

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FONTANA UNIFIED SCHOOL DISTRICT.

OAH Case No. 2018080404

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on August 7, 2018, naming Fontana Unified School District. On August 20, 2018, Fontana served Student with its written response to the complaint.

ALJ Cole Dalton heard the matter in Fontana, California, on October 2, 3, 4 and 5, 2018.

Parents, limited conservators of Student, represented Student and attended each day of hearing.

Jonathan Read and Maryam Rastegar, Attorneys at Law, represented Fontana. Special Education Director Amy Foody attended each day of hearing on behalf of Fontana.

OAH granted the parties' request to continue the matter to October 29, 2018, to permit the parties to file written closing and reply briefs. Upon timely receipt of closing arguments, the record was closed and the matter submitted for decision on October 29, 2018.

ISSUES¹

1. Did Fontana fail to offer Student a free appropriate public education in individualized education programs of March 3, 2017, and February 26, 2018, specifically by failing to include:
 - a. Appropriate goals;
 - b. Sufficient academic instruction;
 - c. Services to prepare Student for transition to an adult program; and
 - d. Services or accommodations to prevent bullying?
2. Did Fontana deny Student a FAPE by asserting that Student had finished high school, although Student had not received a certificate of completion or high school diploma?
3. Did Fontana deny Student a FAPE by unilaterally placing him in an adult

¹ The issues were rephrased and reorganized for clarity, and agreed upon by all parties before the hearing commenced. The issues were reorganized but not substantively changed in this Decision for analytical purposes. The ALJ has authority to redefine a party's issue so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir 2010) 626 F.3d 431, 442-443.)

Student raised several new issues in his closing briefs not raised in his complaint and identified prior to hearing as required by 20 U.S.C. § 1415(f)(3)(B). 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).) Accordingly, Student's additional issues are not considered in this Decision. Documents attached to Student's final brief were not admitted at hearing and therefore are not considered in this Decision.

transition program at the beginning of the 2018-2019 school year without (i) notice to Parents or (ii) parental consent?

4. Did Fontana deny Student a FAPE by failing to implement his IEPs in the following manner:
 - a. Failing to provide him with a communication device as required in IEPs dated (i) March 3, 2017 and (ii) February 26, 2018;
 - b. Failing to provide appropriate speech services during the (i) 2016-2017 and (ii) 2017-2018 school years because a communication device was not available for use; and
 - c. Failing to provide Parents with a communication log as required in IEPs dated (i) March 3, 2017 and (ii) February 26, 2018?

SUMMARY OF DECISION

Fontana offered appropriate goals and academic instruction in its March 3, 2017 and February 26, 2018 IEPs. Fontana based the offers on recent assessments of Student and on present levels of academic achievement and functional performance. Fontana provided Student with a coordinated set of transition activities designed to improve Student's academic and functional achievement, based on his needs, and taking into consideration his strengths, preferences, and interests. The weight of the evidence demonstrated that Fontana provided Student with appropriate transition services during the relevant time period, allowing him to earn a certificate of completion and transition to an adult program.

Parents consented to Student's February 26, 2018 IEP, which reflected agreement to placement and services, specifically, transition to an adult program. IEP recordings demonstrated lengthy, detailed, and vibrant discussions regarding Student's transition after high school. Accordingly, Student claims regarding lack of notice and consent lack merit.

Parents expressed their opinions that Student had been bullied at school; that Fontana did not provide Student with a communication device; and that he did not use the device in speech therapy. The weight of the evidence did not support Parents' opinions.

Student failed to meet his burden of proof regarding any of his claims. Student takes no remedy.

FACTUAL FINDINGS

1. Student, a 19 year old young man at the time of hearing, lived with his Parents within Fontana Unified School District's jurisdictional boundaries at all relevant times. Fontana found Student eligible for special education in 2002, while he attended preschool, due to his autism. Speech language impairment was added as a secondary eligibility through a 2014 psychoeducational evaluation. Parents held a limited conservatorship of Student since July 31, 2017, allowing them to make educational decisions on his behalf.

2. Fontana staff universally described Student as not just being liked but loved by personnel and students. Nicknamed "the Mayor of Summit High," Student greeted those around him, asked questions about their day, and enjoyed social interaction. Student was eager to please, demonstrated consistent effort to complete assignments, followed instructions, and could be easily redirected back to work when distracted.

3. From the time Student was in preschool, he demonstrated needs in the areas of adaptive skills, visual motor skills, academics, cognition, speech and language, and social skills. Since the 2015-2016 school year, Student attended Summit High School in an autism special day class, taught by Alyssa Gama. Ms. Gama held a bachelor's degree in English and a master's in education with an emphasis in special education. She held a cleared education specialist credential, allowing her to teach

children with moderate to severe disabilities.

JANUARY 29, 2015 ASSISTIVE TECHNOLOGY ASSESSMENT REPORT

4. In January 2015, Lawrence Silcock conducted an assistive technology assessment of Student to determine whether he would benefit from using an alternative augmentative communication device, due to concerns over intelligibility. Mr. Silcock held a bachelor of science degree in occupational therapy and a master's degree in business administration, health services. He worked as a licensed occupational therapist for approximately 30 years and as a school-based occupational therapist for 20 years, contracting with various school districts and special education local plan areas. As part of his practice, he provided assessments and training in occupational therapy and assistive technology, and made recommendations to IEP teams. For the past 18 years, Mr. Silcock worked with Assistive Technology Center, coordinating assessments; conducting assessments; training teachers, university students, parents, therapists; and lecturing at conferences on assistive technology assessments, computer hardware and software, augmentative communication devices, and other forms of assistive technology.

5. Mr. Silcock demonstrated training, experience, and knowledge in the areas of occupational therapy and assistive technology, qualifying him to conduct the assistive technology assessment. His assessment consisted of observations, interviews, and administration of testing instruments. Mr. Silcock observed that Student initiated conversations, spoke to other children during lunch, and verbally expressed wants and needs. During testing and observation, Mr. Silcock rated Student's intelligibility at 90 percent.

6. Mr. Silcock found Student's writing capabilities were in the average range. Student did not have difficulty writing, wrote legibly, and preferred writing to typing. During testing, Student responded verbally to questions while looking for and creating a

response using an iPad with voice output applications. He created sentences with some training, but the process slowed him down, compared to simply providing verbal answers.

7. Mr. Silcock discussed his findings at an IEP team meeting on January 29, 2015. Parents expressed concern over others not understanding some words spoken by Student. Fontana agreed to initiate trial use of an alternative augmentative communication device.

8. Mr. Silcock trialed two devices, an iPad and Franklin Speller. He determined that Student better accessed the Franklin Speller, because the font was larger. Student used the Franklin Speller throughout the remainder of the 2015-2016 school year.

JANUARY 19, 2016 INDEPENDENT PSYCHOLOGICAL EVALUATION

9. On January 19, 2016, Karen Conway, Ph.D. conducted an independent psychoeducational evaluation of Student, funded by Fontana. Dr. Conway held a license in clinical psychology, and was a Board Certified Behavior Analyst with doctoral-level training in behavior analysis. Mother requested the evaluation because of concerns regarding Student's academic placement and levels of functioning.

10. Parents expressed concerns to Dr. Conway, similar to those expressed to Fontana over the years, but inconsistent with their desire to maintain Student in his high school placement. Parents wanted Fontana to provide Student with opportunities to develop functional and adaptive skills that would enable him to live independently. They believed Student should be given more challenging assignments and homework. They wanted Student to increase the complexity of his speech, and to learn how to work with money and other life skills.

11. As an independent assessor, Dr. Conway administered the Wechsler Nonverbal Scale of Ability to ascertain Student's general cognitive ability. Based upon

the Wechsler and tests of adaptive skills of daily living, Dr. Conway diagnosed Student with mild intellectual disability. Dr. Conway found her test results consistent with those of Fontana's 2014 psychoeducational evaluation.

