

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
IN THE MATTER OF:
GLENDDORA UNIFIED SCHOOL DISTRICT,
v.
PARENT ON BEHALF OF STUDENT
OAH CASE NO. 2018110712

DECISION

Glendora Unified School District filed a due process hearing request (complaint) with the Office of Administrative Hearings, referred to as OAH, State of California, on November 19, 2018, naming Parent on behalf of Student. Glendora filed an amended complaint with OAH on February 4, 2019. OAH granted Student's request for a continuance on February 22, 2019.

Administrative Law Judge Alexa J. Hohensee heard this matter in Glendora, California on June 4, 5, and 6, 2019.

Lindsey M. Wrape and Constance M. Taylor, Attorneys at Law, appeared on behalf of Glendora. Ann Keyes, Glendora's Director of Student Services, attended the hearing on behalf of Upland.

Parent appeared on behalf of Student on the first day of hearing. Parent did not appear or participate on the second or third day of hearing.

OAH granted Glendora's request for a continuance to June 28, 2019, for filing written closing briefs and replies. Glendora's closing brief was due by June 20, 2019, and was timely filed. Student's closing brief was due June 24, 2019, and was not timely filed. The record closed on June 28, 2019, and the matter was submitted for decision. Student did not request additional time in which to file his closing brief, and filed an untimely closing brief on July 3, 2019. Parent did not follow-up with OAH until July 12, 2019, and when given the opportunity to provide evidence of a medical emergency or filing error,

instead filed an unsigned and unsworn statement that was not credible or persuasive. Student's untimely closing brief was not considered.

ISSUE

The issue set forth below has been redefined in accordance with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443. No substantive change has been made.

Did Glendora's offer of placement and services in Student's February 27, 2018 individualized education program, completed on June 12, 2018, and as amended on August 24, 2018 and December 17, 2018, provide Student with a free appropriate public education in the least restrictive environment?

SUMMARY OF DECISION

Glendora made appropriate offers of a free appropriate public education, also known as "FAPE," in the individualized education program, or "IEP," of February 27, 2018, as completed on June 12, 2018, and as amended on August 24, 2018 and December 17, 2018. Student's executive functioning deficits, attention disorder, and learning disabilities interfered with his ability to access the general education curriculum. Student was capable of performing grade-level academics when provided with a smaller classroom setting, slower pace, and additional adult support of specialized academic instruction classes, which were offered when the February 27, 2018 IEP was finalized at the IEP team meeting of June 12, 2018. After Parent produced doctor's letters stating that Student could not return to school due to disabling anxiety and depression, Glendora offered Student appropriate instruction and services in the least restrictive environment of home hospital instruction in the August 24, 2018 and December 17, 2018 IEPs. Glendora prevailed on the sole issue presented.

FACTUAL FINDINGS

Student was 16 years old at the time of the hearing. He resided with Parent and Stepfather within Glendora boundaries, and attended Glendora schools at all relevant times.

Student was eligible for special education under the category of specific learning disability. Student had a significant difference between his cognitive ability and academic achievement in the areas of math reasoning and calculation, due to processing deficits in attention and memory resulting from attention deficit hyperactivity disorder, referred to as ADHD. Student's ADHD was also a chronic health problem that negatively impacted his educational performance, and he was eligible for special education under a secondary category of other health impairment.

2017-2018 SCHOOL YEAR

During the 2017-2018 school year, Student was in eighth grade at Goddard Middle School. Student was responsible for getting himself to school by bus or bike, and was often tardy or absent. During the 2017-2018 school year, Student was tardy to first period 21 times, and had 12 unexcused and 13 excused absences.

Student was also responsible for taking medication to regulate his attention, but was inconsistent about taking it. Student stayed up late playing online games, and often fell asleep during class.

Socially, Student was smart, friendly, and well-liked by both peers and adults. The middle school principal, Jennifer Prince, interacted with Student regarding absences, tardies, and minor disciplinary matters, and testified credibly at hearing that Student flourished socially in eighth grade. Ms. Prince gave Student strategies to help him get to school on time, such as setting two alarm clocks, and arranged for Student to make up tardies by participating in a 30-minute after-school homework club.

Ms. Prince was aware that Student had reported bullying incidents the prior year in seventh grade. Investigation revealed that Student told a lunch aide that someone had torn up his sandwich, but multiple student witnesses said that Student had made the mess himself. Student reported an incident in the boys' locker room, but could not name or describe the other boy, and it was unlikely that Student or any other boys were in the locker room at the time Student claimed the incident took place. Student claimed he had been bullied once in the restroom, but an adult aide had been by the door and saw Student enter and exit alone, with no voices being heard in the interim. Ms. Prince testified convincingly at hearing that Student had made no credible report of bullying in seventh grade. In eighth grade, Parent reported that Student was being bullied in the hallway during passing periods, but discreet surveillance by Ms. Prince and the assistant principal revealed no basis for that report.

Ms. Prince was a credentialed teacher and administrator, and had been the middle school principal for three years. Ms. Prince testified credibly and convincingly that Student did not report any bullying in eighth grade himself, and that she had never seen Student being bullied or received any student or teacher reports of Student being bullied.

Academically, Student rarely completed classwork in his general education classes or turned in homework, which adversely impacted his grades. Student's general education teachers believed he was capable of working at grade level, but poor attendance, lack of focus, and insufficient homework reinforcement created gaps in knowledge and interfered with his ability to keep up with the core curriculum.

In accordance with the IEP in place at the start of the 2017-2018 school year, Student spent the majority of his day in general education classes. He also attended a grade-level special education class for math called specialized academic instruction math, or "SAI Math," and a special education class that taught study skills, such as

prioritizing work and task completion, called "Directed Studies."

Student had failed all of his core classes at the end of seventh grade, and Parent consented to Student attending two special education classes in eighth grade. General education classes typically had one teacher and about 30 students. Some general education classes were "collaborative," and had an aide to support students who needed additional assistance. Student's special education classes were smaller, with about 15 students, one teacher, and an instructional aide, for a ratio of one adult to every six or seven students. The special education classes offered specialized instruction at a slower pace, in addition to smaller class size and more adult support. Student was earning passing grades in his SAI Math and Directed Studies classes.

Michael Summers was Student's general education English teacher. He had been a credentialed English teacher and taught eighth graders for 22 years, and often gave extra assistance to students with special needs in his classes. Mr. Summers observed that Student was positive, happy, bright, and participated well in class discussions. However, it was difficult to judge exactly how much Student knew because he rarely completed classwork or turned in homework. Mr. Summers gave Student every accommodation he could think of, such as extra time, breaking down assignments, and accepting rough drafts over finished work. Even when he asked Student for just one paragraph of a larger essay assignment at a time, Student always had an excuse for failing to complete that one paragraph. Mr. Summers's English period was a collaborative general education class with an aide, but when Mr. Summers or his aide offered to assist Student with a concept or assignment, Student said he did not need help. Student did not want to stand out from others, and rejected extra help and attention in his general education classrooms. Student also fell asleep during his English class three or four times each week. Mr. Summers placed his hand on Student's shoulder to wake him without drawing undue attention, but Student often fell asleep two or three times in one period.

Mr. Summers did not give many tests, and he graded his students mostly on classwork and homework. He checked the agendas of his students every day to ensure that they had correctly written down their homework assignments, and updated his students' homework progress on Glendora's "Aeries" system every eight to ten days. Aeries was an online portal that allowed students and parents to access student grades through individual accounts established for each student and parent. Missing homework was recorded as a zero. Mr. Summers recorded grades in Aeries every two weeks, and sent progress reports to parents every four weeks.

