

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

RIVERSIDE UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2017080966

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017040949

DECISION

Parents on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on April 21, 2017, naming Riverside Unified School District.

On August 22, 2017, District filed a complaint naming Student. On August 28, 2017, the matters were consolidated and continued to dates stipulated by the parties.

Administrative Law Judge Alexa J. Hohensee heard this matter in Murrieta, California on October 31 and November 1, 2017.

Louis P. Pilato, Attorney at Law, represented Student, and was assisted by advocate Paul Eisenberg. Student's mother (Mother) attended and testified on behalf of Student.

Jack B. Clarke, Jr., Attorney at Law, represented District. Dr. Charity Plaxton-Hennings, District's Director of Psychological Services and Mental Health, and Program

Specialist Robert Diaz attended the hearing on behalf of District.

Daniel Villalobos and Alma Villegas provided Spanish to English and English to Spanish interpretation throughout the hearing.

A continuance until November 20, 2017, was granted for the parties to file written closing arguments. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

STUDENT'S CASE¹

1. Did District deny Student a free appropriate public education by failing to appropriately assess Student in all areas of suspected disability from October 14, 2016, through April 21, 2017, specifically by failing to conduct appropriate assessments in the areas of (i) educationally related mental health services, (ii) language and speech, and (iii) occupational therapy?

2. Did District deny Student a FAPE by failing to provide Student with an appropriate program to meet his unique needs from October 14, 2016, through April 21, 2017, specifically by failing to:

- a. Develop and offer appropriate goals in the December 7, 2016 IEP;
- b. Offer appropriate placement and services to address Student's autism in the individualized education program dated December 7, 2016 and amended on

¹ On the first day of hearing, Student withdrew Issues 1(b), 2(d) and 4(b), as set forth in the prehearing conference order of October 3, 2017. For clarity, some of the issues have been reformatted to eliminate references to withdrawn subparts.

April 27, 2017 (December 7, 2016 IEP)²; and

c. Respond to reports of bullying and to provide a safe learning environment?

3. Did District deny Student a FAPE by failing to provide Mother with Spanish language translations of Student's IEP's, assessments, letters and reports, from October 14, 2016 through April 21, 2017?

4. Did District deny Student a FAPE by predetermining Student's placement in the December 7, 2016 IEP?

DISTRICT'S CASE

5. Did Student's IEP developed on October 14 and December 7, 2016, as amended on April 21, 2017, offer Student a FAPE in the least restrictive environment, taking into account the March 25, 2016 settlement agreement between the parties, such that District may implement the IEP without parental consent?

SUMMARY OF DECISION

Student did not prevail on any of the issues presented in Student's case. Student did not present persuasive evidence that he was on the autism spectrum, and the weight of the evidence did not establish that any changes were required to the December 7, 2016 individualized education program to address Student's needs. District's assessments were performed pursuant to a settlement agreement with Parents, and were appropriately and properly conducted. District developed and offered appropriate goals in the December 7, 2016 IEP. Student's program in the December 7, 2016 IEP was not predetermined. District complied with all procedural requirements in

² In this Decision, the December 7, 2016 IEP and April 21, 2017 amendment will be referred to jointly as the December 7, 2016 IEP, except when the April 21, 2017 amendment is expressly and separately discussed.

developing Student's IEP's. The December 7, 2016 IEP offered Student a free appropriate public education in the least restrictive environment. Student did not establish that he had made any reports of bullying, or that District had failed to provide Student with a safe learning environment. Student did not establish that District had failed to timely provide Mother with Spanish language translations of Student's IEP's, or that District significantly impeded Mother's opportunity to participate in the development of Student's IEP's by failing to translate other documents.

District met its burden of proving that it complied with the procedural requirements for development of an IEP, and that the December 7, 2016 IEP was reasonably calculated to enable Student to make progress appropriate in light of his circumstances. District prevailed on all issues presented in these consolidated matters.

FACTUAL FINDINGS

1. Student was a 16-year-old young man at the time of the hearing. Student resided with Parents within the boundaries of the Riverside Unified School District and was eligible for special education and related services under the eligibility category of "other health impairment" at all relevant times.

2. Mother's primary language is Spanish.

3. Student had a history of anxiety, beginning in first grade. Student received mental health services, and was educated at home during parts of first and sixth grades due to anxiety that manifested as an inability to attend school.

INITIAL AUTISM DIAGNOSIS

4. In February 2015, Student's health insurance company had him assessed at Loma Linda Behavioral Health. Loma Linda diagnosed Student with attention deficit hyperactivity disorder (ADHD), anxiety disorder and an unspecified problem related to social environment. Student was referred to California Psychcare for a psychological

assessment, which diagnosed him with autism spectrum disorder (autism) in May 2015.³

5. The California Psychare report was reviewed at a June 2, 2015 IEP team meeting. Student's eligibility category for special education and related services remained "other health impairment."

2015-2016 SCHOOL YEAR

6. Student entered ninth grade in the 2015-2016 school year. Student experienced anxiety, panic attacks and resulting somatic (physical) problems that inhibited his ability to attend school, and he was placed on home instruction.

7. District conducted a psychoeducational assessment of Student in October 2015. That assessment found that Student had average to low average cognitive ability, with significant delays in attention, memory and emotional functioning. Student's academic scores were in the low average range for reading and written language, and in the deficient range for math. The assessor found that Student would qualify for special education under the eligibility categories of other health impairment or emotional disturbance.

8. At the IEP team meeting to review District's psychoeducational assessment, District and Mother disagreed regarding assessment, eligibility category, placement, and Student's education program going forward. In particular, Mother wanted Student made eligible for special education under the eligibility category of "autism."

PRIOR SETTLEMENT

9. On February 4, 2016, Student filed with OAH a due process hearing

³ The Loma Linda and California Psychare assessments were not in evidence and none of the assessors testified.

request, OAH case number 2016020414, naming District (Student's prior complaint). Student's prior complaint alleged, among other things, that District had failed to appropriately assess Student, that his placement was inappropriate, and that District had improperly failed to designate Student's primary eligibility category as "autism."

10. On March 25, 2016, Parents and District entered into a written settlement agreement of Student's claims. As relevant here, the settlement agreement provided that: (i) Student would be placed at Oak Grove Institute, a nonpublic school of Parents' choice, (ii) Student would receive 20 hours of compensatory speech services, (iii) District would conduct assessments of Student in the areas of educationally related mental health, speech and language, occupational therapy and vision therapy, (iv) District would convene an IEP team meeting to review those assessments no later than October 15, 2016, (v) Parents released all claims regarding placement through the anticipated IEP, and (vi) Parents waived all other educational claims through the date of the agreement.

11. Student began attending Oak Grove Institute in April 2016. Oak Grove administrators had determined that students with a variety of disabilities would benefit from the structure provided in its autism classes, for instance, having fewer classroom peers and having a self-contained classroom that did not require them to navigate the campus and transition from class to class. Student was placed in a self-contained autism classroom with a mix of students with autism and other mild to moderate disabilities. The class was taught by a credentialed teacher with an instructional assistant, and had nine to twelve students. The classroom had a curriculum based on standards for students working towards a diploma, and integrated online programs for students to work on credit recovery.

12. The teacher and staff in the autism class were well-trained in instructional methodologies for teaching students with autism. Instruction was individualized, and the teacher used multi-modal approaches for class lecture, small group and individual

instruction. The class used hands-on activities to help students develop appropriate academic skills, classroom behaviors and social communication, with the goal of transitioning students to general education settings as appropriate. The Oak Grove campus was small, with a ratio of one adult for every six students. The autism classroom was highly structured, and monitored by the teacher to minimize student stress. Each student received 60 minutes of individual therapy in addition to other services on their IEP.

13. During his time at Oak Grove, Student made significant academic progress. He worked hard, completed assignments and enjoyed the online program. Student contributed to classroom discussions, although he preferred to work alone or online. Student needed to work at his own pace, but given additional time to complete assignments and tests, he earned good grades and made significant progress. At home, Mother observed that Student read more, comprehended what he read, and discussed what he read with Parents.

14. Student also made substantial progress in social skills. He transitioned to the new school well, without any major or disruptive behaviors. Student became more comfortable with expressing his needs and advocating for himself. Oak Grove staff observed growth in Student's interactions with peers and adults, and in his participation in group activities.