12. Both Mother and Ms. Gama completed rating scales assessing Student's adaptive behavior and for autism. Both endorsed needs in the areas of communication; community use; functional academics; health and safety; and social skills. Mother's ratings placed Student's adaptive behavior functioning in the extremely low range for his age, while Ms. Gama's rating placed Student slightly higher, in the borderline range.

13. Student scored in the very low range in academic testing, placing him in the range of achievement consistent with students seven years, nine months old. He scored in the profoundly impaired range in receptive vocabulary, which meant that he struggled understanding language spoken by others and required simple explanations. He had needs in visual-motor development.

14. Dr. Conway recommended Student's IEP include goals for adaptive living skills and vocational training. She emphasized the need to maximize Student's time spent practicing vocational skills and addressing needs in receptive and expressive language; self-direction; initiating and completing assigned tasks; and daily skills of adaptive living, such as food preparation, cooking safety, and money management. She recommended assigning homework commensurate with academic performance, rather than repetitive tasks previously mastered.

MARCH 1, 2016 INDEPENDENT AUGMENTATIVE COMMUNICATION EVALUATION

15. On March 1, 2016, Cynthia Cottier conducted an augmentative communication evaluation of Student, at Summit High School. Ms. Cottier, a licensed speech-language pathologist with a certificate of clinical competence, held master of arts and master of education degrees. At hearing, Mr. Silcock reviewed Ms. Cottier's evaluation, comparing it to his own.

16. Ms. Cottier noted in her report that Student already used writing and typing on the Franklin Speller to repair or correct communication breakdowns due to articulation errors. She opined these methods could continue to be used as components of a multi-modal communication system. However, Student wrote typically using one word.

17. Ms. Cottier observed Student independently using his Franklin Speller with ease. She opined, however, that Student might benefit from using a newer device with voice output. She had Student try various devices and applications. She determined that Student responded best when using the Predictable application on an iPad mini. The iPad mini, she opined, was portable enough and Student demonstrated the ability to use word prediction software to form short sentences, rather than relying on single-word output. Moreover, the application could store frequently used messages for quick retrieval on community outings.

18. Ultimately, she recommended an iPad mini with a carrying case and shoulder strap for ease of transport; and training of Student, Parents and staff on functional use of the device.

STUDENT'S APRIL 12, 2016 IEP²

19. On April 12, 2016, Student's IEP team met to review independent evaluations conducted by Dr. Conway, Ms. Cottier, and Richard Furbush³ and to develop Student's annual IEP. All necessary team members participated in the meeting. Amy

² Fontana staff convened Student's annual review on January 21, 2016. Parents could not attend and Fontana rescheduled the meeting to April 12, 2016.

³ Mr. Furbush's November 11, 2015 independent occupational therapy evaluation is neither in evidence nor in dispute.

Foody facilitated the meeting. Mother attended with Phillip VanAllsburg, the family's attorney. Ms. Foody held bachelor of science and master of arts degrees in education. She held a resource specialist certificate of competence; a learning disabilities credential; a clear specialist instruction in special education credential; a professional clear multiple subject credential; and an administrative services Tier II clear credential. She had extensive experience in the field of special education as a credentialed special education teacher, special education supervisor, program specialist, program manager for the West End Special Education Local Plan Area, and as director of special education.

20. Mother expressed concerns regarding increasing Student's academic level; addressing Student's hand-flapping and attention issues; the level of speech services; modification of the staff-Parent communication log; and interest in the life skills-based class and computer class as electives.

21. The IEP team discussed Student's progress and drafted goals in the areas of reading comprehension (reading a current event article, identifying the author's argument, and writing at least three sentences about the event); social behavior (staying and getting back on task during structured academic tasks using visual cues and a visual schedule); independent living (making purchases using the correct amount of cash using the dollar-up method); transition to independent living (Student will dictate résumé answers to teacher during interview); mathematics (two-digit by two-digit problems explaining method); articulation (retelling personal experience using age-appropriate sounds); verbal expression (answering questions using communication device, to demonstrate understanding [who, what, when, where, when]); phonemic awareness (read aloud text using recognizable words); and adaptive skills (asking for breaks; accepting changes in routine).

22. In preparation for drafting Student's individual transition program, Ms. Gama administered the Annual Needs Determination Inventory and interviewed

Student. She modified the proposed program during the IEP team meeting, after receiving the team's input. The plan addressed Student's desire to attend a community college; submit job résumés and applications; and live in an assisted setting and engage in community activities independently.

23. The IEP team discussed Student's testing out of System 44 and into Read 180, a higher level reading program focusing more on comprehension than decoding. Ms. Foody explained that Read 180 addressed needs in reading and listening comprehension through computer-based tasks. Ms. Gama described how Read 180 also addressed auditory and speech needs, in that the program required students to both say words into a microphone and hear the words back, correctly, as part of working their way through tasks on the computer.

24. Mother participated in the IEP team meeting by asking questions herself, and through Mr. VanAllsburg, who provided input on goals, transition programming, school-home communication logs, and occupational therapy services, among other areas. The IEP team asked Mother if she had questions throughout the meeting, providing her with opportunities to share her input and obtain modifications to the IEP. Neither Parent nor her counsel raised concerns that Student had been bullied or that bullying impacted his education.

25. Mother expressed concern about Student's school day. She did not believe Student received speech services consistently and did not know what kind of assignments Student received in his general education classes or Read 180. According to Ms. Gama, Mother brought a book for Parents and teacher to use to communicate on Student's progress, beginning in the 2015-2016 school year. The team agreed to modify the communication log to provide more detail and explained to Mother how she could access Fontana's parent portal, to see Student's assignments, his performance on assignments and tests, and to review his Read 180 assignments. During the meeting,

Fontana agreed to add a line in the logs for communication by Student's speech therapist. Ms. Foody suggested the team consider collaborating with Parents to update the form in a way that would be practical for staff and Parents. The IEP did not require use of a specific form for the communication log.

26. Throughout the meeting, the IEP team discussed Student's certificate of completion track. The IEP document stated that Student participated in an autism program at the functional skills level, targeting a certificate of completion and that he would participate in this environment until the first semester of the 2020-2021 school year. The IEP document wording, standing alone, might have led to confusion, in light of Fontana's issuance of a certificate of completion at the end of high school, rather than at the end of an adult transition program. Fontana's IEP team members, however, explained the process of obtaining the certificate as part of Student's matriculation to an adult transition program.

27. Ms. Gama described Student as being quite independent on his high school campus and explained that many community colleges offered programs teaching life skills to students with special needs. She explained that Student would stay with Fontana until he turned 22 and then go into a college program. She did not say that Student could or should remain in high school until he turned 22.

28. Mr. VanAllsburg opined that having Student search for and apply to colleges would help him feel "normalized" with typically developing peers, who engaged in college preparatory activities in their senior year. Ms. Foody explained that the next adult program Fontana had was at an adult school, so that would be "normalized" as well, because Student would be attending a school with peers his age. She reported that Fontana had options for Student's attendance the following school year.

29. Fontana offered Student, Parent, and staff training on Student's augmentative alternative communication device for 60 minutes yearly in the speech

room as part of his aids, accommodations, and supports. Fontana offered Student continued placement in the “severely handicapped” autism special day class for 150 minutes per school day; speech and language therapy in a small group for a total of 900 minutes per year ; college awareness instruction for 30 minutes monthly; career awareness instruction for 30 minutes monthly; transition services for 30 minutes monthly; collaborative occupational therapy for 60 minutes monthly; individual speech and language therapy for a total of 900 minutes per year; and extended school year placement and services. Student’s program included attendance in three general education elective courses.

30. Ms. Foody explained to Mother that she could consent to all or part of the IEP and that Fontana could only implement portions of the IEP agreed to by Parents. Parents consented to the IEP.

