

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

**IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,**

v.

**LOS ANGELES UNIFIED SCHOOL DISTRICT
OAH CASE NO. 2019080644**

DECISION

Parent on behalf of Student filed a due process hearing request, referred to as the complaint, with the Office of Administrative Hearings, referred to as OAH, State of California, on August 16, 2019, naming Los Angeles Unified School District.

Administrative Law Judge Alexa J. Hohensee heard this matter in Van Nuys, California on October 8, 9 and 10, 2019.

Attorneys Surisa E. Rivers, Wilmer J. Harris, and Sarah Dawley represented Student. Student's parents attended the hearing and testified on behalf of Student. OAH provided a Spanish language interpreter.

Attorneys Erin G. Frazor and Amanda J. Cordova represented Los Angeles. Eric Young, Research and Resolution Specialist, and Patrick D. Johnson appeared on behalf of Los Angeles.

OAH granted the parties' request for a continuance to October 28, 2019, to file written closing briefs. The parties filed timely written closing briefs. On October 28, 2019, the record was closed and the matter was submitted for decision.

ISSUES

The issues, as refined on the first day of hearing on the record, were as follows:

1. Did Los Angeles deny Student a free appropriate public education, referred to as a FAPE, when it failed to offer Student:
 - a. Placement in the least restrictive environment from May 16, 2018, to June 7, 2019; and,
 - b. Appropriate augmentative and alternative communication services from May 16, 2018, to August 16, 2019?
2. Did Los Angeles deny Student a FAPE when it failed to implement Student's augmentative and alternative communication services at home during the 2019 extended school year?
3. Did Los Angeles's May 30, 2019 individualized education program, referred to as an IEP, deny Student a FAPE by not offering appropriate augmentative and alternative communication implementation training for Student, his parents, and teachers?

SUMMARY OF DECISION

The parties entered into a settlement agreement on May 15, 2018 that resolved all claims under the Individuals with Disabilities Act through that date, and provided parental consent to implementation of Student's February 20, 2018 IEP. The February 20, 2018 IEP offered placement at Lowman Special Education Center and augmentative and alternative communication goals and services, through February 19,

2019. That settlement resolved Student's claims as to the appropriateness of the components of the February 20, 2018 IEP implemented by Los Angeles during the 2018-2019 school year, including whether Student was offered the least restrictive environment or appropriate augmentative and alternative communication services.

There was a delay from February 19, 2019, through May 30, 2019, in developing Student's next annual IEP. However, as the delay was at the request of Parents, or to ensure parental participation, no procedural violation occurred. Student also failed to demonstrate that any delay in the development of the May 30, 2019 IEP resulted in a loss of educational opportunity or constituted a significant infringement of Parents' opportunity to participate in the IEP process.

Parents chose not to enroll Student in Los Angeles's 2019 extended school year program, and Los Angeles had no obligation to implement Student's IEP while he was not attending a school program.

Student's May 30, 2019 IEP offered sufficient speech services and a classroom with embedded speech support for the teacher and students. These services were reasonably calculated to allow Student to make progress appropriate in light of his circumstances on his augmentative and alternative communication goals. Student did not prove that it was necessary for Student, his teacher, or Parents to receive additional training on his augmentative and alternative communication device for Student to access the curriculum or make educational progress in light of his circumstances.

FACTUAL FINDINGS

Student was 18 years old and in his second year of twelfth grade at the time of the hearing.

Student resided with Parents within Los Angeles's school district and attended Los Angeles schools at all relevant times.

Student had a diagnosis of Down Syndrome, which impaired English language development. Student also had difficulty with oral motor movements, and his vocalizations were generally unintelligible. Student was eligible for special education and related services under the category of intellectual disability from the age of three.

During the 2015-2016 school year, in ninth grade, Student was placed at Los Angeles's Lowman Special Education Center. Lowman served exclusively special education students from the elementary school level through age 22. Typical students from a nearby middle school would occasionally visit Lowman classes and interact with Lowman's students.

Student attended a class for students with severe disabilities, including intellectual and physical disabilities, taught by Lynne Cripe. Ms. Cripe had a credential to teach students with moderate to severe disabilities, and 10 years of experience working with students with severe intellectual and communication difficulties. Ms. Cripe was proficient in behavior intervention for children with severe learning challenges. Most of her students were nonverbal, and she was fluent in American Sign Language. She was also familiar with technology and devices for augmentative and alternative communication.

Ms. Cripe's class was taught on a collaborative model, with a speech pathologist experienced in augmentative and alternative communication who visited the class weekly to give lessons on using alternative means of communication adapted to that week's curriculum. The speech pathologist also consulted with Ms. Cripe when she had questions or concerns about her students' communication.

During the 2015-2016 school year, Student communicated with vocalizations, gestures, a picture exchange system, approximated American Sign Language signs, and leading adults to desired items. He had access to various augmentative and alternative communication devices in the classroom, including single switch devices, a board with pictures he could point to, and a multi-message voice output device called a Dynavox. The Dynavox was a dynamic display device that used a touch screen to generate words. These methods of communication constituted a multi-modal communication system for Student.

In ninth grade, Student had an attention span of a few minutes for non-preferred activities and enjoyed looking at picture books. He understood the concept of "more," although he did not understand the meanings of numbers. His academic goals included picking a yes or no card to respond to yes or no questions, counting to 20, and a goal to return to the classroom from the outside independently. Student memorized how to write his first name, although he could not identify the individual letters.

Student had minor health problems, such as asthma that was well-controlled by medication. He could not participate in certain activities on the playground or in physical fitness classes due to medical restrictions. Student was friendly but lacked safety awareness and required supervision when navigating the school campus. He was toilet trained, but needed assistance when toileting or dressing. He smiled at other children, but showed no interest in interacting with them without adult prompting.

Student could use single switch devices that chose between two options, but did not show an interest in using speech generating devices like his Dynavox. Student had an interest in communicating, but his primary interest was in using signs and getting up

and walking to items of interest. Although he was physically capable of using his Dynavox, and would do so with re-direction and prompting, Student did not independently choose to use it to communicate.

Student rarely initiated interactions. Student was a passive learner, which meant that he would generally answer "yes or no" and closed-ended questions, but would ignore the speaker if he did not know how to respond. A pattern of passive communication begins in nonverbal children by the age of three. Student was also an English language learner, because Parents spoke Spanish in the home.

During the 2016-2017 school year, Student was in Sally Weinberger's special day class for students with severe disabilities at Lowman. Pictures and signs were still Student's primary modes of communication. He could choose an object from a field of three. Student could navigate an electronic tablet to turn pages and follow a story being read, although he had difficulty with comprehension. He continued to have difficulty identifying numbers or understanding their meaning. He composed simple two-to-three word sentences using a picture communication system with prompting.

At the beginning of the 2016-2017 school year, Ms. Weinberger observed that Student was showing more communicative intent, although he still needed verbal prompting to engage in communicative exchanges. She spoke with the speech pathologist collaborating with her class, Marshall Fenig, who recommended that Student switch from the Dynavox to the simpler GoTalk20. The GoTalk20 was a tablet-like device that used icons printed on static paper overlays, rather than displayed on an electronic touch screen, to generate speech. Icons could be changed to include curriculum topics. The GoTalk20 could be programmed with sentence starters such as "I

want..." to encourage communication. Mr. Fenig felt that the GoTalk20 would provide Student with a better platform for learning foundational language skills now that Student was showing an interest in using a speech generation device.

Mr. Fenig was a licensed speech pathologist and augmentative and alternative communication specialist who provided weekly support to classes at Lowman. Mr. Fenig worked in Los Angeles's augmentative and alternative communication program for 10 years, assessing students for access to alternative modes of communication, giving district-wide trainings, and teaching on-site speech pathologists how to use alternative systems. At California State University Northridge, Mr. Fenig taught augmentative and alternative communication classes for over seven years, supervised speech pathology students in an augmentative and alternative communication clinic for nine years, and ran a social skills clinic for five years. Mr. Fenig's demeanor at hearing was professional, his responses were thorough and informative, and he was credible and persuasive. Mr. Fenig worked in Student's classrooms, and later provided speech services to Student from 2015 through 2019, and was very familiar with Student and his communication needs. Mr. Fenig's testimony was accorded significant weight.

In Ms. Weinberger's class, Student showed some interest in using a speech generating device, but continued to prefer other methods of communication. Mr. Fenig wanted to promote the use of speech generation because as Student got older and interacted with the community, people might not understand his vocalizations or approximated signs, and it was important that Student be able to communicate with words. In May 2017, Mr. Fenig assessed Student to determine if Student could benefit from direct speech services to increase his augmentative and alternative communication skills.