15. Mother observed that Student felt comfortable at Oak Grove and became sick less often, resulting in better school attendance and a calmer demeanor. At hearing, Mother stressed that Student felt safe and secure at Oak Grove and was socializing more with his classmates and peers. She had also seen significant improvements in Student's reading and writing, particularly in reading comprehension.

2016 DISTRICT ASSESSMENTS

16. In July 2016, pursuant to the settlement agreement, District conducted an

educationally related mental health assessment. The assessment was conducted by Dr. Richard Kong, a well-qualified school psychologist with over six years of experience in conducting psychoeducational and educationally related mental health assessments, including for children with autism. At hearing, Dr. Kong was professional in demeanor, and his responses to questions were complete and very informative. His opinions regarding Student's mental health needs, the educational program to meet those needs, and particularly how symptoms of Student's anxiety presented in the educational setting, were persuasive and accorded significant weight.

17. Dr. Kong reviewed Student's educational records, including the report from California Psychare diagnosing Student with autism, and he included assessment instruments for autism in his evaluation. Dr. Kong spoke to Mother and Student's teacher, and based upon their comments and Student's educational history, included tests for anxiety and depression as well as adolescent psychopathology. Dr. Kong interviewed Mother by telephone with the assistance of a bilingual school psychologist.

18. When the Fall 2016 semester began, Dr. Kong observed Student at Oak Grove for one and a half hours. Student followed the classroom routine, paid attention to the teacher and peers, correctly answered questions when called upon by the teacher, but did not volunteer answers. Student generally did not initiate interactions, but responded appropriately when spoken to by others. Student's teacher from Spring 2016 told Dr. Kong that Student enjoyed helping others, and was motivated and diligent in his classes and credit recovery. He worked cooperatively and communicated with adults and peers with prompting. Student's current teacher made a similar report, and added that Student was improving in requesting help or offering help to others. Student could follow classroom rules, work in small groups, stay on task, and his teacher had no academic or behavioral concerns. Dr. Kong interviewed Student and administered the test instruments to him. Student made good eye contact and responded to all

questions, although he was shy at first. Generally, Student indicated that he enjoyed spending time with his family, missed friends attending District schools, and had not been as worried lately.

19. On depression rating scales, Student and his teacher rated him as average, but Mother rated him in the very elevated range for emotional and functional problems. Mother's responses were so extreme as to be suspect according to a reliability index. In measures of anxiety, Student's responses fell within the average range for most areas and types of anxiety tested, although Student's scores indicated concern with converting anxiety into physical symptoms, which was consistent with Mother and teacher interviews. Student viewed himself as functioning well both socially and emotionally, but reliability measures indicated that Student gave some significantly conflicting responses. Dr. Kong noted that Student had received substantial support at Oak Grove, and determined that Student used escape as a means to cope with stressors. Dr. Kong concluded that Student had social emotional needs that impacted his educational performance and recommended educationally related mental health counseling to help Student develop additional coping skills beyond his preferred technique of avoiding or escaping the stressor.

20. Pursuant to the September 2016 settlement agreement District also conducted a speech and language assessment. The assessment was conducted by Roland Juarez, a certified and well-qualified speech and language pathologist who had been conducting assessments of children with autism for over six years. At hearing, Mr. Juarez was professional in demeanor and demonstrated a genuine interest in Student and Student's ability to communicate. Mr. Juarez provided 20 hours of individualized speech therapy to Student prior to the assessment, and was very familiar with Student. His opinions regarding Student's speech and language needs and the educational program to meet those needs were persuasive and given significant weight. No other

speech and language pathologist was called to contradict Mr. Juarez's opinions.

21. Mr. Juarez used a standardized instrument to assess Student's articulation, as children with articulation problems tend to isolate themselves to avoid teasing. Mr. Juarez was bilingual in English and Spanish, and evaluated Student's language skills using three assessment instruments that included a Spanish vocabulary component because Spanish was spoken in Student's home. Mr. Juarez also used a social development test and informal social thinking test, which would inform him if Student had knowledge that he could not apply. These tests also screened for autism, as children with autism had trouble with perspective, inferences, and interpreting facial and gestural cues. Mr. Juarez spoke with Student's teacher and Mother, and observed Student at Oak Grove in the classroom and during physical education.

22. Student's articulation was highly intelligible. He did not stutter, and his voice was normal in quality, tone, pitch and intonation. Mr. Juarez concluded that Student's speech was not a concern. Student scored in the superior range for receptive language (understanding things spoken to him) on one language test, and in the average range for receptive and expressive language in other tests. Student understood idioms, inferred the feelings of others, made eye contact and asked Mr. Juarez questions about what the assessor liked or felt. During the classroom observation Student participated in class discussions. During independent time, Student approached a classmate and tapped the classmate's shoulder to get the classmate's attention and inquired about a video that the classmate was watching on a tablet. Student did not participate in kickball during physical education because he had once been hit in the face by the ball and did not want to get hit again. Student also said that he wanted to focus on schoolwork because he wanted to be a game developer. In Mr. Juarez's professional opinion, based upon his assessment and interactions with Student, Student's language skills were average for his age group. Student did not present with

the communication deficits Mr. Juarez observed in his work with children with autism.

23. Pursuant to the September 2016 settlement agreement District also conducted an occupational therapy assessment. It was performed by Tanya Miller, a well-qualified occupational therapist who had assessed students with autism, and possessed certification to test children for sensory integration. At hearing, Ms. Miller's demeanor was professional, and she answered all questions completely and with informative detail. Ms. Miller observed Student for 20-25 minutes in his classroom, and got input from his teacher. She had Student complete a battery of assessments to determine Student's fine motor and visual motor abilities and obtained writing samples. The standardized assessments required Student to draw progressively complex shapes, draw matching shapes and manipulate a peg board in a timed test. She had Student manipulate small objects such as fasteners, a pencil and scissors to observe his fine motor coordination. Ms. Miller also had Student and his teacher complete sensory profile questionnaires to determine if Student had any sensory processing difficulties and to determine Student's self-care skills. Ms. Miller's opinions regarding Student's fine motor, visual motor and sensory processing needs, and the educational program to meet those needs, were persuasive and accorded significant weight. No other occupational therapist was called to offer a differing opinion.

24. Student was well-behaved during Ms. Miller's observation and did not display any behaviors in response to school bells ringing or people shouting. In visual motor testing, Student scored in the average range. He was able to write legibly, and told Ms. Miller that he was proficient at using a computer and wanted to go into a career with computers. Student's ability to discriminate visual information on the board at the front of the classroom, compose paragraphs and organize his work was age appropriate. Although the responses to a sensory profile indicated that Student preferred sedentary activities and quiet surroundings, neither Student nor his teacher

gave responses indicating sensory sensitivity. Ms. Miller concluded that Student had age appropriate fine motor skills, did not have visual motor deficits, was able to process sensory information in the classroom, and was able to take care of his own self-care and toileting needs at school. She did not find him eligible for occupational therapy services. She also did not find him to fit the profile for students with autism, who commonly present with reactions to noises, perseverations and sensory stimulating behaviors.

25. Dr. Kong, Mr. Juarez and Ms. Miller each administered assessment materials in the language and a form most likely to yield accurate information on what Student knew and how he performed academically, developmentally and functionally. Where appropriate, they used non-standardized and informal measures which, based upon their professional education, training and experience in their respective fields, provided accurate and sufficient information on Student for purposes of educational planning. Dr. Kong, Mr. Juarez and Ms. Miller testified persuasively that they obtained sufficient information upon which to base their conclusions and opinions.

26. Each assessor prepared a written report that included: the assessor's opinion on whether Student needed special education and related services in their field of expertise; the basis for making that determination; relevant behavior noted during the observations of Student; the relationship of that behavior to Student's academic and social functioning; educationally relevant health, development and medical findings; a determination that Student's educational functioning was not affected by environmental, cultural or economic disadvantage.

27. Prior to October 2016, District arranged to reimburse Parents for an independent vision therapy assessment, rather than conduct its own vision therapy assessment.