2016-2017 SCHOOL YEAR

31. During the 2016-2017 school year, Student attended 12th grade at Summit High School, receiving the placement and services identified in his April 12, 2016 IEP. Mr. Silcock trained staff, Student, and Mother on Student’s use of his communication device. Student carried the device with him during the school day, except during physical education. He used the device during speech and language, general education classes, and in his special day class, as needed when a listener could not understand his speech. Student’s Franklin Speller was replaced with an android tablet, pursuant to Ms. Cottier’s recommendations.

32. Stacey Kimmell took Mother to observe two adult transition programs at Citrus High School. Ms. Kimmell held a bachelor’s degree in psychology; a master’s of science in education; and was a Board Certified Behavior Analyst. She worked at Fontana as a school psychologist for six years at the time of hearing. During site observations with Mother, Ms. Kimmell described the routine and function of the classes and

Student's anticipated completion of high school. Mother did not express concerns about Student's transition.

33. Fontana conducted assessments in speech and language, occupational therapy, and psychoeducation, in preparation for Student's triennial IEP meeting in spring 2017. Speech-language pathologist Julie Stone assessed Student and produced a report dated February 3, 2017. She provided Student with speech services throughout the 2016-2017 school year. Student demonstrated a severe articulation disorder characterized by sound substitutions and sound distortions. Intelligibility of Student's speech decreased with an unfamiliar topic and longer sentences. Student had severe delays in receptive and expressive vocabulary, listening comprehension, and oral expression. Listening comprehension referred to Student's ability to understand what he heard. Oral expression meant Student's ability to express his thoughts, verbally. Student expressed his wants and needs independently. Ms. Stone recommended the IEP team consider continued speech and language services.

34. Mr. Silcock conducted Student's triennial occupational therapy assessment and issued a report dated February 12, 2017. Student did not demonstrate sensory issues that inhibited his ability to access academics. Student had average to just below average fine motor abilities. Student completed written assignments in a very legible manner. However, several witnesses, including Ms. Gama, noted that Student took longer to finish written assignments because he was determined to write neatly. Student demonstrated independent self-care at school consisting of toileting, clothing management, food preparation, eating, drinking, and using utensils. Mr. Silcock recommended the IEP team consider continued occupational therapy collaboration.

35. School psychologist Amelia Madueno conducted Student's triennial psychoeducational assessment and issued a report dated March 3, 2017. She interviewed Mother and obtained information from Ms. Gama, Read 180 teacher Ms.

Darling, and physical education and FAST⁴ teacher Mr. Duggins. Ms. Madueno observed Student in his special day class, FAST general education class, walking to the school bus, and in the cafeteria. Ms. Madueno reviewed Student's prior assessments and administered several testing instruments.

36. Mother reported a number of concerns to Ms. Madueno. She reported Student's humming and hand-flapping, and his anxiety with changes in routine. Mother wanted Student to have increased academic challenges so he could be independent and attend college. Mother was also concerned about safety issues such as invading the personal space of others and inattention to his surroundings. Mother wanted Student to make appropriate decisions and obtain his career goal of attending Chaffey College to take computer classes.

37. Ms. Madueno assessed Student's academic achievement. Student scored generally in the mentally deficient range, except math facts fluency (average), math calculation skills (low average), and calculation (borderline). Student's motor skills and visual-motor skills, related to activities requiring written work, fell within the mildly to moderately impaired range. Student's visual perceptual skills (ability to process and understand visual information) fell within the mentally deficient to low average range. Student scored within the mentally deficient range in auditory processing. Ms. Madueno explained that most processing abilities rely on memory, such that accurately processing information required the ability to retain what had been heard and maintain that information in correct sequence.

38. Ms. Madueno assessed Student's social-emotional, adaptive behavior, and daily living skills, using three sets of rating scales she obtained from Mother and Ms.

⁴ FAST was a computer learning class, teaching students to type; use word processing programs, such as Word and Publisher; and compose and send emails.

Gama. On the Behavior Assessment System for Children, Third Edition, neither rated Student's behaviors as clinically significant. Both rated Student within the average range for all areas with one exception. Mother rated Student at risk in functional communication. Functional communication referred to Student's ability to communicate basic thoughts, knowledge, ideas, and feelings in an understandable way. On the Adaptive Behavior Assessment System-II, both rated Student borderline in the area of communication (listening skills needed for communication with others, responding to questions) and extremely low in community use (skills needed to function in the community, using community resources, shopping, and getting around). Generally, Mother's rating scales rated Student lower, compared to Ms. Gama's ratings, across all other areas.

39. Through her assessments, Ms. Madueno determined Student remained eligible for special education and related services due to autism and intellectual disability. She recommended accommodations to reduce demands placed on Student's working memory, including use of a calculator to compensate for difficulties recalling math facts; and use of lecture or peer notes so Student could focus on listening to lectures. Ms. Madueno provided several suggestions to accommodate Student's ability to listen to and follow directions, such as giving one direction at a time; limiting the length and complexity of instructions; writing steps on the board; incorporating visual illustrations; and use of a buddy system. To aid instruction, Ms. Madueno recommended repetition, practice, and review. She suggested use of visual outlines, class notes prior to lecture, and study guides with fill-in blanks to use during lectures to address Student's deficits in memory and listening comprehension. Finally, Ms. Madueno identified accommodations to make sure Student understood, took home, completed, and turned in homework assignments.

40. Ms. Gama rated Student below average in both the general adaptive

behavior composite, a global estimate of adaptive skills compared to same-age peers, and social composite. She rated Student below average in the practical composite, an estimate of self-care, school living, community use, and health and safety. All individual scores within the practical composite were average, except community use. Ms. Gama rated skills needed to function in the community as extremely low. Mother scored Student extremely low in the general adaptive composite; borderline in the social composite, and extremely low in the practical composite. These ratings were consistent with each witness' testimony at hearing and general experience with Student in their respective settings.

41. Ratings across home and school settings supported Fontana's recommendation that Student attend an adult transition program after receiving his certificate of completion. Mother's ratings underscored the significance of Student's needs in the community arena. She engaged in community activities with Student in a less structured, more natural manner and maintained concerns with his community safety, ability to handle money, and interaction with strangers. However, Parents believed Fontana should remedy Student's deficits before he transitioned to an adult program.

STUDENT'S MARCH 3, 2017 IEP

42. Fontana held Student's triennial IEP team meeting on March 3, 2017, to review eligibility, placement, and services. All necessary Fontana team members attended the meeting. Mother and Mr. VanAllsburg attended the meeting on behalf of Student. Mother and counsel received copies of assessment reports and the draft IEP prior to the meeting. Ms. Gama explained during the hearing that she prepared draft IEPs for Student based upon the prior year's IEP, adding progress on goals and proposed new goals. She prepared Student's final IEPs after each meeting, including notes of the meeting and the team's ultimate offer of placement and services.

43. Mr. Silcock, Ms. Stone, and Ms. Madueno reviewed their respective assessments. Mother and Mr. VanAllsburg sought more challenging math assignments and homework; social skills services to address Student's comfort and lack of boundaries with strangers; additional time for writing assignments; and services to support more community outing skills such as directions and using a map. Mother opined that Student did not understand the demands of his assignments in general education classes. She requested to have a peer check in on Student to keep him on task and make sure he understood assignments. Fontana agreed to try a peer tutor for these purposes and recommended Student use a timer so he knew when to move on to the next task. Mother requested a more detailed communication log to address any issues arising throughout Student's school day.

44. Fontana providers discussed Student's progress on goals from his April 2016 IEP. Student met all but one of his nine goals. He did not meet his math goal for two-digit by two-digit multiplication at 90 percent accuracy. He made steady progress, reaching his first (40 percent) and second short-term objectives (60 percent). Ms. Gama revised and continued the goal.

45. According to Mr. Duggins, Student's physical education and FAST teacher, Student socialized well with typically developing peers in these two general education electives. Peers enjoyed working with Student and helped keep him on task. Student made progress in both classes. In FAST, Student learned how to use basic computer programs such as Word, Publisher, and how to compose, add attachments, and send emails.