Mr. Summers observed that Student was popular, and he never observed Student being bullied. Student never reported any bullying to him, and Mr. Summers was surprised to hear Parent report in an IEP team meeting that Student was being bullied at school.

Student's SAI Math class was taught by Ryan Morford. It was a small class with 14 students and an instructional aide. Classwork and homework were 70 percent of the students' grades, and Mr. Morford updated the grades and homework in Aeries every week. He and his aide checked daily that each student correctly recorded their homework assignments in their written agendas. In this class, Student asked for help when needed and was making progress, but Mr. Morford felt that Student's progress was limited by his poor attendance and lack of diligence in completing or turning in work not completed at school. When Student was absent, he missed concept instruction and practice, which minimized Student's progress potential. Mr. Morford testified credibly and convincingly at hearing that Student needed the extra instructional support of special education math outside the general education environment to sustain grade-level math skills.

Colleen Corso taught Student's special education Directed Studies class. She was a credentialed special education teacher with over 25 years of experience. Her class had

18 to 20 students, with two support aides. She worked with Student on his vocational skills goal to use an agenda, independently prioritize tasks, track his assignment completion, and use class time productively. Student made progress in her class. He began to prioritize assignments on his own, started assignments when he entered the classroom, and over the course of the school year needed less and less prompting to stay on task. The small teacher-to-student ratio allowed Ms. Corso and her aide to give each student a significant amount of attention, and Student did not display hesitation in seeking assistance from Ms. Corso or her aide during Directed Studies. Student completed his work in her class, was competent, and sometimes showed sufficient understanding to help peers interpret literature or to explain a science lab.

Over the years, Ms. Corso had observed students who exhibited anxiety through sullen affect, becoming overwhelmed, or being nervous about getting assignments done, but she did not observe any of those signs in Student. She considered eighth grade students the best behaved of middle schoolers, and found Student easy to talk to and someone who acted like a typical eighth grader.

Ms. Corso was aware that Student was not completing his work in his general education classes or outside of school. Every Thursday she gave each of her students a complete summary of their standing in each of their classes and a list of missing assignments, which went home for return with a parent's signature. Student only returned a couple summary slips with Parent's signature. Despite Ms. Corso speaking and emailing with Parent about the summary slips, Student did not turn in further signed summary slips. Ms. Corso also regularly updated Student's agenda online on Aeries, and on Google Keep after December 2017.

Student struggled in his general education classes, particularly with written language tasks. Ms. Corso strongly believed Student needed many accommodations, as well as special education classrooms for core curriculum that gave him an opportunity

to organize his materials, work on assignments, and placed him with peers working on similar concepts. Ms. Corso testified credibly and persuasively that Student could access grade-level curriculum, but needed specialized academic instruction classes that provided smaller class size, more structure, extra adult support, accommodations, and a slower pace to do so.

Glendora had multiple means for Parent to stay informed of Student's homework assignments and completion. These included:

- The Aeries system, which was frequently updated by Student's teachers and accessible to Student and Parent online;
- Teacher websites, including websites maintained by Student's history and science teachers, accessible through a link on the middle school's website;
- Student's written assignment agenda, which each of his teachers checked daily, or almost daily;
- Ms. Corso's weekly Directed Studies assignment summary slips; and
- Ms. Corso's weekly Google Keep assignment summaries.

Despite multiple means of staying informed regarding Student's homework status, Mother and Student rarely checked to see if Student's homework was completed. Stepfather checked infrequently.

In November 2017, Parent complained to Glendora that Student had too much homework. Glendora promptly responded with an offer to conduct a homework assessment, and scheduled an IEP team meeting for November 29, 2017, to discuss homework and accommodations.

November 29, 2017 IEP Team Meeting

On November 29, 2017, Glendora convened an IEP team meeting. Parent explained that she was concerned Student was earning poor grades for failing to turn in assignments. She wanted class expectations changed so that Student could be graded

on what he knew, and not on work completion. The IEP team explained that less work could be required where a task was repetitive, such as homework consisting of multiple practice problems to solve one type of math equation. However, where the work itself was part of the curriculum, such as writing a five-paragraph essay, Student could only demonstrate that he achieved the grade-level standard by completing the task.

Glendora team members explained that if Student's work was modified to the extent that he did not meet grade-level standards, he would not enter high school on a diploma track in ninth grade. Parent wanted Student to earn a diploma, and did not want his work modified from grade-level standards.

Parent asked Student's teachers to use the same encouraging words that she did at home. Student was resistant to adult assistance, and did not like to be told to get back to work. She said that Student wanted to blend in and did not want attention drawn to himself, so non-verbal prompts were best.

The IEP team reviewed and revised the accommodations, and the final list of accommodations in Student's November 29, 2017 IEP included:

- Preferential seating;
- Encouraging prompts;
- Adult to confirm and verify accuracy of assignments in Student's agenda;
- Shortened assignments on repetitive skills;
- Alternative methods of demonstrating information and key concepts (such as speech-to-text for written essays);
- Longer assignments broken into smaller segments;
- Support in prioritizing tasks and managing time;
- Access to a word processing device for written work;
- Short breaks during longer assignments;
- Copy of teacher/study notes;

- Two to three extra days to complete assignments;
- Extra time and separate seating for quizzes and tests; and
- Acceptance of incomplete work for partial credit.

Student's teachers reported that much of Student's difficulties were due to gaps in knowledge as a result of his frequent tardies and absences. As more instructional time was missed, it became more difficult for Student to complete assignments, even during class and Directed Studies.

Student's general education English, history, and science teachers told the IEP team that they were already implementing many of the agreed-upon accommodations, but Student was not able to keep up with the work. Student had great ideas and could comprehend material, but gaps in knowledge prevented him from starting and completing assignments. These teachers recommended that Student be transferred into special education classes, which offered more support for grade-level curriculum and where Student would not stand out for needing additional assistance. Parent disagreed, and told the IEP team that Student did not want to be seen going into a special education classroom. Glendora team members wanted Student to join the IEP team meeting to discuss his concerns, but Parent would not consent to that.

Parent reported that, in addition to ADHD, Student also saw a psychiatrist for anxiety. Student's teachers reported that Student did not display symptoms of anxiety in class, or report being anxious. They noted that Student often put his head down on the desk and appeared sleepy, and Stepfather suggested Student felt overwhelmed and was shutting down as a way to get through the school day. Glendora team members agreed that Student should receive a screening for school-based counseling.

The November 29, 2017 IEP was revised to include the discussed accommodations. Parent did not consent to any part of the IEP or a counseling screening, and the meeting was adjourned.

December 21, 2017 IEP Team Meeting

Glendora convened another IEP team meeting on December 21, 2017. The homework assessment had not yet been conducted, and the IEP team wanted to discuss Student's continuing failure to complete homework. At that meeting, at Parent's request, the IEP team added accommodations that Student:

- Be given to links to online media, when available, to assist learning;
- Be permitted to use graphic organizers and memory strategies; and
- Be given opportunities to revisit an assignment or assessment to demonstrate improved mastery.

The IEP team also added that Student's case carrier would consult with Student's teachers for 30 minutes per quarter to ensure that accommodations were implemented.

