

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
IN THE MATTER OF:
EDUCATIONAL RIGHTS HOLDER, ON BEHALF OF STUDENT,
V.
ANTIOCH UNIFIED SCHOOL DISTRICT. OAH CASE NUMBER 2019020320

DECISION

Student and his Educational Rights Holder filed a request for due process hearing on February 7, 2019, naming Antioch Unified School District. The matter was continued on March 4, 2019, at the parties' request. Administrative Law Judge Rita Defilippis heard the matter in Antioch, California, on April 30, May 1, 2, 3, 7, 8, 9, 10, 13, and 14, 2019.

Christian Knox and Patricia Black, Attorneys at Law, represented Student throughout the hearing. Student attended the hearing during opening statements. Educational Rights Holder was present on three of the hearing days. Amy Levine, Attorney at Law, represented Antioch Unified School District. Dr. Valerie Lopes, Assistant Director of Special Education, and Dr. Ruth Rubalcava, Senior Director of Special Education, attended the hearing on Antioch's behalf.

A continuance was granted at the request of the parties for the submission of written closing argument and the record remained open until June 14, 2019. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

The issues have been re-organized and re-numbered for the purpose of analysis and clarity of this decision. The administrative law judge has authority to reword and re-organize a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.). At the prehearing conference,

counsel for Student clarified Student's issues. Some issues were withdrawn, some combined, and others restated. The order following prehearing conference required the parties to immediately file a written request for relief if the issues as stated in the order did not reflect their understanding of the issues as clarified during the prehearing conference. Neither party filed any such request. The issues were read the first day of hearing and there were no objections raised by either party.

1. Did Antioch deny Student a free appropriate public education, often shortened to the acronym FAPE, by failing to adequately assess Student in all areas of suspected disability, specifically, psychoeducation, transition, assistive technology, and speech and language?

2. Did Antioch deny Student a FAPE during the 2016-2017 school year, from February 7, 2017, by:

- a. failing to offer goals in all areas of need, specifically, transition, reading, writing and math;
- b. failing to offer Student specialized reading services;
- c. failing to offer Student an appropriate transition plan and services;
- d. failing to offer an appropriate amount of specialized academic instruction in writing and math;
- e. failing to provide progress reports on goals;
- f. failing to timely provide an assessment plan following the May 8, 2017 individualized education program team meeting recommendation for math diagnostic testing;
- g. failing to document the one-to-one tutoring services in his IEP dated May 8, 2017; and
- h. failing to implement counseling and guidance and individual counseling services pursuant to the November 4, 2016 IEP?

3. Did Antioch deny Student a FAPE during the 2017-2018 school year, by:
 - a. failing to provide notice of the October 31, 2017 IEP team meeting;
 - b. failing to invite the Educational Rights Holder as part of the October 31, 2017 IEP team;
 - c. predetermining the October 31, 2017 IEP due to absence of Educational Rights Holder participation;
 - d. failing to have a transition or vocational specialist present at the January 25, 2018 IEP team meeting;
 - e. failing to have a general education teacher present for the entirety of all IEP team meetings;
 - f. failing to provide prior written notice for Antioch's June 4, 2018 IEP stated denial, during the IEP team meeting, of one-to-one tutoring?
 - g. failing to provide progress reports on goals;
 - h. failing to offer accommodations in the October 31, 2017 IEP, specifically: checking for understanding; repeating instructions for tests, assignments, and homework; positive reinforcement; flexible seating; flexible scheduling; and small group setting for tests;
 - i. failing to offer goals in all areas of need, specifically, transition, reading, writing and math;
 - j. failing to provide accurate present levels of performance in the October 31, 2017 IEP;
 - k. failing to offer Student specialized reading services;
 - l. failing to offer Student an appropriate transition plan and services;
 - m. failing to offer an appropriate amount of specialized academic instruction in writing and math;
 - n. failing to document the one-to-one tutoring services recommended in

Student's October 31, 2017; January 25, 2018; and May 24, 2018 IEP team meetings;

- o. failing to timely contract with Dr. Carina Grandison, Student's independent educational evaluation assessor as agreed to by Antioch on May 21, 2018;
- p. failing to fund and facilitate the independent psychoeducational evaluation as offered in Antioch's letter, dated May 21, 2018?
- q. placing unreasonable requirements for funding of an independent educational evaluation; and
- r. failing to meaningfully consider Dr. Baikova's private evaluation and recommendations at the May 24, 2018 and June 4, 2018 IEP team meetings;
- s. failing to offer accommodations and services recommended by Dr. Baikova;
- 4. Did Antioch deny Student a FAPE during the 2018-2019 school year by:
 - a. failing to provide progress reports on goals;
 - b. failing to ensure a general education teacher was present throughout the November 27, 2018 IEP team meeting;
 - c. failing to offer Student specialized reading services;
 - d. failing to offer Student an appropriate transition plan and services;
 - e. failing to offer an appropriate amount of specialized academic instruction in writing and math;
 - f. failing to offer goals in all areas of need, specifically, transition, reading, writing and math;

SUMMARY OF DECISION

This decision holds that Antioch failed to assess Student in the areas of transition and assistive technology. Additionally, Antioch denied Student a FAPE by failing to provide him with individual counseling services and offer a needed reading goal from February 7, 2017, through the end of the 2016-2017 school year, and by failing to provide

him with specialized reading services and appropriate transition plans and services from February 7, 2017 to the first day of hearing on April 30, 2019. Further, Antioch denied Student a FAPE by failing to provide an assessment plan following the May 8, 2017 IEP team meeting, to determine his math needs. Student established that Antioch convened Student's annual IEP on October 31, 2017, without providing notice of the meeting or inviting Educational Rights Holder to the meeting.

FACTUAL FINDINGS

Student is an 18-year-old African American high school senior who lives and attends school within the boundaries of Antioch Unified School District. At the time of hearing, Student was eligible for special education as a student with a specific learning disability.

Student had three Educational Rights Holders during the time at issue in this case. Educational Rights Holder 1, held his educational rights from February 7, 2017 to November 27, 2017, pursuant to court appointment. Educational Rights Holder 2, was Student's court appointed Educational Rights Holder from November 27, 2017 to July 2018, when Student turned 18. Student held his own educational rights from July 2018, to April 25, 2019, at which time Educational Rights Holder 2 again became his court-appointed Educational Rights Holder.

From birth to present, Student has been placed as a ward of the court in various home placements with different relatives and foster care providers, necessitating many school changes and numerous Educational Rights Holders. Student has been removed from foster care placements due to allegations of abuse, most recently in October 2010.

Student has a significant history of impaired academic functioning and low auditory and visual processing difficulties which continue to date. Student was eligible for special education under speech and language impairment and received his special education services in a special day class placement. Student's cognitive functioning

dramatically declined from the average range before age six, due to years of chronic and severe trauma, neglect, and abuse between the ages of six and 10. Student's assessors opined that his cognitive ability would recover if provided with mental health interventions and a stable, safe, and supportive foster care placement.

At age 11, Student's mental health had deteriorated to such an extent that he was deemed unable to tolerate academic instruction in any academic setting without risk of further mental health decline because he spent most of his school day in tears and would shut down, pulling his hood over his head, when faced with any academic demand. His eligibility for special education was changed to emotional disturbance, and he received his special education services in a nonpublic school setting which specialized in providing students with needed social emotional supports. In the five years before coming to Antioch, Student received mental health interventions and he became stable enough, for the first time in his academic life, to access needed academic instruction for his still extremely low academic skills.

Student enrolled in Antioch in August, 2016, with a year of high school credits from his prior district, including credits for two semesters of Algebra I and two semesters of Spanish I.

2016-2017 SCHOOL YEAR

2016 Triennial Assessment

Shortly after Student's arrival in Antioch, the District conducted Student's triennial assessment. Mr. Reyes, Student's case manager and teacher, conducted the academic portion. Student scored in the very low range in all academic areas on the Woodcock-Johnson IV Tests of Achievement, except for written language, which was in the low range, and writing samples, which was in the average range.

Adrian Zandi, a school psychologist, conducted Student's psychoeducational assessment. He reviewed Student's records and administered several standardized tests.

Student's auditory processing scores were mostly in the borderline and deficient ranges. Social emotional testing demonstrated that Student's social emotional functioning had significantly improved. Student's cognitive subtest scores ranged from deficient to average. Mr. Zandi considered Student's below average score on the Simultaneous subtest, a measure of nonverbal cognition, to be the best representation of Student's cognitive functioning. Mr. Zandi considered Student's eligibility under emotional disturbance as well as specific learning disability based on his test observations of Student, review of Student's records, and test results.

November 4, 2016 Triennial IEP Team Meeting

On November 4, 2016, Antioch held Student's triennial IEP team meeting to review the results of his triennial evaluation and to develop his IEP. The IEP team determined that Student continued to be eligible for special education under the eligibility category of emotional disturbance. The team added special education eligibility under the category of specific learning disability. Specifically, the team found a severe discrepancy between Student's intellectual ability, and his math calculation, math problem solving, basic reading skills, reading comprehension, and written expression, due to an auditory processing and attention disorder. This was the first time Student's learning disabilities were identified for special education eligibility. Though Student's emotional functioning had significantly improved, his eligibility of emotional disturbance was retained due to Student's history of significant mental health struggles and his observed reluctance and anxiety in anticipation of being tested.

Student's IEP from the triennial meeting included 250 minutes a week of specialized academic instruction, 30 minutes a month of individual counseling, and 30 minutes a week of vocational assessment, counseling, guidance, and career assessment. Student was placed in special education classes for Study Skills, English 10, World History, Physical Science, and Life Skills Math, which taught basic functional math skills. All of

Student's special education classes modified the general education curriculum.

Student's English teacher used a reading program called Multiple Skills that focused on listening and reading comprehension but did not include reading decoding, phonemic awareness, or reading fluency. Student listened to the books audibly, answered questions, and moved onto the next level.

The IEP team determined that Student needed additional math instruction and decided to seek math tutoring from Contra Costa County foster care liaison. Student received 15 sessions of math tutoring through the program. The tutoring was not included in any of Student's IEP's, was not specialized instruction, and was not provided by Antioch.

The November 4, 2016 IEP was Student's first IEP after he turned 16 years of age, and it contained his first transition plan. The transition plan was developed and implemented in Student's study skills class by Mr. Reyes. Mr. Reyes did not testify at hearing and no longer is employed by Antioch. Mr. Zandi, though listed as a person responsible for the transition plan was not involved in the development or implementation of the transition plan.

Student's transition plan included goals to prepare him for postsecondary education and training, employment and independent living. There was no evidence presented at hearing that Student engaged in the activities listed in the transition plan or was provided any instruction or support to engage in the activities.

Student's November 4, 2016 IEP contained five annual goals in the following areas: transitioning towards independent living; listening comprehension; four-paragraph essay writing; arithmetic calculations involving positive and negative integers; and a behavior goal to raise his hand when he needs assistance.

Student's independent living goal required Student to identify his career choice of interest by researching fields of employment with 80 percent accuracy, given access to a

computer with internet capability. His baseline for this goal states that Student is transitioning towards independent living.

Mr. Zandi testified at hearing regarding the 2016-2017 IEP goals. Student's math and writing goals addressed Student's basic skills in those areas and the goals were implemented in special education classes that modified to curriculum according to Student's needs.

Mr. Reyes was responsible to report progress on IEP goals. Teachers testified that they provided updates to Mr. Reyes on Student's progress and that progress was also discussed at IEP team meetings and provided through quarterly grade reports.

Counseling Services

No individual counseling services were provided to Student between February 7, 2017, and the end of the 2016-2017 school year, though his IEP required such services. In Fall 2016, Mr. Zandi, the provider of his counseling, gave him passes to leave class for individual counseling, but Student did not use them. Student told Mr. Zandi that he was not interested in counseling services. Mr. Zandi asked several other times but Student remained unwilling to participate. Mr. Zandi never attempted to find an alternate counselor for Student, nor did he attempt to meet with Student to establish rapport, at any time after February 7, 2017. Mr. Zandi testified at hearing that he could not ethically or professionally force Student to participate in counseling services. Antioch did not take other steps to encourage Student to participate in counseling. There was no evidence presented at hearing that Antioch took any steps to hold an IEP team meeting to discuss Student's lack of participation in counseling services.

May 8, 2017 IEP Team Meeting

On May 8, 2017, the IEP team met to review Student's program. The IEP team discussed appropriate classes for Student for the 2017-2018 school year. The team again

discussed securing non-special education tutoring services available to Student through Contra Costa County, for the next school year, including one day for reading tutoring and one day for math tutoring. Student's specialized academic services were reduced from 250 minutes a week to 150 minutes a week, beginning August 16, 2017 and ending November 7, 2017. There was no evidence that the IEP team discussed the reasons for reducing his specialized academic instruction during this meeting, or his progress on his goals. An offer of specialized academic instruction in math was postponed until Student took a math diagnostic test.

The math diagnostic test was subsequently conducted without an assessment plan. The math diagnostic test is administered by an outside assessor at Deer Valley High School, in conjunction with the University of California, for the purpose of determining Student's math levels so the IEP team could determine what kind of special education math supports he needed.

Antioch's practice is that students can be referred for the diagnostic test on a case by case basis in the course of any student study team, 504 team, or IEP team meeting. A student study team meeting is an informal meeting available to general education students to discuss interventions to address difficulties that a student is having in his or her regular education class. A 504 meeting is a meeting held pursuant to Section 504 of the Rehabilitation Act of 1973, to discuss needed classroom accommodations for students identified as having a disability as defined by the Act. Test results for a special education student are to be reported at the student's IEP team meeting. Student's results were never reported at any of his IEP team meetings and there was no evidence of Student's scores presented at hearing.

Student's November 4, 2016 IEP required that Student's progress on IEP goals would be reported quarterly by progress summary report and by report cards. There was no direct and credible evidence presented at hearing that Antioch provided any written

progress summary reports on Student's IEP goals, or that Student's grade reports contained progress on his IEP goals during the 2016-2017 school year.

2017-2018 SCHOOL YEAR

On October 16, 2017, Kim Geraghty, Student's case manager, sent an email to Educational Rights Holder 1 to inform her of Student's upcoming triennial IEP team meeting scheduled for 8:00 AM on October 31, 2017. The email contained a typographical error in the email address and it was never received. On October 30, 2017, at 8:29 PM, Student's dependency attorney sent Ms. Geraghty an email explaining that she heard from Student's foster mother that an IEP team meeting was scheduled for the next morning. She told Ms. Geraghty that the Educational Rights Holder was not informed of the meeting. The attorney requested that the IEP team meeting be rescheduled with proper notice.

October 31, 2017 Annual IEP Team Meeting

Student's annual IEP team meeting was nonetheless held at 8:00 AM, on October 31, 2017, as scheduled. Educational Rights Holder 1 was not present and did not know about the meeting. Ms. Geraghty made no efforts to contact Educational Rights Holder 1 before beginning the meeting. Ms. Geraghty proceeded with the IEP team meeting because she believed it to be necessary to hold the meeting before November 4, 2017, a year after Student's last annual IEP. She claimed it was part one of a two-part meeting. The meeting lasted only 10 to 15 minutes, due to Educational Rights Holder 1's absence. Meeting participants included Ms. Geraghty, case manager; Ms. Gemmarie Lambonao, special education English teacher; Mr. Matt Belizi, General Education History teacher; Mr. Michael Mastrangelo, General Education Health Teacher; and Mr. Blair Wilkins, Vice Principal. Ms. Lambonao also went by the name of Ms. Gonzaga. This decision will refer to Student's teacher as Ms. Lambonao for the purposes of consistency. Proceeding with the

meeting without prior notice and no attempt to reach the educational rights holder before proceeding denied her meaningful participation.