46. Ms. Gama reviewed Student's independent transition plan. Fontana's team members described the Workability program, which would allow Student to work at various locations, such as Petco or Party City, for one hour per week. However, Parents did not return Student's tuberculosis testing and he could not work until they did.

Fontana provided Parents with written materials about the program, and described independent living.

47. Fontana's transition plan included postsecondary goals in the areas of training and education (use of surveys and a college course catalogue to determine areas of study); employment (mock interviews using a résumé, targeting desired jobs); and independent living (choose items using grocery advertisements, add costs of items, and determine amount of money needed to purchase the items). Transition goals were linked to academic goals implemented by Student's special education teacher.

48. Fontana team members reviewed 11 new proposed goals. Mother and Mr. VanAllsburg asked questions, suggested changes, and the IEP team revised goals based upon their input. In writing, Student demonstrated the ability to write sentences on a topic, but repeated the same sentences over and over in a paragraph. His new writing goal required him to write a five sentence paragraph including a topic sentence and three relevant details, including a conclusion sentence, using a teacher-made rubric, in five of six trials.

49. In employment, Student compiled a résumé and demonstrated the ability to maintain conversations and answer simple questions asked by an adult. His new employment goal required him to engage in a mock interview after reviewing cue cards for appropriate interview behavior (greetings; facial expressions; arm and hand gestures; tone of voice; personal space), and respond to three or more common interview questions by using his communication device, speaking, or writing, using his résumé for reference, in three of three trials.

50. In independent living, Student demonstrated the ability to identify bills and coins correctly, and round up to make purchases. His new goal required him to present at least two items from a shopping list to a sales clerk at a local store by placing them on the counter, count money independently, and wait for change with no more

than one verbal or visual prompt in four of five trials.

51. In math, Student independently added, subtracted, and multiplied two-digit by two-digit problems with 100 percent accuracy and could explain how to do multiplication problems. He did not demonstrate consistency in solving multiplication. His new goal required him to solve 12 of 15 problems by dividing two-digit by two-digit numbers, drawing the equal shares or groups of objects represented, and writing the quotient (ex.: $20 \div 10 = 2$). His first short term objective required using single digit numbers. Ms. Gama developed a second goal to address multiplication. Student demonstrated the ability to consistently solve multiplication problems with two, two-digit numbers with 60 percent accuracy. The second new math goal required Student to, given 15 problems, multiply two, two-digit numbers, showing how he arrived at his answer with 90 percent accuracy in three of four trials.

52. In the area of education (transition), Student determined his likes and dislikes. His new goal required him to use teacher-compiled information (printouts from school websites or college brochures) with key facts highlighted for three colleges for him to research and identify two colleges matching his needs as evidenced by him listing the name and location of the college, the degrees or majors that lead to his career of interest, and the cost of the colleges in two of two trials.

53. In reading, Student scored below basic on the Read 180 reading inventory test. His new goal required him to decode and comprehend third grade literature using Read 180 as measured by running records, reading logs, and teacher-created quizzes, with 95 percent accuracy.

54. In speech and language, Student spoke with 80 percent intelligibility using single words and 60 percent intelligibility using connected speech on an unknown topic. He spoke in sentence fragments and simple sentences with grammatical errors. His new articulation speech goal required him to independently read a story at his reading level

and verbally share three to four sentences about the story with no more than one sound produced error in four of five sentences shared with 80 percent accuracy as measured by therapists' notes and data. His new syntax and morphology speech goal required him to, during whole-class discussion on provided text with an illustrated picture scene, produce one complete sentence using five to seven words with age appropriate syntax and grammar to retell one main event in a story using oral expression or his verbal output device in four of five store-retelling opportunities, with 80 percent accuracy as measured by therapist notes and data.

55. Student engaged with familiar peers, new peers, and strangers, and was universally described as very friendly. Based upon input by Mother and Mr. VanAllsburg, Ms. Gama drafted a social skills goal, which required Student, after reviewing the relationship circles poster and teacher modeling greeting behaviors, to demonstrate appropriate greetings with different types of peers (classmate, schoolmate, stranger) within 30 seconds of meeting that person in four of five trials.

56. Student demonstrated knowledge of safety skills. Mr. VanAllsburg requested Student be given a map goal to help him learn to navigate the community. Ms. Gama described community-based outings and how her class went within two miles of campus to explore different businesses and engage in life skills training, one time per month. Based upon Parent input, she developed a new life skills goal for directions, which required Student to indicate his current location and the location to which he was traveling on a map he would be given during small group activity at school in four of five routes. Neither Mother nor Mr. VanAllsburg raised concerns that Student had been bullied or that bullying impacted his education.

57. Fontana proposed services, and program accommodations and supports including preferential seating; calculator; math manipulatives; picture cues, a visual schedule and other visual supports; additional time for writing activities; sensory

strategies and a sensory diet; and training on his alternative augmentative communication device.

58. The IEP team determined that Student continued to be eligible for special education and related services as a child with autism. The IEP team discussed secondary eligibility of intellectual disability or speech language impairment. Mother requested secondary eligibility based upon speech language impairment. Fontana agreed. Fontana offered Student continued placement in the autism special day class for 200 minutes per day; group speech and language for 900 minutes per year; individual speech and language for 900 minutes per year; collaborative occupational therapy for 60 minutes per month; college awareness instruction for 30 minutes per month; career awareness instruction for 30 minutes per month; transition services for 30 minutes per month; and extended school year placement and services.

2017-2018 SCHOOL YEAR

59. After the March 2017 IEP, Ms. Madueno accompanied Mother on site observations of adult transition programs located at Fontana High School. Ms. Madueno described program components and Student's eventual transition from high school.

60. On October 30, 2017, Mr. VanAllsburg wrote Ms. Foody regarding scrapes and bruises allegedly sustained by Student on October 4, 2017, during a fall. Parents expressed concern that Student was not seen by the school nurse and that Parents were not notified of the incident. Parents further alleged Student had been made to pick up trash during physical education class, frequently picked up gum without using gloves, and became a subject for ridicule by peers. Parents alleged Fontana did not implement Student's IEP in that they did not receive daily communications from Ms. Gama and that Student's assistive technology was not implemented consistently at school. Though Parents attempted to address these issues with school staff, they remained unresolved.

61. At hearing, Parents described how Student often came home from school

with unexplained bruising and cuts. Parents denied hearing any results from investigations Fontana said they would conduct. Ms. Gama knew of only two incidents that could be conceived of as altercations at school. The first occurred in March 2017, when Student threw a rock at another student. The second occurred a few weeks later, when Student took his shoe off in the boys' locker room and threw it at a peer. Ms. Gama addressed the first incident with Student by using a social story about using words when angry, rather than using behaviors. She communicated frequently with Student's general education teachers and was not informed of bullying or other incidents involving Student.

STUDENT'S FEBRUARY 26, 2018 IEP

62. On February 26, 2018, Fontana held Student's annual and transition IEP team meeting. Special Education Local Plan Area coordinator Gardner Desroberts; Ms. Madueno; school psychologist intern Astrid Saavedra; Ms. Gama; Mr. Silcock; Mr. Duggins; administrator and assistant principal Greg Lopez; Father; and Mother attended. Ms. Stone could not attend due to illness but Parents asked that she be called, as needed.

63. Parents expressed concern that Student was not sufficiently challenged academically. They requested word problems be added to his homework. They wanted someone to watch Student at all times because of concerns over his safety. They reported that Student inconsistently used his alternative augmentative communication device, did not bring it home and did not use it in speech.

64. Ms. Gama explained that Student had been prompted to take the device home, but often plugged it in in the back of the classroom and forgot to take it with him. He did not take the device to physical education because he could not use it while participating. Parents were concerned that Student did not take the device to Read 180, but Ms. Gama reported that he did.