An IEP team meeting was held on June 7, 2017, to review Mr. Fenig's assessment, and he recommended that an augmentative and alternative communication goal be added to Student's IEP to use a multi-modal communication system to participate in classroom oral language opportunities. He also recommended that Student receive individual speech services of approximately 30 minutes per week to support that goal. Student's IEP was amended to add the recommended goal and services, and also provided for a series of trials on multiple speech generating devices when the new school year started.

At home, Student was using an iPad with an application called GoTalkNow. GoTalkNow was a simplistic program that enabled Parents to download pictures that would be displayed when Student pressed an icon on the iPad's touch screen. GoTalkNow allowed the user to respond to "Show me"-type questions, but did not teach language skills. It was recommended and used by Student's in-home behavior intervention providers, although it was unknown if they had ever assessed Student's communication needs or were familiar with communication devices. Mother wanted Student to use GoTalkNow at school for consistency. Los Angeles members of the June 7, 2017 IEP team disagreed, as the GoTalkNow program did not teach language fundamentals. Devices like the Dynavox and GoTalk20 taught language acquisition, could be programmed to activities in the classroom, and were more appropriate to accessing the curriculum.

During the 2017-2018 school year, for eleventh grade, Student remained in Ms. Weinberger's class. Mr. Fenig conducted trials of a series of dynamic display speech generating devices, and ultimately transitioned Student back to the Dynavox tablet.

Ms. Weinberger had received training on the Dynavox in the past, and only needed 20 minutes of training with Mr. Fenig to begin supporting Student's use of the Dynavox in her classroom.

During his second year in Ms. Weinberger's class, Student began to respond more readily to questions from familiar persons. Student could point to words or pictures to add to a sentence template with prompting.

Student began to exhibit some maladaptive behaviors when frustrated, including kicking and pounding on the table. He also had significant difficulty with toileting, as he could not unzip his pants and did not wash or dry his hands independently. Student required two adults to assist him in the bathroom.

Beginning in Fall 2017, Mr. Fenig worked with Student on the Dynavox for 30 minutes per week in speech sessions, and during push-in speech services for Ms. Weinberger's class. Mr. Fenig was hoping to get Student to use his speech generating device in a more spontaneous way, but Student did not display a strong interest in, or gravitate towards, alternative communication systems.

During the 2017-2018 school year, Student began using the Dynavox more often in classroom oral language opportunities with adult prompting, although he initially demonstrated no independent desire to do so. As the year progressed, Student slowly began to use the Dynavox to ask questions, and to say "hello" and "good bye." Student needed to be trained and retrained to use the Dynavox, and it was only with significant retraining and repetition that Student moved forward and made progress.

Student did not use the Dynavox as his primary mode of communication. He enjoyed interacting with adults, and would use the Dynavox during speech sessions, but over four years of working with Student, from 2015 to 2019, Mr. Fenig never saw Student choose to use a speech generating device over other communication methods.

FEBRUARY 20, 2018 IEP TEAM MEETING

On February 20, 2018, Student's IEP team met for his annual IEP.

By February 20, 2018, Student had met all of his annual goals from the prior IEP. In language development, he was making eye contact and showing attention for the duration of a communicative exchange, and using single word vocalizations or signs. Student responded to questions from familiar adults, and began to demonstrate understanding in the use of multiple methods of communication. Student continued to have difficulty with reading comprehension, but could count to 10, make choices between more and less, and demonstrated an understanding of the concept of same by sorting items by a single attribute, such as color or shape.

The February 20, 2018 annual IEP offered placement at Lowman and speech services for approximately 30 minutes per week during the regular and extended school years, through February 19, 2019. The speech services addressed two communication goals focused on augmentative and alternative communication. The first required Student to initiate or maintain communicative interactions during teacher-led academic and social activities, with emphasis on use of a multi-message voice output device. The second required use of a tablet or computer to answer simple questions. The IEP also offered ongoing trials of other dynamic display systems.

After the February 2018 IEP team meeting, Student, represented by counsel, filed a due process hearing complaint against Los Angeles. That complaint was resolved by a settlement agreement between the parties dated May 15, 2018.

The settlement agreement resolved all special education claims through the date of the agreement and called for independent evaluations. As part of that agreement, Parents consented to implementation of Student's February 20, 2018 IEP, as amended by the settlement agreement. Neither the settlement agreement, nor the ways in which the settlement agreement was amended, were offered into evidence.

Student attended classes during extended school year in the summer of 2018. Mother requested that his Dynavox go back and forth from school to home so Student could work on communicating with it after school hours, but the Dynavox was not sent home with Student.

2018-2019 SCHOOL YEAR

For the 2018-2019 school year, twelfth grade, Student attended a special day class for students with moderate to severe disabilities, taught by Ms. Cripe. Ms. Cripe had four aides and nine students, for a ratio of five adults to nine students. The students in her class were all nonverbal and used augmentative and alternative communication, including picture word cards, speech output devices, and sign language. Ms. Cripe modified and adapted the alternate curriculum and daily living activities to support her students' goals. She had many communication devices and programs in her classroom, and used multiple supports such as switches and computer generated academic lessons. Communication was the main focus of her classroom. Ms. Cripe could not recall if any typically developing peers visited her classroom during the 2018-2019 school year.

Student's Dynavox was implemented the first week, and accessible to him at all times. Student's Dynavox had to be locked on his language program to prevent him from being distracted by the other tablet features. Ms. Cripe and her classroom staff consistently prompted Student to use the Dynavox prior to using pictures, switches, or signs to communicate. Mr. Fenig trained Ms. Cripe on the Dynavox for one hour at the beginning of the school year, and checked in with her periodically to answer questions she had about teaching Student to communicate with the device. She had extensive experience in teaching use of augmentative and alternative communication devices, and felt very comfortable using the Dynavox.

In Fall 2018, Mr. Fenig trialed two speech generating programs on school iPads, including GoTalkNow because Parents wanted that used at school, and TouchChatHD, which will be referred to as TouchChat. Mr. Fenig decided not to continue the trial of the GoTalkNow application, as it was not complex enough for Student and did not promote language development.

TouchChat was installed on an iPad. It could be customized to provide easy access to vocabulary, and to increase vocabulary as Student's communication became more complex. TouchChat could also be set up to sequence icons to build novel and spontaneous sentences. Student was familiar with iPads both at home and in his classes, where iPads were used for some academic activities.

Tablet style systems have an initial, or home, page on a touch screen, and will bring up another page or menu when an icon is pressed. Student could navigate through the TouchChat screens to find a specific food or animal with Mr. Fenig's assistance. Mr. Fenig decided to continue the trial of TouchChat, and switched Student from a Dynavox to TouchChat. Student enjoyed interacting with adults, and using TouchChat in class and during speech sessions with prompting. However, although

Student could navigate to a particular place by touching icons, he resisted regularly using TouchChat for spontaneous communication. Ms. Cripe and Mr. Fenig observed that in twelfth grade, Student did not demonstrate the desire to formulate a plan to navigate through one or more icons to communicate in lieu of immediate use of vocalizations, signs, or gestures.

INDEPENDENT PSYCHOEDUCATIONAL EVALUATION

As required by the May 2018 settlement agreement, Los Angeles funded an independent psychoeducational assessment of Student. Dr. Carlos Flores completed the assessment in August and September 2018. Dr. Flores had been a psychologist for almost 30 years, and licensed in California for over 15 years. His practice focused on neuropsychological testing and everything related to the brain, including learning disabilities, brain injuries, and Alzheimer's disease. During testimony at hearing, Dr. Flores failed to refer to research on students with significant cognitive delays, and gave vague and uninformative responses to the judge's question regarding the impact of Student's disability on his access the curriculum. Dr. Flores's failure to account for Student's cognitive profile undermined the persuasiveness of his testimony.

Dr. Flores reviewed Student's educational records and observed him in Ms. Cripes' classroom. Student required one-on-one guidance during class, without which Student had difficulty participating in any given task. He often needed hand-over-hand demonstrations to follow verbal commands, such as to put his feet on the floor. Student recognized his name, but could not point to his hair or the word September. Student sorted popsicle sticks by color, and could put together two- or three-piece puzzles. Dr. Flores felt that Student got out of his seat and wandered around the classroom until re-directed because the classmates who needed significant physical and medical assistance were a distraction. At hearing, Dr. Flores noted that two

of Student's classmates needed noisy suctioning, commented that he himself was uncomfortable around medically fragile children with severe physical disabilities, and opined that no child could be expected to learn in a classroom with students who required suctioning. These statements exhibited bias against students with severe physical disabilities which greatly diminished Dr. Flores' credibility as an independent expert witness.