OCTOBER 14, 2016 IEP TEAM MEETING

28. On October 14, 2016, District convened an IEP team meeting to review the

assessments and Student's progress at Oak Grove. Mother, another family member and Student's in-home behavioral support provider attended the meeting, as well as Student's teacher and the principal from Oak Grove, a general education teacher, program specialists and administrators from District, and the assessors Dr. Kong, Mr. Juarez and Ms. Miller. District provided a Spanish language interpreter for Mother. District gave Mother a copy of procedural safeguards in Spanish and offered an explanation of those rights.

29. District provided Mother with copies of the speech and language, occupational therapy, and educationally related mental health assessment reports in English. As Mr. Juarez, Ms. Miller, and Dr. Kong presented their reports, the interpreter provided Mother with Spanish language interpretation. The interpreter also assisted Mother with asking questions and providing additional input regarding the areas of assessment to the IEP team.

30. Mr. Juarez reviewed his speech and language assessment report for the IEP team. Mr. Juarez concluded that Student had age appropriate social communication skills and did not need speech therapy. Mother told the team that Student was initiating conversation more often; in particular, he had a job delivering meals to seniors with Meals on Wheels, and was greeting seniors by name and having conversations with them.

31. Ms. Miller went over her occupational therapy assessment report with the team. Ms. Miller explained that Student's fine motor and visual motor skills were age appropriate, and that Student did not have inappropriate reactions to sensory stimuli. Mother was asked if she had any comments and she did not.

32. Dr. Kong reviewed the results of his educationally related mental health assessment. He concluded that Student had social emotional needs, including anxiety and depression, which required mental health counseling to teach him coping skills to

deal with stressful situations. When team members were asked for comments, Mother stated that Student displayed symptoms of sadness and loneliness at home, which was consistent with Student's response that his friends were at District schools and not at Oak Grove. Mother discussed some of Student's past challenges, and shared her hope that Student would become more extroverted. Student's teacher added that Student generally held back from interacting with other students or showing emotion, although he had joined a game with a peer that day. The teacher and other Oak Grove representatives explained how they were working to make Student feel more comfortable, and opined that Student would participate more as he became comfortable with his classmates. Student's home behavioral services provider shared that he would be working with Student at school that day to obtain information to assist in working with Student at home. Dr. Kong recommended that Student receive 60 minutes a week of individual counseling, and that his teacher receive 30 minutes per month of consultation to develop strategies to support Student. He proposed an annual goal that Student cope with negative emotions by identifying difficult situations, acknowledging negative emotions, and discussing feelings with his counselor in 80 percent of situations across four weeks. Mother did not tell Dr. Kong or the team that she thought Student's lack of social interaction was the result of autism, or request that the team develop goals and services to address Student's social skills.

33. Each of the assessors were careful to ensure that the Spanish language interpreter had sufficient time to interpret their presentation, and paused frequently to ask Mother if she had any comments or questions.

34. Mother did not have the vision therapy report. Mother told the team that she felt that she had not been given sufficient opportunity to answer the parent interview questions for the educationally related mental health assessment, and the team agreed that she would be given another chance to add information. The meeting

was adjourned to be reconvened at a later date.

DECEMBER 7, 2016 IEP TEAM MEETING

35. On December 7, 2016, District reconvened the IEP team meeting. The same persons attended the meeting, with the exception of Ms. Miller (excused by Mother), a different in-home behaviorist for Student, and Student's therapist at Oak Grove instead of the Oak Grove principal. The same Spanish language interpreter was provided for Mother. Mother was given a copy of procedural safeguards and an explanation of her rights as a parent in Spanish.

36. Mother told the team that she had been unable to respond to the District's contacts for her to provide further input for the educationally related mental health assessment. Dr. Kong agreed to make an appointment to meet with her at the end of the meeting. Mother also explained that she had obtained a vision therapy assessment for Student, but did not have the report to share with the IEP team.

37. The team reviewed Student's progress on goals. Student met his goal to ask his teacher about missed assignments, and made progress on his reading and math goals. The team reviewed Student's present levels of performance. In reading, Student read and recalled basic information, but still had difficulty recognizing literary elements such as characters, setting, plot, conflict and theme. District team members proposed an annual goal that Student read and correctly respond to questions about these elements with 80 percent accuracy in four out of five trials. In writing, Student's three-paragraph expository essays scored one out of a four-point rubric. District team members proposed a goal that Student write a three-paragraph persuasive essay with introduction, supportive arguments and conclusion that scored at least two on a four-point rubric in three of four trials. In math, Student was working on pre-algebra skills. District team members proposed an annual goal that Student solve three-step algebraic equations with one variable with 80 percent accuracy in four of five trials. The academic

goals would be measured by work samples and teacher records.

38. District team members also proposed an annual goal in social emotional development to address Student's preference to work alone and his reluctance to join class discussions. District team members adopted a goal for Student to raise his hand and volunteer to appropriately comment during class discussions without prompting in eight out of 10 opportunities. Mother did not tell the team that she thought Student's isolation and lack of participation was the result of autism, or request that the team develop social emotional goals and services to address autism.

39. Mother asked the team to develop goals to explain to Student his rights when he turned 18 years old. In response, District team members had Student join the IEP team meeting for the discussion of transition goals. They explained to Student about the age of majority and his responsibilities as an adult in the IEP process. Student's teacher reported that Student recently completed a banking program that discussed budgeting and money management, and District team members explained that Student would be working on independence skills through transition goals. Student expressed that he wanted to attend a well-known local college that specialized in game design. District team members proposed an annual transition goal that Student prepare for post-secondary education opportunities by researching and developing a portfolio of information on course of study and cost of three colleges or trade schools, with teacher guidance. District team members also proposed an annual goal that Student learn to complete information in a standard employment application to be measured by work samples and teacher review. These transition goals were designed to teach Student important transition skills such as finding employment, handling income and budgeting for higher education or training.

40. District team members adopted the proposed academic, social emotional and transition goals, including the annual social emotional goal proposed by Dr. Kong.

Each of the annual goals appropriately addressed Student's areas of need. Each goal contained a description of how progress on that goal would be measured. Each goal also provided for periodic reports of Student's progress to be shared at the time of report cards and at parent-teacher conferences.

41. The team discussed placement. Mother was very happy with Student's placement at Oak Grove. Student had made progress at Oak Grove, as seen in his improved school work, reduced anxiety and improved attendance. Oak Grove staff described the classroom and the many supports in place at the school, which Dr. Kong had explained were important to support Student's mental health and his ability to function in the school environment. The team discussed less restrictive placement options, but after listening to the assessment reports and Mother's input, and in light of Student's success at Oak Grove, the District team members determined that Student should remain in the autism class at Oak Grove with supports and accommodations. The IEP therefore offered continuing placement at Oak Grove.

42. District team members did not find Student eligible for speech therapy or occupational therapy, but adopted Dr. Kong's recommendations for 60 minutes per week of individual counseling and 30 minutes per month of consulting services to Student's teacher. The same services were offered over the 20-day 2017 extended school year. The services were projected to start the next day and continue for one year, and the frequency, location and duration of the services were written into the IEP.

43. The Spanish language interpreter interpreted for Mother throughout the IEP team meeting, and read Mother portions of the IEP document as they were covered. The District team members went slowly through the IEP discussions for Mother and the interpreter, and frequently inquired if Mother had questions or comments. Mother wanted Student's eligibility changed to "autism" rather than "other health impairment," but did not tell that to the other team members. District team members attended the

IEP team meeting with open minds, and took the information and concerns voiced by Mother into consideration when developing the IEP.

44. Mother was aware at the time of the December 7, 2016 IEP team meeting that Student's eligibility category was not changed to "autism." Mother refused to consent to the IEP for this reason. Mother did not request a Spanish language copy of the IEP, and because she did not sign or return the consent page, she did not check the box on that page to request a written translation. After the meeting, Parents sent District a letter requesting independent educational evaluations in speech and language, occupational therapy and psychoeducational development.

45. On January 13, 2017, District sent Parents written notice in English of its agreement to fund independent educational evaluations in speech and language and occupational therapy. The notice explained that because District had not assessed Student's psychoeducational development since 2015, District wanted to do its own psychological assessment. The notice also included an explanation in Spanish of why District sought to conduct its own psychoeducational assessment, and an assessment plan in Spanish. Parents did not sign and return the assessment plan.