65. At hearing, Mr. Silcock, Ms. Gama, and Ms. Stone described Student's use of the devices throughout the school day, including speech therapy sessions. Student expressed himself verbally and only needed to use the communication device infrequently. He demonstrated his preference for speaking, not relying on the device, by leaving it in the classroom, telling Ms. Gama he did not need to take it with him. She explained to him that he needed to take it because others may need him to clarify certain words.

66. During the IEP and at hearing, Mr. Silcock and Ms. Gama described a two to three week period when Student went without a communication device. Student broke the device while plugging it in for recharging, something Ms. Gama related as a common experience with the android device. Ms. Gama notified Mr. Silcock of the damage and Mr. Silcock had the device replaced within a few weeks and by the time of the February 26, 2018 IEP team meeting. Mr. Silcock provided Student with an iPad mini, using the same word prediction software Student accessed on the android device.

67. Student's teachers understood his speech and knew, when needed, how to prompt him for clarification. Even without the device, Student easily clarified speech by writing words down.

68. The IEP team reviewed Student's present levels of performance, Parents' conservatorship of Student, and Student's certificate of completion status. Ms. Gama reviewed Student's independent transition plan, which remained unchanged from the unsigned 2017 IEP. Student's course of study remained in the autism program, working on functional skills, leading to a certificate of completion.

69. The IEP team reviewed Student's progress on goals. Student met all of his goals from the 2016 IEP. Both during the IEP meeting and at hearing, Parents expressed confusion regarding which goals Student had been working on. They believed Fontana would have implemented goals from the 2017 IEP, even though they did not sign

consent. Ms. Gama, at the IEP meeting and at hearing, described her implementation of 2016 goals “at a higher level” once Student met the original goals.

70. Ms. Gama added reporting periods of October 30, 2017, December 30, 2017, and February 26, 2018, to Student’s 2016 goals in reading comprehension, social behavior, independent living, transition-employment, math, and adaptive skills. Student’s goals for phonemic awareness and speech did not have added goal reporting. Although Ms. Stone did not attend the meeting she submitted new speech goals, which identified Student’s present levels of performance.

71. During the February 26, 2018 IEP team meeting, Fontana did not modify the present levels of performance from Student’s 2017 IEP on certain goal pages: for writing; transition-employment; independent living; transition-education; and life skills. However, his present levels of performance in these areas were updated elsewhere in the IEP document and discussed during the IEP meeting.

72. Parents expressed concern at the IEP team meeting and during the due process hearing, that Fontana used a cut-and-paste approach to the IEP, merely copying information from prior IEPs. A review of the IEP documents demonstrated that much information was carried over from the 2017 IEP, to which Parents did not consent. Student continued to have needs in the areas identified in the 2017 goals. Fontana modified the goals to reflect any gains made by Student, and offered them in the 2018 IEP. For this reason, there are similarities between the two documents.

73. Student’s 2016 goal for social behavior, which addressed staying on task rather than looking around or humming, was discontinued. By February 2018, Student minimally exhibited these behaviors and was easily redirected. Student’s 2016 reading comprehension goal had been met, surpassed, and was discontinued. His 2016 verbal expression goal had been met and was discontinued.

74. The IEP team discussed new draft goals. Parents asked questions, provided

input, and the IEP team made changes to goals, accordingly. Ms. Gama reported that Student met his writing goal from 2016. Student wrote sentences on a topic but repeated the same sentence over and over in a paragraph. Student's new 2018 writing goal modified the 2017 goal by adding the requirement of an additional sentence, now six, stating four, not three, relevant details.

75. Student met his 2016 employment goal. His new goal, identical to that offered in 2017, required him to undertake a mock interview with an adult for a desired job, reviewing appropriate behaviors and responding to questions. The goal addressed needs in living skills and transition.

76. Student's independent living goal from 2016 regarding making purchases had been met and continued at a higher level for Student to count out money independently using a variety of bills, and wait for and count change from the cashier. The 2017 and 2018 goals were identical and addressed needs in life skills and transition.

77. Fontana offered a new education-transition goal, different from the 2017 IEP, requiring Student to select college courses and career interests. The goal addressed his needs in life skills and transition.

78. Student's functional math present level of performance was updated to reflect that he could solve two-digit by two-digit multiplication problems with 90 percent accuracy. Student's new goal required him to work on 20 problems to solve two-digit by one-digit and two-digit by two-digit division problems, with explanation, and 90 percent accuracy in three of four trials.

79. Student met his 2016 articulation goal, improving to 80 percent intelligibility at the word level, 70 percent intelligibility in simple and connected sentences, and 70 percent intelligibility on an unknown subject. His new goal, the same as written in 2017, required him to independently read a story at his own level and share

thoughts on the story with minimal sound production errors. The goal addressed speech needs.

80. Fontana added a goal for syntax/morphology (same goal as offered in 2017 IEP), which required Student to retell the main event of a story during whole group discussion, using oral expression and his communication device (as needed). The goal addressed needs in speech.

81. Fontana added a goal for life skills-directions (same goal as offered in 2017), which required Student to indicate his location and destination on a map during small group activity. The goal addressed his need in life skills and transition.

82. During the meeting, Parents continued to express concerns over the communication log. They claimed Student did not bring it home, did not accurately put information in it, and they did not believe he received speech services or accommodations in his general education classes. At hearing, Parents did not produce any pages from the communication log to evidence their complaints at successive IEP meetings from 2016 through 2018.

83. The team agreed that Ms. Gama would email Parents, daily. Parents were initially reluctant to receive emails, but they ultimately agreed. At hearing, Ms. Gama persuasively testified that she sent daily emails to Parents, except when she was out, doing assessments, or attending IEPs.

84. In the least restrictive environment section of Student's IEP, Fontana described, as it did in the 2017 IEP, that the least restrictive environment for Student was the autism special day class where Student worked on academics and adaptive skills. Fontana offered two general education electives along with Read 180, then a special education class. After describing the least restrictive environment, the IEP stated Student would transition to an adult transition program at the end of the 2017-2018 school year, specifically, the functional skills program for 18-22 year olds at Fontana High School.

85. The IEP did not identify supplementary aids, services, or supports. Fontana provided no explanation in the notes. The audio recording of the meeting contained a lengthy discussion of Parents' objections to the adult transition program. Parents stated their opinion that Student was not ready for transition to an adult program. They requested that he stay at Summit High School. Parents often spoke over Fontana staff and made it clear they would not accept a change in placement. Parents opined, as they did at hearing, that Fontana did not challenge Student and instead repeated the same instruction year after year. When Fontana staff explained Student's varied curriculum and good progress over time, Parents insisted on maintaining their position or brought up different complaints.

86. Fontana tried to address Parents' concerns. They explained that Student would benefit by being around same age peer models in the adult transition class. A benefit he would not obtain by being around younger students who did not have experience with community based independent living skills.

87. Mr. Desroberts offered a site visit of Fontana's adult transition programs and suggested the possibility of having a transition aide for the first few weeks of Student's program. Fontana team members explained that Student reached an age where he needed to transition to the adult program to work with same-age peers. They described the benefits of attending the new program. At hearing, Mr. Silcock explained that Student would turn 20 years old shortly and the next oldest peer in his current special day class at Summit High School was 17 years old. Apart from age, the adult transition program offered Student more frequent and involved experience in the community, which Student needed to develop independent living skills.

88. For the remainder of the 2017-2018 school year, Fontana offered continued placement in the autism special day class for 300 minutes daily; group speech and language therapy for 900 minutes a year; individual speech and language therapy

for 900 minutes a year; collaborative occupational therapy for 60 minutes monthly; college awareness instruction for 30 minutes monthly; career awareness instruction for 30 minutes monthly; and transition services for 30 minutes monthly.

89. Beginning with the 2018-2019 school year, Fontana offered Student placement in the adult transition program at Fontana High School. Fontana team members advised Parents to discuss Student's 2018-2019 school year electives with Mr. Lopez, if they decided to maintain Student's placement at Summit High School.