Dr. Flores administered two tests of intellectual functioning. On one measure, Student scored below the first percentile in all areas. His full scale intelligence quotient on that measure was 40, demonstrating significantly subaverage intellectual functioning. On an untimed measure that tested nonverbal intelligence, and was less likely to be affected by language deficits, Student received the lowest score possible of 62.

On other tests, Student could not repeat single digits or sentences and scribbled rather than copied symbols. Student's scores in attention and executive functioning were the lowest possible, in the impaired range. His visual motor integration was markedly delayed.

Student received the lowest scores possible in tests of language related skills, such as word knowledge and concept formation. Dr. Flores could not administer tests of memory and learning due to Student's inability to communicate. Student obtained the lowest possible scores and ranked at the pre-Kindergarten level in all academic areas. Student could identify only six letters and could not count from one to two, even when given visual models.

On adaptive functioning scales completed by Parent and Ms. Cripe, although Student was 16 years old, his adaptive level in expressive language equivalent was that of a one-year-old, and receptive language equivalent to that of a two-year-old. Student's communication skills, daily living skills, and social skills were all reported at less than the first percentile and in the low range.

Dr. Flores concluded that Student had limitations in learning and retaining information necessary to achieve traditional academic and vocational goals, and required specialized academic instruction and vocational intervention. Student's attention and concentration were limited to approximately one minute, and Student was unable to focus his attention on a specific task without frequent redirection. Student required assistance with even the most basic activities of daily living, although he could launch a video game on Mother's smartphone. Dr. Flores concluded that Student's lack of functional language severely limited his ability to learn in the classroom or any other setting.

Dr. Flores recommended that Student be supervised throughout the day due to impaired adaptive functioning. He recommended a quieter classroom and more individualized attention from the teacher or classroom assistants to maintain Student's level of engagement and minimize the probability of frustration and behavioral difficulties. Despite not having credentials in speech language pathology, Dr. Flores recommended that Student receive group speech instruction to improve his social skills, and individual speech sessions to develop functional language, in 20 to 30 minute sessions twice each week. He also recommended that Student have access to a tablet computer to enhance his communication skills, and that both Student and Parent receive training on the use of the tablet. However, he cautioned that Student's

TouchChat, which was being trialed during the psychoeducational assessment, had 15 icons on the main screen, which he opined caused Student some level of confusion, and he recommended minimizing the number of icons to avoid cognitive overload.

Doctor Flores's report was dated October 31, 2018. There was no evidence of when the report was received by Los Angeles.

After Dr. Flores's assessment, Mr. Fenig transitioned Student back to the GoTalk20, which had fewer icons than the TouchChat, pending an IEP team meeting to consider the results of the independent assessment.

INDEPENDENT COMMUNICATION EVALUATION

As part of the May 2018 settlement agreement, Los Angeles funded an independent educational evaluation of Student by Margaret Perkins in two areas:

- Augmentative and alternative communication, or how Student could communicate in light of his disability, and
- Assistive technology, or what devices would support that communication.

Ms. Perkins was a licensed speech language pathologist with 37 years of experience, primarily in the areas of augmentative and alternative communication and assistive technology for children. At hearing, she testified in a calm and professional manner, except when she made recommendations for remedies, during which testimony she appeared tentative and less comfortable.

Ms. Perkins conducted her evaluation in September 2018. She reviewed educational records, but she was apparently given an old IEP from February 2017. Ms. Perkins spoke with Parents and Mr. Fenig, and observed Student through most of a school day. Ms. Perkins did not have a copy of Dr. Flores's report. She found that, with

auditory feedback and icons that did not change location, Student could locate high frequency core vocabulary words and choose words from "next word" prediction menus. She concluded that Student demonstrated the cognitive skills to use a speech generating device that used a combination of text and symbolic representations.

Ms. Perkins completed checklists that looked at Student's strengths and weaknesses in communicating, and the number of spontaneous novel utterances. Across school environments, Student had good motor skills, was not bothered by noise or movement, and was sociable. However, he appeared to understand more than he could express, lacked social communication skills, was unintelligible when he vocalized, and had very limited unaided communication. Student communicated primarily to request a preferred item or to make choices. He used eye gaze, facial expressions, gestures, body movement, vocalizations, approximated signs, and the GoTalk20. Student's communication was primarily adult-led, and although he could follow single-step directions, he often needed those directions to be repeated multiple times.

Ms. Perkins had Student try an iPad application similar to the GoTalk20. That application was for students with emerging language skills, with 15 icons on the home page for individual words, phrases, and sentences. Student attempted to engage with Ms. Perkins on that application, but Ms. Perkins concluded that his use of sentence starter icons, such as "I want," would cause Student to learn rote phrases. She preferred that Student naturally put sentences together by composing a series of words himself, which is the way natural language is acquired, although the difficulty of navigating between pages to find icons would decrease Student's ability to be spontaneous.

Ms. Perkins also tried NovaChat, a speech generating device with a large screen and 60 small icons that offered a wide vocabulary for building sentences. When an airplane passed overhead during the test, Student covered his ears. Ms. Perkins then

modeled the "I don't like" button, which Student copied. Ms. Perkins then navigated down four levels to find an airplane icon, which Student pressed after modeling. Ms. Perkins also turned down the volume of the device every time Student hit the "turn down" and "more" icons that Ms. Perkins modeled for him. Ms. Perkins thought Student's actions demonstrated good expressive language skills.

Lastly, Ms. Perkins had Student try PRiO, a communication application for the iPad with 84 single-press, 84 transition, and 84 "full user" areas that closely mirrored typical language development by allowing the user to communicate by combining words into phrases and sentences. The PRiO system also contained grammar support, such as verb tense, articles, contractions, and plurals. With modeling and prompting such as pointing to the icon, Student could press the icons and copy Ms. Perkins' proposed sentences.

Ms. Perkins concluded that Student understood much more than he could say, and that simple systems like the GoTalk20 limited his communication with the use of preprogrammed sentence starters. It was her practice to always recommend the most complex speech generating device that a child was physically capable of using, and then slowly pare away features that the child could not use. Accordingly, she recommended the 84-icon, multi-level PRiO application, because Student could physically navigate it, it had a rich vocabulary, and it required the use of separate words to create sentences. PRiO could also be expanded to generate bilingual speech, which would allow Student to interact with Parents in Spanish.

Ms. Perkins wrote up her report in September 2018, but did not complete and sign it until after further conversations with Parents on December 20, 2018. Ms. Perkins did not recall when she sent her report to Parents or Los Angeles.

The maladaptive behaviors Student had displayed in Ms. Weinberger's class, and in Ms. Cripe's class at the beginning of the 2018-2019 school year, were extinguished by the end of the school year. Student no longer pounded on the table, kicked things, or got up out of his seat. When toileting, Student still had trouble with his pants, but washed and dried his hands without prompting and needed less supervision. Ms. Cripe opined at hearing that by the end of the 2018-2019 school year, Student's academic and health needs could have been met on a comprehensive high school campus if he was supervised at all times for safety reasons. However, she strongly believed that Student should transition to a vocational program to learn employment and life skills to support independence, and should not continue in an academic program.

FEBRUARY 19, 2019 IEP TEAM MEETING

On February 19, 2019, Los Angeles convened an IEP team meeting to review the independent assessments and Student's program.

Ms. Perkins presented her augmentative and alternative communication and assistive technology assessment results. She concluded that Student would benefit from an augmentative and alternative communication system with strong core vocabulary that could be easily modeled, and recommended the PRiO system. Ms. Perkins's report did not recommend training for school staff or Parents, and Student presented no evidence that Ms. Perkins recommended training at the IEP team meeting. Mr. Fenig disagreed that the PRiO was an appropriate system for Student, particularly due to its extreme complexity. The team adjourned the meeting to be reconvened on March 13, 2019 with Student present.

MARCH 13, 2019 IEP TEAM MEETING

On March 13, 2019, Los Angeles reconvened Student's IEP team meeting.

Dr. Flores presented his psychoeducational assessment report. He concluded that Student required ongoing adult support and supervision, and recommended that Student receive a vocational assessment. Parents disagreed with the recommendation that Student explore vocational training, and requested that Student be transitioned to a comprehensive high school campus for another year of twelfth grade. Parents wanted to visit a classroom for moderate intellectual disabilities at Student's home school, Sun Valley High, and Los Angeles team members proposed to arrange a visit. Mr. Fenig agreed to collaborate with Student's private speech pathologist on a communication goal, and with Ms. Perkins on an appropriate communication device. The meeting was adjourned to be reconvened in a few weeks.

MAY 30, 2019 IEP TEAM MEETING

On May 30, 2019, Los Angeles convened an IEP team meeting.

The team reviewed Student's progress. He had made progress on or met all of his annual goals, including the areas of academics, communication, behavior, physical fitness, and self-help/daily living skills. Ms. Cripe recommended that Student transfer into Lowman's new vocational program after graduation on June 7, 2019.