Following the October 31, 2017 IEP team meeting, Ms. Geraghty returned to her office and replied to Student's attorney's email explaining that a part one of the meeting will have to be held and a part two would be scheduled. Ms. Geraghty failed to mention to the attorney that the meeting had already been convened. Approximately an hour after the meeting was convened, Student's attorney emailed Ms. Geraghty informing her that, a new Educational Rights Holder would be appointed. Both Ms. Geraghty and Student's attorney were still unaware of the typographical error causing the lack of notice. There was no evidence presented at hearing that Ms. Geraghty ever informed Educational Rights Holder 1 or Student's attorney that the October 31, 2017 meeting had been convened. There was also no evidence presented at hearing that either was provided a copy of the October 31, 2017 IEP.

October 31, 2017 IEP

The October 31, 2017 IEP provided for 100 minutes daily of specialized academic instruction in a group setting, 30 minutes per month of college awareness, individual and group, and 30 minutes per month of career awareness, individual and group. All services were to be provided from October 31, 2017, to October 31, 2018. Ms. Geraghty dropped the counseling services from Student's IEP services because she heard from Student's counselor that Student was not participating, and did not want counseling.

Some accommodations listed in Student's prior November 4, 2016 IEP were removed from the October 31, 2017 IEP, including checks for understanding; repeating directions for tests, assignments and homework; small group setting for tests, and positive reinforcement, and flexible scheduling. Accommodations that were added to the October 31, 2017 IEP included: reader services, calculator, and modified grading in general education classes if appropriate. Most of the accommodations that were not continued

from the 2016 IEP were general teaching principles that are commonly employed in the course of regular instruction.

Student's October 31, 2017 IEP contained a page entitled Present Levels of Academic Achievement and Functional Performance, which contained results of state testing indicating Student was not meeting the standard for English Language Arts in all areas, specifically, reading, writing, speaking and listening, and research inquiry. It also contained state test results for Math, which showed that Student was also not meeting the standard for math in all areas, specifically, concepts and procedures, problem solving and data analysis, and communication reasoning. His scores from his triennial academic testing in November 2016 were also listed and showed that his broad reading, basic reading, reading fluency skills were in the very low range. His broad mathematics, and math calculations skills were also in the very low range. His written expression was in the low range. Student was described as having good attendance, as being conscientious, and as enjoying drawing, watching television, and gaming.

Ms. Geraghty, as Student's case manager for the 2017-2018 school year, developed Student's individual transition plan for the October 31, 2017 IEP. The plan contained Student goals to prepare for transition to postsecondary education, and employment. Activities were listed to support Student in working toward these goals. There was no goal to prepare for post-secondary independent living, unlike Student's prior transition plans. Ms. Geraghty did not include any independent living goal as she believes that independent living goals are only used for moderately to severely disabled students.

Although the box on the transition plan was checked indicating that agencies were invited to participate in the IEP team meeting, there was no evidence that this actually occurred.

Student's goal to prepare for post-secondary training and education, stated that upon completion of school, Student would attend the local community college and take

the required courses in order to transfer to a four-year college. Activities to support the goal include: Student will identify the educational or training requirements for the career pathway that he is interested in; Student will continue to participate in activities and conversations in order to identify the options that are available to him; and Student will demonstrate an understanding of how education is the first step to a career, enabling him to make a positive and appropriate transition from high school.

Student's goal to prepare for post-secondary employment, was for Student to have a career in the animated film industry upon completion of high school. The activity to support Student in this goal was for Student to research and demonstrate knowledge of job qualifications in his area of interest through the internet and the career center.

Student's IEP contained four annual goals in the areas of college and career awareness, reading comprehension, arithmetic calculation, and multi-paragraph essay writing.

Student's IEP college and career goal required Student to identify five requirements for each job he identifies in his area of career interest. The baseline for this goal states that Student requires the research skills needed in order to make appropriate college and career choices. This goal was referenced in Student's transition plan to support his postsecondary goals, but was wholly unrelated to those goals. This goal was repeated from Student's November 4, 2016 IEP, which establishes that he failed to meet the goal. The baseline establishes that Student lacked the prerequisite skills to work on the goal. There was no evidence presented at hearing that Antioch assessed why Student lacked the skills required for the goal or considered services, instruction or support, to enable him to work on the goal.

Student's October 31, 2017 IEP requires Student's progress to be reported quarterly by summary progress reports and report cards.

On November 27, 2017, Educational Rights Holder 2 was court-appointed as

Student's new Educational Rights Holder. Up to that time, there was no evidence at hearing that either Educational Rights Holder 1 or Student's attorney knew that an annual IEP team meeting was convened for Student on October 31, 2017. On December 4, 2017, Educational Rights Holder 2 introduced herself by email to Ms. Geraghty and informed her that the only IEP she had received upon becoming Educational Rights Holder was Student's November 4, 2016 IEP. Ms. Geraghty replied in a December 6, 2017 email attaching a copy of the October 31, 2017 IEP, described as "Student's current IEP". Ms. Geraghty did not mention in her email that consent to the IEP was needed, or that a part two of the IEP meeting was needed due to the absence of Educational Rights Holder 1 from the October meeting. Instead, Ms. Geraghty informed Educational Rights Holder 2 that a meeting would be scheduled to discuss Student's progress.

When asked by Student's counsel at hearing whether she implemented the October 31, 2017 IEP between October 31 and January 25, 2018, Ms. Geraghty stated that she did. When asked if she had consent to implement the IEP, Ms. Geraghty testified that she would have gotten verbal consent when she talked to Educational Rights Holder 2 sometime in December. When asked later by Antioch's counsel, Ms. Geraghty testified that she implemented the November 4, 2016 IEP from November 4, 2016 through the January 25, 2018 IEP team meeting. Ms. Geraghty's testimony that she implemented the November 4, 2016 IEP from October 31 to January 25, 2018, is rejected as not credible given her withholding of information about the October 31, 2017 IEP meeting from Educational Rights Holder 1 and Student's attorney, and her failure to inform Educational Rights Holder 2 that a second IEP team meeting was needed to get consent to the October 31, 2017 IEP. The preponderance of the evidence presented at hearing established that the IEP dated October 31, 2017, was implemented through January 25, 2018.

January 25, 2018 IEP Team Meeting

On January 25, 2018, Antioch held an IEP team meeting to discuss Student's progress and his transition from high school to post-secondary school. Meeting participants included Student; Educational Rights Holder 2; Ms. Geraghty; Vice Principal Wilkins; Student's educational advocate; Student's social worker; Bill Leach, Student's General Education Art teacher; Ms. Lambonao, Student's Special Education English teacher; and Mr. Bellizi, Student's General Education History teacher. Dr. Elena Baikova, an assessor from West Coast Children's Clinic who was in the process of conducting an assessment at the request of Student's dependency team, attended the meeting to gather information. Ms. Lambonao and Mr. Belizi only attended the January 25, 2018 IEP team meeting for a short time to report Student's progress in class. Student's classes for the following school year were discussed. There was no evidence that Student's October 31, 2017 IEP goals or services were discussed during the meeting or documented in the January 25, 2018 addendum IEP.

At the January 25, 2018 meeting, Educational Rights Holder 2 requested individual tutoring for Student in English and Math, due to his very low triennial assessment scores in these areas. She also requested work experience for Student and a more coordinated vocational education process involving Antioch and other agencies involved with Student. The notes documented that the team agreed that individual tutoring was mandatory given Student's low scores. There was conflicting testimony at hearing whether or not all team members agreed regarding the tutoring. No offer of tutoring was made at the meeting.

Educational Rights Holder 2 had received a copy of Student's November 4, 2016 IEP as well as the October 31, 2017 IEP, shortly after becoming Student's Educational Rights Holder in November 2017. At the January 25, 2018 IEP team meeting, Educational Rights Holder 2 had the information she required to voice any concerns about the

October 31, 2017 IEP, including changes from the 2016 IEP, but she did not express any such concerns. There was no evidence at hearing that Antioch prevented Educational Rights Holder 2 from doing so at the January 25, 2018 IEP meeting.

West Coast Children's Clinic Psychological Assessment

Between November 30, 2017 and March 31, 2018, a psychological assessment was conducted by Dr. Elena Baikova, a psychologist employed by West Coast Children's Clinic, an agency which primarily serves children from the foster care system who have experienced trauma. Dr. Baikova received her Doctorate in Psychology in 2016 from the Wright Institute in Berkeley, California. She earned her Master's Degree in Clinical Psychology in the course of earning her doctorate at the Wright Institute. Dr. Baikova was an elementary school special education teacher from 2006 to 2010 in the Oakland Unified School District, and had a teaching credential in special education. Dr. Baikova has conducted approximately 25 psychological assessments. She has attended approximately 40 IEP team meetings. Dr. Baikova testified at hearing about her assessment. Dr. Baikova's assessment was given the most weight of all of the assessments presented at hearing, based on the extensive time she spent with Student in order to establish rapport, her experience and training in the area of traumatized children, and her reasoned choice of test instruments.

The West Coast assessment was not done for the District or at its expense. It was done at the request of Student's social worker to address concerns about Student's mental health, academic difficulties, and daily living functions. The assessment was not a psychoeducational assessment and did not specifically assess Student's processing skills or whether he has a specific learning disability.

Dr. Baikova's assessment established that Student's cognitive functioning is in the average range, with relative strengths in planning and learning, and challenges with sequential and simultaneous processing. However, the testing showed that Student is

achieving at a level far below his cognitive potential. His mathematics, math fluency, total reading, basic reading, oral reading fluency, spelling, expressive vocabulary, and oral reading accuracy were all at, or below, the first percentile. His Listening and Reading Comprehension, Receptive Vocabulary, Sentence Building, Sentence Combining, Essay Theme Development and Text Organization, Sentence Repetition, and Essay Composition Grammar and Mechanics, were in the low average to average range. His highest scores were in the seventy-fifth percentile in Oral Word Fluency and the seventy seventh percentile in his Essay Word Count. Essentially, Student made no academic progress since the November 4, 2016 triennial evaluation.

Dr. Baikova's informal adaptive assessment established that Student needs support with money management and career planning. Student is resilient and has learned to rely on himself due to the constant changing of people in his life.

Dr. Baikova determined that Student had Generalized Anxiety Disorder and Academic or Learning Problem. Dr. Baikova made 17 educational recommendations in her report, including reading remediation in basic reading, sight words, decoding, and word attack; specific assistive technology tools; vocational assistance and specific vocational activities; specific study supports; specific visual supports; specific agencies available to Student that could be part of his vocational team; specific steps to assist Student to enroll in and afford college; and specific job recommendations and schoolwork schedule recommendations to avoid Student's overload.

MAY 24, 2018 IEP Team Meeting

On May 24, 2018, Antioch held an IEP team meeting for Student. Participants included Educational Rights Holder 2; Student's Attorney; Dr. Baikova, by telephone; Ms. Carolyn Taylor, District Representative; Mr. Wilkins, Vice Principal; Ms. Cherole Lee, School Counselor; Mr. Zandi, School Psychologist; Mr. Bellizi, Student's General Education History Teacher; and Ms. Geraghty, Student's Case Manager. Mr. Bellizi was present for some, but

not all, of the meeting.

Dr. Baikova's assessment was passed out to team members. Dr. Baikova summarized her assessment results. She explained to the team that Student has the ability to perform at a higher level than he is currently functioning if provided interventions. There was some discussion regarding the report, including a comment by Mr. Wilkins about why Student's low test scores do not correlate with his class grades. Ms. Geraghty informed Educational Rights Holder 2 that Antioch needed time to review the assessment since it had just been passed out to team members.

The IEP team discussed Student's need for one-to-one tutoring in reading and math. There was conflicting testimony regarding the discussion and whether or not the team agreed that Student required the tutoring. The IEP notes stated that the team agreed he needed tutoring, but no offer of tutoring was made at the meeting.

Progress on Student's IEP goals was not discussed at this IEP team meeting. Teachers reported Student's progress in his classes. He was reportedly doing well and passing. Ms. Cherole Lee, Student's academic counselor, reviewed Student's credits and the IEP team decided on Student's classes for the 2018-2019 school year.

Ms. Geraghty, Student's case manager for the 2017-2018 school year did not read Dr. Baikova's report. Ms. Geraghty and Ms. Taylor credibly testified at hearing that the IEP team discussed and considered Dr. Baikova's report. Ms. Lambonao, Student's special education teacher and case manager for the 2018-2019 school year, did not attend the May 24, 2018 IEP team meeting and never received or reviewed Dr. Baikova's report.

June 4, 2018, IEP Team Meeting

On June 4, 2018, Student's IEP team reconvened. Present at the meeting were Student's Attorney; Ms. Taylor; Ms. Sarah Kollerman, Student's Court Appointed Special Advocate, participating by telephone and representing Educational Rights Holder 2, who was out of the country; Ms. La Jeune Lee, Student's Social Worker; Mr. Wilkins; Ms.

Geraghty; Ms. Lambonao; and Ms. Ruth Whittington, Social-Emotional Counselor. Student's Attorney requested educationally related mental health services for Student. Student's Attorney requested goals for decoding, math problem solving, and reading out loud. She also requested that the team add accommodations including visual supports, graphic organizers, note takers, and auditory textbooks. Lastly, Student's attorney raised the issue of Student's need for intensive one-to-one tutoring due to his inability to make progress on his goals.

The Antioch IEP team members declined to offer intensive one-to-one tutoring services for the reasons that on-site general education tutoring, both group and individual, was available to Student and he had not taken advantage of it. The denial was also based on the fact that Student is doing well in his classes and his grades show that he is making progress on his goals. The team agreed to add the goals and accommodations requested by Student's attorney.

An IEP addendum was developed following the June 4, 2019, meeting. The addendum included new goals for reading decoding and fluency, and math decoding and problem solving; and accommodations of visual supports, provision of note-taker, and auditory textbooks. The added goals and accommodations were consistent with the recommendations of Dr. Baikova. A goal for Student to distinguish target activities from interfering activities was also developed.

There was no credible evidence presented at hearing that written quarterly reports on Student's progress on his October 31, 2017 IEP goals, were provided to Student or Educational Rights Holder during the 2017-2018 school year. Progress summary reports on goals, dated May 30, 2018, were placed in the June 4, 2018 IEP document admitted at hearing. However, that IEP was developed after the June 4, 2018 meeting, and was not shared with Educational Rights Holder, until sometime over the summer, after the school year had ended.

Prior Written Notice: One-to-One Tutoring and Mental Health Services

On June 6, 2018, Antioch drafted a prior written notice denying Student's May 24, 2018, and June 4, 2018 requests for one-to-one tutoring and stating that Educational Rights Holder 2 declined offered educationally related mental health services of 30 minutes per week for Student, at the May 24, 2018 IEP team meeting. The prior written notice states that it was sent via U.S. Certified and First Class Mail to Educational Rights Holder 2, care of the Court Appointed Special Advocate office in San Francisco. No proof of a return receipt was presented at hearing. Educational Rights Holder 2 testified at hearing that she never received the prior written notice.

There was no evidence presented at hearing that any new offer of FAPE involving counseling services was made at the May 24, 2018 IEP team meeting or that Educational Rights Holder 2 declined any educationally related mental health services at that meeting or later.

The testimony of Ms. Lambonao, Student's English teacher for the 2017-2018 school year, established that no specialized reading services were provided to Student to address Student's very low reading skills. Student read books aloud and listened to audible versions of the books.