90. On April 3, 2018, Mother signed consent to the IEP, checking the box that read, "I agree with the IEP, with the exception of," where she noted an attachment. The attachment was a statement of disagreement with the IEP in the following respects: Student was not challenged academically; his safety and behavior incidents were not discussed at the transition IEP team meeting; the IEP notes omitted parental concerns over placement and did not accurately reflect the IEP team's deliberation; the IEP draft was a copy-and-paste job and not a new IEP; and Fontana intended to withhold services from Student as indicated on page 25 of the IEP. Fontana received the signed IEP on April 16, 2018, noting the date with a "received" stamp.

91. Consistent with their consent to the IEP, Parents did not contact the school to review elective classes with Mr. Lopez. According to Ms. Foody, Fontana sent letters to parents of special needs students each summer regarding what school site their children would attend each following year. The letters were sent because programs frequently changed from one school site to another.

92. On May 24, 2018, Fontana issued Student's certificate of completion. At hearing, Fontana witnesses, including Ms. Foody and Mr. Lopez, explained that Fontana notified Parents of the certificate of completion and offered Student the opportunity to walk at graduation with his peers. Parents refused to accept the certificate of completion.

93. In early August 2018, Parents took Student to Summit to register him for the new school year. School staff advised them that Student had been assigned to the adult transition program at Fontana High School, pursuant to the signed IEP. School started on August 4, 2018. Fontana's autism special day class at Summit High School closed after the 2017-2018 school year. The autism special day class at Summit was replaced with a moderate to severe multiple disability special day class.

94. Ms. Kimmell opined at hearing that Student would benefit from placement at the adult transition program at Fontana High School and that the placement was appropriate. She described Student as being very social and believed he could, with skill training through the program, independently hold a job. She believed it a disservice to Student that he remained in high school, missing out on community based outings and instructional time in the adult program. Her opinion was consistent with Dr. Conway, who recommended Student maximize time spent practicing vocational skills and daily skills of adaptive living.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁶ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that

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

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

all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their Parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the Parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "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 California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of Parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide

educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) In a recent unanimous decision, the United States Supreme Court declined to interpret the FAPE provision in a manner that was at odds with the *Rowley* court’s analysis, and clarified FAPE as “markedly more demanding than the ‘merely more than the de minimus test’ ” the Tenth Circuit Court of Appeals had used. (*Endrew F. v. Douglas School Dist. RE-1* (2017) 580 U.S. ___ [137 S.Ct. 988, 1000] (*Endrew F.*)). The Supreme Court in *Endrew F.* stated that school districts must “offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” (*Id.* at p. 1002.)

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.)

5. 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].) Here, Student had the burden of proof on all issues.

ISSUE 1(A): APPROPRIATE GOALS

6. Student contends Fontana's March 3, 2017 and February 26, 2018 IEPs failed to offer appropriate goals, instead repeating goals from his 2016 IEP. Fontana contends goals offered in the 2017 and 2018 IEPs appropriately addressed Student's needs based upon his then-present levels of performance.

7. An IEP must contain a statement of the child's present levels of academic achievement and functional performance and 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)(i) and (ii); Ed. Code, § 56345, subds. (a)(1) & (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)(i)(III); 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. (b).)

8. Failure to provide a statement of appropriate annual goals is a violation of the IDEA's procedural requirements for the formulation and revision of IEPs. (See 20 U.S.C. § 1415(d)(1)(A)(i); Ed. Code 56345, subd. (a).) Procedural violations of the IDEA only constitute a denial of FAPE if the violation: (1) impeded the student's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decisionmaking process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1208, quoting *Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.)

9. The purpose of goals is to permit the IEP team to determine whether the

pupil is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child, and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS March 25, 1998).)

10. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. An IEP is "a snapshot, not a retrospective." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir.1993) 993 F.2d 1031, 1041 (*Fuhrmann*)). It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal-achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p. 1149; *Fuhrmann, supra*, 993 F.2d at p. 1041 ("an IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted").)

11. The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), 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).)

12. During the March 3, 2017 IEP meeting, the team reviewed progress on goals, prior to drafting new goals in Student's areas of need. Student met eight of his nine goals from the 2016 IEP. He made steady progress toward the math goal, which his teacher revised and continued in the 2017 IEP. he IEP team reviewed recent assessments

in occupational therapy, speech and language, and psychoeducation.

13. After reviewing assessments and Student's present levels of academic and functional performance, Fontana and Mother, with Mr. VanAllsburg, developed 11 new goals. The goals addressed Student's needs in transition (employment, independent living, and education); math; reading; social skills (maintaining boundaries with known and unknown people); life skills (directions; using a map); and speech and language.

14. Student's 2017 goals supported Student's transition plan, speech services, community based instruction, and participation in general education electives. Ms. Gama and Ms. Stone persuasively demonstrated that goals in academics and speech were measurable, based upon Student's present levels of academic achievement and functional performance, and that Student had a reasonable chance of meeting the goals within a year.

15. Parents presented no evidence that the 2017 goals were deficient in any manner. During the 2017 IEP meeting, their counsel suggested changes to goals and asked for and obtained additional goals (social skills; using a map).

16. Here, Fontana offered Student new goals in 2017, but Parents did not consent to their implementation. Fontana offered many of the same goals in Student's February 2018 IEP as the goals continued to address Student's ongoing needs in math, writing, speech, life skills, and transition. For example, Fontana could not implement Student's 2017 map using goal, which continued to be appropriate for his 2018 IEP.

17. Fontana offered 2018 goals in math; employment; making purchases and counting change; college and career interest; articulation/story reading; syntax/morphology; and map use/directions. Ms. Gama and Ms. Stone persuasively demonstrated that goals in academics and speech were measurable, tailored to the progress Student made on prior goals and his present levels of academic and functional

performance, and that Student had a reasonable chance of meeting the goals within a year.

18. Student contends the goals were repetitive, because 2018 goals looked similar to 2017 goals, which had not been implemented. At hearing, Student demonstrated the similarity between baselines in the 2017 and 2018 goals. On the other hand, Fontana staff identified updated present levels of performance elsewhere in the IEPs.

19. Present levels of performance typically appear as baselines in each goal they are meant to address. Here, some of Student's present levels were updated on the present levels page rather than as baselines for each goal. However, under special education law the IEP need only include required information once.

20. The weight of the evidence demonstrated that the goals in Student's March 3, 2017 and February 26, 2018 IEPs addressed his unique needs in writing, math, speech, transition, and life skills; were measurable; and had a reasonable chance of being attained within a year. Moreover, the two IEPs showed a direct relationship between Student's present levels of performance in each area, his goals, related services in speech, and placement in a functional skills special day class with general education electives.

21. The weight of the evidence demonstrated that Fontana's March 3, 2017 and February 26, 2018 IEPs offered appropriate goals. Accordingly, Student did not prevail on Issue 1(a).

ISSUE 1(B): SUFFICIENT ACADEMIC INSTRUCTION

22. Student contends he did not receive sufficient academic instruction because the 2017 and 2018 IEPs failed to address academic concerns expressed by Parents during the meetings. Fontana contends it offered appropriate academic instruction, evidenced by assessments of Student and his progress on goals.

23. Special education is specially designed instruction to meet a child's unique needs, as stated above. (20 U.S.C. § 1401(29)(A); 34 C.F.R. § 300.39(a)(1); see also Ed. Code, § 56031, subd. (a).) "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Andrew F., supra*, 137 S. Ct. at 999, 197 L. Ed. 2d at 349.) Toward this end, the IEP must be "appropriately ambitious" in light of those circumstances. (*Id.*, 137 S. Ct. at 1000, 197 L. Ed. 2d at 351.)

24. Student did not present any evidence tending to prove that specially designed instruction offered by Fontana was deficient in any manner. Student argues only that he had been in the same autism special day class for several years and that his academics were repetitive.