Parents had visited Sun Valley High, and requested placement there. Los Angeles offered placement in the moderate intellectual disability class at Sun Valley High for the 2019-2020 school year, but team members agreed that Student would remain at Lowman for an additional week to participate in the graduation ceremony with his friends on June 7, 2019.

Prior to the May meeting, Mr. Fenig and Ms. Perkins had communicated by telephone and email to discuss an appropriate augmentative and alternative communication device for Student. Mr. Fenig recommended TouchChat. Ms. Perkins

initially objected to TouchChat, in part, because it did not have bilingual capacity, and because it did not allow separate icons to be strung together to form sentences. However, Ms. Perkins was incorrect, as Touch Chat could be programmed to be bilingual and to string icons to create sentences. Mr. Fenig informed her that he could program TouchChat for Student to learn word-on-word combinations as opposed to just rote phrases. He also drafted a proposed annual goal for Student to learn to combine words into one-to three-word sentences.

At the May 2019 IEP team meeting, both Ms. Perkins and Mr. Fenig agreed that the TouchChat could be configured to be an appropriate communication device for Student. The IEP team adopted a communication goal for Student to participate in language and social activities by using one to three icon combinations on a dynamic display device.

The IEP team offered Student extended school year services, including speech services, but Parents informed the team that for reasons unrelated to the IEP offer, Student would not attend school during the summer 2019 extended school year.

The meeting was completed and adjourned. Mr. Fenig had customized the TouchChat program for Student during the Fall 2018 trial, and arranged for it to be issued to Student at the start of the 2019-2020 school year.

Student did not attend school over the summer 2019 extended school year. Los Angeles did not send an iPad with TouchChat home with Student for use over the 2019 summer break.

Keri Matsumoto provided speech services to Student at Sun Valley for the 2019-2020 school year. She was a licensed speech language pathologist, with a Master's of Science from Columbia University in communication disorders, and in-depth training in

how to navigate, program, and model augmentative and alternative communication devices. She modeled multi-symbol responses on the TouchChat with Student to work on his IEP communication goal.

SEPTEMBER 2019 OBSERVATION

Student attended Lauren Foster's moderate intellectual disabilities class at Sun Valley for the 2019-2020 school year.

In September 2019, Student privately retained Ms. Perkins to reevaluate Student's augmentative and alternative communication. Ms. Perkins spent approximately 90 minutes observing Student at Sun Valley on a Friday morning. Friday mornings in Ms. Foster's class were "Fun Fridays," which included a vocabulary test for which Student signed, and cooking with a chef. Fridays were fairly chaotic, and as Student's cooking job that day was rolling dough, he was not using his TouchChat device.

Ms. Perkins observed Student in Ms. Foster's classroom, where he was engaged and interactive with the teacher and the classroom assistants, and demonstrated joint attention and turn-taking skills. Student could follow multi-step directions, although he needed verbal directions to be accompanied by gestures or signs.

Student rarely initiated communication. His communication was generally limited to gestures or approximated signs to request highly motivating items. Student also consistently repeated the last sign that he saw. For example, he would respond to "Are you done or do you want more?" with the sign for "more," and to "Do you want more or are you done?" with the sign for "done." However, Student did get his iPad with TouchChat out of his backpack to communicate that he wanted to go to the grocery store, which was a class trip that had been cancelled that week.

Ms. Perkins pulled Student aside during a break and tried NovaChat with Student again. When she modeled sentences, he could repeat them or similar sentences. Student did not want to work with Ms. Perkins and pushed her away. When she modeled "I don't want" on the NovaChat, Student signed "work" rather than pressing an icon, and she stopped working with him.

Ms. Perkins wrote a short report, and made the same recommendations for features of a communication system that she had in her December 2018 assessment report, although she did not name a particular device or application.

MARY FALVEY, INCLUSION WITNESS

Student retained Mary Falvey to conduct a records review and an observation at Sun Valley High for purposes of testifying at hearing. Ms. Falvey has a doctorate in teaching students with severe disabilities, a severely handicapped teaching credential in California, and decades of teaching experience. Ms. Falvey is interested in quality education for students with severe disabilities, including integration with typical peers. She does not have a degree or credential in the field of inclusion, and has only acted as an inclusion specialist for one child for the past two and a half years.

Ms. Falvey observed Student at Sun Valley for three hours, in Ms. Foster's class, in the cafeteria and in the video production class. She did not see Student being resistant to any activities or staff expectations. She felt that Student had a nice relationship with staff and both his disabled and non-disabled classmates. During her observation, Student watched a science experiment in Ms. Foster's class without being disruptive, sat and watched students enter the cafeteria, and watched attentively as the video production teacher moved around the room.

Ms. Falvey reviewed Student's records for six hours, but could not recall Student's present levels of performance in academics, social skills, behavior, or communication, or any of Student's goals. She explained that she was only looking at whether the goals could be implemented on a comprehensive campus, and she opined that they could. She did not observe any programs at Lowman, did not speak to any teachers at Lowman, and did not review Student's progress on goals at Lowman.

Ms. Falvey testified that studies of adults with Down Syndrome suggested that more inclusive school settings led to "more successful" employment. She further opined that Student needed one or two more years on an inclusive high school campus, because social skills are important to success in employment. She did not persuasively explain how, with three years of special education eligibility left to Student, one or two more years on a high school campus rather than in a vocational program would be more likely to improve Student's employment and independence outcomes.

Ms. Falvey also testified that taking core academic classes at Lowman had deprived Student of the opportunity to learn vocational skills in elective classes at a comprehensive high school, such as the video production class. She opined that because Student "had missed as much as he had missed," Student should receive an hour per day of academic tutoring after school, for five days per week. She also recommended that an inclusion specialist work in Student's classrooms for five hours per week to ensure that Student has sufficient accommodations.

Ms. Falvey's testimony was predominately vague and uninformative. Her opinions rarely encompassed Student's individual abilities or needs, and presented as non-specific conclusions drawn from unrelated research. Her conclusion that Student had been wrongfully placed in academic classes at Lowman, rather than vocational classes at Sun Valley, and therefore entitled a remedy of academic tutoring was illogical.

Her opinion that Student should receive two more years of high school for access to vocational classes, rather than being in a vocational program, was puzzling. She made a recommendation for five hours per week of academic tutoring without consideration of Student's short attention span as reported by Dr. Flores and Student's present levels of performance. She also admitted that she is not an inclusion specialist herself, but speculated that five hours per week was an average amount of time for inclusion specialist services.

Ms. Falvey did not have any credentials as a speech language pathologist, but testified that, in her opinion, the GoTalkNow application on Parent's iPad would improve Student's communication skills. This opinion was in direct contradiction of the opinions of speech pathologists and assessors Ms. Perkins and Mr. Fenig, neither of whom recommended the GoTalkNow application because it was too simplistic. Ms. Falvey's willingness to testify in areas which she had no credentials, experience or expertise undermined her credibility. For these reasons, her opinions on Student's educational needs and remedies for alleged educational loss were accorded very little weight.

LEGAL CONCLUSIONS

INTRODUCTION – USE OF LEGAL CONCEPTS THROUGHOUT THE DECISION

In this discussion, unless otherwise indicated, this introduction's legal citations are incorporated into each issue's conclusion. All references to the Code of Federal Regulations are to the 2006 version.

LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

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

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

A free, appropriate public education, often called a FAPE, means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's Individualized Education Program, commonly called an IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, or supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

In general, an IEP is a written statement that is developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, needs, and academic and functional goals related to those needs. It also provides a statement of the special education; related services, which include transportation and other supportive services; and program modifications and accommodations that will be provided for the child to work towards the stated goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39 Cal. Code Regs., tit. 5, § 3001, subd. (p).)

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 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. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*), the Supreme Court held that a child's "educational program must be appropriately ambitious in light of his circumstances." "Every child should have a chance to meet challenging objectives." (*Ibid.*) *Endrew F.* explained that "this standard is

markedly more demanding than the 'merely more than de minimis' test... The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Id.* at pp. 1000-1001.) The Court noted that "any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." (*Id.* at p.999.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.* The Court acknowledged that Congress had not materially changed the statutory definition of a FAPE since *Rowley* was decided and so declined to change the definition itself. The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

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, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Generally, a party is limited to filing a request for due process two years from the date the person knew or should have known of the facts which form the basis for the request for a due process hearing.

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. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. §1415(i)(2)(C)(iii).) Here, Student requested the hearing, and therefore has the burden of proof on the issues.