At some point in the 2017-2018 school year, Student received 12 sessions of non-special education tutoring, as he did the prior school year. The tutoring was not documented in any of Student's IEP's and it was not specialized instruction by Antioch. There was no evidence of the subject matter of this tutoring.

Student's 18th Birthday

In July 2018, Student became 18 years of age and obtained his own educational rights. After his birthday, Antioch directed all communications to Student, without copying his attorney or Educational Rights Holder 2, after his eighteenth birthday, until April 25, 2019, when Educational Rights Holder 2 was again appointed by the court as

Student's Educational Rights Holder.

2018-2019 SCHOOL YEAR

November 27, 2018 IEP Team Meeting

On November 27, 2018, Student's annual IEP team meeting was held. In attendance were Ms. Taneka Bourgeois, Program Specialist; Ms. Lambonao; Student; Student's Attorney, via telephone; Educational Rights Holder 2; Student Advocate; Attorney for Antioch; Ms. Valerie Lopes, Assistant Director of Special Education; Ms. Geraghty, Student's Economics Teacher; Mr. Benjamin Brusio, San Francisco Mental Health Clinician; Ms. Miki Izu, San Francisco Independent Living Skills Education Advocate; Ms. Karen Paulsson, School Psychologist; Ms. Wudel, General Education English Teacher; Mr. Paul Furiosi, General Education Culinary Arts Teacher; and Mr. Eston Greub, General Education Computer teacher. General education teachers came and left the November 27, 2018 IEP team meeting, serially, due to a floating substitute teacher relieving them one at a time to attend the meeting. They each reported Student's progress in their classes.

At the November 27, 2018 meeting, the IEP team reviewed Student's transition plan, progress on Student's October 31, 2017 goals and progress on the goals developed after the June 4, 2018 IEP team meeting. Student did not meet any of his goals. The team determined Student needed only 40 credits to graduate with a diploma. New goals were discussed and determined, most were continued from the prior school year because Student had not met them, with the exception of his read aloud goal and vocabulary decoding goal, which the team agreed not to continue. Eight goals were now included in Student's IEP. The team agreed to remove Student's eligibility under emotional disturbance. His primary eligibility for special education became specific learning disability. The offer of FAPE included 600 minutes per week of specialized academic instruction, 30 minutes per month of career awareness, 30 minutes per month of college awareness, and 30 minutes per month of other transition service.

Student's individual transition plan in the November 27, 2018 IEP contains goals to prepare for post-secondary training and education, post-secondary employment, and postsecondary independent living.

Ms. Lambonao never took Student into the community to work on the activities listed to support Student's goal for further education including applying to community college and applying for financial aid.

Student's IEP goal to support his transition plan goals for postsecondary education, employment and independent living requires Student to identify five qualifications for jobs identified in his area of career interest. This was the same IEP transition goal as in his prior two IEP's. The prior IEP listed a baseline establishing that Student lacks the prerequisite research skills to work on the goal.

There was no evidence presented at hearing that Antioch assessed the reason that Student failed to meet the IEP career interest goal or that Antioch provided support or instruction to assist Student to gain the prerequisite skills that he lacks to engage in the goal.

Student's November 27, 2018 IEP requires that Student's progress will be reported quarterly by summary progress reports and report cards.

During the 2018-2019 school year, Student received one hour a month of Transition Partnership Program Services, which is a Contra Costa County Office of Education Program providing vocational training and paid employment opportunities to foster youth with an IEP or a 504 plan in Contra Costa County. Program staff who worked with Student did not have any teaching credential. Student was referred to this program by the Contra Costa County Office of Education foster care liaison. Through the program, Student was placed in various jobs including a cashier job at McDonalds, a warehouse job at TJ Maxx, and a job with East Bay Regional Parks. There is no application process for the job placements. Student left the McDonalds job because of his difficulties managing the

cash register and making change. The purpose of the program is to provide paid work experience for students. The Transition Partnership Program services were not indicated in Student's individual transition plan. These services were never discussed at Student's IEP team meetings, and no staff from the program ever attended any of Student's IEP team meetings.

During the 2018-2019 school year, Student was placed in general education English 12 for both semesters. Both of Student's general education English teachers testified at hearing and confirmed that no specialized reading services were provided to Student to teach him to read during the 2018-2019 school year. The teachers assumed that Student could read.

Request for Independent Educational Evaluation, Dr. Grandison's Testimony and Neuropsychological Assessment

On May 2, 2018, Educational Rights Holder 2 sent an email to Ms. Geraghty requesting an IEP team meeting based on Student's recent West Coast assessment results. In the email, she also requested an independent neuropsychological evaluation for Student to provide information about Student's specific learning disabilities that are interfering with his learning goals.

On May 7, 2019, Student's attorney emailed Ms. Geraghty informing her that the recent evaluation from West Coast Children's Clinic indicates that Student is of average cognitive ability but has particular weaknesses in phonemic awareness and math and needs the independent assessment to identify these suspected disabilities and needed intensive remediation. She stated that Educational Rights Holder 2 will be requesting individual tutoring in all academic areas at the upcoming IEP team meeting. She also expressed concern that Antioch has not addressed Student's need for educationally related mental health services and asked what mental health services he is currently receiving.

On May 21, 2018, Antioch provided prior written notice agreeing to conduct the independent assessment and attached the Special Education Local Plan Areas guidelines for obtaining an independent educational evaluation and a suggested list of assessors.

On August 27, 2018, Educational Rights Holder 2 informed Antioch that she chose Dr. Carina Grandison to conduct the independent educational evaluation that Antioch agreed to conduct in May 2018. On September 10, 2018, Antioch mailed a contract for the independent educational evaluation to Dr. Grandison. The contract required the approval of Antioch's Board of Directors to become effective. On October 9, 2018, Dr. Grandison signed the contract but redacted one term of the contract requiring her to add Antioch as an additional insured, based on her view that to do so would violate the law, the code of ethics she is required to follow, and prior rulings of the California Department of Education, commonly shortened to CDE. On October 22, 2018, Antioch sent Dr. Grandison a letter explaining that the contract would be presented to Antioch's Board of Directors on November 14, 2018. Before the board meeting, Antioch attempted to clarify the contract term objected to by Dr. Grandison; inquired as to the cost to Dr. Grandison to add Antioch as an additional insured; and requested the specific law, code of ethics, and CDE ruling referred to by Dr. Grandison. Dr. Grandison did not respond.

Antioch contacted Student in a letter dated November 2, 2018, at a time when he held his own educational rights, to apprise him of the contract term disagreement and pending board meeting, and attached a copy of the letter sent to Dr. Grandison. On November 14, 2018, Antioch's Board of Directors rejected the contract. Antioch sent Student a letter on November 15, 2018, informing him that the board did not approve the contract, and informing Student that Antioch stood ready to fund an independent educational evaluation by another assessor of Student's choice. The letter attached a list of suggested assessors and a copy of his procedural safeguards. No response was received from Student indicating he still wanted to pursue an IEE or selecting another

assessor.

Dr. Grandison conducted an assessment of Student in January and March 2019. Antioch was unaware of Dr. Grandison's assessment of Student until Dr. Grandison scheduled observations of Student at school, which were subsequently cancelled by Antioch.

Dr. Carina Grandison testified at hearing regarding her assessment of Student. Dr. Grandison received her Doctorate in Developmental Psychology in 1992, and her Master of Arts in Psychology in 1988, both from Boston University. She is a California Licensed Clinical Psychologist. Dr. Grandison has conducted thousands of assessments of children and young adults with various disabilities, including autism, learning disabilities, intellectual disabilities, more than a hundred being independent educational special education evaluations. Based on Dr. Grandison's training and experience, her testimony and conclusions were given due weight.

Dr. Grandison's assessment was originally planned to be an independent educational evaluation funded by Antioch, but became a private assessment for Student when contract negotiations never resulted in an approved contract.

Student's scores show that Student's non-language based cognitive functioning is in the average range, but his ability to take in information and reproduce it on his own is impaired. When read two stories, his recall and retelling of the stories was disorganized. Student was not able to produce a writing sample consistent with a verbal writing prompt. These struggles indicated to Dr. Grandison a language processing problem, indicating the need for a speech and language assessment.

Student's academic scores demonstrated that he has not progressed since Antioch's November 4, 2016 triennial assessment. Student's academic scores were in the deficient range across the board. His reading, writing and math composite scores were at or below the first percentile among his peers. His reading comprehension was at the

fourth percentile. His scores on the Gray Oral Reading Test, Fifth Edition, were in the first percentile. Student struggled with single digit addition, was unable to do double digit subtraction when regrouping was required, and could only do some single- digit multiplication, but not division. Dr. Grandison opined that Student's unchanging academic scores indicate that Student's services while in Antioch have been inadequate to meet his needs, given that his very significant learning disabilities affected all academic domains including reading, writing and math. She also concluded that Student has not been prepared for further education, work or independent living, as he is now 18 years old, and about to enter community living as an adult.

Dr. Grandison concluded that Student requires educational services to make up for the failure of Antioch to provide appropriate special education services to meet his needs. She recommended 100 hours per year, for two years, of one-to-one support in each of three areas: reading, writing, and math, for a total of 600 hours over two years. Student requires social-emotional support to come to grips with his past and to prepare him for his future, in the form of trauma informed psychotherapy, two times a week for two years, for a total of 200 hours. Lastly, Student requires a comprehensive vocational assessment due to his failure to develop a concrete path toward an actual job and his demonstrated vague concept of college. Without these services, Dr. Grandison opined that Student will not have the skills necessary to become a productive member of society.

TESTIMONY OF LISA PIPPIN

Ms. Lisa Pippin testified as Student's expert at hearing. Ms. Pippin received her Masters of Science Degree in Psychology in 2003, and her Bachelor of Arts Degree in Psychology, in 2000, both from San Francisco State University. She is a Licensed Educational Psychologist, a Credentialed School Psychologist, and a Certified Behavioral Intervention Case Manager. From 2013 to present, she has been an Educational

Consultant specializing in psychoeducational evaluations. In this role she has performed independent educational evaluations to determine learning profiles, services, and placement options. She develops comprehensive treatment plans to guide teams, performs functional behavior analyses, develops behavior plans, and collaborates with professionals to create student-centered plans. Ms. Pippin has worked with children and families for over 22 years. She has conducted almost 1,000 assessments as part of the development of IEP's. Ms. Pippin's testimony was clear and detailed and demonstrated her knowledge regarding learning disabilities, specifically dyslexia, including the appropriate instructional methodology for students with dyslexia. Based on her training, experience and reasoned opinions, her testimony was given great weight.

Ms. Pippin reviewed Student's records, including assessment scores from early childhood to present, which consistently documented Student's impaired functioning in the area of phonological processing, which established that Student has dyslexia. Ms. Pippin opined that school psychologists should have identified Student's dyslexia earlier, based on his consistently documented scores evidencing dyslexia through the years. Student's coexisting learning disability and trauma related mental health decline, which resulted in low cognitive scores, resulted in a delay in his identification as a student with specific learning disabilities, based on a discrepancy model.

Ms. Pippin persuasively established that there is no dispute in the reading research, that you cannot assist a child with dyslexia to progress in his reading development unless you provide direct intensive reading instruction using structured literacy program. This multisensory approach creates neurological pathways to facilitate a student's development of phonological processing to enable the student to learn to read. Student's 2016-2017 goal for listening comprehension is not a goal that addresses reading, as it involves listening comprehension, a separate skill area than reading. Student requires this instruction to learn to read.

Student's history of trauma and tumultuous life, alone, cannot account for Student's scores indicating dyslexia. Student's scores should have alerted his assessors to his risk of reading failure, necessitating specialized reading services, previously described, regardless of whether or not he met a discrepancy requirement for special education under the category of specific learning disability. Student's cognitive functioning also could not explain his scores indicating dyslexia, because research shows that phonological processing is not linked to cognition.

Ms. Pippin established that Student's consistently low math scores through all of his assessments, indicate dyscalculia, a math disability. With dyslexia, a student struggles to assign sound to symbol. Similarly, a student with dyscalculia has difficulty assigning a quantity to a symbol. Student requires intensive, direct, systematic instruction in both reading and math. Student's scores indicate that Student cannot self-teach given more time or a slower paced curriculum. The only way to assist Student to progress in math, is to start at his basic math level and systematically take him through his skill development.

Ms. Pippin opined that Student will require 150 to 300 hours of one-to-one instruction using a structured literacy program, provided 90 minutes per session, over the course of one to three years, to compensate Student for the failure to provide appropriate reading instruction.

Ms. Pippin recommended a speech and language assessment of Student's language skills to determine whether a speech and language pathologist could help train Student in a way to improve his auditory processing skills. She also recommended an assistive technology assessment to identify technology which would assist Student to better access his educational services and to demonstrate his skills, which the inability to read makes difficult.

TESTIMONY OF VICKI PEOPLES

Ms. Vicki Peoples was hired by Student to review his records in order to form an

opinion regarding the transition services provided to Student by Antioch. She did not meet with Student or his family. She received her Master's Degree in Special Education from California State University, Sacramento in 2009. She earned her Bachelor of Arts Degree in Vocational Education from San Jose State University. Ms. Peoples holds a Mild/Moderate Teaching Credential, with an emphasis on transition from school to adult living; an Educational Specialist Credential; a Designated Subject Teaching Credential; and an Adult Education Credential. Ms. Peoples has worked in the area of vocational training and transition planning for 33 years. She created a transition program at a nonpublic school. Before that, she worked with special education students at six high schools on job coaching, job development, interest assessment, career guidance, mobility training, and assistance and referrals to other agencies. Ms. Peoples established a transitional K-12 program for special education students, and provided vocational instruction. She worked for 12 years teaching individuals with disabilities job search techniques, resume writing, interview skills, personal appearance and job development and coaching, and on eliminating barriers to employment including transportation, social security benefits, behavior modification, and lack of job skills. Based on her extensive training and experience, her testimony was accorded great weight.

Ms. Peoples established that the transition preparation process sequentially includes identification of career interests, identification of a student's values, and identification of a Student's career aptitude and skill level.

Ms. Peoples found only one transition assessment in Student's records, which was an undated interest profiler which consists of 60 questions. Student scored highest in the career areas of artistic, social, realistic, and conventional. Antioch never got beyond this first step in the three years that staff worked with student. There was no evidence in Ms. Peoples' record review, that Antioch assessed Student's values, career aptitude, and skill level in areas including social, academic, mobility and functional life skill such as

navigating around the community and independently making purchases. Antioch did not assess Student's skills to evaluate which jobs in his area of interest would be a good fit, including his social, academic, mobility, and functional life skills. These assessments are the only way to identify Student's barriers to employment or to identify jobs Student would succeed in and would want to maintain over time.

Ms. Peoples testimony established that Antioch's inability to move Student beyond the very first step in the transition process to identify his career interest, evidenced his need for further and prompt assessment, in the form of a functional vocational assessment, to determine the reason for his lack of progress and to identify the specific instruction and support he required to progress through the sequential transition process.

Ms. Peoples stressed the importance of including other agencies such as the Department of Rehabilitation, Social Security Administration, or the California Conservation Corps, in Student's transition IEP meetings, according to his interest, due to his unique transition needs as a foster child and likely financial and housing need after he ages out of foster care. These agencies must be invited to the transition IEP team meetings because services from other agencies cannot be recommended by the IEP team without their direct involvement in the decision. There was no evidence in her review of Student's records that this was done.