The IEP team discussed having both Student and Parent use the online application Google Keep as an organizational tool to ensure Student's homework assignments were completed. This tool allowed Student to take pictures of his assignments on the board, rather than having to write them down. Ms. Prince agreed to meet separately with Parent and Student to set up this Google application on their cell phones and laptops, so that both Parent and Student could readily access Student's assignments, calendar, and grades from different devices. Parent was optimistic that the use of technology would make Student more accountable.

Glendora team members encouraged Parent to have Student attend the after-school homework club. The homework club was supported by both general education and special education teachers. The special education teacher was an eighth grade teacher and familiar with the curriculum at Student's grade level.

The IEP team meeting was adjourned. Parent consented to the new accommodations, but did not consent to a school-based counseling screening.

Ms. Prince met with Parent and Student individually in December 2017. She

downloaded the Google Keep application onto their cell phones and laptops and gave them each individual instruction in how to use the application to record and access assignments.

During January and February 2018, school psychologist Mark Beckett performed a homework evaluation for Student. At that time, Student was earning B's in Directed Studies and SAI Math, a C in science, and F's in English and history. Mr. Beckett conducted interviews with Student, Student's teachers, Parent, the school counselor and administrator. He reviewed Student's records, observed Student at school, and collected data on Student's homework completion.

Mr. Beckett observed Student in his classes, and Student was 25 minutes late to first period science that day. Most of Student's homework was unfinished classwork. In each of Student's classes, he was given an opportunity to record his homework on Google Keep and in his written agenda. Student's teachers prompted or redirected him, with physical gestures such as pointing to the paperwork or tapping the desk with their fingertips, but Student rarely completed classwork. Student did not request assistance in his general education classes, and continued to reject assistance when offered. Student worked on homework for his other classes in his Directed Studies class, but often did not take the opportunity to complete unfinished classwork.

Mr. Beckett discussed Student's work completion with his teachers. There was no homework in science, and that week Student had completed 50 to 100 percent of the daily classwork. However, for two months Student failed to bring assigned materials to build a chemical reaction snow globe. Student had only been able to complete the project when the teacher gave Student the missing materials himself. In history, Student completed five percent or less of daily classwork and turned in no homework, with no increase when allowed extra days for completion. In English, Student did not turn in any

work on most days. Only in special education math did Student complete 100 percent of classwork, and he had no homework for that class.

Mr. Beckett interviewed Parent, who complained she could not figure out what homework assignments were due when, as Student always waited until the last minute to tell her that his work was due. Parent felt Student's assignments were not being "chunked" into smaller pieces per his IEP, and that the Directed Studies teacher was unable to teach Student how to organize and prioritize. Parent indicated that she and Stepfather were responsible for administering Student's ADHD medication, although Student contradicted that and told Mr. Beckett that he was responsible for his own medication and sometimes forgot to take it. Parent stated that Student had distraction-free areas in which to do homework, although Student reported that he did homework in the kitchen and was constantly distracted by things like the television, dog, cooking, and people talking. Parent reported that Student was not supposed to have access to electronic devices at night, but was very resourceful at getting to them. Student admitted to Mr. Beckett that he was struggling in English and history.

Mr. Beckett's report recommended that Student receive his homework in smaller chunks, that the teachers go over Student's accommodations with Student, and that Student be given an opportunity to complete in-class work in a distraction-free area. He recommended that Parent and Stepfather help Student track homework assignments, provide Student with a distraction-free area to complete his homework, ensure that Student not play with electronics late at night, ensure that Student got plenty of sleep, and help Student take his medication and arrive at school on time each day. Mr. Beckett recommended the team consider putting Student in a classroom with a smaller setting for English and history.

Glendora made several attempts to schedule an annual review IEP for Student in February 2018. However, Parent did not want to attend another meeting until a

thorough draft had been drawn up for her review. Parent also declined to discuss a plan for post-secondary transition that identified vocational and career goals at the annual meeting.

As of February 23, 2018, Student had 12 absences and 16 truanancies for the 2017-2018 school year.

FEBRUARY 27, 2018 IEP TEAM MEETING

Glendora properly noticed Student's annual review IEP team meeting for the morning of February 27, 2018, and provided a draft of the IEP to Parent in advance. However, Parent emailed Glendora late the night before the meeting that she would not attend because the draft did not include placement and services. During business hours, Ms. Keyes responded to Parent that placement and services were an IEP team decision, and not determined or entered into the IEP until the meeting itself. That morning, Glendora convened the IEP team meeting with all necessary IEP team members except Parent, and adjourned the meeting without action.

The following day, Ms. Keys spoke to Parent on the phone. Parent requested that the IEP team meeting be rescheduled for a Friday, which was most convenient for Parent.

On March 5, 2018, Glendora sent Parent another draft IEP, which included present levels of performance and proposed goals, but not placement and services. It also sent Parent a copy of Mr. Beckett's homework assessment report. Glendora invited Parent to contact them with disagreements or concerns about any information in the IEP or assessment report. It also offered to reconvene the IEP team meeting on a Friday in March without all of the teachers because they were unavailable, or on a Friday in April or May with all of the teachers, or on a day other than a Friday.

On March 13, 2018, and again on March 20, 2018, Glendora sent follow-up emails to Parent to reschedule Student's annual IEP team meeting, as Parent had not

responded. Glendora also sent a written letter on March 22, 2019, which included a summary of its attempts to reschedule the meeting and a copy of Parents' Rights and Procedural Safeguards.

During April 2018, Glendora made multiple attempts to schedule a continuation of the February 2018 IEP team meeting for May 2018. Parent ultimately agreed to attend a meeting on June 12, 2018.

At the end of the 2017-2018 school year, Student received F's in English, history and science, with an A in physical education, a B in Directed Studies, and a C- in SAI Math.

JUNE 12, 2018 IEP TEAM MEETING

On June 12, 2018, Glendora convened an IEP team meeting for Student. Parent excused in writing the presence of Student's science, history, physical education and Directed Studies teachers, and his case carrier, each of whom submitted written reports regarding their area of curriculum or related services. Parent, Stepfather, Father, Stepmother, Ms. Keyes, Ms. Prince, Mr. Beckett, Mr. Summers, Mr. Morford, the middle school counselor, teachers from Glendora High School, administrators from both the middle school and Glendora High, and attorneys for Student and Glendora attended.

Parent was concerned that Student was failing his classes, which hurt his self-esteem. She believed Student had too much homework, and should not be graded down if he couldn't complete it all. Father agreed, and wanted someone to sit with him at home while he completed his homework. Mother requested an after-school tutor to supervise homework be added to Student's IEP.

Mr. Beckett went over his homework assessment and recommendations. He noted that Student struggled with long-term assignments, even when broken into smaller assignments. Ms. Prince explained the homework support and accommodations that Glendora offered and implemented throughout the school year. Mr. Beckett

concluded that Student succeeded in special education classes because they provided consistent specialized and reinforcing instruction that Student needed in addition to homework supports.

The team reviewed Student's present levels of performance, which consistently identified absences and missing assignments as impacting his academics. During the 2017-2018 school year, Student had accrued 27 absences and 21 tardies to first period alone. The written reports of Student's teachers all expressed concern with Student's excessive absences, which resulted in knowledge gaps that impacted Student's ability to complete his work. All teachers reported missing assignments and homework, despite implementing the plethora of accommodations in the IEP, such as extended time for completion, shortened assignments, and opportunities to turn in late work. Several of Student's teachers expressly stated their opinions that Student would comprehend the material better and benefit educationally from smaller classes in which the work was broken down and presented with additional instructional support. One of the IEP team members from Glendora High expressed concern about absences in high school, where classes were combined into 100-minute "blocks" and presented on different days, so that a missed day was the equivalent of missing two days' worth of instructional time.