ISSUE 1(A): PLACEMENT IN LEAST RESTRICTIVE ENVIRONMENT

Student contends that Los Angeles denied him a FAPE by not placing him in the least restrictive environment of a comprehensive high school campus from May 16, 2018, through June 7, 2019. District contends that Student was placed at Lowman by Parents' consent to the February 20, 2018 IEP per the May 2018 settlement agreement, that Student was placed at Lowman at request of Parents, and that Lowman was the least restrictive environment.

LEAST RESTRICTIVE ENVIRONMENT

To provide the least restrictive environment, school districts must first ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and second, that special classes or separate schooling occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors:

- The educational benefits of placement full-time in a regular class;
- The non-academic benefits of such placement;
- The effect the student has on the teacher and children in the regular class;
- and
- The costs of mainstreaming the student.

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

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) "Mainstreaming" is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

The continuum of program options includes, but is not limited to:

- Regular education;
- Resource specialist programs;
- Designated instruction and services;
- Special classes;
- Nonpublic, nonsectarian schools;
- State special schools;
- Specially designed instruction in settings other than classrooms;
- Itinerant instruction in settings other than classrooms; and
- Instruction using telecommunication instruction in the home or instructions in hospitals or institutions.

(Ed. Code, § 56361.)

PLACEMENT PURSUANT TO SETTLEMENT AGREEMENT

A special education settlement agreement is considered a contract, and the IDEA favors settlement of disputes between parents and school districts. (See, *T.B. v. San Diego Unified School Dist.* (9th Cir. 2015) 806 F.3d 451, 486, fn. 14, citing *D.R. v. East Brunswick Board of Education* (3rd Cir. 1997) 109 F.3d 896, 901.) A parent can waive his or her child's right to a FAPE. (*Ballard v. Phila. Sch. Dist.* (3rd Cir. 2008) 273 Fed.Appx. 184, 188; 20 U.S.C. § 1415(e)(2)(F)[parties may resolve FAPE disputes by written agreement].) Parties routinely enter into agreements to resolve litigation, and an agreement is not void because a party settled for less than he or she later believes the law provides. (*Ibid.*)

California district courts have held that OAH has jurisdiction to interpret and enforce settlement agreements concerning the educational program of a disabled child. (See *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal. Mar. 27, 2007) 2007 U.S. Dist. 2007 WL 949603; *Hayden C. v. Western Placer Unified Sch. Dist.* (E.D.Cal. May 12, 2009) 2009 WL 1325945; *Lara v. Lynwood Unified Sch. Dist.* (C.D.Cal. July 29, 2009) 2009 WL 2366454.)

The adequacy of an IEP document is evaluated from the perspective of the IEP team at the time it was drafted to determine what was, and what was not, objectively reasonable at that time. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) A claim accrues when the parent learns of the injury that is a basis for the action, that is, when the parent knows that the education provided is inadequate. (See 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (l); *M.M. & E.M. v.*

Lafayette School Dist. (N.D.Cal., Feb. 7, 2012 Nos. CV 09–4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19, *affd. in part & revd. in part* (9th Cir. 2014) 767 F.3d 842; *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

Here, the February 20, 2018 IEP offered placement at Lowman, a school Student had attended for several years, and with which Parents were familiar. Any claim that a school exclusively for special education students was not the least restrictive environment for Student accrued at the time of that offer. Student was represented by counsel when Parents entered into the May 15, 2018 settlement agreement on his behalf. Parents knew or should have known all reasons that the February 2018 IEP was allegedly inadequate when they entered into an agreement that resolved all issues over which OAH had jurisdiction, including whether the offer of placement at Lowman in the February 2018 was the least restrictive environment. Student cannot now be heard to raise a claim post-settlement that the February 20, 2018 IEP failed to offer Student a FAPE in the least restrictive environment.

A parent can, and many do, consent to implementation of IEPs that he or she contends do not constitute a FAPE. (See Ed. Code § 56346, subd. (e) [a parent need not consent to all parts of an IEP].) This allows a later challenge to the appropriateness of the offer. However, here, where all claims regarding the February 29, 2018 IEP were subsequently resolved by agreement of the parties, Student cannot now contend that the placement offered by that IEP was not the least restrictive environment. Further, OAH does not have the jurisdiction to set aside a settlement agreement. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, *5.)

Los Angeles did not deny Student a FAPE in the least restrictive environment by complying with the May 15, 2018 settlement agreement between the parties, which placed Student at Lowman through February 19, 2019.

LEAST RESTRICTIVE ENVIRONMENT AFTER FEBRUARY 19, 2019

There is no dispute that Student needed specialized instruction and could not have been satisfactorily educated in a regular education classroom. Rather, Student contends that he was not mainstreamed to the maximum extent appropriate.

From February 19, 2019, through May 30, 2019, while the May 30, 2019 IEP was being developed, placement in a special education classroom at Lowman, without access to typical peers, was a more restrictive environment than a special education classroom on a comprehensive high school campus. A comprehensive high school campus such as Sun Valley would have provided Student with daily access to typical peers at lunch, during class period transitions, and during supported inclusion into general education elective classes. Ms. Weinberger, Ms. Cripes, and Ms. Foster testified convincingly that the instruction and services in support of Student's goals in his IEPs could be implemented on a comprehensive high school campus. Although they all expressed concern about Student's safety when navigating a campus, any safety issues were addressed at Sun Valley by having Student and his classmates transition between school settings under adult supervision.

The May 30, 2019 IEP team did not have information on Student's integration onto a comprehensive high school campus for the 2019-2020 school year. However, none of the witnesses who were on Student's 2019 IEP team expressed surprise that Student appeared to be doing well at Sun Valley. Student's skills were generally at the same level as other students in Ms. Foster's moderate intellectual disabilities class, and he was friendly and well-behaved. It would have been reasonable for Student's May 30, 2019 IEP team to anticipate that a special education teacher credentialed to teach students with intellectual disabilities would be able to work with Student on his annual goals, as Ms. Foster did. A program with teacher and aide support for inclusion in

general education electives would also readily meet the IDEA mandate that disabled students be given opportunities to engage in activities with nondisabled peers. The IEP team could have reasonably calculated that Student could work on his annual goals and make progress in a class like Ms. Foster's on a comprehensive campus with significantly greater mainstreaming opportunities than offered by Lowman.

Placement at Lowman did not provide Student with opportunities to engage in activities with nondisabled students to the maximum extent that was appropriate in light of the continuum of program options. Accordingly, Lowman was not the least restrictive environment for Student during the development of the May 30, 2019 IEP, from February 19, 2019 through May 30, 2019.

NO PROCEDURAL ERROR, OR SUBSTANTIVE DENIAL OF FAPE, DURING IEP DEVELOPMENT FROM FEBRUARY 19, 2019 TO MAY 30, 2019

Student claims that he was not timely offered the least restrictive environment. The time for Los Angeles to make an offer of FAPE began after the February 20, 2018 IEP expired. However, the evidence did not establish that Los Angeles unreasonably delayed in making a placement offer of a comprehensive high school campus, or if it had, that such a procedural error resulted in a substantive denial of FAPE.

When an IEP team review is not completed in the time scheduled, for instance if the parents seek to visit proposed placements before the placement offer is finalized, the school district has two options. It can to continue working with the parents to develop a mutually agreeable IEP, or unilaterally revise the IEP and then file an administrative complaint to obtain approval of the proposed IEP. (See *Anchorage School Dist. v. M.P.*, (9th Cir. 2012) 689 F.3d. 1047, 1056.) The Ninth Circuit has been particularly harsh in criticizing school districts for failing to ensure parental participation

in the development of their child's IEP. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992), *superseded on other grounds by* 20 U.S.C. § 1414(d)(1)(B) (*Target Range*).)

In *Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F.3d 1038 (*Doug C.*), the parent frequently wanted to reschedule meetings, and the agency ultimately held an annual IEP team review without the parent to meet the statutory deadline. The Ninth Circuit explained that parental participation in the IEP process is critical to the IDEA's structure, which relies upon parental participation to ensure the substantive success of the IDEA in providing quality education to disabled students:

[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties *throughout the development* of the IEP . . . demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

(*Doug C.*, *supra*, 720 F.3d at pp. 1043-1044, quoting *Rowley*, *supra*, 458 U.S. at pp. 205-206 (*emphasis added*); see also *Honig v. Doe* (1988) 484 U.S. 305, 311 ["Congress repeatedly emphasized throughout the [IDEA] the importance and *indeed the necessity of parental participation* in both the development of the IEP and any subsequent assessments of its effectiveness." (*emphasis added*)].)