Ms. Peoples reviewed Student's transition plans from November 4, 2016 through November 27, 2018. All of the plans and services lacked any specialized instruction and support, community activities, work experience, or the inclusion of other agency personnel at meetings. There was no evidence that the transition activities were actually provided or that anyone but Student was responsible for their completion. Student's 2016 IEP transition goal baseline was vague and not helpful to identify his current skill level. Student's 2017-2018 school year transition plan documents that Student lacks the computer research skills to start working toward the goal. There is also no postsecondary

goal to transition from school to independent living, which is an essential goal for students in the foster care system. Student did not meet his 2017-2018 school year IEP transition goal and it was repeated in the 2018-2019 school year. This indicated his need for assessment and instruction. Student's 2018-2019 school year transition plan and services required Student to engage in activities that necessitated specialized support and instruction, which should have been included in the plan.

Ms. Peoples established that the amount of Student's IEP college and career service hours were inadequate to meet his transition needs and that Student needed at least one hour of services per week. Community involvement was required and would necessarily require more time than the 30 to 90 minutes a month of vocational services offered in Student's IEP's. When asked if Student's work on career related activities in his general education classes, as testified to by his teachers, such as resume writing or job interviewing, satisfied the requirement to provide transition services, she emphasized that the transition process is required to be a coordinated set of activities that are designed within an outcome-oriented process. Piecemeal and uncoordinated activities, though related to employment, do not satisfy the coordinated transition services requirement.

Ms. Peoples assessment of what Student needs now to make up for the lack of appropriate transition services would include a comprehensive functional vocational assessment. Ms. Peoples concluded that Student lacks many vocational skills as the result of Antioch's failure to provide appropriate vocational services and he therefore requires an intensive vocational program. She opined that a residential placement which incorporates vocational on-site training would serve to provide Student with the appropriate amount of compensatory vocational services, given his age, his complex vocational need, and limited time to develop his skills before aging out of foster care.

TESTIMONY OF DR. VALERIE LOPES

Dr. Valerie Lopes testified on behalf of Antioch about her opinions regarding the

appropriateness of Student's specialized academic instruction and his amenability to reading and math remediation. Dr. Lopes received her Doctorate in Clinical Psychology from Palo Alto University in 2012. She earned her Master of Science Degree in Clinical Child and School Psychology from California State University, Easy Bay, in 1990. She is a Credentialed School Psychologist, a Licensed Educational Psychologist, and she holds an Administrative Services Credential. Dr. Lopes has been employed by Antioch as the Assistant Director of Special Education for the 2018-2019 school year. Before that, she worked for Oakland Unified School District for 12 years, first as a School Psychologist and then as Coordinator in the Psychological/Social Work Services Department, where she supervised trained, evaluated, and provided consultation to, 66 school psychologists and social workers.

Dr. Lopes' testimony at hearing was confusing, inconsistent, and demonstrated a lack of knowledge about the purposes of special education services, which she is charged with supervising and administering. As such, her testimony was accorded no weight. The inconsistency of her testimony was evidenced by her inconsistent opinion regarding Student's cognitive ability. First, she agreed that Student's mental health has improved since his last placement in the area of depression and anxiety, and his cognitive functioning has increased to the point that he can take advantage of the instruction being provided to him. She testified at length regarding Student's increased cognitive abilities which she attributed to being in a stabile living situation, increased emotional stability, exposure to high level instruction, and interaction and learning from general education students. Yet then, Dr. Lopes asserted that Student's very low reading and math scores did not necessarily indicate learning disabilities in these areas because these scores are consistent with his cognitive levels. Dr. Lopes opined that Student does not have the cognitive ability to benefit from an intensive structured literacy program or from math remediation. Dr. Lopes opined that Student's nonverbal cognition is higher but that is not

used in learning to read.

Dr. Lopes' opinions about Student's cognitive capacity were not persuasive. They were contrary to those of her school psychologist, Mr. Zandi, who found Student's cognitive ability to be in the low average range of functioning. Additionally, the November 4, 2016 IEP team found Student eligible as a student with a specific learning disability, not an intellectual disability. Dr. Lopes' opinion regarding Student's cognitive functioning was also contrary to Dr. Baikova and Dr. Grandison's assessment results finding Student's cognitive scores in the average range. Dr. Lopes' opinion of Student's cognitive capacity was therefore unpersuasive and was given no weight.

Dr. Lopes and other district witnesses stressed that Student has passed all of his general education and special education courses and is on track for graduation with a diploma. It is true that Student has demonstrated consistently that he is highly motivated to get passing grades. Educational Rights Holder 2 and Student closely monitored Student's grades and the status of Student's assignments on Antioch's electronic information system accessible to parents and students. Student sought out his teachers to remedy any grade declines by asking for extra work. Ms. Geraghty believed that Student is the most motivated student she has ever taught.

However, Student's passing grades do not mean his program has been adequate. Student remains functionally illiterate and lacks basic academic skills in all areas. Multiple accommodations, modified curriculum, and reduced expectations, evidenced by Dr. Lope's opinion that Student could not benefit from reading remediation and Student's duplicate high school credit for completing the same classes twice, Spanish I and Algebra I, facilitated Student's movement through his required coursework for a diploma. Student repeatedly failed to meet his IEP goals, and he never progressed in his academic skills in reading, writing and math, as evidenced by his consistent deficient and unchanging deficient scores on assessments throughout the time period at issue in this case and

repeated IEP goals, year after year.

Many of Student's teachers who testified at hearing were unaware of his reading deficits and claimed he read at varying levels ranging from fourth grade to high school level. Student's scores on standardized tests have remained at or below the first percentile through 2019. At hearing Antioch contended that Student can read at a much higher level than his assessments indicate, as evidenced by the books he carried and checked out of the library and his teacher's estimates of his reading ability. There was no evidence presented at hearing that anyone verified that he was actually able to read the books. None of the teachers who claimed that Student's reading level was higher than his test scores indicate, ever directly assessed his reading ability. Student listened to the books the class used in his special education English classes for the 2016-2017 and 2017-2018 school years. Antioch's claim that Student does not need specialized reading services because he can read well enough, is unreasonable, given his consistent reading scores at the first percentile or below on assessments from November 2016 through 2019. Student was able to gather meaning of texts using context clues, dictionaries, and with the use of audible versions of the books he was required to read. This is not a measure of his actual reading ability.

Antioch does not have a structured literacy program at the high school level. The lack of an appropriate program does not relieve Antioch of the responsibility to remediate Student in the area of basic reading. This is especially true in light of the unique circumstances that Student missed the ability to access reading instruction for several years in his life to address his learning disability. This was due to the severity of his competing mental health disabilities which resulted from his history of neglect and abuse and which professionals identified as requiring intensive services before Student could be safely exposed to the demands of any academic setting.

LEGAL CONCLUSIONS

LEGAL FRAMEWORK UNDER THE IDEA

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

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for higher education, employment and independent living, and 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 a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In 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 specifies 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).)

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 *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580 U.S. [137 S.Ct. 988, 996], the Supreme Court clarified that “for children receiving instruction in the regular classroom, [the IDEA’s guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” Put another way, “[f]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” (*Id.* at 999 (citing *Rowley, supra*, 458 U.S. at pp. 203-204).) The Court went on to say that the *Rowley* opinion did not “need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level.” (*Id.* at 1000.) For a case in which the student cannot be reasonably expected to “progress[] smoothly through the regular curriculum,” the child’s educational program must be “appropriately ambitious in light of [the child’s] circumstances .” (*Ibid.*)

The IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at 1001.) Importantly, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Ibid.*) 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); 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, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) 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])

A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subds. (f)(1) & (2), (j); *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

ISSUE 1: WHETHER ANTIOCH FAILED TO ASSESS IN AREAS OF PSYCHOEDUCATION, TRANSITION, ASSISTIVE TECHNOLOGY, AND SPEECH AND LANGUAGE

Student contends that Antioch used the November 4, 2016 triennial assessment throughout the time period at issue, to determine Student’s present levels and therefore

there was no current assessment information upon which to base Student's current levels of performance. Student asserts that Antioch's psychoeducational assessment was not valid because rapport was not established with student. He contends that a transition assessment was required to inform the development of appropriate transition goals and services for Student. Student points to his lack of progress throughout the time period as evidence of his need for an assessment at all times as an issue in this case. Student asserts that an assistive technology assessment was required, based on Student's low reading and math scores and his difficulty and lack of progress in writing. Lastly, Student asserts that speech and language was a suspected disability, necessitating assessment, due to Student's very low assessment scores in the area of language processing and in light of Student's early history of speech and language impairment requiring a special day class placement.

Antioch contends that Student was assessed in all areas of suspected disability and need, that Student's present levels of performance were accurate, and that informal, age appropriate, transition assessments were administered to determine his transition needs. Antioch maintains that an assistive technology assessment was not necessary because Student was appropriately accommodated in his classes throughout the time period at issue in this case and he accessed the curriculum as evidenced by successfully completing the course requirements to stay on track toward earning a high school diploma. Lastly, Antioch contends that there was no indication that speech and language was an area of suspected disability necessitating assessment.

A local educational agency is required to assess a student to determine whether the student is an individual with a disability and to determine the student's educational needs. (20 U.S.C. § 1414(b)(4); Ed. Code, § 56026.). The determination of Student's needs includes consideration of the student's functional performance. (Ed. Code, §§ 56320, subd. (b)(1), 56345, subd. (a)(1).). Once a student is identified as a student with a disability in

need of special education, a local educational agency shall reassess the student not more frequently than once a year, unless the parent and the local educational agency agrees otherwise, and at least every three years, unless the parent and the local educational agency agree in writing that reassessment is not necessary. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, § 56381(a)(2).).

A local educational agency is required to assess a student in all areas of suspected disability including, if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).).

A district's failure to conduct appropriate assessments or to assess in all areas of suspected disability constitutes a procedural violation that may result in a substantive denial of FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032-1033.). A school district is required to use those assessment tools necessary to gather relevant functional and developmental information about the child to assist in determining the content of the child's IEP. (34 C.F.R. § 300.304(b)(1)(ii).) A district must also ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services. (34 C.F.R. § 300.304(c)(6).)

In assessing an area of suspected disability, a district must assess the student's functional capabilities and whether they may be increased, maintained, or improved through the use of assistive technology devices or services. (*Letter to Fisher* (Office of Special Education Programs, 29 Dec. 4, 1995); 23 IDELR 565.) The evaluation should provide sufficient information to permit the IEP team to determine whether the student requires devices or services in order to receive FAPE. (*Ibid*).

The United States Department of Education attaches great importance to accurate,

comprehensive evaluations as underscored by its regulation providing that parents who disagree with district evaluations may obtain an independent evaluation at public expense. (20 U.S.C. §1415(b)(1) & (d)(2); 34 C.F.R. § 300.502(b); Ed. Code, §§56506, subd. (b), 56329, subd. (b).) The failure to obtain critical assessment information about a student “render[s] the accomplishment of the IDEA's goals -- and the achievement of a FAPE -- impossible.” (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 quoting *Amanda J. v. Clark County School Dist.* (9th Cir.2001) 267 F.3d 877, 894.)

Antioch conducted one assessment of Student, his November 4, 2016 triennial assessment, which was conducted outside the relevant statute of limitations of this case, and therefore no analysis is made as to whether Antioch’s triennial assessment was appropriate.

Psychoeducation

Student’s argument in his closing brief regarding Antioch’s failure to assess in the area of psychoeducation is mainly focused on Antioch’s November 4, 2016 triennial assessment, outside the statutory period at issue in this case. There was insufficient evidence presented at hearing as to Student’s need for a psychoeducational assessment by Antioch during the timeframe at issue in this case. Student failed to sustain his burden as to Antioch’s alleged failure to assess suspected disability in the area of psychoeducational needs.

Transition

Transition services include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. (20 U.S.C. § 1401(34)(C); Ed. Code, § 56345.1, subd, (a)(3).)

The evidence presented at hearing, including Student’s transition plans, the

testimony of Ms. Peoples, and the testimony of Student's teachers, establishes that Student lacks many of the functional skills necessary for further education, employment and independent living. Student reads at a very low level and cannot calculate basic arithmetic problems without a calculator. Antioch provided only one IEP goal to support transition, which was repeated for three years. Student's 2018-2019 transition plan goals involved highly complex independent living tasks, such as completing financial aid forms, locating and investigating places to live in the community, and opening a bank account. There was no evidence that Antioch conducted any assessment of Student's ability to engage in these activities without instruction and support. There was also no assessment of Student's ability to safely navigate the community which was a prerequisite for many of his goals.

Student required a comprehensive functional vocational evaluation to identify his vocational needs, including identification of the obstacles to further education, employment and independent living that Student's individual skills and levels of functioning present. Student sustained his burden of proof that Antioch failed to assess his disability needs in the area of transition. The failure to assess Student's transitional needs denied him a FAPE as it impeded his right to an appropriate education and deprived him of educational benefit.

Assistive Technology

Assistive technology is "any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability." (34 C.F.R. 300.5.) Assistive technology service is "any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device." (34 C.F.R. § 300.6.)

The preponderance of the evidence presented at hearing, including the testimony

of Student's teachers, Student's experts, and documentary evidence including Student's assessments and writing samples, established the need for an assistive technology assessment throughout the time period at issue in this case. Student struggled in reading; basic arithmetic; and writing, including his use of grammar, his ability to spell, and to organize his thoughts to produce an essay with a topic sentence, supporting paragraphs, and a reasoned conclusion. Student's private assessments in 2018 and 2019 determined his cognitive functioning to be in the average range, indicating that he should be functioning at a much higher level academically. Dr. Baikova's assessment recommendations detailed many assistive technology recommendations that would have increased or improved Student's functioning in writing, computer research, vocational activities, and general access to his educational curriculum. Although teachers did accommodate Student through the use of a calculator and auditory textbooks, an assistive technology assessment of Student in his learning environment, was necessary to identify assistive technology to increase and improve his ability to demonstrate his knowledge and understanding to his teachers, and to overcome obstacles to required activities such as his inability to conduct computer research, so he could make progress on his vocational goals.

Student sustained his burden of proof, that Antioch failed to assess his need for assistive technology, which was a procedural violation of IDEA. This failure denied Student a FAPE as it deprived him of educational benefit as he was unable to access his vocational curriculum or to make meaningful progress on his IEP writing goals.

Speech and Language

Student did not sustain his burden of proof that speech and language was a suspected disability requiring Antioch to conduct a speech and language assessment. Ms. Pippin testified that Student's language processing scores in the area of auditory processing and his early history of speech and language impairment, indicated the need

for further speech and language assessment. Dr. Grandison testified that Student's inability to retell a story in an organized manner or follow her directions for a writing prompt, indicated language processing difficulties necessitating further speech and language assessment. Neither Ms. Pippin nor Dr. Grandison are speech and language pathologists. Nor did either expert observe Student's speech and language functioning at school. None of Student's teachers who testified at hearing, expressed any concerns regarding Student's ability to understand oral direction, or to verbally express his ideas and information in class. The testimony of Student's teachers as well as his test scores, indicate Student's strength in auditory comprehension. Accordingly, this was not an area of suspected disability requiring assessment.

ISSUE 2A: WHETHER ANTIOCH, FROM FEBRUARY 7, 2017, TO THE END OF THE 2016-2017 SCHOOL YEAR, FAILED TO OFFER TRANSITION, READING, WRITING, AND MATH GOALS

Student asserts that Antioch failed to offer Student goals to meet his transition, reading, writing and math needs. Student maintains that his transition goal was not related to his postsecondary goals and was not based on age appropriate transition assessments. Student contends that his reading goals did not address his very low level of functioning. Antioch contends that goals were provided in all of these areas of Student's need. Antioch maintains that Student's listening comprehension goal can fairly be considered as a goal to teach him reading skills.