25. The evidence demonstrated Student had academic needs in the areas of reading, writing, and math. Student required supports to access his academic curriculum including preferential seating, a calculator, math manipulatives, picture cues, and a visual schedule. Student worked on academic goals throughout the school day. He began reading instruction at Summit using System 44, a foundational reading program. During the 2016-2017 school year, Student progressed to the Read 180 program, a higher-level program, which targeted development of his reading comprehension.

26. Student made progress appropriate in light of his circumstances due to autism and mild intellectual disability. He met most of his annual goals every year and made good progress on others.

27. The evidence demonstrated that Student's 2017 and 2018 IEPs were reasonably calculated to enable him to make progress appropriate in light of the his circumstances. Accordingly, Student did not prevail on Issue 1(b).

ISSUE 1(C): SERVICES TO PREPARE STUDENT FOR AN ADULT TRANSITION PROGRAM

28. Student contends that Fontana did not prepare him to transition to an

adult program. Fontana contends Student made sufficient progress to obtain his certificate of completion and that Student, as a 19 and 20 year old, should be allowed to model same aged peers with community based work and independent living skills.

29. Beginning no later than the effective date of the IEP in effect when the pupil reaches the age of sixteen, the IEP team meeting must include consideration of postsecondary goals and transition services for the pupil. (Ed. Code, § 56341.5, subd. (e).)

30. Transition services are a coordinated set of activities that are (1) designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation; (2) based on the student's individual needs, taking into consideration the student's strengths, preferences and interests; and (3) include 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 functional vocation evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

31. The adequacy of transition services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Coop. School District* (1st Cir. 2008) 518 F.3d 18, 28-30.) When a transition plan fails to comply with the procedural requirements, but the individual transition plan or IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Educ.* (U.S. Dist. Ct, D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, *10.) A transition plan that is procedurally

deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE. (*Ibid.*)

32. Individual transition plans and supporting IEP goals and services need to address a student's unique needs. Here, Fontana met its obligation to evaluate and provide appropriate services and IEP goals related to Student's adaptive skills in the community, which it persuasively demonstrated Student needed to support his post-secondary transition.

33. Fontana developed appropriate transition services after identifying Student's strengths, preferences, and interests. Fontana offered Student work experience through Workability, meant to support Student's social nature and interest in independent living. His transition plan addressed needs in identifying colleges and courses of study, mock interviews to gain employment, and learning independence in the community. Student received related services in college awareness, career awareness, and other transition targeting transition goals.

34. Moreover, Student's teachers and service providers consistently described his need to obtain sufficient community-based instruction, with accompanying academics, focused on improving his functional achievement to facilitate his move to post-secondary employment and living. Ms. Gama's special day class engaged in community based activities one time per month. In adult transition classes, Students spend most of their time engaged in community activities, taking skills learned in the classroom into the natural setting where they can grow into further independence.

35. Student presented no evidence that Fontana failed to prepare him for an adult transition program. Through the 2017 and 2018 IEPs and hearing, Parents expressed concern about Student's safety. They described him as not having distance boundaries when talking to people, even strangers. He did not have the maturity of other 19 year olds. They wanted him to develop more and worried that he would not

handle the transition well. Although understandable, Parents' concerns were not evidence that Fontana failed to offer Student appropriate transition services.

36. The weight of the evidence proved that Fontana's transition plan was reasonably calculated to address Student's unique needs. Accordingly, Student did not prevail on Issue 1(c).

ISSUE 1(D): SERVICES OR ACCOMMODATIONS TO PREVENT BULLYING

37. Student contends Fontana's March 2017 and February 2018 IEPs did not address being bullied at school. Fontana contends Student experienced two independent incidents, Fontana investigated the incidents and found no evidence of bullying at school. Fontana also argues it offered Student a FAPE in any event.

38. In a 2013 joint letter providing guidance on the IDEA, the U.S. Office of Special Education and Rehabilitative Services and the Office of Special Education Programs described bullying as the use of real or perceived power over a target where the aggression is repeated, or has the potential to be repeated, over time. Acts of bullying include physical, verbal, emotional, or social behaviors ranging from blatant aggression to subtle and covert behaviors. (*Dear Colleague Letter*, (OSERS/OSEP August 20, 2013) 61 IDELR 263; 113 LRP 33753 (Dear Colleague 2013).)

39. The California Education Code defines bullying as "any severe or pervasive physical or verbal act or conduct by a pupil or group of pupils . . . directed toward one or more pupils" that causes or is "reasonably predicted" to cause a reasonable student to experience one or more of the following: (a) fear of harm to his or her person or property; (b) a substantially detrimental effect on his or her physical or mental health; (c) a substantial interference with his or her academic performance; or (d) a substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school. (Ed. Code, § 48900, subd. (r).) A "reasonable student" is a pupil, including an exceptional needs pupil, who exercises average care, skill, and

judgment in conduct for a person of his or her age, and with his or her special needs. (*Id.* at subd. (r)(3).)

40. The bullying of a student with a disability that results in the student not receiving meaningful educational benefit may constitute a denial of a FAPE under the IDEA. (*Dear Colleague 2013, supra*, at p. 2.)

41. Parents complained that Student often came home from school with unexplained bruising and cuts. Ms. Gama knew of only two incidents that could be conceived of as physical altercations at school. First, in March 2017, Student threw a rock at another student. After learning of the incident, Ms. Gama reviewed a social story with Student regarding using words, not behaviors, to express anger. Second, a few weeks later, Student took his shoe off in the boys' locker room and threw it at a peer. Administration investigated the incidents and, according to Ms. Gama, found no evidence Student had been bullied. Student did not present incident reports or an investigation report, which lends credence to Ms. Gama's testimony.

42. The two incidents were atypical for Student who was well liked and had a good temperament. Moreover, Ms. Gama spoke to Student's general education teachers often and received no input of bullying by or against Student. Student's providers, who testified at hearing, had no knowledge of Student being bullied.

43. Student did not establish that he suffered severe or pervasive aggression falling within the definition of bullying. Moreover, Student failed to establish that any incident that occurred denied him access to his education, resulting in a loss of meaningful educational benefit. Accordingly, Student did not prevail on Issue 1(d).

ISSUE 2: CERTIFICATE OF COMPLETION

44. Student contends he should remain in high school, as he never received a certificate of completion or high school diploma from Fontana. Fontana contends it notified Parents that Student's certificate of completion would be issued at the end of

the 2017-2018 school year, allowing him to walk with graduating peers.

45. Fontana informed Parents of Student's work toward a certificate of completion and ultimate transition to an adult program during his April 12, 2016, March 3, 2017, and February 26, 2018 IEPs.

46. Several hours of IEP meeting audio recordings of the relevant IEP meetings evidence the numerous discussions Fontana's team had with Parents and their counsel regarding the availability of program options, Student's certificate of completion track, and Fontana's recommendation that Student move to an adult transition program. During the 2018 IEP meeting, Parents robustly argued against Student's transition and issuance of the certificate of completion. During the meeting, and consistent with Fontana's evidence at hearing, Mother described observing adult transition programs at Citrus and Fontana High School, with Fontana staff.

47. Subsequently, Parents signed consent to the 2018 IEP, which called for Student's placement in an adult transition program located at Fontana High school beginning in the 2018-2019 school year. Moreover, Fontana issued Student's certificate of completion on May 24, 2018, and invited him to walk with his peers during the graduation ceremony.

48. Student failed to meet his burden of proving, by a preponderance of the evidence, that Fontana denied him a FAPE in regards to his completion of high school and receipt of a certificate of completion. Accordingly, Student did not prevail on Issue 2.

ISSUE 3: NOTICE, PARENTAL CONSENT BEFORE CHANGING PLACEMENT TO ADULT TRANSITION PROGRAM

49. Student contends Fontana unilaterally changed his placement to an adult transition program, without first notifying them of the change and obtaining their consent. Fontana contends that Parents were notified of Student's transition to an adult

program during the April 26, 2016 IEP and every IEP thereafter. Fontana further contends Parents signed consent to Student's February 26, 2018 IEP, which offered placement in the adult transition program at Fontana High School.