Educational agencies have timelines to meet, which may be jeopardized by having to reschedule or continue meetings, and the Ninth Circuit explained the deliberation process that the agency must use:

The more difficult question is what a public agency must do when confronted with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP. In considering this question we keep in mind the purposes of the IDEA: to provide disabled students a free appropriate public education and to protect the educational rights of those students. It is also useful to consider our standard for determining when a procedural error is actionable under the IDEA. We have repeatedly held that “procedural inadequacies that result in the loss of educational opportunity or seriously infringe the parents’ opportunity to participate in the IEP formulation process, clearly result in the denial of FAPE.” When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in a denial of FAPE. In reviewing an agency’s actions in such a scenario, we will *allow the agency reasonable latitude in making that determination*.

(*Doug C.*, *supra*, 720 F.3d at p. 1046 (Internal citations omitted, emphasis added)). The Ninth Circuit noted that it previously held that delays in meeting deadlines did not deprive the student of educational benefit (see *A.M. v. Monrovia* (9th Cir. 2010) 627 F.3d 773, 779), and held that the agency’s decision to prioritize strict deadline compliance over parental participation was clearly not reasonable.

Here, Student offered no evidence that the delay in completing the annual 2019 IEP review was the fault of Los Angeles. The February 19, 2019 IEP was held when Ms. Perkins was available to present her independent assessment report. Dr. Flores, the psychologist chosen by Parents to conduct the independent psychoeducational assessment, was not present at the February 19, 2019 IEP team meeting. The IEP team wanted to hear the independent assessment report obtained by Parents pursuant to the settlement agreement, and take Dr. Flores's findings into consideration when developing a FAPE for Student. The evidence was unclear on whether the February 19, 2019 IEP team meeting was adjourned due to the schedules of Parents, independent assessors, attorneys and advocates, or other necessary IEP team members. However, it was clear that the IEP team members, including Parents, mutually agreed to reconvene on March 13, 2019. The team's decision to delay an offer of FAPE was reasonable and in compliance with Ninth Circuit guidance to prioritize full team participation over statutory deadlines.

At the March 13, 2019 IEP team meeting, Parents requested that the meeting be adjourned and reconvened to allow them time to visit proposed placements. Again, Los Angeles's decision to reconvene the meeting to ensure informed parental participation in the placement deliberation process was in keeping with Ninth Circuit guidance.

Parents visited Sun Valley prior to the May 30, 2019 IEP team meeting, and were primary participants in the IEP team's placement discussions and decision regarding an offer of placement in the least restrictive environment.

Parents' participation in the team's placement decision for the 2019-2020 school year was of paramount importance. Accordingly, Los Angeles did not commit a procedural violation by rescheduling meetings to review Student's educational program

over a series of IEP team meetings from February 19, 2019, through May 30, 2019, to ensure full and informed parental participation. This is particularly true as the IEP notes indicate that one or more of the meetings were scheduled in accordance with the settlement agreement. The IDEA, as interpreted by the Ninth Circuit, requires school districts to forego meeting statutory deadlines as necessary to ensure parental participation. This Decision declines to find that Los Angeles committed a procedural violation by reconvening Student's annual IEP multiple times as agreed upon by the IEP team members under these circumstances.

Even were the series of IEP team meetings found to be a procedural violation of the statutory deadlines for annual review of Student's IEP, the evidence did not establish a substantive denial of FAPE.

The IDEA requires that a due process decision be based upon substantive grounds when determining whether a child has received a FAPE. A procedural error is not sufficient for a party to prevail, unless that violation impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (j); *Rowley*, *supra*, 458 U.S. at pp. 206-207.) Procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of parents' opportunity to participate in the IEP process are insufficient to support a finding that a student has been denied a FAPE. (*Target Range*, *supra*, 960 F.2d at p.1482.)

Here, the evidence did not establish that the three-month delay in completing Student's annual IEP review resulted in a loss of educational opportunity. And, as discussed above, the delay ensured Parents' participation rather than impeded it.

Student made progress on his goals throughout the 2018-2019 school year. Student met all of his February 2018 annual goals in communication, augmentative and alternative communication, English language development, functional reading, math, writing, physical fitness, vocational, and behavior. Ms. Cripe testified persuasively and convincingly that Student made slow but steady academic progress during his twelfth grade year. Student also made significant progress in adaptive living skills. He acquired independence in toileting that was necessary to his success on a comprehensive high school campus the following school year, and his maladaptive behaviors were extinguished.

In the area of communication, Mr. Fenig testified credibly and persuasively that Student made steady progress in 2018-2019 by increasing his understanding and use of his communication devices, and by interacting more spontaneously. Student's 2018 augmentative and alternative communication goal was to use a multimodal communication system to participate in oral language opportunities, an action he had routinely resisted in favor of vocalizations, signs and gestures. By May 2019, Student continued to require prompting and redirection, but used his dynamic display device to initiate communication with fewer reminders to do so, and was showing increased interest in communication through such a device.

The evidence fell short of establishing that Student experienced a loss of educational benefit because he was placed in a more restrictive setting for the three months it took the team to complete Student's IEP. Student presented no evidence that he could have, or would have, progressed more rapidly in academics, adaptive living skills, or communication if he had been placed in a less restrictive environment for that period of time. Dr. Flores did not offer a concrete opinion on Student's academic potential. Ms. Falvey's opinions were vague, unsupported, and unconvincing, and she

reported that Student essentially watched typical peers without interaction on the comprehensive campus. Ms. Perkins's observation at Sun Valley attributed Student's communication progress to a teacher who was modeling signs and prompting Student to use his dynamic display device, all things similarly observed in Ms. Cripe's classroom. This evidence was insufficient to support a contention that Student's placement had any impact on his ability to make progress from February 19, 2019 through May 30, 2019.

No SUBSTANTIVE FAPE DENIAL FROM MAY 30, 2019 TO JUNE 7, 2019

In addition, the IEP team, including Parents, did not want to move Student to a new campus until after he graduated with his classmates on June 7, 2019. Parent did not consent to the May 30, 2019 IEP until June 5, 2019, just two days before the end of the 2018-2019 school year at issue. Student presented no evidence that Parents would have consented to a change of placement from Lowman to Sun Valley before the end of the school year.

For the reasons stated, Student did not lose educational opportunity because he was not offered placement in the less restrictive setting of a comprehensive campus prior to May 30, 2019. Accordingly, he did not suffer a substantive denial of FAPE due to a delayed offer of placement.

Student did not meet his burden of proving that Los Angeles denied him a FAPE by not offering placement in the least restrictive environment between February 19, 2019, and June 7, 2019.

ISSUE 1(B): AUGMENTATIVE AND ALTERNATIVE COMMUNICATION SERVICES FROM MAY 16, 2018 TO AUGUST 16, 2019

Student contends that Los Angeles failed to offer Student appropriate augmentative and alternative communication services between May 16, 2018, and August 16, 2019, or essentially through the 2019 extended school year. Student asserts that this includes lack of an appropriate communication device and training on the device, resulting in lost opportunities to communicate with an appropriate device. District disagrees.

SETTLEMENT AGREEMENT BARS CLAIM THROUGH REVIEW OF INDEPENDENT COMMUNICATION ASSESSMENTS ON FEBRUARY 20, 2019

The May 2018 settlement agreement between the parties resolved all issues concerning the appropriateness of the February 20, 2018 IEP offer, including its offer of augmentative and alternative communication services and equipment. However, the agreement called for Los Angeles to convene an IEP team meeting within 20 regular school days of Los Angeles's receipt of Ms. Perkins's independent augmentative and alternative communication assessment report. Therefore, challenges to the appropriateness of communication services offered to Student are barred only through the time for review of Ms. Perkins's assessment report.

NO DELAY IN REVIEWING COMMUNICATION ASSESSMENT REPORT

No evidence was offered of the date on which Los Angeles received Ms. Perkins's assessment report. However, Ms. Perkins did not complete and sign her report until December 20, 2018, and could not have sent it any earlier. Twenty school days equates to approximately one calendar month, and Lowman's winter break included time in January. This permits a reasonable inference that the February 19, 2019 IEP was timely

held if Ms. Perkins's report was received in mid-January 2019. Accordingly, Student is entitled to challenge the appropriateness of the communication services and equipment offered as of the date of the IEP held to review her report, February 19, 2019.

TIME PERIOD FROM FEBRUARY 19, 2019 THROUGH AUGUST 16, 2019

Any delay by Los Angeles in making an offer of augmentative and alternative communication services and equipment from February 19, 2019, through finalization of the IEP offer on May 30, 2019, was not a procedural violation. As discussed above, the series of IEP team meetings prioritized and ensured parental participation in the IEP process. Per *Doug C.*, school districts are allowed reasonable latitude in determining if multiple IEP team meetings promote the purposes of the IDEA and to ensure appropriate parental participation. (*Doug C.*, *supra*, 720 F.3d at p. 1046.)