An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in

the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) When appropriate, the IEP should include short-term objectives that are based on the child's present levels of academic achievement and functional performance, a description of how the child's progress toward meeting the annual goals will be measured, when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(iii); Ed. Code, § 56345, subd. (a)(3).)

Beginning not later than the first IEP to be in effect when a student is 16 years of age, the IEP must contain appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(VII)(aa); Ed. Code, § 56345, subd. (a)(8).)

Ms. Peoples, Student's transition expert, established that identifying career interests is the first step in transition planning. The November 4, 2016 IEP was the first IEP developed after Student turned 16 and contained Student's first transition plan. Student's IEP goal for the 2016-2017 school year requires Student to identify his career choice of interest by researching fields of employment. From February 7, 2017, to the end of the 2016-2017 school year, Antioch provided a goal in Student's area of need of transition.

Antioch conducted Student's triennial assessment within a few months of Student's enrollment. The academic portion of the assessment measured all areas of Student's reading to be in the very low level. His auditory processing scores were mostly in the borderline and deficient range. Mr. Zandi, Antioch's School Psychologist, discussed these scores with the November 4, 2016, IEP team. The IEP team determined Student, now 16,

for first time, to be eligible for special education services under the category of specific learning disability in five areas, including basic reading, reading comprehension, written expression, math calculation, and math problem solving.

Student clearly required a reading goal throughout his years at Antioch to address his very low basic reading skills. His need for such a goal was urgent in light of Student's extreme reading needs, his age, and the apparent absence of effective reading intervention earlier in his education. The only goal for reading for the 2016-2017 school year, was a listening comprehension goal. This goal did not address any of Student's reading needs and cannot be regarded as a reading goal. Listening comprehension and reading comprehension and decoding are distinct skills.

It is undisputed that Student needed an IEP goal in the area of writing. Student's November 4, 2016 IEP contained a multi-paragraph essay writing goal. Given Student's test scores between the low and average range in the area of writing, Student's IEP writing goal from February 7, 2017 to the end of the 2016-2017 school year addressed his writing need as it involved short essay writing skills. Antioch provided a writing goal to address Student's writing need between February 7, 2017, and the end of the 2016- 2017 school year.

It is undisputed that Student had a need for a math goal. Student's math goal required Student to solve addition, subtraction, multiplication, and division problems, including those that use positive and negative integers and with a combination of these operations. The goal addressed Student's math need as it involved basic arithmetic and it was implemented in a special education math class where the curriculum was modified based on Student's needs. Antioch provided an IEP goal to address Student's math need from February 7, 2016 to the end of the 2016-2017 school year. Student failed to sustain his burden of proof on this issue.

Antioch provided Student with transition, writing and math goals in these areas of

Student's need. Therefore, Student did not sustain his burden to prove that Antioch failed to provide IEP goals in these areas. Antioch failed to provide Student with a reading goal during the 2016-2017 school year to address his reading need. This deprived him of the educational benefit of learning to read, and therefore denied him a FAPE. Student sustained his burden of proof as to Antioch's failure to provide an IEP goal in Student's area of need of reading.

ISSUE 2(B): WHETHER ANTIOCH, FROM FEBRUARY 7, 2017, TO THE END OF THE 2016-2017 SCHOOL YEAR, FAILED TO PROVIDE STUDENT WITH SPECIALIZED READING SERVICES

Student contends that Antioch failed to provide Student with a specialized reading program to address his reading needs as indicated by Student's 2016 triennial assessment. Student asserts that his disability is such that it can only be ameliorated by a structured literacy program which utilizes multisensory and systematic direct explicit instruction. Antioch contends that Student's services met his reading needs and that Student's cognitive functioning was too low to benefit from a structured literacy program. Antioch contends that Student's basic skill remediation must be balanced with Antioch's mandate to provide maximum exposure to the high school curriculum toward a diploma.

Special education is specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs. (20 U.S.C. § 1401(29); Ed. Code, § 56031, subd. (a).) A Student's IEP must contain a statement of the special education and related and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to a student to enable the student to advance to attaining the annuals goals, to be involved in and make progress in the general education curriculum. (20 U.S.C. § 1414(c)(i)(B)(iv); Ed. Code, § 56345, subd. (a)(4).)

The methodology used to implement an IEP is left up to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful

educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149-1150; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Committee* (1st Cir. 2004) 361 F.3d 80, 84 (citing *Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992.)

Education Code Section 56335 defines and describes educational services for students with the characteristics of dyslexia, as evidence-based, multi-sensory, direct, explicit, structured and sequential approach to instruction. (Ed. Code § 56335, subd. (a).) Program guidelines for dyslexia are required to be developed and used to assist regular education teachers, special education teachers, and parents to identify and assess pupils with dyslexia, and to plan, provide, and improve educational services to pupils with dyslexia. The guidelines must include characteristics typical of pupils with dyslexia and strategies for their remediation. (Ed. Code § 56335, subd. (b).) A student who meets the eligibility for special education under the category of specific learning disability, and who exhibits the characteristics of dyslexia, is entitled to receive this instruction as special educational services. (Ed. Code § 56335.5, subd. (a).) Given the express language of Education Code 56335, defining educational services for students with characteristics of dyslexia, Antioch's contention that it has discretion to instruct Student in reading using other instructional methods is rejected.

Ms. Pippin's persuasive testimony established that Student's scores on Antioch's 2016 triennial assessment, as well as Student's scores on the prior assessments reviewed by Antioch as part of the triennial assessment, clearly document Student's dyslexia, which requires an evidence-based, multi-sensory, direct, explicit, structured and sequential approach to instruction. The definition of educational services for students with dyslexia, set forth in Education Code Section 56335, mirrors Ms. Pippin's recommendation. Antioch should have identified that Student's test scores evidenced dyslexia and Student's need

for specialized reading services. Student is eligible for special education services as a student with a specific learning disability and he is therefore entitled to receive these recommended reading services as part of his specialized academic instruction.

The overwhelming evidence presented at hearing established that Antioch failed to provide Student with specialized reading services during the 2016-2017 school year from February 7, 2017, to meet his reading needs and to enable him to make meaningful reading progress. Antioch's assertion that Student was provided with appropriate reading instruction to meet his reading needs and to provide meaningful educational benefit is rejected in light of the testimony of Ms. Pippin, the guidelines of Education Code 56335, and Student's unchanging reading scores on his testing throughout the statutory period of this case. Antioch's failure to provide these services resulted in Student's loss of the educational benefit, and denied him a FAPE. Student therefore sustained his burden of proof on this issue.

ISSUE 2(C): WHETHER ANTIOCH, FROM FEBRUARY 7, 2017 TO THE END OF THE 2016-2017 SCHOOL YEAR, FAILED TO OFFER AN APPROPRIATE TRANSITION PLAN AND SERVICES

Student contends that Student's transition plan and services were not appropriate to meet his educational transition needs and because the transition plan and services do not comply with the transition service requirements of IDEA. Student asserts that Student's goals were not based on age appropriate transition assessments, his IEP transition goal is not related to his post-secondary goals and contains a baseline that is not sufficiently specific to determine his present level in order to measure Student's progress or his ability to achieve his annual goal. Antioch contends that Student's transition plan goals and services were appropriate to meet his transition needs.

Beginning at age 16 or younger, the IEP must include a statement of needed transition services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect when a

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

Transition services are a coordinated set of activities that are 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. The transition services must be based on the student's individual needs, taking into account the student's strengths, preferences and interests. They must 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 provision of a functional vocational evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

Student sustained his burden of proof that Antioch failed to provide him with an appropriate transition plan and services. Student's transition goal was not measurable and therefore did not comply with IDEA's requirements. Had Antioch identified Student's present level of performance on this goal in the 2016-2017 school year, he could have been provided instruction, services or supports to enable him to conduct the necessary research for the goal. Student's transition goal to identify his career choice was not related to any of Student's listed transition plan postsecondary goals. This resulted in Student having no IEP goal to support his postsecondary transition goals to transition to further education, employment, and independent living. All of the activities listed in

Student's transition plan required Student, alone, to do them. There was no evidence presented at hearing that Student received any supports to engage in the required activities. Given his very low academic scores in reading, the activities, including researching college financial aid options, would have been very difficult for Student to accomplish without specialized instruction, support, and services. Antioch failed to invite other agencies to Student's IEP team meeting to participate in Student's transition planning. He was also not provided any community or work experience opportunities.

Accordingly, Student was deprived educational benefit due to Antioch's failure to provide appropriate transition services, which denied Student a FAPE.

ISSUE 2(D): WHETHER ANTIOCH, FROM FEBRUARY 7, 2017 TO THE END OF THE 2016-2017 SCHOOL YEAR, FAILED TO PROVIDE AN APPROPRIATE AMOUNT OF SPECIALIZED ACADEMIC INSTRUCTION IN WRITING AND MATH

The issue as alleged and adjudicated involves the amount of specialized academic instruction rather than the substantive appropriateness of the instruction.

Student contends that Antioch did not provide Student with enough specialized academic instruction in writing and math. Antioch contends that Student's instruction was sufficient to meet his special education needs in these areas.

Special education is specially designed instruction to enable the student to advance to attaining the annuals goals, and to be involved in and make progress in the general education curriculum. (20 U.S.C. § 1401(29).)

Student's November 4, 2016 IEP provided 250 minutes a day of academic instruction divided over his five special education classes. Student's instruction in all of these classes was specialized academic instruction which modified the general education curriculum. Student failed to meet his burden of proof to establish that the amount of specialized academic instruction offered by Antioch was inadequate to assist Student to progress on his writing and math goals. Student was placed in all special education

courses for academics. The preponderance of evidence presented at hearing established that Student was provided an appropriate amount of specialized academic instruction in writing and math during the 2016-2017 school year from February 7, 2017.

ISSUE 2(E): WHETHER ANTIOCH, FROM FEBRUARY 7, 2017 TO THE END OF THE 2016-2017 SCHOOL YEAR, FAILED TO PROVIDE PROGRESS REPORTS ON GOALS

Student contends that Antioch failed to report progress on Student's goals during the 2016-2017 school year. Antioch contends that progress reports were provided.

IEP's must contain a description of the manner in which the progress of the Student toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report card, will be provided. (20 U.S.C. § 1414(d)(1)(A)(III); Ed. Code, § 56345, subd. (a)(3).)

Student's November 4, 2016 IEP states that Student's progress on IEP goals will be reported quarterly by progress summary report and by report cards. There was no direct and credible evidence presented at hearing that Antioch provided any written progress summary reports on Student's progress, or that Student's grade reports contained progress on his IEP goals during the 2016-2017 school year. The failure to provide progress reports, between February 7, 2016 and the end of the 2016-2017 school year, was a procedural violation.

Educational Rights Holder 1, who was the Educational Rights Holder during the 2016-2017 school year, did not testify at hearing. Mr. Reyes, who was Student's case manager and responsible to report progress on goals, also did not testify at hearing. Progress was discussed at IEP team meetings and Student's teachers testified that they communicated Student's progress to Mr. Reyes. Student also received quarterly report cards with his special education class grades and comments. Student therefore did not sustain his burden of proof that the failure to provide progress reports resulted in a denial

of FAPE.

ISSUE 2(F): WHETHER ANTIOCH FAILED TO TIMELY PROVIDE AN ASSESSMENT PLAN FOLLOWING THE MAY 8, 2017 IEP TEAM MEETING RECOMMENDATION FOR MATH DIAGNOSTIC TESTING

Student contends that Antioch was required to provide Educational Rights Holder 1 an assessment plan for the diagnostic test that the May 8, 2017 IEP team agreed to use to determine Student's needs and what specialized academic instruction Student required. Antioch contends that an assessment plan was not required because both general education students going through the student study team and 504 process can also be referred for the diagnostic test and therefore it is not a special education assessment requiring an assessment plan. Antioch also asserts that Educational Rights Holder 2 did not have standing to claim a denial of FAPE based on lack of parental participation as a result of not receiving an assessment plan because she was not Student's Educational Rights Holder during the 2016-2017 school year.

A district must give parent an assessment plan within 15 calendar days of a referral for assessment, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation in excess of five schooldays, from the date of receipt of referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (a); 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c)(4).)

An IEP program required as a result of an assessment to determine whether the child is an individual with special needs and to determine the educational needs of the child, must be developed within a total time not to exceed 60 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the Parent's or guardian's written consent for assessment, unless the parent or guardian agrees in writing to an extension.

(Ed. Code § 56043(f)(1).) California law requires that the assessment report must be provided to the parent at the IEP team meeting regarding the assessment to allow for discussion and explanation. (Ed. Code, § 56329, subd. (a)(1).)

To obtain parental consent for an assessment, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. § 1414(b)(1); 20 U.S.C. § 1415(b)(3) and (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) Nothing in these statutes limits the duty to provide an assessment plan to assessment measures administered only to special education students.

Student was referred for the Math Diagnostic Test, conducted by an outside assessor, to determine his need for specialized math instruction. The assessment was therefore subject to the requirements set forth above. Antioch concedes that no assessment plan was provided. The failure of Antioch to provide an assessment plan to Student's Educational Rights Holder was a procedural violation. This procedural violation substantively impeded Student's right to a FAPE and the Educational Rights Holder's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student. Student, now 18, filed for due process to assert that the procedural failure denied him a FAPE.

It is undisputed that Educational Rights Holder 1 had decision making authority to act on behalf of Student at the time Antioch failed to provide the assessment plan. Student had educational rights at the time this case was filed. Antioch cited no persuasive

authority to support the claim that Student or Educational Rights Holder 2 lacked standing to assert a denial of FAPE based on Antioch's failure to provide an assessment plan to Educational Rights Holder 1. All of the cases cited by Antioch involved litigants who lacked decision making authority at the time of the alleged violation or the litigant filed on behalf of the student after the student attained the age of majority. The facts in the present case are distinguishable as Educational Rights Holder 1 had decision making authority at the time of the violation, and Student is asserting the violation of his procedural rights through the present due process action which he filed at the time he held his own educational rights.

Student sustained his burden of proof to establish that the failure of Antioch to comply with the procedural requirements for assessments denied Student a FAPE. The Math Diagnostic Test was administered to determine Student's needs and which special education class was appropriate for Student for the 2018-2019 school year. Antioch chose Algebra I, a class that Student had completed and received credit for, his entire freshman year in his prior district. Because Antioch failed to comply with required assessment procedures, the Math Diagnostic Test results were never shared with Student or his Educational Rights Holder. Student had no way of knowing whether the test results indicated that retaking Algebra I was appropriate. Given Student's very low arithmetic skills, there may have been a more basic class that could have been indicated, which would have better assisted Student to develop his basic math skills. Antioch's failure to comply with the assessment procedures of IDEA denied Student the protection of those procedures and any opportunity for his representative to question Antioch's choice of math courses in order to assist Student to receive a FAPE. This deprived Student of his right to a FAPE.

ISSUE 2(G): WHETHER ANTIOCH FAILED TO DOCUMENT THE ONE-TO-ONE TUTORING SERVICES IN HIS IEP DATED MAY 8, 2017

Student contends that Antioch was required to document, in the May 8, 2017 IEP, the tutoring services the IEP team discussed and decided to secure for Student through Contra Costa County. Antioch contends that it was not required to document the tutoring services received from Contra Costa County as they were not special education services, but were tutoring services through Contra Costa County, available to Student as a foster child.

There are detailed legal requirements for the contents of an IEP. (See 20 U.S.C. § 1414(d) and Ed. Code, § 56345.) Federal and State law each provide that there is nothing that requires that additional information be included in a child's IEP beyond what is explicitly required in 20 U.S.C. § 1414. (20 U.S.C. § 1414 (d)(1)(A)(VIII)(cc)(ii); Ed. Code, § 56345, subd. (i).) There is no requirement to document in an IEP all of the IEP team discussion regarding possible recommendations. There is also no requirement to document non-special education services. Student failed to sustain his burden of proof that Antioch's failure to document Student's tutoring services was a procedural violation or resulted in a denial of FAPE.