APRIL 21, 2017 IEP TEAM MEETING

46. On April 21, 2017, District convened an IEP team meeting to determine why Parents had not consented to the December 7, 2016 IEP. Mother attended, as did a program specialist and special education teacher from Oak Grove, Student's therapist at Oak Grove, and a District special education program specialist. A Spanish language interpreter was provided for Mother. District gave Mother a copy of procedural safeguards in Spanish.

47. Mother told the team that she would not consent to the IEP unless Student's eligibility category was changed to "autism," his goals were changed to reflect the needs of an autistic child, and Student was offered services in speech and language,

occupational therapy and vision therapy. District team members did not change the offer of FAPE in the December 7, 2016 IEP, and Mother did not consent to implantation of the IEP.

48. Mother provided District with a copy of the vision therapy assessment. She also renewed her request for an independent psychoeducational evaluation. District instead provided Mother with a copy of the January 2017 assessment plan for her signature.

49. The meeting was adjourned, and the team agreed to reconvene to discuss the results of the vision therapy assessment after District had had an opportunity to read the report. Mother requested a Spanish language translation of the December 7, 2016 IEP.

50. On April 18, 2017, Student was running across campus with some friends and not looking where he was going. He hit his head on a tree branch, which cut the top of his head. Student did not report the injury. Mother noticed blood in Student's hair that evening, and testified that she lived in constant fear that Student would injure himself again, but she did not report the injury to Oak Grove until October 2017, seven months later.

51. Mother was provided a copy of the December 7, 2016 IEP translated into Spanish in April or May of 2017.

52. At hearing, Mother was effusive in her praise for the autism classroom at Oak Grove, and the significant progress that her son was making in academics, communication and social emotional development. She did not want a change in Student's placement. Student did not present any evidence of how his educational program would differ if his eligibility category was "autism" rather than "other health impairment," and Mother did not specify what program changes she believed would take place if Student's eligibility category was changed. Mother testified that she

worried if Student was not eligible for special education and related services under the category of “autism,” his diagnosis of autism by California Psychcare might be disregarded by insurance or other State and federal agencies, and his eligibility for other services through those sources might be jeopardized.

DR. GROSS’ REGIONAL CENTER ASSESSMENT

53. In August 2017, Parents sought services from the local regional center for services to address Student’s diagnosis of autism.⁴ The regional center referred Student to Dr. Thomas Gross for a psychological evaluation to rule out intellectual disability or autism. Dr. Gross was a well-qualified clinical psychologist who performs assessments to determine regional center eligibility under the Lanterman Developmental Disabilities Service Act. Dr. Gross did not apply, and was not familiar with, the criteria for eligibility for special education and related services under the IDEA.

54. Parents provided Dr. Gross with the California Psychcare assessment that diagnosed Student with autism, but no other reports. Parents told Dr. Gross that Student was in special education, but did not provide Dr. Gross with any of District’s assessment reports or Student’s IEP’s.

⁴ In California, local regional centers provide services and supports for persons with developmental disabilities directed towards: the alleviation of the disability; social, personal, physical, or economic habilitation; or achievement and maintenance of independent, productive and normal lives. (Welf. & inst. Code, § 4512(b).) Eligible persons are referred to as “consumers,” and must have disabilities that meet the definition of developmental disabilities under the Lanterman Developmental Disabilities Service Act. (*Id.*, §§ 4512(a) and (d).) Regional center services are centered on the individual and the family, and promote community integration; independent, productive, and normal lives; and stable and healthy environments. (*Id.*, § 4646(a).)

55. Dr. Gross administered an intelligence test to Student, on which Student scored in the average range. Parents completed the only other two test instruments administered by Dr. Gross. On rating scales of Student's adaptive behavior, Parents reported that Student rarely initiated or contributed to conversations, could care for himself but needed reminders to bathe or to do chores, and tended to isolate himself. On an autism rating scale, Parents reported that Student isolated himself, had poor eye contact, did not exhibit joint attention, was inattentive to others, shook his feet as if nervous, was hyper-sensitive to sounds, was particular about foods, sniffed clothing and food before eating, watched the same videos over and over, and preferred a routine. Dr. Gross observed Student during testing and the parent interview, and observed him to be quiet and withdrawn, give one or two word responses to questions, wring his hands, speak sparingly, sit quietly during the parent interview, and be unable to enter into or sustain a simple conversation. Dr. Gross interviewed Student, who reported that he had friends he contacted by telephone, and that he enjoyed multi-player games such as Uno, War and Battleship.

56. Dr. Gross concluded that Student had multiple persistent deficits in social communication and social interaction across multiple contexts, deficits in nonverbal communication in social interaction, had poor eye contact, was unable to respond to others' body language, was uninterested in peers, exhibited repetitive patterns of behavior (wringing hands), was hypo-reactive to pain and hyper-reactive to sound and touch, and that these symptoms would cause significant impairment in social and academic settings and interfere with the development of adaptive self-help skills. He also concluded, based only upon Parents' report, that Student's school placement was appropriate and that a social skills goal should be included in Student's IEP. Dr. Gross diagnosed Student with autism within the Lanterman Act's definition of that term.

57. Dr. Gross was unaware of the extensive and thorough assessments by

District in the areas of language and social communication, sensory integration and mental health. The information given to him by Parents was limited, and would tend to skew the results of his assessment towards a finding of significant autistic behaviors. At hearing, Dr. Gross freely admitted that the conclusions in his assessment might have been different had he had an opportunity to review District's assessments. He acknowledged that he was unfamiliar with Student's classroom at Oak Grove, and had not seen Student's IEP. Dr. Gross also stressed that he applied an autism standard of eligibility for regional center consumer services, and could not opine on whether Student would meet the autism criteria for eligibility for special education and related services from District. Dr. Gross' opinions on Student's abilities and needs were viewed with caution in light of the limited information that had been provided to him.

DISTRICT'S EXPERT PSYCHOLOGIST

58. Dr. Charity Plaxton-Hennings testified as District's expert in psychoeducational development. Dr. Charity Plaxton-Hennings had assisted in District's 2015 psychoeducational evaluation of Student and was familiar with him. Dr. Plaxton-Hennings was a licensed clinical psychologist and neuropsychologist, and a credentialed school psychologist.

59. Dr. Plaxton-Hennings opined that Dr. Gross had not administered sufficient tests to rule out other diagnoses to explain Student's symptoms of isolation and withdrawal. For instance, someone who presented with anxiety might have difficulty in social situations without being on the autism spectrum, and Dr. Gross did not assess for anxiety. In light of Student's history of attention and memory deficits, Dr. Plaxton-Hennings opined that Dr. Gross should have administered tests to determine if those areas would explain some of Parents' observations, rather than relying on one test of Student's cognitive ability.

60. Dr. Plaxton-Hennings also disagreed with conclusions Dr. Gross had drawn

from his short observation of Student during testing. In her experience, a 16-year-old adolescent boy rarely wants to converse with adults, does not like attending therapy, and rarely wants to talk about himself to a strange adult. Therefore, she opined that much of Student's behavior during testing with Dr. Gross, such as poor eye contact, reluctance to engage in conversation and brief responses, was age appropriate rather than symptomatic of autism. Dr. Plaxton-Hennings noted that Student liked games like Uno and Battleship, which involved turn-taking, taking the perspective of an opponent to develop strategy, and working in a group. Such skills are commonly areas of deficit for children with autism and not typical of a student significantly impacted by autism. In addition, Dr. Plaxton-Hennings noted that Student's highest score in Dr. Gross's cognitive testing was in the domain of communication, which is inconsistent with a diagnosis of autism.

61. Dr. Plaxton-Hennings had similar criticisms of the California Psychare evaluation, which she had reviewed. She noted that most of the information in that report was gathered from Parents, and that many of the things reported had not been seen by District staff in the school setting. In her opinion, based upon her education, training, experience, knowledge of Student, conversations with school staff and review of the last several years of assessments, Student did not present with autism.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20

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

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

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

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

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. The Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.* (March 22, 2017) 580 U.S. __ [137 S.Ct. 988] (*Endrew*). It explained that *Rowley* held that when a child is fully integrated into a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Id.*, 137 S.Ct. at pp. 1000-1001, citing *Rowley*, 458 U.S. at p. 204.) As applied to a student who was not fully integrated into a regular classroom, the student’s IEP must be reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. (*Endrew*, 137 S.Ct. at p. 1001.)