Even had the delay in making an offer of communication services and supports through May 30, 2019, been a procedural violation, the evidence did not establish that the delay resulted in any loss of educational benefit.

Ms. Perkins's Expert Opinion Testimony

The opinions of Ms. Perkins pertaining to Student's interest in, and ability to use, speech generating devices were unpersuasive. Both of her reports contained multiple observations and conclusions that were either inconsistent with contemporaneous reports from other sources, or appeared highly speculative. For example, she reported in December 2018 that Student had intermediate cognitive abilities, language skills, and linguistic strengths. This was inconsistent with the scores in the extremely low range in those areas elicited by Dr. Flores and the February 20, 2018 reports of Student's present levels of performance. Ms. Perkins reviewed an old IEP from February 14, 2017 IEP, which did not give current present levels of performance for 2018. The February 20,

2018 IEP reported that Student was able to greet with "hello" and "good bye," needed errorless choices to correctly answer questions, and could not identify or count numbers beyond ten. These levels are inconsistent with Ms. Perkins's recommendation that Student be required to process the amount of information provided by the PRiO. Ms. Perkins's December 2018 assessment report was completed several months after Dr. Flores's psychoeducational assessment report, but there was no evidence that Ms. Perkins was aware of, or had read, Dr. Flores' findings prior to making her recommendations.

Ms. Perkins seemed to make unsupported conclusions when interpreting Student's communicative actions. For example, she testified that Student understood prepositions because he could follow multistep directions with prepositions, such as "coffee over on the next table." However, her opinion did not take into account Student's need for adult assistance. Her conclusion was inconsistent with observations by Dr. Flores, Ms. Weinberger, Ms. Cripes and Sun Valley staff that Student needed multiple verbal and gestural prompts, and sometimes hand-over-hand guidance, to perform a multi-step task.

Ms. Perkins opined unpersuasively at hearing that students learn to read by reading, and to communicate by communicating, and that everyone "whether a Downs syndrome three-year-old or retired professor" required the same core vocabulary words, including abstract words and adjectives. Student was a beginning language learner with limited comprehension and a one-minute attention span. Ms. Perkins did not satisfactorily explain why Student needed a communication device with abstract words and the extensive vocabulary of a retired professor.

Ms. Perkins's opinion that Student was an excellent communicator when given the opportunity was not persuasive considering the examples reported. Student's communication on the dynamic display devices could readily be explained in other ways. For instance, Student was copying Ms. Perkins's modeling by pointing to icons. Ms. Perkins was asking questions that would be answered appropriately if Student simply pressed the previously pressed icon again. She also used open-ended questions that Student could appropriately respond to with any icon available on the open menu. Although Ms. Perkins is an experienced practitioner in the field of augmentative and alternative communication, her conclusions regarding Student's abilities appeared overstated and speculative.

Broad statements also undermined the persuasiveness of Ms. Perkins's opinions. For example, she always recommended using the most complex communication device that a student is physically capable of using. Such recommendations are contrary to the IDEA's focus on a child's unique educational needs, and could result, as here, with a child distracted and overwhelmed by excessive icon choices and complicated technology. Dr. Flores and Ms. Foster both opined that even 15 icons on the TouchChat appeared to cause Student some confusion or cognitive overload.

Ms. Perkins recommended adding a bilingual component to Student's communication device, without explanation of why such an addition was necessary for him to obtain educational benefit, or the consequences of such an addition. Student had already shown resistance to using a communication device. Ms. Perkins failed to explain how a communication device that generated two different sounds for each icon would benefit Student in language acquisition and communicative interactions.

Ms. Perkins did not recommend parent training in either of her reports, and there was no evidence that she recommended parent training when she presented her assessment report. Therefore, her opinion at hearing that Los Angeles denied Student a FAPE by failing to offer Parents training was unconvincing.

At hearing, Ms. Perkins recommended that Student receive more “intense” services going forward. She recommended 60 minutes per week of individual speech therapy, and 60 to 90 minutes per week of push-in speech services in the classroom. She reasoned that Student should receive 180 minutes per month of consultation with the teacher by an augmentative and alternative communication specialist, because Student’s communication device would need to be programmed and adapted to classroom materials such as novels and literacy lessons. She also recommended two hours per week of Student training, apparently in addition to over two hours per week of speech services, and six hours per month of parent training, without significant explanation. The amount of services recommended was not based on Student’s level of need or an opinion of lost educational benefit. Instead, the amount was based upon Student having a “short window” of special education eligibility remaining. The services recommended also appeared to be duplicative of each other.

Ms. Perkins’s opinions regarding the need for compensatory education were unpersuasive. First, she failed to establish any educational loss from Student’s use of a Dynavox or GoTalk20. Ms. Perkins herself recommended that Student continue to use a multi-modal communication system, including vocalizations, signs, picture boards, and a speech generation device, and there was persuasive evidence that Student was making progress in his communication skills using the multi-modal communication systems available at Lowman.

Second, her recommendations failed to take into account communication supports and speech services already offered in Student's IEPs. Student received 30 minutes per week of individual speech in support of Student's use of a communications device, communication device support in the classroom, and embedded teacher training and consultation by the speech pathologist. Ms. Perkins did not account for these services in her calculations of educational loss, or her remedy recommendations. Third, her remedy recommendations fluctuated and increased as she testified, seemingly without serious consideration.

Fourth, Ms. Perkins had not previously recommended such a range of services to the Spring 2018 IEP team as educationally necessary, so it is unclear how their absence would have caused an educational loss or why they would be necessary at this time. Lastly, the recommendations appear inflated, particularly as Student is performing academically at a pre-Kindergarten level, and would not need the extensive programming and modification that Ms. Perkins opined would be necessary to adapt the communication device to the alternate curriculum.

Ms. Perkins also frequently testified as though Student was at grade level, or at least functioning academically above a pre-Kindergarten level. Ms. Perkins's opinions on Student's need to communicate at a higher level, such as by responding to lessons after having read a novel, indicated a strong lack of familiarity with Student or a foundation for her opinions. Mr. Fenig worked in Student's classroom for four years, including the 2018-2019 school year. He assessed Student multiple times, and for two years provided individual speech services to Student on a weekly basis to teach Student functional language through use of a communication device. Mr. Fenig's experience as a speech language pathologist with experience in augmentative and alternative

communication, who assessed and worked with Student, gave his opinions regarding Student's communication needs, and the equipment, supports, and services required to address those needs, significantly more weight than those of Ms. Perkins.

Augmentative and Alternative Communication Equipment

Regarding equipment, Mr. Fenig testified persuasively that the GoTalk20 and TouchChat devices met Student's communication needs in Spring 2019. Mr. Fenig and Ms. Cripe also testified persuasively that having a speech pathologist providing classroom consultation offered sufficient support for Ms. Cripe and her classroom staff to effectively use the GoTalk20 and TouchChat device with Student. The evidence established that Student made progress on his goals, including in the area of augmentative and alternative communication, with the devices provided by Los Angeles.

Ms. Perkins's opinion that Student needed a much more complex communication device, with additional icons, multiple screen levels, an extensive core vocabulary, and bilingual capability to receive a FAPE were unpersuasive and unconvincing.

Per *Rowley*, the methodology used to implement an IEP is left to the school district's discretion so long as it is reasonably calculated to provide some educational benefit to the student based on his needs. (*Rowley, supra*, 458 U.S. 176 at p. 209.) Courts are ill-equipped to second guess reasonable choices school districts have made among appropriate instructional materials. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950.) Student did not establish that Los Angeles was required to provide the specific assistive technology requested by Parents, or the most technologically advanced device. The weight of the evidence established that the Dynavox, GoTalk20 and TouchChat were reasonably calculated to, and did, provide Student with some educational benefit based on his needs.

Augmentative and Alternative Communication Services

As to communication services, Student made slow but steady progress in his ability to communicate, and in his use of dynamic display devices with fewer reminders. Mr. Fenig testified persuasively that Student's disability impacted the use of his dynamic display devices. During 2018-2019 school years, Student was working on foundational skills in both understanding the reasons for using a dynamic display device to communicate as well as how to use such a device.

Ms. Perkins did not refer to research on students with significant cognitive delays, and did not provide any specific testimony on how Student's intellectual disability impacted his ability to communicate. She did not take into account Student's ability to attend to instruction, which varied from one minute to 30 minutes depending upon Student's preference for the activity, when making service recommendations. Some of the services recommended by Ms. Perkins were necessary to access activities well beyond Student's academic level. Ms. Perkins's opinions were given less weight than Mr. Fenig due to her limited knowledge of Student and apparent intent to maximize services.

The weight of the evidence established that the augmentative and alternative communication services offered to Student in the February 20, 2018 IEP, and provided throughout the 2018-2019 school year pending development of the May 30, 2019 IEP, were reasonably calculated to enable Student to make progress appropriately ambitious in light of his circumstances.