Glendora team members agreed to include round-trip home to school transportation in the IEP to help Student get to school on time. Parent opined that the service would be ineffective, because Student would not get to the bus on time.

Student's case carrier shared that she had met with Student prior to the meeting, and discussed the supports he would need in high school. Student admitted he rarely used the homework supports available to him, and thought help from his teachers would be the most beneficial. He also thought a Directed Studies class in high school would be helpful.

Parent stated that Student was seeing a therapist for anxiety and depression, and

requested a social emotional goal for self-esteem. She also commented that Student had negative feelings about receiving help from adults at school. Parent reported that Student was taking medication for anxiety, although she could not recall the name or dosage. Ms. Keyes reminded Parent that Glendora was waiting for parental consent to conduct a counseling screening, and promised to provide her with a second referral packet and a release of information form to permit Glendora to contact Student's therapist for information. Glendora would convene an IEP team meeting after the screening to determine if counseling was needed and draft appropriate counseling goals.

The IEP team reviewed Student's progress on his annual goals. Mr. Morford stated Student had not met his math reasoning or math calculation goals, as he was still struggling with missed underlying skills for more advanced concepts. Student also failed to meet his study skills goal, although Ms. Corso reported significant progress.

Ms. Farricker had drafted proposed goals for Student in the areas of organization, work completion, math reasoning, math calculation, written expression, and attendance after speaking with Student's teachers, particularly Mr. Morford and Ms. Corso.

The math reasoning goal targeted math problem-solving skills, which were an area of need identified by Mr. Morford. The goal provided that given five problems and a calculator, Student would use variables to represent quantities and construct simple equations and inequalities to solve problems with 70 percent accuracy in two consecutive trials, measured by work samples and teacher records. This math skill was part of the eighth grade curriculum, and a foundation for ninth grade math.

The math calculations goal was drafted from a baseline showing that Student made errors in tracking multi-digit problems involving addition, subtraction, multiplication and division. It required Student to line up numbers and decimals to fluently complete these processes using standard algorithms with at least 80 percent

accuracy in two consecutive trials measured with work samples and teacher records. This goal worked on fundamental skills needed for high school math.

Ms. Corso helped draft a goal to target Student's executive functioning, or organization deficits, which was broken down into two goals for organization and task completion at Parent's request. The organization goal targeted Student's need to track assignments and homework completion. It required him to maintain an agenda and independently prioritize his assignments and tests with their due dates, turning in 80 percent of his assignments in five consecutive trials as measured by teacher records. The task completion goal required Student to improve attention to task during assignment completion in a study skills class, as demonstrated by 80 percent completion of assignments in five consecutive trials by review of teacher records. Student struggled to organize his work and remain on task, and both of these goals addressed Student's executive functioning and attention deficits.

The written expression goal addressed Student's low written language scores and resistance to drafting, editing, and revision. Mr. Summers and Ms. Corso believed that Student was very capable of verbally expressing his thoughts, and needed to master the skills to express them in writing. This goal required Student to complete a graphic organizer on a topic, and produce, with a word processor, a clear and coherent paragraph consisting of a thesis statement, supported with valid reasoning and evidence, and concluded with his analysis. The goal would be measured by work samples in two trials demonstrating 80 percent accuracy based on a rubric appropriate to the task. This skill was part of the ninth grade curriculum, and this goal would follow Student into ninth grade.

The team also wrote an attendance goal, with Student to attend school on time 90 percent of the time for 20 consecutive school days in two consecutive trials. This goal

targeted Student's excessive absences and tardies, which were negatively impacting his educational progress.

Parent requested a goal to address Student's anxiety, but the Glendora team members wanted to defer drafting that goal until the counseling screening was done, as a counselor would work with Student on identifying stressors and learning coping strategies. In the interim, the team drafted a self-advocacy goal to address Student's difficulty in requesting assistance to ensure understanding of assignments. It required him to participate in an early morning tutorial program, offered every morning at Glendora High School, as demonstrated by attendance and seeking assistance with assignments 80 percent of the time in two consecutive trials.

The IEP team adopted the proposed goals, as revised at the meeting. The goals were measurable, and included objective criteria, evaluation procedures, and schedules for determining on an annual basis whether the goals were achieved. Each goal indicated the setting in which Student was to perform the skill, how the skill would be measured, the length of time or number of times the skill was to be performed, and the measurement tools. The goals were designed to meet Student's individual needs resulting from his executive functioning, attention, memory deficits, and his ADHD, and to allow him to make progress in the general curriculum. Glendora witnesses testified convincingly that the goals targeted all of Student's areas of educational need, and were reasonably calculated to be achievable within a 12-month period.

At Parent's explicit request, the IEP team agreed to defer drafting a post-secondary transition plan until the Fall 2018 semester, to be completed by the high school IEP team. Student's current responses to a transition questionnaire were included in the IEP.

The IEP team reviewed Student's accommodations, and adopted the accommodations discussed, including a reduction of skills-based repetitive homework.

A teacher from the high school stressed to Parent that college preparation curriculum often required more than mastery of skills, such as essays demonstrating understanding of advanced concepts, and that Student would need to produce work to meet grade-level standards. The Glendora High teachers recommended that Student be offered an Independent Learning Center class, where Student could obtain assistance with classwork and homework. Ms. Corso was familiar with the high school's Independent Learning Center, and confirmed to the IEP team that it provided the same level of support as her Directed Studies class.

The meeting ran over its scheduled time, and Parent agreed to excuse Ms. Prince, the principal, and the high school representatives. Father and Stepmother also left.

Glendora offered Student specialized academic instruction for three periods, or 3,000 minutes per month, in special education math, special education English, and the Independent Learning Center. Student would take general education courses in physical education, science, and a rotating class in College/Career Planning and Health. The IEP also provided for Student's case carrier to consult with his teachers and support staff for 30 minutes per quarter. The IEP documented the projected start date of services, and the anticipated frequency, location, and duration, specifically documenting changes in the schedule for block scheduling at high school for the 2018-2019 school year.

Glendora also offered Student round-trip home-to-school transportation. Glendora did not offer Student extended school year because the IEP team had not seen Student experience significant regression or difficulty in the recoupment of skills after extended breaks.

Parent repeated her request for after-school tutoring. Glendora team members responded that Student was very intelligent, and did not need one-on-one instruction to comprehend concepts. Instead, he needed small classes with additional support to learn how to demonstrate his knowledge, along with the Independent Learning Center,

with vocational goals to learn study skills and organization. Glendora declined to add after-school tutoring as a service on Student's IEP.

Parent did not consent to the IEP, and the meeting was adjourned.

On June 20, 2018, Glendora sent a follow-up letter to Parent reiterating its offer of placement and services, and declining to offer after-school tutoring.

2018-2019 SCHOOL YEAR

On August 13, 2018, prior to the beginning of the 2018-2019 school year, Parent took Student to see the psychiatrist who was treating him for ADHD. The psychiatrist wrote and signed a letter to Glendora stating Student reported that none of his teachers in middle school had liked him, that he had felt unsupported, that he had received multiple detentions because he couldn't do anything right, and that he was very anxious about starting high school. Parent had reported to him that Student refused to get out of the car for Freshman Orientation and experienced shortness of breath. The doctor's letter concluded that the severity of Student's anxiety prevented him from attending school, with a projected return date of September 24, 2018.