50. Whenever a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, it must give parents prior written notice of that decision. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.102(a)(3)(iii); Ed. Code, § 56500.4.) The notice must include (1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency made the decision; (3) a description of each evaluation procedure, assessment, record, or report on which the decision was based; (4) a reminder of parents' procedural safeguards; (5) sources for assistance; (6) the options considered and the reasons for rejecting the others; and (7) a description of other factors relevant to the decision. (34 C.F.R. § 300.503(b); Ed. Code, § 56500.4, subd. (b). The notice must be given "a reasonable time before" the district actually changes the student's placement or the provision of a FAPE to the student. (34 C.F.R. § 300.503(a).) This is to ensure that "parents have enough time to assess the change and voice their objections or otherwise respond before the change takes effect." (*Letter to Chandler* (OSEP 2012) 59 IDELR 110.)

51. An IEP provides prior written notice of a placement change when it contains all of the notice requirements set out in 34 CFR 300.503(a). (See 71 Fed. Reg. 46,691 (2006).)

52. Districts are required to consider parents' preferences. The IDEA does not require a school district to accept parents' choice of program, but it must consider suitable alternatives. (*Blackmon v. Springfield R-XII School Dist.* (8th Cir. 1999) 198 F.3d 648, 658.) While the IEP team should work toward reaching consensus, the school district has the ultimate responsibility to determine that the IEP offers a FAPE. (App.A to

34 C.F.R. part 300, Notice of Interpretation, 64 Fed.Reg. 12473 (Mar. 12, 1999).)

53. Fontana arranged Student's placement in the adult transition program at Fontana High School for the beginning of the 2018-2019 school year. Student had not attended that program at the time of hearing. Instead, Student remained in a special day class at Summit, under stay put. (See (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505, subd. (d).)

54. Student's contention that he did not receive notice of Fontana's intent to change placement to an adult transition program at the beginning of the 2018-2019 school year lacks merit for several reasons. The IEP team discussed Student's certificate of completion track and transition to an adult program during the April 12, 2016, March 3, 2017, and February 26, 2018 IEP meetings.

55. During the March 3, 2017 meeting, Fontana considered Parents' reluctance to change Student's placement to an adult transition program and, given his age at the time, agreed to maintain Student's placement in the autism special day class during the 2017-2018 school year. Fontana considered Parents' preferences.

56. Mother observed adult transition programs at Citrus High School after the 2016 IEP, and at Fontana High School after the 2017 IEP, in preparation for Student's upcoming change of placement.

57. During the February 26, 2018 IEP meeting, the team discussed Student's continued placement in the autism program targeting functional skills where Student would obtain a certificate of completion and, thereafter, transition to a functional skills adult transition program at Fontana High School, at the end of the 2017-2018 school year.

58. Moreover, after taking home and reviewing the 2018 IEP, Mother checked the box that read, "I agree with the IEP, with the exception of," where she noted an attachment. The attachment was a statement of disagreement with the IEP in the

following respects: Student was not challenged academically; his safety and behavior incidents were not discussed at the transition IEP team meeting; the IEP notes omitted parental concerns over placement and did not accurately reflect the IEP team's deliberation; the IEP draft was a copy-and-paste job and not a new IEP; and Fontana intended to withhold services from Student as indicated on page 25 of the IEP.

59. The IEP notes on page 24 provide a summary of Parents' dispute over placement. The notes accurately summarize the IEP team's discussion of placement, indicating Parents did not think Student was ready for transition; Student was not ready for an adult program; and Parents requested he stay at Summit. In the IEP audio recording, Parents sound frustrated, upset, angry, and worried about the idea of Student transitioning to an adult program. The IEP team discussed placement for several minutes. The IEP notes are not required to be a transcript of Parent concerns.

60. Parents signed consent to the IEP on April 3, 2018. Fontana received the signed IEP from Parents on April 16, 2018. During the summer, Fontana sent notice to Parents regarding what school site their children would attend each following school year. Parents did not contact Mr. Lopez to discuss either returning Student to Summit or what electives Student would take if he did.

61. Under the circumstances, Fontana reasonably believed Parents consented to implementation of the 2018 IEP, including Student's transition to an adult program. Student did not meet his burden of proof that Fontana failed to provide notice or obtain consent before initiating Student's placement at Fontana High School's adult transition program. Accordingly, Student did not prevail on Issue 3.

ISSUES 4(A), (B), AND (C): FAILURE TO IMPLEMENT

62. Student contends Fontana failed to implement his March 3, 2017 and February 26, 2018 individualized education programs, in that Fontana did not provide Student with an alternative augmentative communication device for use at school and in

the speech room, and failed to provide Parents with a communication log, as required in his IEPs. Fontana contends Student had access to his alternative augmentative communication device during the relevant time frame and that the device was unavailable for only a brief period of time when it needed to be replaced. Further, Fontana contends that even without the device, Student was provided a FAPE because he communicated verbally and by writing.

63. Minor discrepancies between services provided by a school district and services called for by the IEP do not give rise to an IDEA violation. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811, 822.) Only a material failure to implement an IEP violates the IDEA. (*Id.* at p. 822.) "A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." (*Ibid.*) "There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education." (*Ibid.*) "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*)

64. A school district must obtain informed parental consent to an IEP prior to implementation of special education and related services offered in the IEP. (34 C.F.R. § 300.300(b)(4)(i); Ed. Code, § 45346, subd. (a).)

Access to Communication Device and Speech Services

65. The weight of the testimony demonstrated that Student went without a communication device for two to three weeks prior to the 2018 IEP meeting. Student broke the android device while plugging it in for recharging, something Ms. Gama related as a common experience with that type of device. She notified Mr. Silcock of the damage and Mr. Silcock replaced the device with an Ipad mini, using the same word

prediction application, within a few weeks and by the time of the February 26, 2018 IEP team meeting.

66. Student used the device throughout his school day, except during physical education. Student used the device in speech therapy. Moreover, the evidence demonstrated that Student did not require his device to communicate with staff and peers on campus. Those familiar with Student typically understood his speech. When Student needed to repair a communication break down without his device, he simply wrote a word down rather than typing it into his device.

67. Student did not demonstrate a material failure to implement his IEPs. The weight of the evidence demonstrated a minor discrepancy in implementation of Student's communication device. Accordingly, Student did not prevail on Issue 4(a) or (b).

Communication Log

68. Student's April 2016 IEP notes reflected discussion on streamlining the communication log between Fontana and Parents. Fontana agreed to add a line in the logs for communication by Student's speech therapist. Because Parents sought additional information on Student's daily activities, Ms. Foody suggested the team consider collaborating with Parents to update the form in a way that would be practical for staff and Parents. The IEP did not require use of a specific form.

69. At Student's February 2018 IEP team meeting, the parties agreed that Ms. Gama would email Parents about Student's daily activities. Ms. Gama persuasively testified that she did so.

70. Neither party submitted communication logs into evidence. However, IEP recordings reflect Parents' knowledge of Student's progress, daily routines, and intermittent issues. Student did not present evidence of deficiencies in Fontana's communication with them, which prevented them from participating in meetings

regarding Student's identification, evaluation, educational placement, and the provision of a FAPE to Student. Rather, the IEP meetings reflect Parents had knowledge about Student's needs, expressed disagreement regarding Fontana's conclusions, requested and obtained revisions to the March 2017 and February 2018 IEPs. Accordingly, Student failed to meet his burden of proof and did not prevail on Issue 4(c).

ORDER

All of Student's claims for relief are denied.

PREVAILING PARTY

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

RIGHT TO APPEAL

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

DATED: November 14, 2018

_____/s/_____

COLE DALTON

Administrative Law Judge

Office of Administrative Hearings