As to the summer 2019 extended school year, the May 30, 2019 IEP offered the same equipment and 30 minutes per week of individual speech services that allowed the Student to make appropriate progress through the regular school year. More

importantly, Parents advised the IEP team that they did not intend to send Student to school during extended school year for reasons unrelated to the adequacy of Los Angeles's offer, and any deficiency in the offer would not have resulted in actual harm.

Student contends that the speech logs from the 2018-2019 and 2019-2020 school years show that Student was not receiving individual speech services in the use of his dynamic display devices, because most of the entries refer generally to multi-modal communication systems. Notably, Student's Issue 1(b) is a challenge to the offer of services, not to whether or not such services were implemented.

However, the weight of the evidence demonstrated that Student's speech sessions provided instruction and training on his dynamic display devices. First, Mr. Fenig testified that he worked with Student on dynamic display devices during each session, even if that was not specifically recorded. Second, during the 2018-2019 school year, Mr. Fenig provided services to support two February 2018 augmentative and alternative communication goals specifically referencing a dynamic display device. Third, the "FAPE Summary Grid" at page 26 of 27 of the February 20, 2018 IEP specifically states that the speech services offered during the regular and extended school years were for the purpose of addressing Student's augmentative and alternative communication goals. The weight of the evidence demonstrated that Student's speech services were offered to, and did, provide instruction and practice on his dynamic display devices, regardless of the broad language included in the session logs.

Augmentative and Alternative Communication Training

The speech services offered in the May 30, 2019 IEP were appropriate to support Student's augmentative and alternative communication goals to initiate and maintain conversations with his speech generating device, and to construct multi-icon communications. These services were therefore reasonably calculated to allow Student to make progress appropriate in light of his circumstances, without the need for additional Student training.

Further, the evidence did not demonstrate that Student was, as contended in Student's closing brief, deprived of opportunities to improve his functional communication. Student was placed in classrooms that focused on language acquisition, and were taught by special education teachers qualified and experienced in teaching language acquisition to students with intellectual impairment. The classrooms provided an extensive system of augmentative and alternative communication materials, such as sign language instruction, picture communication systems, switches, and a variety of speech generating devices. Ms. Weinberger and Ms. Cripe had the support of a speech pathologist experienced in augmentative and alternative communication working with the class weekly on language acquisition, and consulting with the teacher in a collaborative model. Student was given trials on a variety of speech generating devices, including ones with static overlays and ones with dynamic displays such as an iPad, when his experienced and knowledgeable teachers reported increased interest and competency in using such devices. From June 7, 2017, Student received speech sessions for 30 minutes per week to support augmentative and alternative communication goals. Lastly, Student's teachers were experienced in the use of American Sign Language, approximated signs, and picture communication, and encouraged Student to use

vocalizations, signs, and gestures to communicate, as well as use his speech generating devices. There was no point during the period at issue when Student did not have a robust program of instruction and support in functional communication.

In summary, Student failed to meet his burden of proving that Los Angeles denied him a FAPE by failing to offer appropriate augmentative and alternative communication services, communication devices, or training, from May 16, 2018, through August 16, 2019.

ISSUE 2: HOME SERVICES DURING 2019 EXTENDED SCHOOL YEAR

Student contends that Los Angeles denied him a FAPE because the May 30, 2019 IEP offered Student use of a communication device at home and at school during the regular and extended school years, but did not send the communication device home with Student during the 2019 extended school year. District contends that it had no obligation to provide IEP services to Student when he did not attend school during the 2019 extended school year.

The May 30, 2019 IEP offered Student a dynamic display speech generating device on a touch screen tablet to be used at home and at school during the regular and extended school years. Mother consented to the IEP on June 5, 2019, but Student was not given the device for use over the summer.

At hearing, Mr. Fenig testified that students were not given communication devices to take home during extended school year if they did not attend school during extended school year. Lowman's principal and Ms. Matsumoto testified that they were unaware of a Los Angeles policy for release of speech generating equipment over the extended school year. That testimony did not establish that Student was entitled to take his communication device home if he did not attend school during the extended school

year. Lowman's principal testified that she was aware of some students who took low-incidence equipment home over the summer when not attending school, which also fell short of establishing that Los Angeles was required to let Student to take his communication device home for summer. Student did not offer any evidence of a Los Angeles policy covering his situation.

Even were such a policy in effect, failure to provide IEP services when Student is not attending school is not a violation of the IDEA. School districts are responsible for providing specialized equipment, including assistive technology devices, for use at school when it is needed to implement a student's IEP. (Ed. Code, §§ 56363.1, 46341.1, subd. (b)(5).) School districts are also required to offer extended school year services when necessary to provide a FAPE. (34 C.F.R. § 300.106(a)(1).) There is no legal requirement that a school district provide extended school year services in the home when the parent elects not to send their child to school for the extended school year. (See *Capistrano (CA) Unified School District*, 68 IDELR 173 (Office for Civil Rights 2016).)

Parents elected not to send Student to school during the 2019 extended school year. Accordingly, Los Angeles was not required to implement Student's IEP during that time.

Student failed to meet his burden of proving that Los Angeles denied him a FAPE by not sending Student's augmentative and alternative communication device home with him during the 2019 extended school year.

ISSUE 3: TRAINING ON STUDENT'S COMMUNICATION DEVICE

Student contends that Los Angeles denied him a FAPE because the May 30, 2019 IEP did not offer training for teachers, staff, or parents on Student's communication device. District contends that such training was not necessary to provide a FAPE.

Ms. Perkins's December 20, 2018 assessment report did not recommend training. Her September 29, 2019 updated evaluation was not available to the May 30, 2019 IEP team, and did not make specific training recommendations regarding duration, frequency, or persons. Student presented no evidence that Ms. Perkins discussed training as a component of the IEP at the February 19, 2019, March 13, 2019, or May 30, 2019 IEP team meetings. Additionally, Ms. Perkins testimony regarding training recommendations was duplicative, poorly reasoned, and unpersuasive.

In contrast, Mr. Fenig testified persuasively that training did not need to be a component of Student's May 30, 2019 IEP offer because the speech pathologists working individually on a weekly basis with Student on his augmentative and alternative communication goals were already trained on devices such as the TouchChat, which itself was easy to learn and use for persons not familiar with it. Speech pathologist consultation with both Ms. Cripe's classroom in 2018-2019 and Ms. Foster's classroom in 2019-2020 was also embedded in the communication-rich moderate intellectual disability classrooms offered to Student. Both Mr. Fenig and Ms. Matsumoto, the speech pathologists assigned to work with Student in 2019-2020, were augmentative and alternative communication specialists and familiar with TouchChat. One of the benefits of the TouchChat device was its ease of use for persons unfamiliar with the device, and both Ms. Cripes and Ms. Foster testified that use of the device was intuitive and easily learned with use, with little to no training.

More importantly, Mr. Fenig persuasively testified that the 30 minutes per week of individual speech services offered in the IEP were appropriate to support Student's augmentative and alternative communication goals to initiate and maintain conversations with his speech generating device, and to construct multi-icon

communications. These services were therefore reasonably calculated to allow Student to make progress appropriate in light of his circumstances, without the need for additional Student training.

Student's present levels of performance for the February 19, 2019 IEP reported that Student was making progress on his augmentative and alternative communication goals. Mr. Fenig, Ms. Matsumoto, Ms. Cripes, and Ms. Foster all testified that during the 2018-2019 and 2019-2020 school years, Student was making progress in using his communication device, without additional training for teachers and Parents.

Although Student would have preferred an additional offer of training for his teachers, and for Parents, such training was not required for Student to make progress on his communication goals. An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parents' desires."], citing *Rowley, supra*, 458 U.S. at p. 207.)

A school district is not required to provide the parents' preferred program, even if the parents' preferred program would have resulted in greater educational benefit. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1313-1314.) Student might have made more progress with additional training for teachers, staff, and Parents. However, the opinions of Dr. Flores, Ms. Perkins, and Ms. Falvey in this regard were speculative and unsupported by reference to Student's unique cognitive profile. Ms. Foster appeared hesitant to offer any opinion on Student's language development potential. A preponderance of the evidence established that Student made meaningful progress in his use of speech generating devices and gained educational benefit with the level of services offered in the May 30, 2019 IEP.

Student did not meet his burden of proving that Los Angeles denied him a FAPE by not offering training for teachers and Parents in the May 30, 2019 IEP.

ORDER

All of Student's 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, Los Angeles prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

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

Dated: November 18, 2019

/S/
Alexa J. Hohensee
Administrative Law Judge
Office of Administrative Hearings