ISSUE 2(H): WHETHER DURING THE 2017-2018 SCHOOL YEAR, ANTIOCH FAILED TO IMPLEMENT COUNSELING AND GUIDANCE AND INDIVIDUAL COUNSELING SERVICES PURSUANT TO THE NOVEMBER 4, 2016 IEP

Student contends that Antioch was obligated to implement Student's counseling services as stated on the service page of his IEP, from February 7, 2017, to the end of the 2016-2017 school year. Antioch contends that Student's refusal to participate in counseling services when his counselor attempted to meet with him relieved Antioch of its obligation to provide the counseling services because they cannot force Student to participate in counseling.

To provide a FAPE, a school district must deliver special education and related services "in conformity with" a student's IEP. (20 U.S.C. § 1401(9).) In *Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 481 F.3d 770, the Ninth Circuit held that failure to deliver related services promised in an IEP is a denial of FAPE if the failure is "material"; meaning that "the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." (*Id.* at p. 780.) The court further held that in such a case "the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) The court found that a district's provision of only five hours of math tutoring out of a promised 10 hours was a material failure to provide services in conformance with the student's IEP. (*Id.* at p.781.)

Student's November 4, 2016 IEP required Antioch to provide 30 minutes per month of individual counseling and 30 minutes a week of vocational assessment, guidance and individual counseling services. To the extent that Student's issue asserts Antioch's failure to provide weekly vocational counseling and guidance, Student did not present any persuasive evidence that these services were not provided.

Mr. Zandi sent Student a pass for individual counseling services two times, at the beginning of the 2016-2017 school year, and Student did not respond to the pass request. On a third occasion Mr. Zandi saw Student in the office and inquired about his not responding to counseling services. Student stated that he was not interested in receiving counseling. No attempts were made by Mr. Zandi to engage Student in the counseling process between February 7, 2017 and the end of the 2016-2017 school year. It was undisputed that Student needed counseling. Student was a minor at the time that counseling services were stopped. Student's lack of participation did not excuse Antioch from providing the counseling services. Once it became apparent to Antioch that Student was not participating in counseling, Antioch was obligated to hold an IEP team meeting to discuss the situation and to determine appropriate services and supports needed to

address Student's counseling needs.

Student sustained his burden of proof that Antioch failed to provide him with 30 minutes a month of individual counseling services from February 7, 2017 to the end of the 2016-2017 school year. This was a material failure to implement Student's IEP. This failure deprived Student of the educational benefit of the counseling services which denied him a FAPE.

ISSUE 3 (A), (B) AND (C): WHETHER DURING THE 2017-2018 SCHOOL YEAR, ANTIOCH (A) FAILED TO PROVIDE NOTICE OF THE OCTOBER 31, 2017 IEP TEAM MEETING; (B) FAILED TO INVITE STUDENT'S EDUCATIONAL RIGHTS HOLDER TO THE MEETING; AND (C) PREDETERMINED THE OCTOBER 31, 2017 IEP

Student contends that Antioch failed to provide notice of the October 31, 2017 IEP team meeting and convened the meeting without the presence or knowledge of Educational Rights Holder 1, which resulted in a clear violation of FAPE. Antioch contends that notice of the October 17, 2017 IEP was provided to Educational Rights Holder 1, who did not attend the meeting. Antioch made the decision to proceed with the meeting to comply with the IDEA procedural timeline to hold the meeting. Antioch contends that holding the meeting without an Educational Rights Holder was appropriate because the deadline for the meeting was approaching and there was no Educational Rights Holder because she was being replaced.

IDEA and California state law explicitly require that student's Educational Rights Holder be part of any IEP team meeting which is charged with developing and implementing a student's IEP. (20 U.S.C. §§1401(14), 1414(d)(1)(B)(i); Ed. Code, § 56342.5.) Special education law places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. §

1415(b)(1).) The United States Supreme Court has recognized that parental participation in the special education process is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 d.2d 904].) Additionally, California law requires that the assessment report must be provided to the parent at the IEP team meeting regarding the assessment to allow for discussion and explanation. (Ed. Code, § 56329, subd. (a)(1).)

Local educational agencies convening an IEP team meeting must take steps to ensure that the Parent of an individual with special needs is present at each IEP team meeting and is afforded an opportunity to participate. Parents must be notified of IEP team meetings early enough to ensure an opportunity to attend. The meeting shall be scheduled at a mutually agreeable time and place. The notice must include the purpose, time and location of the meeting and who will be in attendance. (Ed. Code, § 56341.5, subd. (a)-(c).)

Antioch failed to provide proper notice of the October 31, 2017 IEP team meeting as required by IDEA. This was a procedural violation. Instead of proper written notice, Antioch emailed Educational Rights Holder 1 on October 16, 2017, using an email address that contained a typographical error in the email address, which was never delivered. Therefore Ms. Geraghty failed to invite Educational Rights Holder 1 to Student's annual IEP team meeting. When the Educational Rights Holder did not show up for the meeting, Antioch took no steps to contact her to determine her location or to reschedule the meeting. Instead, Antioch proceeded with the IEP team meeting without her. Ms. Geraghty conceded that she held the meeting so that she would comply with the legal requirement to hold the meeting before November 4, 2017.

Antioch's contention that there was no educational rights holder to participate in the meeting because Ms. Geraghty was told that a new Educational Rights Holder was going to be appointed, is rejected. At the time that Ms. Geraghty proceeded with the IEP

team meeting without an Educational Rights Holder, she did not have any information that the Educational Rights Holder was going to be replaced. Furthermore, the court filing presented as evidence at hearing established that Educational Rights Holder 1 was still Educational Rights Holder up to November 27, 2018, the day that Educational Rights Holder 2 was appointed. Antioch's contention that Student's attorney gave Ms. Geraghty permission to hold a part one of the IEP team meeting is also without merit as Ms. Geraghty received this information after the meeting was already convened. Additionally, Ms. Geraghty failed to inform the attorney that the meeting had already been convened when she told the attorney she would have to convene a part one of the meeting.

When confronted with the choice of complying with one procedural requirement of the IDEA or another, a district must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, courts will allow the agency reasonable latitude in making that determination. (*Doug C. v. Hawaii Dept. of Education*, 720 F.3d 1038, 1046 (9th Cir. 2013)). In *Doug C.*, the Ninth Circuit held that the decision to hold the IEP team meeting without parent on the day scheduled, after the parent informed the team that he was too ill to attend, was a denial of FAPE and not reasonable in light of the importance of the procedural requirement to ensure parental participation. The Court also held that the district's holding of a follow-up meeting, a month later, where the team went through the already completed and adopted IEP line by line, with parent present, was not enough to remedy the holding of the annual IEP team meeting without parent. The parent in *Doug C.*, had filed for due process the day before the follow-up meeting and rejected the IEP in its entirety at the follow up meeting, because it was developed and adopted, without his participation. (*Doug C.*, *supra*, at pp. 1042, 1047.)

Antioch's decision to prioritize strict compliance with IEP team meeting timelines over the procedural requirement to ensure parental participation was not reasonable

under Doug C., supra. The deadline to hold the annual IEP meeting was November 4, a few days after the October 31, 2017 meeting. Antioch took no steps to cancel and reschedule the IEP team meeting to one of the remaining days before the November 4, 2017 deadline. Had Antioch taken steps to reschedule the meeting to ensure parent participation, any violation of the procedural requirement to timely hold the meeting would likely not have risen to a violation of FAPE.

Antioch's omission of Educational Rights Holder 1 from Student's annual IEP team meeting resulted in a substantive denial of FAPE, as it prevented Educational Rights Holder from participating in Student's annual IEP team meeting and in the creation of his annual IEP. Substantial changes were made to Student's IEP, including the elimination of mental health services, the elimination of a transition goal for independent living, and reduction of the amount of Student's specialized academic instruction.

Educational Rights Holder 2 was appointed a little over a month after the October 17, 2017 IEP team meeting. She sent Ms. Geraghty an email in December 2017, introducing herself and informing Ms. Geraghty that the only IEP she was provided upon becoming Educational Rights Holder, was Student's November 4, 2016 IEP. Ms. Geraghty replied by email and attached a copy of the October 31, 2017 IEP, but made no mention of the fact that the IEP was developed without Educational Rights Holder 1's participation, despite numerous email exchange opportunities to do so.

On January 25, 2018, an addendum IEP team meeting was held to discuss Student's progress and transition services. Although the preponderance of the evidence shows that Student's October 31, 2017 IEP goals and services were not discussed at that meeting, Educational Rights Holder 2 had ample time to review both the November 4, 2016 and the October 31, 2017 IEP, between December and the January 25, 2018 IEP team meeting. Educational Rights Holder 2 raised no concerns about the October 31, 2017 IEP at the January meeting. As Educational Rights Holder, she was charged with the responsibility to

review Student's records and participate in IEP team meetings to facilitate the provision of a FAPE to Student. There was no evidence that she was prevented by the January IEP team from raising her concerns and fully participating in the meeting. She had ample opportunity to reject the October 31, 2017 IEP and when she failed to do so at the January 25, 2017 meeting, the denial of FAPE resulting from Antioch's holding of the October 31, 2017 IEP without Educational Rights Holder 2, ended.

Having found a denial of FAPE due to Antioch's failure to include Educational Rights Holder 2's participation in the October 31, 2017, IEP team meeting and in the creation of Student's IEP, from October 31, 2017 to January 25, 2018, it is not necessary to reach a determination of Student's allegations of other substantive violations during that time period. Therefore, Student's Issue 3(c), whether Antioch predetermined the October 31, 2017 IEP, is not reached or decided.

ISSUE 3(D): WHETHER ANTIOCH FAILED TO HAVE A TRANSITION OR VOCATIONAL SPECIALIST PRESENT AT THE JANUARY 25, 2018 IEP TEAM MEETING

An IEP team is required to include one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessment results; at the discretion of the parties, other individuals; and, when appropriate, the person with exceptional needs. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(b)(6).)

There is no requirement to have a transition or vocational specialist present at an IEP team meeting. Student failed to sustain his burden of proof that the failure to have a transition or vocational specialist at the IEP team meeting was a procedural violation or resulted in a denial of a FAPE.

ISSUE 3(E): WHETHER ANTIOCH, DURING THE 2017-2018 SCHOOL YEAR FROM JANUARY 25, 2018, FAILED TO HAVE A GENERAL EDUCATION TEACHER PRESENT FOR THE ENTIRETY OF ALL IEP TEAM MEETINGS

An IEP team is required to include a regular education teacher if a student is, or may be, participating in regular education. The regular education teacher, to the extent appropriate, shall participate in the development, review, and revision of the IEP. This includes assisting in the determination of positive behavioral intervention and supports and other strategies for the student, and the determination of supplementary aids and services, program modifications, and supports of school personnel, that will be provided for the pupil to advance appropriately toward the student's annual goals; to be involved and make progress in the general education curriculum; and to be educated and to participate with other children with and without disabilities. (20 U.S.C. § 1414(d)(1)(B)(ii); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b)(2).)

There is no requirement that the regular education team member be present for the entire IEP team meeting. Student failed to sustain his burden of proof that Antioch's failure to have a general education present for the entirety of all IEP team meetings was a procedural violation or resulted in a denial of FAPE.

ISSUE 3(F): WHETHER ANTIOCH PROVIDED PRIOR WRITTEN NOTICE OF ITS DECISION, DURING THE JUNE 4, 2018 IEP TEAM MEETING, TO DENY PARENT'S REQUEST FOR ONE-TO-ONE TUTORING

Student contends that Educational Rights Holder 2 never received any prior written notice of Antioch's decision to deny her request for one-to-one tutoring for Student. Antioch asserts that it sent the prior notice via certified mail to the only address that it had for Parent, which was care of the Court Appointed Special Advocate Office in San Francisco. Antioch claims that it is presumed that the certified letter was received by Parent.

A school district must provide prior written notice to the parents of a student whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the student, or the provision of a FAPE to a student. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).)

California's Evidence Code furnishes a useful analogy for this situation. Section 641 of the Evidence Code creates a presumption that a properly addressed and mailed letter is presumed to have been received by the addressee, but it is a rebuttable presumption. (Ev. Code, § 604. Once the responding party testifies that they did not receive the letter, the presumption of delivery ceases to exist. (*Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1479, 1481.).

It is undisputed by the parties that Antioch was required to send prior written notice to Educational Rights Holder 2 when it refused to provide the requested services. Educational Rights Holder 2 testified that she never received the prior written notice from Antioch. In the past, the Court Appointed Special Advocate's Office has promptly contacted her and forwarded any mail to her when mail is received at the office with her name listed as the intended recipient. Any presumption that the prior written notice was received, was rebutted by Educational Rights Holder's testimony. Antioch provided no evidence at hearing to indicate that the prior written notice was received by either the Court Appointed Special Advocate Office or Educational Rights Holder 2.

Failure to provide prior written notice was a procedural violation. Educational Rights Holder 2 testified that she received the June 4, 2018 IEP at some point in the summer following her trip out of the country. The notes of the IEP discuss the denial of tutoring and the reasons therefore. Student failed to sustain his burden of proof that the failure to provide prior written notice resulted in a denial of FAPE. The preponderance of the evidence presented at hearing established that the failure to provide prior written

notice did not significantly impede Educational Rights Holder 2's opportunity to participate in the decision making process regarding the provision of FAPE to Student, nor did the failure to provide prior written notice deprive Student of educational benefit.

ISSUE 3(G): WHETHER ANTIOCH, DURING THE 2017-2018 SCHOOL YEAR, FROM JANUARY 25, 2018, FAILED TO PROVIDE PROGRESS REPORTS ON GOALS

Student contends that Antioch failed to provide progress reports during the entire 2017-2018 school year. Antioch contends that it provided written progress reports on goals to Educational Rights Holder 2, on March 30, 2018. Antioch asserts that Student's progress in his classes was reported at all IEP team meetings and therefore any failure to provide written quarterly reports did not constitute a denial of FAPE.

Student sustained his burden of proof that quarterly progress reports were not provided throughout the 2017-2018 school year, from January 25, 2018, including the March 30, 2018 documentation of progress contained in Student's June 4, 2018 IEP. The evidence established that the June 4, 2018 IEP was prepared at some time after the June 4, 2018 IEP team meeting and was sent to Educational Rights Holder 2, sometime in the summer, after the 2017-2018 school year ended.

The failure to provide progress on goals is a procedural violation of IDEA. However, there were three IEP team meetings held on January 25, 2018, May 24, 2018, and June 4, 2018 during which Student's progress was described by Student's teachers. Additionally, Student and Educational Rights Holder 2 constantly monitored Student's progress on the electronic student information system available to Students and parents. The failure of Antioch to provide progress reports during the 2017-2018 school year did not significantly impede Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, impede Student's right to a FAPE, or deprive Student of educational benefit. No denial of FAPE resulted from the procedural violation.

ISSUE 3(H): WHETHER ANTIOCH FAILED TO OFFER ACCOMMODATIONS IN THE OCTOBER 31, 2017 IEP, FROM JANUARY 25, 2018 TO THE END OF THE 2017-2018 SCHOOL YEAR, SPECIFICALLY, CHECKS FOR UNDERSTANDING; REPEATED INSTRUCTIONS FOR TESTS, ASSIGNMENTS, AND HOMEWORK; POSITIVE REINFORCEMENT; FLEXIBLE SEATING; FLEXIBLE SCHEDULING; AND SMALL GROUP SETTING FOR TESTS

Student asserts that the accommodations that were contained in Student's November 4, 2016 IEP were required to be included in Student's October 31, 2017 IEP. Antioch asserts that the accommodations listed in the October 31, 2017 IEP were appropriate. Antioch maintains that most of the accommodations, with the exception of small group setting for tests, are provided to all students as part of best practice teaching strategies.