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

preponderance of the evidence].) In this matter, Student had the burden of proof on the issues decided in Student's complaint, and District had the burden of proof on the issue decided in District's complaint.

DISTRICT'S AFFIRMATIVE DEFENSE

5. District contends as an affirmative defense that Student's complaint in this matter was resolved by the settlement of Student's prior complaint, and that Student cannot again raise a claim that he requires special education services due to autism.

6. A special education settlement agreement is considered a contract. (See, e.g., *D.R. v. East Brunswick Board of Education* (3d Cir. 1997) 109 F.3d 896, 898.) California district courts have held that OAH has jurisdiction to interpret and enforce settlement agreements concerning the educational program of a disabled child. (See *Pedraza v. Alameda Unified School Dist.* (N.D.Cal. Mar. 27, 2007) 2007 U.S. Dist. LEXIS 26541; *Hayden C. v. Western Placer Unified School Dist.* (E.D.Cal. May 12, 2009) 2009 WL 1325945; *Lara v. Lynwood Unified School Dist.* (C.D.Cal. July 29, 2009) 2009 WL 2366454.)

7. In the March 25, 2016 settlement agreement, Student waived all educational claims through the date of the agreement (and through the October 14, 2016 IEP team meeting as to placement). Such a waiver did not waive claims relating to the identification of Student's educational needs arising after March 25, 2016. Student expressly limited his claims in this due process matter to those arising after October 14, 2016. Accordingly, the terms of the settlement agreement do not bar Student's claims, including the claim that he should have been found eligible for and received special education and related services under the eligibility category of "autism" on information available to his IEP team on or after October 14, 2016.

STUDENT'S ISSUE 1: ASSESSMENTS

8. Student contends that District denied him a FAPE by failing to appropriately assess him in the areas of educationally related mental health services, language and speech, and occupational therapy. District disagrees and contends that its assessments were appropriate.

Legal Authority

9. When conducting assessments, a local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304(c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) The IEP team must consider the assessments in determining the child's educational program. (34 C.F.R. § 300.324(a)(1)(iii).)

10. The assessments used must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; (3) used for purposes for which the assessments are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of such

assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

11. Individuals who are both “knowledgeable of the student’s disability” and competent to perform the assessment, must conduct assessments of students’ suspected disabilities. (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

12. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student’s academic and social functioning; (5) the educationally relevant health, development and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

Analysis

13. The evidence demonstrated that District’s language and speech assessment, occupational therapy assessment, and educationally related mental health services assessment conducted in September and October 2016 were appropriately and

properly conducted.

14. All District personnel involved were qualified to conduct the assessments. Student was assessed using a variety of assessment instruments, ranging from standardized tests to observation, in order to determine his unique needs. The assessment instruments were appropriate given Student's history of attention deficits and anxiety, as well as his recent diagnosis of autism. The assessments were not racially, sexually, or culturally biased, were given in Student's primary language of English, and were valid for the purpose for which they were used. The assessment instruments were completed by Student, and the scores obtained were valid. Mother was provided with comprehensive reports that explained all of the assessments, and included recommendations for Student's education. The reports were reviewed by the assessors at an IEP team meeting with the assistance of a Spanish language interpreter for Mother. The reports were discussed at an IEP team meeting that was attended by all necessary people and in which Mother fully participated.

15. District's evidence concerning the qualifications of the language and speech and occupational therapy assessors, their assessment methods and instruments, and the results of the assessments, was undisputed and persuasive. Neither Dr. Gross nor Mother testified concerning, or offered opinions regarding, Student's fine motor or sensory needs. Dr. Gross did not testify regarding, or criticize, Mr. Juarez's assessment. However, to the extent Dr. Gross opined that Student had deficits in expressive language, receptive language and social interaction based upon Parents' report and his brief interaction with Student, this opinion was given little or no weight, as outside of his area of expertise and based on insufficient and inaccurate information regarding Student's language and communication skills and needs.

16. Dr. Gross did not review or comment upon Dr. Kong's assessment, the methods of its administration, its results, or Dr. Kong's opinions. He did not identify any

deficiencies in Dr. Kong's assessment, or offer an opinion on any new information gained in his own assessment of Student that would have been material to the IEP team's development of Student's program for the 2016-2017 school year. Dr. Gross noted that he was not a credentialed school psychologist, and at hearing did not make any recommendations regarding Student's education. At the time of his assessment, Dr. Gross did not know about District's multiple prior assessments in the areas of psychological development, language and speech, and mental health needs finding that Student was not autistic, and opined that had he known, he would have gathered additional information and might have come to a different conclusion. Parents' failure to provide Dr. Gross with important relevant information undermined Dr. Gross' opinion that Student's difficulties with social interaction were due to autism, and accordingly, that opinion was given little or no weight.

17. The credible testimony of Dr. Kong, Mr. Juarez and Ms. Miller established that they each administered assessment materials in the language and a form most likely to yield accurate information on what Student knew and could do academically, developmentally and functionally. Each assessor explained why they chose the assessment tools they did, and that the assessment tools, whether normed tests or scales, were used for their intended purpose, valid and reliable, and administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. Each of these assessors testified persuasively that, based upon their professional education, training and experience in their respective fields, their assessments provided accurate and sufficient information on Student for purposes of educational planning.

18. The IEP team looked at all of the assessment reports, and no single measure or assessment was used as the sole criterion for determining an appropriate educational program for Student. Student was assessed in all areas of suspected

disability as agreed upon by Parents and District in the March 25, 2016 settlement agreement.

19. The weight of the evidence established that the October and December 2016 IEP teams had accurate, reliable and sufficiently comprehensive assessment information before them to appropriately and fully consider whether Student had additional unique needs that needed to be addressed at the meetings.

20. Student failed to meet his burden of proving by a preponderance of the evidence that District's September 2016 language and speech assessment, October 2016 educationally related mental health assessment, or October 2016 occupational therapy assessment were not appropriately completed. District prevailed on issue 1.

STUDENT'S ISSUE 2(A): GOALS

21. Student alleges that District that denied him a FAPE by failing to develop appropriate goals to address Student's autism. District contends that it developed appropriate and measurable goals that addressed each of Student's areas of educational need.

Legal Authority

22. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (Letter to Butler, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

23. In addition, the IEP must include "appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved," and a statement of how the student's progress toward the goals will be measured. (Ed. Code, § 56345, subd. (7), (9); 20 U.S.C. § 1414(d)(1)(A)(i)(III).) An examination of an IEP's goals is central to the determination of whether a student has received a FAPE. In *Adams v. State of Oregon*, the Ninth Circuit stated: "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

24. Beginning at age 16 or younger, the IEP must include a statement of needed transition services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect when a student reaches 16 years of age must include appropriate, measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A).)

25. A school district's determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively reasonable...at the time the IEP was drafted." (*Adams, supra*, at p.1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

Analysis

26. District developed measurable annual goals in Student's areas of need resulting from his disabilities to enable Student to be involved, and make progress, in the general curriculum. Student's present levels of performance and progress on prior annual goals identified weaknesses in the academic areas of reading, writing and math. Student's reading goal sought to improve Student's comprehension of written material, and his writing goal focused on expanding Student's writing skills from expository essays to persuasive essays referencing supporting information. The math goal addressed more difficult, multi-step algebraic equations that Student needed to complete his algebra requirement. These academic goals were appropriate.

27. District also developed measurable annual goals to address Student's other areas of need. In light of the teacher's report and Dr. Kong's assessment, the team drafted goals in the area of social emotional development, for Student to participate more in class, and to identify adverse emotions and learn coping strategies with the help of his counselor. Dr. Kong persuasively opined that these goals were appropriate to help Student develop independent living skills, particularly social interaction skills. As Student was also almost 16 years of age at the time of the October 14, 2016 IEP, District developed transition goals that addressed Student's interest in post-secondary education and competitive employment. Oak Grove's director of education testified persuasively that these nonacademic goals were appropriate for Student's grade and age level, and necessary for Student to acquire critical information about college and career options. It is also worth noting that, although the IEP teams did not have Dr. Gross' August 2017 psychological assessment report, the social skill deficits identified in Dr. Gross' assessment report were addressed by the social emotional goals drafted by the October 14, 2016 IEP team.

28. Student did not demonstrate that District failed to identify any areas of

educational need that required goals to be written to enable Student to access the general curriculum or to be successful in vocational and social endeavors.