The first day of the school year was August 15, 2018. Parent provided the doctor's letter to Glendora on August 16, 2018, and requested home hospital instruction.

August 24, 2018 IEP Amendment

Glendora prepared an IEP amendment to offer Student home hospital instruction, or one-on-one instruction in the home, for one hour per day through September 24, 2018, and retroactive to the first day of school. Parent consented to the August 24, 2018 IEP amendment, but withheld consent to the remainder of the February 27, 2018 IEP.

Glendora assigned two high school teachers to provide Student one-on-one home instruction. Kurt Dykstra was scheduled to provide instruction in science and health, and Kyle Johnson was scheduled to provide instruction in the other core

subjects. Mr. Dykstra had been a credentialed teacher for 28 years, and had previously provided home instruction. Mr. Johnson was a credentialed education specialist. Both Mr. Dykstra and Mr. Johnson testified credibly and convincingly at hearing that they made repeated and consistent attempts to contact Parent to set up times to provide instruction, but Parent did not return their calls or emails, made excuses for delays in response, or responded that proposed dates and times were inconvenient. There was often no adult present with Student, which was a requirement for Student to receive home hospital instruction.

In the infrequent situations when instruction was successfully arranged, Parent subsequently canceled, with reasons such as she did not realize the date was a holiday and Student was visiting relatives, or Student had contagious pink eye. Mr. Johnson agreed to meet Student at the local public library, where other adults were present, but Student only appeared once for a lesson. Substantial email correspondence between Parent, Mr. Dykstra, and Mr. Johnson was admitted into evidence, establishing that Parent was either nonresponsive or consistently canceled scheduled lessons.

Student did not return to school on September 24, 2018, and Student's attorney relayed that he was still under his doctor's care and unable to attend school. Glendora attempted to schedule an IEP team meeting in October 2018, but Parent did not return or respond to the meeting notices. Glendora team members wanted to obtain more information about Student's medical condition, and review and revise his IEP as necessary to plan for a transition from home instruction to the public high school. Mr. Dykstra and Mr. Johnson continued to attempt to schedule home instruction.

Glendora continued to attempt to schedule an IEP team meeting, and Parent ultimately agreed to attend a meeting on December 13, 2018.

On December 4, 2018, Parent provided Glendora with a typed and unsigned letter from Student's psychiatrist, dated September 26, 2018, stating the severity of Student's condition prevented him from attending school until December 20, 2018.

December 13, 2018 IEP Team Meeting

On December 13, 2018, Glendora convened an IEP team meeting attended by Parent, Stepfather, Ms. Keyes, Mr. Dykstra, Mr. Johnson, high school teachers, school nurse Abbey Fueger, and Glendora mental health coordinator Lucia Fernandez.

Parent informed the IEP team that Student was seeing a therapist weekly, and was very traumatized by bullying he experienced in middle school. Student was on medication for anxiety, and his psychiatrist was preparing another letter to extend home instruction.

Glendora team members inquired about Student's diagnosis, as it was unusual for a doctor not to include that in a home instruction letter. They also requested that Parent sign a release for the nurse and mental health coordinator to speak with Student's psychiatrist. Parent said that the diagnosis was general anxiety, accompanied by panic attacks. Glendora requested Parent consent to an assessment of Student's social, emotional, and behavioral functioning.

The IEP team discussed a tentative home instruction schedule to accommodate the hours Parent was home, or when Student could meet at the local library. The IEP team agreed to extend home instruction in accordance with the doctor's letter through December 20, 2018. However, Glendora team members told Parent that a new doctor's letter would be needed to continue home instruction in the Spring 2019 semester. Mr. Dykstra walked Parent to the school library to pick up some books for Student's home instruction, hoping this would motivate Parent to finalize an instruction schedule.

On December 18, 2018, Glendora typed up the IEP dated December 17, 2018, and sent it in a letter to Parent for signature. The letter included an assessment plan to sign

and return for an assessment of Student's social, emotional, and behavioral functioning, and an authorization for disclosure of information from Student's doctor. The assessment plan explained that the assessment would look at how Student felt about himself, how he got along with others, and how he took care of his personal needs at home, in school, and in the community.

After Glendora's winter break, Mr. Dykstra and Mr. Johnson made regular and persistent efforts to contact Parent or Stepfather to schedule home instruction, with little success. Parent and Stepfather continued to be unresponsive or slow in responding, and were polite but uncooperative in scheduling home instruction sessions.

On January 15, 2019, Student's attorney forwarded a typed and unsigned letter from Student's psychiatrist, dated January 5, 2019, stating that Student could not return to school until April 5, 2019. All of the doctor's letters were on the letterhead of the doctor's office, but only the original letter from August 13, 2018, was signed.

On January 16, 2019, Parent signed and returned the December 17, 2018 IEP, consenting to home instruction. She also signed and returned the assessment plan for a social, emotional, and behavioral functioning assessment, and the authorization for release of information from Student's psychiatrist.

On January 17, 2019, Glendora's mental health coordinator Ms. Fernandez spoke by telephone with Student's psychiatrist. He told her that he usually saw Student every six months. He had last seen Student in August 2018, and was having difficulty scheduling an appointment to see Student again. Ms. Fernandez followed up with an email on January 18, 2019, asking for Student's diagnoses and medications, and the treatment goals the psychiatrist was working on with Student.

In January 2019, Ms. Fernandez made reasonable attempts to schedule a time to meet with Student and Parent to conduct the social, emotional, and behavioral assessment, without success.

On January 30, 2019, school nurse Ms. Fueger emailed Student's psychiatrist, asking the basis of the second and third doctor's letters extending the time for home instruction through April 5, 2019. She explained that Glendora wanted to see if the psychiatrist could assist them in planning a transition back to school, perhaps with a combination of home instruction and a partial school day.

On January 30, 2019, Student's psychiatrist responded to Ms. Fueger that he could not make recommendations concerning Student's medically related educational needs because he had not seen Student since August 2018. He indicated that Parent had canceled a recent appointment, but that he would comment on Student's needs after he had seen Student.

In light of this information, Glendora sent a letter to Parent declining to extend home instruction, as Student's psychiatrist had been unable to make recommendations about Student's medically related educational needs when contacted directly. Glendora continued to offer the unused home instruction hours written into the recent IEP amendments.

On January 31, 2019, Student's psychiatrist again emailed Ms. Fueger and asked her to disregard the letter dated January 5, 2019, as it did not come from his office. He also asked her to disregard any unsigned letters, as they were not approved by his office.

From August 24, 2018, through March 15, 2019, Parent arranged for Student to receive only two lessons from Mr. Dykstra and one lesson from Mr. Johnson, each of which occurred in February 2019. During the three home instruction sessions, Student seemed calm and acted appropriately. Neither Mr. Dykstra nor Mr. Johnson observed any signs that Student was anxious or depressed.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA

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

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

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 *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 F.*). 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, supra*, 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 F., supra*, 137 S.Ct. at p. 1001.) The Ninth Circuit has affirmed that its FAPE standard comports with *Endrew F. (E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535 [nonpub. opn].)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 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, Glendora had the burden of proof on the issue decided.

DETERMINATION OF FAPE IN A DISTRICT-FILED CASE

When a school district seeks to prove that it provided a FAPE to a particular student, 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.)

The IDEA requires that certain members participate in any IEP team meeting, unless excused by the Parent. This includes:

- 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; and
- 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.)

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. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) Additionally, 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 v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 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].)

An annual 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).) 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).)

The IEP document created by the IEP team must include a statement of the special education and related services 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).) 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).)

In determining whether an IEP offers a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*).) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) As stated earlier, 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. (*Andrew F., supra*, 137 S.Ct. at pp. 1000-1001, citing *Rowley, supra*, 458 U.S. at p. 204.) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

Lastly, the school district must ensure that the program is designed following a number of general procedural requirements so that the student is placed in the least restrictive environment:

- The placement decision is made by a group of persons, including the parents, and other persons 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;
- Placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
- Unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
- 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
- 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.)

FEBRUARY 27, 2018 IEP

Glendora noticed and convened an IEP team meeting on February 27, 2018. The

meeting was attended by assessor Mr. Beckett, administrative designee Ms. Keyes, Student's general education English, history, science and physical education teachers, and Student's special education SAI Math and Directed Studies teachers. All necessary team members were present except Parent, and as she had informed Glendora that morning that she would not attend, the IEP team appropriately adjourned the meeting with no action.

Before the meeting, Glendora forwarded to Parent a copy of draft portions of the IEP with present levels of performance and proposed goals, as well as a copy of the homework evaluation report, to ensure parental participation. Parent's last minute refusal to attend a properly noticed meeting because she wanted IEP team recommendations before they had been made or discussed, and because she disagreed with including development of a transition plan as an agenda item, did not demonstrate any lack of compliance with procedural requirements by Glendora.

Because Glendora adjourned the meeting without action, and did not attempt to develop an IEP without Parent's participation, no denial of FAPE occurred at that meeting. Because Glendora's offer of FAPE was made at the June 12, 2018 IEP team meeting, it is analyzed in the discussion of that IEP.

JUNE 12, 2018 IEP

Team Member Participation

Glendora appropriately worked with Parent to reconvene the IEP team to include parental participation. Glendora representatives explained to Parent on February 28, 2018, that its draft IEPs did not contain proposed services or placement because those were determined as a team decision after the goals were finalized. Glendora also attempted to accommodate Parent's specific date requests for the rescheduled meeting, although it could not simultaneously accommodate the dates chosen by Parent and

have all the teachers present. Glendora mailed multiple letters to Parent with proposed dates in March, April, and May 2018. Although Glendora could not arrange for all of Student's teachers to attend a meeting on the dates agreeable to Parent as the end of the 2017-2018 school year approached, it did obtain Parent's written excusal of those teachers who could not attend.

All necessary IEP team members were included in the June 12, 2018 meeting. Student was represented by both of his parents, stepparents, and his attorney. Student participated in general education, and in addition to the presence of general education English teacher Mr. Summers, IEP team members had reports from all of Student's other general education teachers from eighth grade. Ms. Keyes represented Glendora, and was knowledgeable about both the general education and special education classes Student attended at Goddard.

Also in attendance were the assistant principal, a general education teacher, and a special education teacher from Glendora High. The high school representatives were knowledgeable and able to describe the 2018-2019 high school block schedule, and to contribute meaningfully to the discussion of the classes and accommodations available to meet Student's educational needs as he transitioned into ninth grade. The high school representatives left near the scheduled end of the meeting, after the discussions regarding high school resources were completed, and Father, Stepmother, and Ms. Prince also left. As none of these individuals were necessary IEP team members, their absence in the final minutes of the meeting was not a procedural violation.

At the June 12, 2018 IEP team meeting, Parent, Father, and both stepparents were informed of Student's problems, discussed Parent's concerns about homework and absences with the IEP team, and discussed and revised the goals and services. Parent requested that Student attend general education classes with after-school tutoring, which was considered by the IEP team. Parent was afforded an opportunity to, and did,

meaningfully participate in the development of Student's IEP at the June 12, 2018, IEP team meeting.

Annual Goals

The June 12, 2018 IEP team developed measurable annual goals related to Student's present levels of performance. The goals addressed his processing deficits in working memory and attention, and poor organizational skills, to enable Student to be involved in and progress in the general education curriculum. Revised goals were written in math reasoning and math calculation to address Student's poor working memory, which made it difficult for him to perform advanced math problems using previously learned concepts. New goals were developed in organization, task completion, written expression, attendance, and self-advocacy that appropriately targeted Student's need to learn important study skills, strategies for coping with difficulty in producing written work, and approaches for seeking assistance as needed. Each of these goals was appropriate, and addressed one or more of Student's skill deficits to enable him to be involved in and progress in the general curriculum.

The weight of the evidence established that the June 12, 2018 IEP annual goals addressed the full range of Student's needs, with each goal addressing one or more skill deficits. At the time of the June 16, 2018 IEP team meeting, Student was in eighth grade, and would have his next annual IEP review during ninth grade in February 2019. The academic goals in math and written expression appropriately targeted skills that either created a foundation for ninth grade curriculum, as in the math reasoning goal, or were based on the ninth grade curriculum. The goals described what the IEP team reasonably expected Student could accomplish within a 12-month period.

The June 12, 2018 IEP team acknowledged Parent's reports of Student's anxiety and depression, and sought Parent's consent and permission to interview Student and to contact his mental health providers to conduct a screening for school-based

counseling services. The IEP team took Parent's report of school-based anxiety seriously, although Parent could not recall the medication her son took for that condition, and school staff had not seen Student exhibit any signs of anxiety or depression. However, without Parent's consent to assess and exchange of information with mental health providers, Glendora team members did not have sufficient information to verify Student's medically related educational needs or to draft a counseling or mental health goal. In fact, the weight of the evidence did not support a need for a counseling goal at the time of the June 12, 2018 IEP, which was well before Parent produced any doctor's letters referencing anxiety or depression.

The June 12, 2018 IEP team did not discuss post-secondary goals or a transition plan, because Parent refused to discuss the transition plan in the same meeting as the annual IEP. In addition, Student was not turning 16 years of age until the following 2018-2019 school year, and the IEP team was not required to include a post-secondary transition plan at that time. However, the team did reasonably include in the IEP document Student's responses to a transition interview, and a statement that Glendora High staff would convene an IEP team meeting before Student turned 16 years of age in January 2019.

Special Education And Related Services

Applying the *Rowley* standard, as restated and affirmed in *Endrew F.*, the weight of the evidence established that the June 12, 2018 IEP was designed to meet Student's unique needs and was reasonably calculated to provide Student with educational benefit appropriate in light of his circumstances.

Student had gaps in his math knowledge due to missing a significant amount of instruction when he was absent or tardy. His deficits in working memory made it difficult for him to solve complex math problems that relied on previously learned computations to solve the equation, requiring revised math goals. Student was also struggling in

English, which required written work to demonstrate mastery of grade level standards. The June 12, 2018 IEP offered Student specialized academic instruction in math, English and study skills in small classrooms with a low student-to-adult ratio and a slower pace, but at grade level. This proposed level of instruction was reasonably calculated to confer a meaningful benefit and permit Student to advance through the general education curriculum.

Parent wanted Glendora to provide a tutor after school to supervise Student's homework completion and provide homework assistance as necessary. She hoped this would raise Student's grades, which were partly dependent upon homework completion.

An educational agency formulating a special education program for a disabled pupil is not required to furnish every special service necessary to maximize the child's potential. (*Rowley, supra*, 458 U.S. at p. 199.) Instead, an educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F. 3d 1025, 1033.) To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of the district's proposed program and not on the family's preferred alternative. (*Gregory K., supra*, 811 F.2d at p. 1314.) An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at pp. 198-200.) If the school district's program meets the substantive *Rowley* factors, then that district provided a FAPE, even if the child's parents preferred another program and even if the parents'

preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at 1314.)

Student did not require adult supervision after school to complete his homework. Student completed work and obtained educational benefit during the 2017-2018 school year in the small, structured SAI Math and Directed Studies classrooms with the support of credentialed special education teachers and their classroom aides, without the need for one-on-one adult supervision. Mr. Morford testified persuasively that although Student was not diligent in turning in work not completed in class, it was his lack of attendance that hindered learning. Ms. Corso observed in Directed Studies that Student was capable of prioritizing tasks on his own, self-starting on his work, and needed fewer prompts to complete that work over the course of the school year. This evidence demonstrated that Student did not require Parent's preferred one-on-one adult supervision for work completion.

Student did not require one-on-one instruction. Given an appropriate educational setting, with an opportunity to organize and work alongside peers learning the same concepts at the same pace, Student could make progress and keep up with grade-level curriculum without the need for one-on-one instruction. Student's difficulties arose from knowledge gaps, an unwillingness to seek assistance, and deficits in working memory, not a lack of supervision. There was no evidence that Student required one-on-one teaching to understand concepts, but rather, he needed information presented with less distractions, at a slower pace, and with adult assistance available as needed.

Student was offered transportation in support of his attendance goal. He was not offered extended school year services, but there was no evidence that Student forgot what he learned over summer breaks. The purpose of special education during the extended school year is to prevent serious regression over the summer months. (*Hoelt*

v. Tuscon Unified School Dist. (9th Cir. 1992) 967 F.2d 1298, 1301.)

The weight of the evidence established that the June 12, 2018 IEP offered Student sufficient special education and related services to meet his needs, and enabled him to receive educational benefit and advance through the general education curriculum.

Least Restrictive Environment

To provide the least restrictive environment, school districts must first ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and second, that special classes or separate schooling occur only if the nature or severity of the child's 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:

- The educational benefits of placement full-time in a regular class;
- The non-academic benefits of such placement;
- The effect the student has on the teacher and children in the regular class;
- and
- 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 ADHD and Tourette's Syndrome].)

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. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) “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.)

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.)

Here, applying the *Rachel H.* factors to the facts, Student could not have been satisfactorily educated in a regular education environment. Student would not receive educational benefit from full-time placement in regular education. In a large general education classroom like Mr. Summers’s English class, Student resisted adult assistance, failed to complete classwork, and fell asleep. By June 12, 2018, Student had failed all of his general education classes except physical education. Student had severe attention and processing deficits that significantly interfered with his ability to learn in the fast

pace and whole-class instruction format of general education classes.

There also appeared to be little non-academic benefit to placement in regular education classes. Mother reported that, socially, Student did not want to be seen going to special education classes. But in larger classes, Student simply disengaged. He refused to seek out available instructional assistance, and rejected it when offered because he felt it singled him out in front of typical peers. Parent reported to the June 12, 2018 IEP team that Student was developing low self-esteem from failing grades, which only occurred in his general education classes. There was evidence that Student stayed up all night, which caused him to fall asleep in his general education classes, but Stepfather suggested Student may have been shutting down because the pace of instruction was causing him frustration and anxiety. In either event, Student's inability to focus or keep up in the general education classrooms not only interfered with his academic learning, but minimized any non-academic benefit he received from being in the general education classroom.

Student was not a behavior problem and did not disturb other students, although he was a bad example to his peers in general education by placing his head on the desk and shutting down or sleeping through his general education classes. There was no evidence that cost was a factor in the IEP team's decision that Student could not have been satisfactorily educated in a regular classroom. In conclusion, each of the four *Rachel H.* factors weighed in favor of a placement outside of the regular classroom.

Once it has been determined that education in the regular classroom cannot be achieved satisfactorily, the inquiry turns to whether the child has been mainstreamed to the maximum extent appropriate. (*Daniel R.R.*, *supra*, 874 F.2d at p. 1050.) Here, the evidence demonstrated that the June 12, 2018 IEP offer of special education classrooms for core classes of English and math, with a special education Independent Learning

Center class, and integration into general education for physical education, science and an elective, was the least restrictive environment for Student.

The evidence established that Student was receiving educational benefit from placement in a specialized instruction classroom for math and Directed Studies. Student was failing English, which would require even greater written work production at the ninth grade level. Placement in grade-level special education classes for core subjects in high school, with an Independent Learning Center class to provide academic support with instruction in organization and opportunities for work completion, was reasonably calculated to enable Student to make progress in the general education curriculum appropriate in light of his circumstances.

Student was afforded opportunities to interact with typical peers in general education during physical education, where he excelled, and in science and an elective. The Independent Learning Center would have provided Student support for all of his classes, including science and an elective. Instruction in core classes would benefit Student in all academics-based courses. The offered program would have provided grade-level instruction in both his special education and general education classes, ensuring that Student acquired the same academic knowledge base as his typical peers.

The evidence showed that Student also received non-academic benefit from the offered placement. Student's self-esteem was adversely impacted by his inability to keep up in the general education classrooms, and Student could reasonably be expected to experience less frustration and resultant anxiety as he learned core grade-level material with intensive supports at a more manageable pace. Student was socially uncomfortable asking for instructional assistance in his general education classes, even when additional aides were available for that purpose, but had displayed no such hesitation in his special education math or Directed Studies classes. Accordingly, the instructional supports of placement in grade-level special education classrooms outweighed Student's social

discomfort with being associated with special education classes, not only because they provided necessary academic instruction, but because once Student was in that environment, he felt comfortable enough to access those instructional supports.

Substantively, regular education in core subjects offered Student little in the way of academic or other benefits, and was likely to lead to increased frustration and anxiety. On the other hand, special education classes in grade-level core subjects and executive functioning skill acquisition offered an environment in which Student had a history of making progress. Balancing the benefits of placement in classes in which Student was failing just for him to be with typical peers against the benefits of specialized academic instruction where Student was passing and even thriving, the weight of the evidence established that the placement offered in the June 12, 2018 IEP was the least restrictive environment in which Student could be satisfactorily educated.

The June 12, 2018 IEP placement offer complied with all procedural requirements. The placement decision was made during the annual IEP review by a group of knowledgeable team members. Class selection was made after a detailed discussion on Student's needs, consideration of potential harmful effects on Student, and the least restrictive environment, with the assistance of knowledgeable high school representatives. Glendora offered Student placement at Student's home school of Glendora High, the same school he would have attended if he did not have a disability. Lastly, the IEP team carefully reviewed Student's accommodations before recommending removal from age-appropriate general education classrooms, and developed a program that did not require modifications in the general education curriculum and kept Student on a diploma track for high school.

Glendora sustained its burden of proof establishing the June 12, 2018 IEP made an appropriate offer of special education placement and related services in the least restrictive environment for Student.

AUGUST 24, 2018 IEP

When a pupil with exceptional needs experiences an acute health problem which results in non-attendance at school for more than five consecutive days, the school district shall assure that an IEP team meeting is convened to determine appropriate educational services. (Cal. Code Regs., tit. 5, section 3051.17, subd. (c).) After completion of a pupil's annual IEP, the parent and school district may agree not to convene an IEP team meeting for purposes of making changes to the IEP, and instead may develop a written document to amend or modify that IEP. (Ed. Code, § 56380.1.)