An IEP team is required to determine whether a student needs a particular device, or service, including intervention, accommodation, or other program modification, in order for the student to receive a FAPE. (20 U.S.C. § 1414(d)(3)(B); Ed. Code, § 56341.1, subd. (b).) There is no requirement to retain prior accommodations year to year. Testimony at hearing established that most of the disputed accommodations were provided by teachers to all students as part of best practice teaching strategies. There was no evidence presented at hearing that any of the disputed accommodations were denied to Student. Student failed to sustain his burden of proof that the failure to include the disputed accommodations in the October 31, 2017 IEP was a procedural violation of IDEA or resulted in a denial of FAPE.

ISSUE 3(I): WHETHER ANTIOCH, DURING THE 2017-2018 SCHOOL YEAR, FROM JANUARY 25, 2018, FAILED TO OFFER GOALS IN ALL AREAS OF NEED, SPECIFICALLY, TRANSITION, READING, WRITING AND MATH

Student contends that his transition goals did not meet his transition needs as he required a goal to assist him to transition from school to independent living. Antioch

maintains that Student's goals were developed in all of these areas of need.

It is undisputed by the parties that Student had educational needs in the areas of transition, writing, reading and math. Student's needs remained the same since his last school year. The preponderance of the evidence at hearing established that Antioch developed a transition goal, a multi-paragraph essay writing goal, a reading goal and a math goal as part of his October 31, 2017 IEP to address his need in these areas.

Student failed to sustain his burden of proof on this issue.

ISSUE 3(J): WHETHER ANTIOCH DENIED STUDENT A FAPE FROM JANUARY 25, 2018, BY FAILING TO PROVIDE ACCURATE PRESENT LEVELS OF PERFORMANCE IN THE OCTOBER 31, 2017 IEP

Student contends that the October 31, 2017 IEP contains the same present levels of performance as used in Student's November 4, 2016 IEP, taken from his 2016 triennial assessment, and therefore the information no longer reflects Student's current levels. Antioch contends that Student's October 31, 2017 IEP does contain accurate present levels of performance.

An annual IEP must contain a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).) The present levels of performance create baselines for designing educational programming and measuring a student's future progress toward annual goals.

Student's October 31, 2017 IEP contains a page entitled Present Levels of Academic Achievement and Functional Performance, which contains results of state testing indicating Student was not meeting the standards in the areas of English Language Arts and Math. His academic scores from his 2016 triennial testing were in the very low range except for written expression, which was in the low range.

Student's present levels as stated in the October 31, 2017 IEP are consistent with Dr. Baikova's assessment scores later in the same school year. Student's assertion that Student's present levels of performance contained in his October 31, 2017 IEP are not accurate, was not supported by the evidence presented at hearing. Student's present levels had not substantially changed since they were described in the triennial IEP document. Student's present levels of performance in the October 31, 2018 IEP are accurate. Student therefore failed to sustain his burden of proof on this issue.

ISSUE 3(K): WHETHER ANTIOCH DENIED STUDENT A FAPE DURING THE 2017-2018 SCHOOL YEAR, FROM JANUARY 25, 2018, BY FAILING TO PROVIDE STUDENT WITH SPECIALIZED READING SERVICES

Student's and Antioch's contentions mirror those made concerning the 2016- 2017 school year. Student's reading needs throughout the 2017-2018 school year remained unchanged, as evidenced by his present levels of performance on his October 31, 2017 IEP. The evidence presented at hearing established that Antioch continued to fail to provide Student with a specialized reading program during the 2017-2018 school year, from January 25, 2018. Antioch's failure to provide these services resulted in Student's loss of the educational benefit of learning to read, and denied him a FAPE.

ISSUE 3(L): WHETHER ANTIOCH DENIED STUDENT A FAPE DURING THE 2017-2018 SCHOOL YEAR, FROM JANUARY 25, 2018, BY FAILING TO OFFER STUDENT AN APPROPRIATE TRANSITION PLAN AND SERVICES

Student contends that his transition plan was not appropriate because it did not provide needed instruction to meet his IEP goal to research jobs in his career interest; did not contain any community activities; and omitted an independent living goal, which is an important area of Student's need as he transitions from foster care. Antioch contends that Student's transition plan and services were based on age appropriate assessments and were appropriate to meet Student's transition needs.

Student's IEP transition goal generally required him to demonstrate his knowledge of jobs in his area of interest by listing corresponding requirements and qualifications, he would need for those jobs. The baseline for the goal states that Student requires the research skills needed in order to make appropriate college and career choices. This baseline establishes that Student does not have the skills to accomplish the goal by himself and requires instruction on how to accomplish it. Assessment was needed to determine what type of instruction or services he required to gain the necessary research skills. Instruction is a required part of transition services if a Student's individual needs require it. The instruction or services he needs to develop research skills should have been listed in his transition plan. There was no evidence presented at hearing that such assessment, services or instruction was provided to Student.

Student's transition plan contains no community activities to support his goal. All of the activities in his transition plan are classroom based. Student requires skills to transition to the community. Without community experience, Student will be at risk of not developing needed skills to work, navigate college, and function independently as an adult. Community experiences are a required component of transition services. There was no evidence presented at hearing that services were provided to Student by Antioch in the community as part of Student's transition plan and services.

Antioch omitted a goal for independent living. Student will be transitioning from foster care to independent living and a post-secondary goal for independent living is therefore especially important. The evidence presented at hearing established that a transition goal to support post-secondary independent living is essential and should have been included in his transition plan for the 2017-2018 school year, based on his individual needs.

Student's IEP provides for 30 minutes a month for college awareness services and 30 minutes a month for career awareness services. Given the transition needs discussed

above, the services are inadequate and inappropriate to meet his transition needs.

Providing more community experiences and specific instruction will require more frequent and intensive services.

The preponderance of the evidence presented at hearing established that Student's transition goal and services for the 2017-2018 school year were not appropriate and did not comply with the transition services requirements set forth in IDEA. Antioch's failure to provide an appropriate transition plan and services pursuant to his October 31, 2017 IEP denied Student a FAPE as Student was deprived of the educational benefit of community involvement and preparation for independent living that IDEA requires.

ISSUE 3(M): WHETHER ANTIOCH DENIED STUDENT A FAPE DURING THE 2017-2018 SCHOOL YEAR, FROM JANUARY 25, 2018, BY FAILING TO OFFER AN APPROPRIATE AMOUNT OF SPECIALIZED ACADEMIC INSTRUCTION IN THE AREAS OF WRITING AND MATH

Student contends that Student's skills in the areas of writing and math required more specialized instruction than he was receiving. Antioch contends that Student's specialized academic instruction was sufficient to meet his needs in these areas.

Student was enrolled in a special education English class and a special education math class during the first semester of the 2017-2018 school year. He was enrolled in a special education study skills class, the second semester of that year. His specialized academic instruction reflects Student's time in those classes, of 100 minutes per day, five days a week. Student failed to sustain his burden of proof that the amount of specialized academic instruction was not adequate to allow him to work toward his writing and math goals.

ISSUE 3(N): WHETHER ANTIOCH DENIED STUDENT A FAPE BY FAILING TO DOCUMENT THE ONE-TO-ONE TUTORING SERVICES RECOMMENDED IN STUDENT'S

OCTOBER 31, 2017; JANUARY 25, 2018, AND MAY 24, 2018 IEP TEAM MEETINGS

There is no IDEA requirement to document all of the IEP team discussion in an IEP team meeting, regarding possible recommendations. There was no evidence presented at hearing that any discussion of tutoring occurred at the October 31, 2017 IEP team meeting. At the January 25, 2018 and May 24, 2018 IEP team meetings, the request for tutoring was discussed but never offered. A follow-up IEP team meeting was scheduled to the May IEP team meeting to make a decision as to the tutoring, and it was declined at that meeting. Antioch was not required to document Student's tutoring services in the aforementioned IEP's, as no offer of FAPE regarding the tutoring services was made. Student's contention, raised in his closing brief, that Antioch was required to document the 12 sessions of tutoring services that Student received, is also rejected as there is no requirement to document non-specialized services in Student's IEP. Student failed to sustain his burden of proof that Antioch's failure to document Student's tutoring services was a procedural violation or resulted in a denial of FAPE.

ISSUE 3(O), 3(P) AND 3(Q): WHETHER ANTIOCH DENIED STUDENT A FAPE DURING THE 2017-2018, AND 2018-2019 SCHOOL YEAR, BY FAILING TO CONTRACT WITH DR. CARINA GRANDISON, STUDENT'S INDEPENDENT EDUCATIONAL EVALUATION ASSESSOR, AS AGREED TO BY ANTIOCH ON MAY 21, 2018; BY PLACING UNREASONABLE REQUIREMENTS FOR FUNDING OF AN INDEPENDENT EDUCATIONAL EVALUATION; AND FAILING TO FUND AND FACILITATE THE INDEPENDENT NEUROPSYCHOLOGICAL EVALUATION AS OFFERED IN ANTIOCH'S LETTER, DATED MAY 21, 2018

Student contends that Antioch was obligated to fund Student's independent educational evaluation once Antioch agreed to do so on May 21, 2018. Student contends that Antioch delayed timely contracting with Dr. Grandison, placed unreasonable requirements for the funding of independent educational evaluations, and failed to fund and facilitate the independent educational evaluation which all resulted in a denial of

FAPE to Student. Antioch contends that it agreed to fund the independent educational evaluation and developed a reasonable contract with Dr. Grandison that was never executed due to Antioch's Board of Directors' failure to approve the contract as redacted by Dr. Grandison. Antioch contends that it thereafter continued to agree to fund and facilitate the independent educational evaluation, but Student never chose another assessor or pursued the assessment.

A student may be entitled to an independent educational evaluation if he or she disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].) In response to a request for an independent evaluation, an educational agency must, without unnecessary delay, either: file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

The following evidence presented at hearing is undisputed. On May 21, 2018, Antioch agreed to fund an independent educational evaluation and Dr. Grandison was not chosen as the preferred assessor until August 27, 2018. Therefore, Student did not sustain his burden of proof as to issue 3(o), as Antioch never agreed to contract with Dr. Grandison in the May 21, 2018 letter.

Antioch developed a contract which was sent to Dr. Grandison on September 10,

2018. The contract was subject to board approval and the next board meeting was November 19, 2018. Dr. Grandison made changes to the contract by redacting a term requiring her to add Antioch to her professional liability insurance as an additional insured. She returned the signed and redacted contract to Antioch on October 9, 2018. Between that date and the board meeting, Antioch communicated with Dr. Grandison asking for specifics as to her objections to the contract and trying to reassure her and inquire as to anything Antioch could do to resolve her contract disagreement, but Dr. Grandison never replied.

Student, who turned 18 in the summer of 2018, now held his educational rights, and was apprised by Antioch on November 2, 2018, through written correspondence, that Dr. Grandison did not agree to all of the terms of the contract, and the contract, with changes by Dr. Grandison will be presented to the board for consideration on November 14, 2018. Antioch's Board of Directors did not approve the contract on November 14, 2018, and the contract was not executed. On November 15, 2018, Antioch sent Student a letter informing him that the board did not approve the contract, and that Antioch stood ready to fund an independent educational evaluation by another assessor of Student's choice. Antioch attached a list of assessors and procedural safeguards. Student, who held his own educational rights, did not choose an assessor or respond in any way to Antioch's correspondence. Student therefore failed to sustain his burden of proof as to issue 3(q).

Dr. Grandison never became Student's independent educational evaluation assessor for the assessment agreed to by Antioch on May 21, 2018. Any assessment conducted by Dr. Grandison is a private assessment. Dr. Grandison conducted her assessment of Student with full knowledge that she had no contract with Antioch and may not be paid. Any expectation that Antioch is obligated by agreement to pay Dr. Grandison for her assessment is without legal basis. But for Student's failure to respond by choosing an assessor, Antioch would have funded and facilitated an independent

educational evaluation.

The basis of Student's contention in issue 3(p) is that the contract term requiring Antioch to be named as an additional insured, was unreasonable. Student did not sustain his burden of proof that the contract term with which Dr. Grandison disagreed, was unreasonable. Dr. Rubalcava credibly testified that the contract term Dr. Grandison disputed was a common term used in all of Antioch's independent educational evaluation contracts and has never before been challenged by assessors.

ISSUES 3(R) AND 3(S): WHETHER ANTIOCH FAILED TO MEANINGFULLY CONSIDER DR. BAIKOVA'S PRIVATE EVALUATION AND RECOMMENDATIONS AT THE MAY 24, 2018, AND JUNE 4, 2018 IEP TEAM MEETINGS AND FAILED TO OFFER ACCOMMODATIONS AND SERVICES RECOMMENDED BY DR. BAIKOVA

Student contends that Antioch failed to meaningfully consider Dr. Baikova's assessment at the May 24, 2018, and June 4, 2018 IEP team meetings, or to offer her recommended services and accommodations. Antioch contends that the report was appropriately considered by Antioch, and goals and accommodations, consistent with Dr. Baikova's recommendations, were included in the June 4, 2018 IEP.

In developing each child's 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, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3); Ed. Code, § 56341.1). As part of any reevaluation of Student, the IEP team must consider existing assessment data, including evaluations and information provided by the parents of a student, current classroom based assessments and observations, and teacher and related service providers' observations. (20 U.S.C. § 1414(c)(1)(A)(i); Ed. Code, § 56381, subd. (a)(2)(b)(1)).

The preponderance of the evidence presented at hearing established that the IEP

team meaningfully considered Dr. Baikova's report. At the May 24, 2018, IEP team meeting, each team member was provided with a copy of Dr. Baikova's report. Dr. Baikova summarized her report. The IEP team discussed and considered her reported assessment results. Mr. Wilkins asked questions about her assessment findings. The team agreed to further review her report. On June 4, 2018, a continuation meeting was held to discuss Antioch's offer of FAPE. There was no indication that the IEP team discussed Dr. Baikova's report, but Antioch added goals for reading decoding and fluency, and math decoding and problem solving; and accommodations of visual supports, notetaker, and auditory textbooks. The added goals and accommodations were consistent with the recommendations of Dr. Baikova.

Student did not sustain his burden of proof that Antioch failed to consider Dr. Baikova's assessment. The District was under no obligation to accept the recommended services in the report; it needed only to consider the report, and it did so.

ISSUE 4(A): WHETHER ANTIOCH, DURING THE 2018-2019 SCHOOL YEAR, FAILED TO PROVIDE PROGRESS REPORTS ON GOALS

Student contends that Antioch failed to provide progress reports on goals during the 2018-2019 school year. Antioch contends that quarterly progress reports were provided and no denial of FAPE resulted from any missed progress reports because progress on goals were reported at the November 27, 2018 IEP meeting and throughout the year through communications between Student and teacher.

The evidence presented at hearing established that Antioch provided progress reports on goals on October 23, 2018 and March 13, 2019. Progress on goals was also reported at Student's November 27, 2018 IEP team meeting. Student's October 23, 2018, and March 13, 2019 progress reports on goals were mailed to him by certified mail. As of the date of hearing, three progress reports for the 2018-2019 school year were required. Antioch failed to provide Student's second quarter progress report, which was a

procedural violation. However, Student and Educational Rights Holder 2 closely monitored his progress using the student information system available to students and parents to review grades and progress. Student failed to sustain his burden of proof that the procedural violation resulted in a denial of FAPE.