29. Mr. Juarez and Ms. Miller persuasively opined that Student did not require speech therapy or occupational therapy to access the general curriculum. Student did not offer the District-funded vision therapy report into evidence, or present evidence that the report recommended vision therapy for Student. Although Mother testified that it was her belief that Student required speech, occupational and vision therapies, with corresponding goals in those areas, Student provided no persuasive evidence that Student required such services to access the general curriculum. Mother was not a licensed professional in these areas, and no witnesses with education, training and experience in the fields of speech and language, occupational therapy, or vision therapy were called to contradict District's witnesses.

30. As discussed at Issue 2(b), below, Student did not establish that his ability to access the general curriculum was impeded in any way by autism. The goals developed by Student's December 7, 2016 IEP team addressed Student's academic and social emotional functioning, and enabled him to be involved in and make progress in the general curriculum.

31. Accordingly, the goals included in the December 7, 2016 IEP addressed the full range of Student's educational needs arising from his disabilities, and were reasonably designed to enable him to be involved in and make progress in the general curriculum.

32. Student failed to meet his burden of proving by a preponderance of the evidence that District failed to develop and offer appropriate goals in December 7, 2016 IEP. District prevailed on Issue 2(a).

STUDENT'S ISSUE 2(B): PLACEMENT AND SERVICES

33. Student contends that District denied him a FAPE by failing to offer

appropriate placement and services in the IEP of December 7, 2016. Specifically, Student contends that the program offered did not address his diagnosis of autism. District asserts that the IEP offered Student a FAPE in the least restrictive environment.

Legal Authority

34. In determining the educational placement of a child with a disability, a school district must ensure that: (1) the placement decision is made by a group of persons, including the parents, knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; (2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; (3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; (4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

35. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that (1) children with disabilities are educated with non-disabled peers; and that (2) special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student has on the teacher and children in

the regular class; and (4) the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of general education was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].)

36. If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options.⁷ (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

37. If a child with a disability is not fully integrated into a regular classroom, the special education and related services in the student's IEP must be reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. (*Endrew*, 137 S.Ct. at p. 1001.)

⁷ "Mainstreaming" is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

38. An IEP must include a post-secondary transition plan during the school year in which the child turns 16 years old. (Ed. Code, § 56043, subd. (g)(1).) “Transition services” means “a coordinated set of activities for an individual with exceptional needs” that: 1) “Is designed within an results-oriented process, that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to post-school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation”; 2) “Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil”; and 3) “Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.” (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

Analysis

39. Looking at the evidence as a whole, Student’s diagnoses of autism were unreliable and unpersuasive for purposes of requiring District to incorporate additional autism-specific components in Student’s IEPs. Further, District properly crafted an IEP that addressed Student’s individual needs regardless of his eligibility category, as discussed below.

40. Here, applying the *Rachel H.* factors to the facts, shows that Student could not have been satisfactorily educated in a regular education environment. Student had difficulty with grade level reading, writing and math, needed to perform at his own pace, and could not be expected to receive educational benefit in classes taught at grade level without individualized and specialized academic instruction. Although Student could arguably have received non-academic benefit in a regular classroom from exposure to

social communication modeling by typical peers, the evidence established that Student had severe anxiety that significantly interfered with his ability to cope with stressors such as unfamiliar peers, large classes and a crowded campus. Mother, Student's assessors and Oak Grove's director of education uniformly opined that Student needed a small, structured classroom and the support of a low student to adult ratio of a nonpublic school, such as Oak Grove, to function successfully in a school setting. Dr. Kong's assessment indicated that Student was at risk of somatization, and would get physically ill when expected to perform beyond his coping skills. Student's difficulty with stress did not adversely impact Student's teacher and classmates as his stress response was to withdraw from participation and isolate himself, but increased absences would reduce opportunities for socialization, indicating the need for a small classroom with social and emotional support. In conclusion, the *Rachel H.* factors weighed in favor of a placement outside of the regular classroom.

41. Once it has been determined that education in the regular classroom cannot be achieved satisfactorily, the inquiry turns to whether Student has been mainstreamed to the maximum extent appropriate. Here, the December 7, 2016 offer of the autism classroom on a small, highly structured and supported nonpublic school campus for a full day was the least restrictive environment for Student.

42. Student was receiving educational benefit from placement in the autism classroom at Oak Grove. He received individualized, multi-modality instruction at his academic level, and was able to progress in his lessons and take tests at his own pace. The autism class also provided online credit recovery opportunities, and since being at Oak Grove, Student was on track to earn the credits required for graduation with a regular high school diploma. In addition to opportunities to work individually, the small number of students in the autism classroom allowed Student to be comfortable enough to pay attention during lectures, participate in group discussions and take notes, which

supported academic learning. Student's grades had improved dramatically since being enrolled in the autism classroom at Oak Grove, as had his attendance, which contributed significantly to his ability to timely advance in his academic courses.

43. Student also received non-academic benefit from the offered placement. Student benefitted behaviorally from the structure of the autism classroom, and the teacher and staff were trained to work in applied behavior analysis and other methodologies to teach students with autism and other mild to moderate disabilities. The autism class focused on socialization, behavior and communication, and provided Student with necessary supports to interact with peers and adults, reducing Student's anxiety. Embedded counseling services, with additional educationally related mental health counseling and teacher consultation would help Student to recognize adverse feelings and develop coping skills, a significant social emotional deficit resulting in debilitating stress and depression. There was abundant evidence that Student was beginning to function well and without extreme behaviors, and would make progress with the offered level of support in a small, familiar and controlled school setting. Dr. Kong and Dr. Paxton-Hennings testified convincingly that Student was not ready to be mainstreamed, and required a full-day placement in a special day class on a nonpublic school campus at that time.

44. Balancing the benefits of a general education program in which Student was previously failing due to his inability to cope against the benefits of a program that was clearly beneficial, the weight of the evidence established that placement in a highly structured and individualized classroom on a small nonpublic school campus was appropriate. In conclusion, Student's placement in a self-contained and structured classroom on a small nonpublic school campus, such as the autism class at Oak Grove, was the least restrictive environment in which Student could be satisfactorily educated.

45. The related services offered were also appropriate. The addition of the

recommended level of counseling and consultation services would enable Student to learn coping strategies for the stressors inevitable in school challenges, such as difficult work assignments, group learning and social expectations. Dr. Kong and Dr. Plaxton-Hennings testified persuasively that this level of support was reasonably calculated to address Student's anxiety and enable him to make progress on his social emotional goals.

46. Student's socialization deficits were appropriately addressed by the embedded supports of the autism classroom at Oak Grove and educationally related mental health counseling, rather than speech therapy. Although Mother wanted Student to have speech therapy, Mr. Juarez's assessment, and the testimony of Oak Grove and District witnesses who had interacted with Student, established that Student's speech and language skills, including social communication skills, were age appropriate. Student's existing social communication skills were impacted by his anxiety, and it was his escape from stressors that manifested as shyness, isolation and avoidance of social interaction.

47. The December 7, 2016 IEP included a coordinated set of transition services focused on improving the academic and functional achievement needed to facilitate Student's movement from school to post-school activities. Student wanted to attend college and pursue a career in game design, and the transition goals and activities of researching and developing a portfolio of information on three colleges or trade schools and gathering information to complete an employment application were designed to transfer his education and work experience into the opportunity to achieve his post-secondary plans. The transition plan was based on Student's individual needs, and took into account his strengths and preferences, such as aiming for entry into a local and well-known gaming design school. Work on these transition goals would also provide instruction on development of employment skills and other adult living objectives,

including finding employment, costs of higher education or training, and how to handle income.

48. Student did not establish that he required occupational therapy or vision therapy. Although Student liked being apart from groups and in a quiet space, Ms. Miller's assessment and the testimony of the school staff who had worked with Student established that this behavior was a means for Student to cope with his anxiety, and not a symptom of sensory sensitivity requiring occupational therapy. There was no evidence that Student required vision therapy.

49. The testimony of Dr. Gross did not establish that Student required school-based services specific to behaviors or deficits resulting from autism. Dr. Gross was not a school psychologist, did not observe Student in a school setting, and did not interview Student's teachers. Dr. Charity Plaxton-Hennings testified persuasively and convincingly that the results of Dr. Gross' testing could be explained as symptoms of ADHD, anxiety and depression. District witnesses who interacted with Student, all of whom were experienced in working with children with autism in educational settings, opined that Student did not exhibit common characteristics of autism, such as lack of eye contact (beyond that age appropriate for a teenaged boy), behavior problems, difficulty following conversations or understanding nonverbal cues, or sensory sensitivity, at school. Although Mother and District team members disagreed on whether Student should be classified as a student with autism or a student with multiple disabilities, the services offered in the December 7, 2016 IEP addressed each of Student's academic, social, emotional and transition needs.⁸

⁸ Whether a child is "described as cognitively disabled, other health impaired, or learning disabled is all beside the point. The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education." (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2014) 758 F.3d 1162, 1173, citing *Heather S. v.*

50. Mother appeared to believe that applied behavior analysis methodology was best for students with autism, however, an IEP is not required to designate the particular instructional methodologies that will be utilized in instruction. (71 Fed. Reg. 46,665 (Aug. 14, 2006).) As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) This rule is applied in situations involving disputes regarding choice among methodologies for educating children with autism. (See *Adams, supra*, 195 F.3d at 1149; *Pitchford v. Salem-Keizer School District* 155 F.Supp.2d 1213, 1230-32 (D. Ore. 2001); *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84 (*T.B.*)) Student's teacher and staff at Oak Grove were already well-trained in, and implemented, methodologies for teaching students with autism, and a reference to this methodology was not required on Student's IEP.

51. Student did not produce educational professionals to testify regarding services or accommodations needed, but not offered, in the December 7, 2016 IEP to address autism. Student was making significant educational progress both in his grade level curriculum, and in the online credit recovery program with the instruction and supports provided by the autism classroom. Accordingly, District's offer was reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

52. Student failed to meet his burden of proving by a preponderance of the evidence that District had denied him a FAPE by failing to offer appropriate placement

Wisconsin (7th Cir. 1997) 125 F.3d 1045, 1055; *see also* 20 U.S.C. § 1412(a)(3)(B) ["Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter."]; Ed. Code § 56301.)

and services to address his autism in the December 7, 2016 IEP. District prevailed on Issue 2(b).

STUDENT'S ISSUE 2(C): BULLYING

53. Student contends that District denied him a FAPE by failing to appropriately respond to reports of bullying and to provide Student with a safe learning environment. District disagrees.

Legal Authority

54. The bullying of a student with a disability that results in that student not receiving meaningful educational benefit may constitute a denial of a FAPE under the IDEA. (*Dear Colleague Letter*, OSERS (August 20, 2013) 113 LRP 33753.) This applies whether or not the bullying is related to the student's disability. (*Id.*, at p. 2.)

55. Implicit in the duty of a school district to respond to acts of bullying is the requirement that the district received notice of those acts. (See *Dear Colleague Letter*, OCR (October 26, 2010) 55 IDELR 174, 110 LRP 62318.) "A school is responsible for addressing harassment incidents about which it knows or reasonably should have known." (*Id.*, at p.2.)

Analysis

56. Student offered no evidence that he had been bullied, or that any report of bullying had been made, during the time period at issue. He also offered no evidence of a failure of District to provide a safe learning environment. To the contrary, Mother testified that Student felt safe and secure at Oak Grove, and as a result had been sick and absent less, as well as calmer in general.

57. The one injury sustained by Student was the result of Student's inattention, and was an isolated injury that was not repeated. The injury was so minor

that Mother did not report it to Oak Grove until a week prior to the due process hearing, suggesting that Mother's testimony that she lived in constant worry from April 2017 that Student would suffer a greater injury by hitting his head on low branches was disingenuous.

58. Student failed to meet his burden of proving by a preponderance of the evidence that District had denied him a FAPE by failing to respond to reports of bullying or to provide a safe learning environment. District prevailed on Issue 2(c).

STUDENT'S ISSUE 3: TRANSLATION OF DOCUMENTS

59. Student contends that District failed to timely respond to Mother's request for a Spanish language translation of Student's IEP's assessments, letters and reports, and that this failure deprived Mother of an opportunity to meaningfully participate in the development of Student's IEP. District contends that it translated the IEP's as required.

Legal Authority

60. A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

61. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses

disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

62. Local educational agencies "shall take any action necessary to ensure that the parent or guardian understands the proceedings at [an IEP team] meeting, including arranging for an interpreter for parents or guardians . . . whose native language is other than English." (Ed. Code, § 56341.5, subd. (i); see also 34 C.F.R. § 300.322(e).) This enables parents to understand their child's needs so that they can give informed consent for their child's IEP. "Consent," as defined in Section 300.9 subpart (a) of title 34 of the Code of Federal Regulations, means the parent has been fully informed, in parent's native language, of all information relevant to the activity for which consent is sought.

63. The IDEA, and the Code of Federal Regulations interpreting the IDEA, do not require that a school district translate assessments or IEP documents from English to a parent's native language. Federal and state education law require that school districts take any action necessary to ensure that the parent or guardian understands the IEP team meeting proceedings, including arranging for an interpreter if necessary. (34 C.F.R. §§ 300.9, 300.322(e); Ed. Code, § 56341.5, subd. (i).) The Office of Special Education Programs of the United States Department of Education has stated that the IDEA and corresponding Code of Regulations do not require translations of IEP documents, although providing such translations may help demonstrate in some circumstances that non-English speaking parents have been fully informed of the services the IEP offers. (*Letter to Boswell* (OSEP 2007) 49 IDELR 196; *City of Chicago School District 299* (Ill State Educational Agency 2010) 110 LRP 36565; *In re: Student with a Disability* (NM State Educational Agency 2011) 111 LRP 39015.) California law requires that a parent be given

a copy of an IEP in his or her primary language upon request. (5 Cal. Code Regs., § 3040, subd. (a).)

64. An assessment plan must be provided in the native language of the parent, unless to do so is clearly not feasible. (Ed. Code, §56321, subd. (b)(1).) Similarly, when an agency gives written notice of a refusal to initiate or change the identification, evaluation, or educational placement of the child or a provision of FAPE to the child, the notice must be provided in the native language of the parent unless it is clearly not feasible to do so. (34 C.F.R. § 300.503(c)(1)(ii).)

65. A procedural violation of the IDEA, such as an error in the IEP document, results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505(f)(2).)

Analysis

66. Mother was given a copy of her procedural safeguards in Spanish at the October 14, 2016, December 7, 2016, and April 21, 2017 IEP team meetings, and had those rights explained to her in Spanish by the interpreter at the December 7, 2016 IEP team meeting. Mother was aware of her procedural rights and understood them.

67. Mother was not deprived of meaningful participation because District did not provide Mother with Spanish language translations of District's speech and language, occupational therapy, or educationally related mental health assessment reports, or any other letters sent by District from October 14, 2016 through the filing of the complaint.

68. Mother had a Spanish language interpreter at each IEP team meeting and was accompanied by a family member to assist her in understanding the information provided regarding Student's disabilities, the impact of those disabilities on Student's

functioning and educational performance, and the components of the educational program offered. Mother received an explanation of the results of the assessments directly from the assessors, and participated in the discussions of those results. Mother participated in the discussion of goals, placement and services, both by offering input and asking questions, and by requesting changes to Student's IEP in the area of transition. Mother understood that District team members did not see Student as autistic. She understood why District retained Student's "other health impairment" eligibility, and why Student was not offered speech, occupational therapy and vision services, although she disagreed. In summary, Mother participated in developing the December 7, 2016 IEP and understood the assessment results and the FAPE offer, although she disagreed with them.

69. Mother had no intention of consenting to implementation of the December 7, 2016 IEP, until and unless Student's eligibility category was changed to autism. Accordingly, even had she requested a translated copy of the IEP at the end of the December 7, 2016 IEP, any delay in getting that translation to Mother did not significantly interfere with her opportunity to meaningfully participate in the IEP process.

70. District's January 13, 2017 written response to Parents' independent educational evaluations request was in English, however, District agreed to fund the speech and language and occupational therapy assessments and did not delay or deny Student's right to independent educational evaluations in those areas. As to the psychoeducational assessment, District provided Parents with an explanation in Spanish for seeking to do its own assessment, and an assessment plan in Spanish, in compliance with statutory notice requirements. The English portion of the written notice agreeing to Parents' request constituted a minor procedural error that did not impede Student's right to a FAPE, significantly impede Mother's opportunity to participate in the IEP development process, or deprive Student of educational benefit.

71. Student did not meet his burden of proving by a preponderance of the evidence that Mother was deprived of meaningful participation, or that Student was denied a FAPE, because of the lack of translated copies of District's assessment reports or letters, or a Spanish language translation of the December 7, 2016 IEP. District prevailed on Issue 3.

STUDENT'S ISSUE 4: PREDETERMINATION

72. Student contends that District previously formed and continued an opinion that Student was not autistic and as a result failed to offer a program consistent with an autism diagnosis. District contends that it did not procedurally violate the IDEA by predetermining Student's IEP or by denying Mother the opportunity to meaningfully participate in the IEP process.

Legal Authority

73. Legal Conclusion 61 is incorporated herein by reference.

74. An education agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one ... option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification."].)

Analysis

75. Student failed to establish that his program had been predetermined by the District team members, or that Mother was deprived of meaningful participation in the development of Student's IEPs.

76. No evidence was offered that District team members met before the October 14, 2016, December 7, 2016, or April 21, 2017 IEP team meetings to discuss the terms of Student's IEP, or entered into agreements regarding Student's IEP outside of Student's IEP meetings. Teachers and assessors met informally to discuss Student's progress and program as part of the assessment process, and to prepare Student's present levels of performance between March 25, 2016, and April 21, 2017, but went into Student's IEP team meetings with open minds. Not every meeting to discuss programming for the student or the progress he is making needs to be an IEP team meeting, subject to parental notice and participation. School district personnel may meet informally and engage in conversations on issues such as teaching methodology, lesson plans, coordination of service provision or potential services or placement, so long as they come to an IEP team meeting with an open mind. (See, e.g., *Busar v. Corpus Christi Independent School Dist.* (1995 5th Cir.) 51 F.3d 490, 494, fn. 7, *cert. denied* 516 U.S. 916 (1995); *R.S. and S.L. v. Miami-Dade County School Bd.* (2014 11th Cir.) 757 F.3d 1173, 1188-1189.)

77. Mother had an opportunity to discuss the proposed IEP, and her concerns were considered by District members of the IEP teams. Mother attended the October 14, 2016, December 7, 2016, and April 21, 2017 IEP team meetings. At the first two meetings, Mother was accompanied by a family member and Student's in-home behavior intervention provider, who were provided opportunities to ask questions and contribute information to the discussion. A Spanish language interpreter was provided for Mother, and District team members paused throughout their presentations to give

the interpreter an opportunity to interpret and to inquire if Mother had any questions or needed clarification before they moved on. Mother was informed of Student's problems, discussed with the team Student's social activities in the home and community, such as his participation in Meals on Wheels, and reported that Student was happy at Oak Grove and enjoyed the classes and structure. Mother disagreed with Dr. Kong's report that found Student to be suffering from anxiety and depression, and not that Student had autism. At the December 7, 2016 IEP team meeting, Mother requested goals on Student learning about his rights as an adult, which prompted the team to invite Student into the meeting and led to a discussion of Student's transition goals. Mother requested that Student be found eligible for special education under the eligibility category of autism at the April 21, 2017 IEP team meeting. Mother attended the IEP team meetings, expressed disagreement regarding the IEP teams' conclusions, and requested revisions to Student's IEP, therefore she meaningfully participated in the development of Student's IEP.

78. Mother's disagreement with the designation of Student's eligibility category for special education and related services as "other health impairment" does not indicate that District predetermined Student's eligibility category. The IEP's statement that Student has "medical and clinical diagnoses" in addition to an historical diagnosis of ADHD, and a lack of references to autism, similarly do not indicate predetermination. Parents retain the right to refuse consent to implementation of the IEP, in whole or in part (*I.R., supra*, 805 F.3d at p. 1170, citing 34 C.F.R. 300.300(d)(3)), but cannot dictate the terms of the offer itself. Development of an IEP is a team decision, but if the team members do not agree, it is the school district that is ultimately responsible for ensuring that a student is offered a FAPE. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*); *Letter to Richards*, 55 IDELR 107 (OSEP 2010).) There was no evidence that District team members predetermined Student's eligibility

category, and substantial evidence that Mother meaningfully participated in the development of her son's IEP, including disagreement over whether Student's primary disability was autism. Even if Mother's position was well-supported, as Student contends it was, District's offer in disagreement with Mother does not indicate, let alone establish, predetermination.

79. Student did not meet his burden of establishing that he was denied a FAPE because his IEP had been predetermined by the District team members, or that Mother was unable to meaningfully participate in development of Student's December 7, 2016 IEP. District prevailed on Issue 4.

ISSUE 5: PROCEDURAL AND SUBSTANTIVE COMPLIANCE

80. District contends that it met all procedural and substantive requirements for development of Student's December 7, 2016 IEP. Student contends that District did not develop appropriate goals and predetermined placement.

Legal Authority

81. Legal Conclusions 23-27, 31 and 77 are incorporated here by reference.

82. When a school district seeks to prove that it provided a FAPE, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

83. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with

exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.)

84. An IEP must contain a statement of measurable annual goals related to “meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum” and “meeting each of the child's other educational needs that result from the child's disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

85. An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include: a projected start date for services and modifications; and, the anticipated frequency, location and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

86. Only the information set forth in 20 United States Code section 1414(d)(1)(A)(i) must be included in the IEP and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code, § 56345, subds. (h) & (i).)

Analysis

87. As discussed at Issue 2(b), the December 7, 2016 IEP offered Student a FAPE under the *Rowley* standard, as clarified by *Endrew*.

88. In addition to the substantive elements discussed above regarding the propriety of District's offer of placement and services, District also has the burden of proving procedural compliance with the development of the IEP.

89. District complied with the procedural requirements of developing the December 7, 2016 IEP. The October 2016, December 2016, and April 2017 IEP teams included the mandatory members: Mother, a general education teacher, Student's special education teacher, and District and Oak Grove administrators qualified to supervise specially designed instruction and knowledgeable about the general education curriculum and available resources. Ms. Miller attended the October 14, 2016 IEP team meeting to explain her occupational therapy assessment, conclusions and recommendations to the team, and Dr. Kong and Mr. Juarez were at both the October 14, and December 7, 2016 IEP team meetings to present their assessments to the team and participate in the design of Student's educational program. Student's in-home behavior intervention service providers were present at the October 14, and December 7, 2016 meetings and contributed to team discussions. Mother was provided with a Spanish language interpreter at all meetings, and the District team members reviewed information at a slower pace, and frequently stopped for comments or questions from Mother, to accommodate interpretation. As discussed at Issues 3 and 4, Mother was afforded an opportunity to participate in each of the IEP team meetings.

90. The December 7, 2016 IEP included a statement of the special education and related services offered, with a projected start date for services and modifications and the frequency, location and duration of services. The IEP contained a statement of measurable annual goals, how the goals would be measured, and post-secondary transition goals and a transition plan. The IEP showed a direct relationship between Student's present levels of performance, the goals, and the educational services to be provided.

91. The IEP contained a transition plan with appropriate, measurable postsecondary goals based upon transition assessments appropriate to Student's age and related to training, education, employment and independent living skills. The plan also contained the transition services needed to assist Student in reaching those goals.

92. District established that it met all procedural requirements in the development of the December 7, 2016 IEP, and that the IEP contained all necessary components. As discussed at Issues 2(a) and 2(b), the goals, services and accommodations offered were reasonably calculated to enable Student to make progress appropriate in light of his circumstances, and the December 7, 2016 IEP offered Student placement in the least restrictive environment for Student.

93. Accordingly, District met its burden of proving by a preponderance of the evidence that the December 7, 2016 IEP offered Student a FAPE in the least restrictive environment. District prevailed on Issue 5.

ORDER

1. All of Student's requests for remedies are denied.
2. District's IEP offer of December 7, 2016 offered Student a FAPE. District may implement it without Parents' consent until another IEP is mutually agreed upon or ordered.

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, District prevailed on all issues in this consolidated matter.

RIGHT TO APPEAL THIS DECISION

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

Dated: January 2, 2018

/s/

ALEXA J. HOHENSEE

Administrative Law Judge

Office of Administrative Hearings