With Parent's consent, an amendment to Student's June 12, 2018 IEP was created and signed by Parent without a meeting on August 24, 2018, within a week of Glendora receiving a doctor's letter stating Student could not attend school due to temporary debilitating anxiety and depression. The amendment immediately implemented home instruction, and expressly provided for another IEP team meeting to occur on September 24, 2018, to review Student's need for continued home instruction or other services. Glendora staff reasonably anticipated contacting Student's mental health providers, conducting a counseling screening, and reviewing home instructor reports during that period to assess Student's ability to tolerate instruction and to discuss ways in which to gradually integrate Student back into the school environment.

General education students may receive individual instruction in their home, a hospital, or other health facility when a temporary disability that makes attendance in a regular program impossible or inadvisable. (Ed. Code, § 48206.3.) This service is different from individualized in-home placement and instruction under the IDEA for purposes of providing a FAPE to a child with disabilities. (34 C.F.R. 300.115(b)(1); Cal. Code Regs., tit. 5, § 3051.4, subd. (d).) Both types of in-home placements are commonly referred to as "home hospital instruction" when due to a temporary medical condition, but an in-home placement for a disabled child under the IDEA must continue to provide a FAPE.

When recommending placement for home instruction for a pupil with exceptional needs, the IEP team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. (Cal. Code Regs., tit. 5, § 3051.4, subd. (d).) The report shall include a projected calendar date for the pupil's return to school. (*Id.*) The IEP team shall meet to reconsider the IEP prior to the projected calendar date for the pupil's return to school. (*Ibid.*)

The IDEA seeks to ensure that disabled students are educated with nondisabled peers to the maximum extent appropriate, and separate schooling is disfavored unless the nature or severity of the disability cannot be satisfactorily accommodated in a less restrictive environment. Therefore, it is unsurprising that California regulations implementing the IDEA require that a pupil with exceptional needs not be sequestered in a home placement unless certain stringent criteria are met.

The doctor's letter of August 13, 2018, met California special education regulation requirements by stating the diagnosed condition, certifying that the severity of Student's condition prevented him from attending a less restrictive placement, and projecting Student's return to school on September 24, 2018. Glendora acted promptly by putting home instruction in place for the duration of Student's temporary condition, retroactive to the date of the doctor's letter, and complied with its obligations under the IDEA.

Contact with Student's attending psychiatrist about his disabling mental health condition was necessary for Glendora to develop an IEP for Student while he was medically unable to attend school. Glendora included in the August 24, 2018 IEP amendment that the IEP team would meet prior to Student's anticipated return on September 24, 2018 to re-evaluate Student's in-home program. During that time,

Glendora anticipated speaking to Student's psychiatrist about Student's mental health, conducting a screening for school-based mental health counseling or the need for further mental health assessment, and getting the reports of Student's home instructors on his tolerance for instruction, to develop a plan to transition Student back to the less-restrictive school environment.

Parent did not cooperate with Glendora in any respect with regard to the development of an individualized home instruction program for Student. Parent did not sign and return the authorization for Student's psychiatrist to disclose mental health information to Glendora. Parent did not sign and return the authorization to conduct a counseling screening. Parent did not timely reply to Student's designated home instructors, or work cooperatively with them to schedule times for home instruction. Glendora's inability to obtain from Student's attending psychiatrist a medical report with an assessment of Student's condition, including a precise diagnosis or the reasons for the doctor's opinion that Student could not attend a less restrictive environment, or to convene an IEP team meeting to design a program tailored to Student's mental health needs, was the result of Parent's failure to respond to Glendora's reasonable requests.

Glendora was not required to offer additional special education and related services in the IEP of August 24, 2018. Parent provided Glendora with a doctor's letter stating the bare minimum to meet California requirements and declined to authorize Glendora to obtain further information regarding Student's medically related educational needs. The doctor's letter unequivocally stated that Student could not attend a less restrictive placement than his home until September 24, 2018. Multiple witnesses testified that Student was bright, capable of grade-level work, and willingly accepted instructional assistance when in a small setting, and that five hours per week of individualized instruction would enable Student to keep up with his classes. In light of this, the weight of the evidence established that Glendora's offer of five hours of one-

on-one home instruction per week was reasonably calculated to enable Student to make progress in light of his temporary circumstances.

Accordingly, Glendora met its burden of proving by a preponderance of the evidence that the August 24, 2018 IEP offered Student a FAPE in the least restrictive environment.

DECEMBER 13, 2018 IEP

Due to Parent's unavailability, Glendora was unable to convene another IEP team meeting until December 13, 2018. It was attended by Parent, Stepfather, Ms. Keyes, school nurse Ms. Fueger, mental health counselor Ms. Fernandez, Mr. Dykstra, Mr. Johnson, and a Glendora High assistant principal. All necessary team members were present.

Parent provided Glendora with what turned out to be an unauthorized doctor's letter extending the date of Student's anticipated return to school to December 20, 2018, but had not given any other information about Student's medical condition to the IEP team. Glendora assumed the letter was authentic, and there was little Glendora could do to tailor an educational program to Student's needs other than stress to Parent the need for additional information. The IEP team inquired about Student's condition, but Parent had little to say other than that Student's anxiety had increased and that another doctor's letter was forthcoming. Glendora team members again requested authorization to speak with Student's doctor, sought to conduct a social, emotional, and behavioral assessment, and attempted to discuss a home instruction schedule.

Given the September 26, 2018 doctor's letter certifying the severity of Student's condition and stating that it prevented Student from attending a less restrictive placement, home instruction continued to be the least restrictive placement to meet Student's medically related educational needs.

Parent ultimately consented to an exchange of information with Student's

psychiatrist and an assessment of Student's social, emotional, and behavioral functioning, but not until after the December 13, 2018 IEP team meeting had taken place and the December 17, 2018 IEP had been finalized.

For the reasons discussed under the analysis of the August 24, 2018 IEP, Glendora's December 17, 2018 offer to continue the level of services in the August 24, 2018 IEP constituted a FAPE in the least restrictive environment. The offer was reasonably calculated to provide Student with educational benefit at that time, in light of the lack of additional information regarding Student's condition resulting from Parent's refusal to cooperate with information exchange, assessment, or in-home instruction.

Parent consented to the December 17, 2018 IEP, but wrote that she did not agree that it constituted a FAPE. However, Parent failed to provide Glendora with the information required to develop a more nuanced home instruction program to meet what might have been Student's true unique educational needs at that time. Information Glendora later acquired revealed that the September 26, 2018 and January 5, 2019 doctor's letters had not been written by Student's doctor, and Parent had used them to deceive Glendora.

At the time of the December 13, 2018 IEP team meeting, Glendora team members did not know that the second doctor's letter was not authorized by Student's psychiatrist. The Glendora IEP team acted reasonably when they relied on Parent's reports and the September 26, 2018 letter to offer continued home instruction. The IEP offer of services and placement cannot be judged in hindsight with later-acquired information that the letter was unauthorized. This Decision finds that Glendora offered a FAPE on the information that was reasonably available to the IEP team at the time that the offer was made.

Accordingly, Glendora met its burden of proving by a preponderance of the evidence that the December 17, 2018 IEP, documenting the continuation of home instruction services recommended at the December 13, 2018 IEP team meeting, offered Student a FAPE in the least restrictive environment.

ORDER

Glendora's IEP of February 27, 2018, as completed on June 12, 2018, and as amended on August 24 and December 17, 2018, offered Student a FAPE in the least restrictive environment.

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, Glendora prevailed on the sole issue at hearing.

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: July 19, 2019

/S/

Alexa J. Hohensee

Administrative Law Judge

Office of Administrative Hearings