ISSUE 4(B): WHETHER ANTIOCH DENIED STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR BY FAILING TO ENSURE A GENERAL EDUCATION TEACHER WAS PRESENT THROUGHOUT THE NOVEMBER 27, 2018 IEP TEAM MEETING

As previously determined, there is no IDEA requirement to provide a general education teacher for the entirety of an IEP team meeting. Student failed to sustain his burden of proof that Antioch's failure to have a general education present for the entirety of the November 27, 2018 IEP team meeting was a procedural violation or resulted in a denial of FAPE.

ISSUE 4(C): WHETHER ANTIOCH, DURING THE 2018-2019 SCHOOL YEAR, BY FAILED TO OFFER STUDENT SPECIALIZED READING SERVICES

Student contends that by the beginning of the 2018-2019 school year, Student's need for a specialized reading program was obvious and that Antioch's failure to provide such instruction denied Student a FAPE. Antioch contends that Student's cognitive functioning is too low for him to be amenable to reading remediation using a specialized reading program, and he does not need a reading program because he can in fact read.

The evidence presented at hearing established that Student's reading scores remained unchanged from his triennial assessment in 2016, based on his scores in Dr. Baikova's assessment. Antioch documented Student's inability to read when it listed "learning to read", as a target goal for Student in the wording of his self-correction and improvement goal, which was added to the June 4, 2018 IEP and continued as a goal in the November 27, 2018 IEP. Antioch added goals for decoding and fluency and accommodations of auditory textbooks and note-taker assistance, in Student's June 4,

2018 IEP. Yet a specialized reading program was never provided to Student. Instead, the June 4, 2018 IEP team decided to place Student in twelfth grade general education English classes for the 2018-2019 school year, and the IEP team decided not to continue Student's reading decoding and fluency IEP goals at the November 27, 2018 IEP team meeting.

Antioch was aware that Student could not read, and his scores in reading continued to require a specialized reading program which includes evidence-based, multi-sensory, direct, explicit, structured and sequential instruction. (Ed. Code § 56335, subd. (a).) As a student with a specific learning disability, Student is entitled to receive this reading instruction as part of his specialized academic instruction.

Student's passing grades and earning of a high school diploma alone, did not prove that he could read or did not need a reading program. His test scores showed that his reading was at a very low level, and the teachers who testified otherwise never tested him to determine his reading level.

Student sustained his burden of proof, that Antioch failed to provide him with a specialized reading service. This failure deprived him of the educational benefit of learning to read, which is essential in Student's preparation for further education, work and independent living.

ISSUE 4(D): WHETHER ANTIOCH DENIED STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR BY FAILING TO OFFER STUDENT AN APPROPRIATE TRANSITION PLAN AND SERVICES

Student contends that Student's transition plan and services were duplicative of his transition plan in his October 31, 2017 IEP, which indicates a lack of appropriate vocational services and corresponding lack of Student progress. Student contends that the transition services added to the November 27, 2018 transition plan for independent living, required instruction, support and community activities. Antioch contends that the

transition plan is appropriate, Student's inability to identify a career interest is not unusual for a student his age, and the repetition of the career interest goal is not indicative of inappropriate transition services.

Student sustained his burden of proof by overwhelming evidence that Antioch failed to provide him with an appropriate transition plan and services. Antioch's transition plan and services failed to consider Student's functional and academic skills in the development of his goals. Antioch failed to assess the reason for Student's lack of progress on the only repeated IEP goal provided to Student in three years, to support his transition to post-secondary life. The services lacked coordination. The Contra Costa County Transition Partnership Program, which provided Student with paid work experience was not involved in Student's transition planning and was not reflected in Student's transition plan. There are many essential agencies that should have been involved in Student's coordinated transition services. Antioch has done almost nothing to prepare Student, now 18 and close to aging out of foster care, for further education, work or independent living.

Many of Dr. Baikova's assessment recommendations addressed these particular vocational needs of Student. Antioch had access to this report and its recommendations yet Student's case manager, Ms. Lambonao, never reviewed the report and recommendations. She was not at the May 2018 IEP team meeting to receive or to consider Dr. Baikova's assessment report. Ms. Lambonao drafted Student's 2018-2019 school year goals and transition plan. Student's transition plan and services evidenced no planning, coordination, or consideration of Student's unique needs, strengths, or abilities, or his most recent private assessment. There was no evidence that any of the activities listed in the plan were provided to Student or supported with direct instruction either in the classroom or in the community.

Student sustained his burden of proof that Antioch failed to provide him with an

appropriate transition plan and services in the 2018-2019 school year and that the failure to provide these services deprived him educational benefit and denied him a FAPE.

ISSUE 4(E): WHETHER ANTIOCH, DURING THE 2018-2019 SCHOOL YEAR, FAILED TO PROVIDE AN APPROPRIATE AMOUNT OF SPECIALIZED ACADEMIC INSTRUCTION IN WRITING AND MATH

During the 2018-2019 school year, Student's IEP required that he receive 100 minutes a day of specialized academic instruction from the beginning of the school year until his IEP meeting on November 27, 2018. After the November IEP team meeting, his specialized academic instruction was increased to 600 minutes a week, which added 20 minutes of specialized academic instruction per day. Student failed to sustain his burden of proof that the amount of specialized academic instruction offered by Antioch was inadequate to allow Student to work toward his writing and math goals.

ISSUE 4(F): WHETHER ANTIOCH DENIED STUDENT A FAPE BY FAILING TO OFFER GOALS IN ALL AREAS OF NEED, SPECIFICALLY, TRANSITION, READING, WRITING, AND MATH

Student contends that Antioch failed to provide goals in Student's areas of transition, reading, writing and math needs. Antioch maintains that Student's goals were developed in all of these areas.

It is undisputed by the parties that Student had educational needs in the areas of transition, reading, writing, and math. Student's needs remained the same since his last school year. The preponderance of the evidence at hearing established that Antioch developed a transition goal, a writing goal, reading goals and math goals as part of his November 27, 2018 IEP. Student failed to sustain his burden of proof that Antioch failed to offer goals in these areas.

REMEDIES

Student requests Antioch to fund the cost of an independent assistive technology assessment and an independent vocational assessment, including the cost of the assessors' attendance at an IEP team meeting to review the assessment results, and to offer services and goals in all areas of need, and adequate accommodations. Student requests 900 hours of a structured literacy program with an educational therapist of Student's choice. Student requests that Antioch convene an IEP team meeting to offer Student an appropriate transition program, such as Fred Finch, a residential transition program, to develop his skill deficits in the areas of postsecondary education, employment and independent living. Student also requests 100 hours of compensatory transition services. Student requests Antioch to fund Student's transportation for all requested compensatory relief, such as by providing Student with a bus pass. Antioch requests that Student's requested relief be denied.

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia*, (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

Staff training can be an appropriate remedy for a Student who was denied a FAPE;

the IDEA does not require compensatory education services to be awarded directly to a student. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid*, *Student v. Reed Union School District*, (Cal. SEA 2008) 52 IDELR 240 [109 LRP 22923] [requiring training on predetermination and parental participation in IEPs].)

The main purposes of the IDEA are to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for higher education, employment and independent living, and 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).)

Student is an African American young man who has been in the foster care system all of his life. He has severe learning disabilities and was unable to access critical instruction in basic academic skills when such instruction is typically provided to students, due to his overriding need for mental health services caused by years of severe trauma. Before coming to Antioch, Student received these mental health interventions which gave him the necessary coping skills to finally access services to address his complex learning needs. Upon his arrival, Antioch assessed Student and identified his multiple and severe learning disabilities for the first time in Student's life, and then failed to provide him with the specialized reading services his disability required and appropriate transition services to prepare him for life after high school.

As of the last day of hearing, Student was on track to graduate with a diploma. An individual with exceptional needs who graduates with a diploma is no longer eligible for

special education and related services. Given Student's foster care status, illiteracy, age, and graduation status, determining appropriate remedies reasonably calculated to provide Student the educational benefits that likely would have accrued from the special education services that Antioch should have supplied in the first place, required careful and thoughtful consideration of the facts of this case and in light of Student's issues as plead and proven at hearing.

Student sustained his burden of proof that Antioch denied Student a FAPE by: failing to assess him in the areas of assistive technology and transition; failing to provide him with individual counseling services and with a reading IEP goal from February 7, 2017, to the end of the 2016-2017 school year; failing to provide Student with specialized reading services and appropriate transition plans and services from February 7, 2017 to April 30, 2019; failing to provide notice of his October 31, 2017 annual IEP team meeting to his Educational Rights Holder, and to invite his Educational Rights Holder to the October 31, 2017 IEP team meeting; and failing to provide an assessment plan for the math diagnostic test.

To compensate for Antioch's failure to assess Student in the area of assistive technology, Antioch shall fund the cost of an independent assistive technology assessment by a nonpublic agency of Student's choice, for the purpose of identifying assistive technology to assist student to work toward his postsecondary goals for further education, employment and independent living. Student's listening comprehension is in the average range and he is able to express his thoughts and ideas verbally but has difficulty with the mechanics of writing and spelling. Student's goal is to go to the local community college and he will benefit from assistive technology to access his instruction, to listen to his textbooks, to support his written work, and to demonstrate his knowledge to his instructors. Had Antioch conducted this testing following the triennial assessment in 2016, Student would likely have been provided with assistive technology and provided

with training in the use of the technology. Therefore, it is reasonable for Antioch to fund the cost of any recommended training in the use of recommended assistive technology in order to provide Student with the educational benefit he was deprived of as the result of Antioch's failure to assess Student.

To compensate for Antioch's failure to assess Student in the area of transition, Antioch shall fund the cost of an independent functional vocational assessment by a nonpublic agency of Student's choice. Ms. Peoples established that Student's lack of progress on his transition goals was likely the result of unidentified obstacles including social, academic, mobility, and functional life skills, which can only be identified through a comprehensive vocational assessment. Had Antioch conducted this assessment upon Student's first indication of lack of progress, he likely would have been provided with necessary and appropriate instruction. It is reasonable for Antioch to fund the cost of instruction identified by the vocational assessment to address Student's unique obstacles to further education, employment and independent living in a similar timeframe that Antioch had the opportunity to serve Student. The purpose of the functional vocational assessment is also to determine Student's career interests, to identify reasonable postsecondary goals, to identify agencies and community opportunities to support Student in his postsecondary goals, and to inform the process of developing a detailed plan for Student to eventually reach those goals.

Antioch failed to provide Student with specialized reading services throughout the timeframe at issue in this case. Antioch shall provide a bank of tutoring hours by a nonpublic agency of Student's choice to be provided at a frequency and duration of at least two hours per week in a one-to-one setting, using specialized reading services that conform to the requirements of Education Code 56335.

Antioch failed to provide Student with appropriate transition plans and services throughout the timeframe at issue in this case and Student's IEP vocational services were

inadequate in amount to provide services required by IDEA, especially in light of Student's functioning. Student did not establish, by a preponderance of the evidence, that Student required a residential program to remedy Antioch's failure to provide appropriate transition services. Antioch shall fund a bank of transition services for Student, which may include vocational counseling, academic, social, mobility, functional life skill development, and vocational programs, as appropriate to prepare Student for further education, employment, and independent living, as informed by Student's functional vocational assessment.

Antioch failed to provide Student with individual counseling services from February 7, 2017, to the end of the 2016-2017 school year. Antioch shall therefore provide four hours of individual counseling services to Student by a nonpublic agency of Student's choice.

Antioch engaged in serious procedural violations. These included Antioch's failure to provide Educational Rights Holder 1 with an assessment plan for the math diagnostic test following the May 8, 2017 IEP team meeting, and Antioch's failure to invite Educational Rights Holder 1 to Student's October 31, 2017 IEP team meeting and convening the meeting without the presence or participation of Educational Rights Holder 1. These violations resulted in significantly impeding Educational Rights Holder's participation in the decision making process regarding the provision of FAPE to Student. Antioch also prioritized its responsibility to assist Student to obtain a high school diploma over its mandate to provide Student with special education and related services to meet his unique needs and to prepare him for further education, employment and independent living. To remedy these failures, Antioch shall conduct trainings for Deer Valley High School special education teachers and Antioch's special education administrators.

ORDER

1. Antioch shall fund the cost of an independent assistive technology

assessment, through direct contract, by a nonpublic agency of Student's choice, who also meets Antioch's criteria for such assessment, not to exceed \$2500.00. If Student has not graduated from high school, Antioch shall convene an IEP team meeting to review the results of the assessment and to determine appropriate assistive technology training for Student and staff, and equipment for Student, and shall fund the cost of the assessor to attend the meeting. Whether or not Student has graduated, Antioch shall fund the cost of the recommended assistive technology training through direct contract, not to exceed \$500.00. The assessment must be completed within 90 days of the issuance of this decision.

2. Antioch shall fund the cost of a functional vocational assessment through direct contract, by a nonpublic agency of Student's choice, who meets Antioch's criteria for such assessments, at a cost not to exceed \$2500.00. If Student has not graduated with a diploma, Antioch shall convene an IEP team meeting to review the results of the assessment and to offer the recommended services. The assessment must be completed within 90 days of the issuance of this decision.

3. Antioch shall fund 174 hours of specialized reading services through direct contract, by an educational therapist or reading specialist of Student's choice, in a one-to-one setting, who is trained and experienced in the provision of reading instruction that complies with Education Code Section 56335, not to exceed \$125.00 per hour.

4. Antioch shall fund the cost of 100 hours of transition services through direct contract with a nonpublic agency, not to exceed \$125.00 per hour, which may include vocational counseling, academic tutoring, social skills training, mobility training, vocational programs, and functional life skills training, consistent with the recommendations of Student's functional vocational assessment and Student's postsecondary goals related to further education, employment and independent living.

5. Antioch shall fund Student's transportation to all compensatory services by

funding a bus pass for Student, or by funding other agreed upon transportation.

6. Student shall have until August 31, 2022 to utilize the funds for services set forth above. Student may obtain these services at any time during the year, including summers, weekends, and weekdays.

7. Antioch shall provide special education teachers at Deer Valley High School and special education administrators: a one-hour training on the importance of ensuring meaningful parent participation in the decision making process regarding the provision of a FAPE for their children; a two- hour training on balancing the responsibility to assist Students to graduate with a diploma and the special education mandate to provide Students special education and related services to meet their unique needs and to prepare students for further education, employment and independent living; and a three-hour training on the dyslexia Guidelines issued by the California Department of Education and the requirements of Education Code section 56335, which includes training on the identification of students with dyslexia.

8. The trainings listed above shall be provided by outside special education attorneys or other trained individuals who are not employed by Antioch. The trainings shall be completed by August 31, 2020. Antioch shall inform Student and or Student's Educational Rights Holder in writing, following the completion of the trainings. The notification must include the name of the trainer, the subject matter of the training, the time and date of the training, and the number of participants in the training.

9. All of Student's remaining requests 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, Student prevailed on Issues 1, in part; 2(a), in part; 2(b); 2(c); 2(f); 2(h); 3(a); 3(b); 3(k); 3(l); 4(c); and 4(d). Antioch prevailed on Issues 1, in part; 2(a), in part; 2(d);

2(e); 2(g); 3(d); 3(e); 3(f); 3(g); 3(h); 3(i); 3(j); 3(m); 3(n); 3(o); 3(p); 3(q); 3(r); 3(s);
4(a); 4(b); 4(e); and 4(f). Issue 3(c) was not reached or decided.

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: July 17, 2019

/s/

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings