

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020010259

EDUCATIONAL RIGHTS HOLDERS ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

DECISION

AUGUST 5, 2020

On January 8, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Educational Rights Holders on behalf of Student, naming Chaffey Joint Union High School District. Educational Rights Holders will be referred to as Rights Holder A and B. The matter was continued for good cause on February 21, 2020.

Administrative Law Judge Rommel P. Cruz heard this matter by videoconference in California, on June 2, 3, 4, 9, 10, 11, 16, and 17, 2020.

Attorney Diana Renteria represented Student. Rights Holder A attended each day of the hearing and was assisted by a Spanish language interpreter throughout the hearing. Student did not attend the hearing.

Attorney Sarah Orloff represented Chaffey Joint Union. Director of Special Education Kelly Whelen, and West End Special Education Local Plan Area Program Specialist Royal Lord, Ph.D., attended the hearing on behalf of Chaffey Joint Union.

At the parties' request, OAH continued the matter to July 20, 2020, for written closing briefs. The record was closed and the matter was submitted on July 20, 2020.

ISSUES

1. Did Chaffey Joint Union deny Student a free appropriate public education, referred to as a FAPE, for the 2018-2019 school year, including the 2019 extended school year, by:
 - a. Failing to provide Rights Holder with an initial assessment plan;
 - b. Failing to conduct an initial assessment of any suspected disability;
 - c. Denying Rights Holder an opportunity to participate in the initial assessment decision-making process;
 - d. Impairing Rights Holder's ability to participate in the individualized education program, referred to as an IEP, decision-making process;
 - e. Failing to offer Rights Holder training;
 - f. Failing to provide Rights Holder with prior written notice in response to Rights Holder's emailed request for an assessment;
 - g. Failing to conduct a functional behavior assessment or behavior intervention plan when Student's behaviors impeded his education; and

- h. Failing to provide interventions when Student failed all his classes for the school year?
- 2. Did Chaffey Joint Union deny Student a FAPE by failing to meet its child find obligations from April 2018, through June 28, 2019, by failing to initially assess and identify his disabilities and provide an educational program to address his needs?
- 3. Did Chaffey Joint Union deny Student a FAPE from April 2018, through June 28, 2019, by failing to develop appropriate goals in the areas of:
 - a. Academics;
 - b. Need for extra help;
 - c. Need for more study time;
 - d. Tutoring;
 - e. Timely completion of assignments;
 - f. Class preparation;
 - g. Organization;
 - h. Spending more time on assignments;
 - i. More effort on assignments;
 - j. Homework completion;
 - k. Assignment completion; and
 - l. Test preparation?
- 4. Did Chaffey Joint Union deny Student a FAPE from April 2018, through June 28, 2019, by failing to offer:
 - a. Behavior therapy services;
 - b. Appropriate speech and language services;
 - c. Appropriate occupational therapy services;
 - d. Appropriate assistive technology assistance through a tablet computer;

- e. Appropriate one-to-one aide; and
 - f. Appropriate extended school year services?
5. Did Chaffey Joint Union deny Student a FAPE from April 2018, through June 28, 2019, by failing to assess Student in the areas of:
- a. Academic achievement;
 - b. Intellectual development;
 - c. Social emotional functioning;
 - d. Behavior;
 - e. Speech and Language Communication development;
 - f. Adaptive behavior;
 - g. Post-secondary transition;
 - h. Health;
 - i. Assistive technology;
 - j. Temporary special needs assistance; and
 - k. Occupational therapy?
6. Did Chaffey Joint Union deny Student a FAPE from August 7, 2019, through January 6, 2020, by:
- a. Failing to find Student eligible for special education and related services under the categories of:
 - i. Specific learning disability,
 - ii. Speech or language impairment,
 - iii. Intellectual disability;
 - b. Failing to conduct an appropriate psychoeducational assessment;
 - c. Having the school nurse assess Student's social emotional health;

- d. Conducting a speech and language assessment that:
 - i. Had the school psychologist administer the Bilingual Articulation and Phonology Assessment,
 - ii. Failed to use a formal voice assessment,
 - iii. Failed to use a formal fluency of speech assessment,
 - iv. Failed to use a formal pragmatic social language assessment, instead of relying solely on informal observations;
 - e. Failing to offer goals in the areas of:
 - i. Expressive vocabulary,
 - ii. Receptive vocabulary, and
 - iii. Following directions?
7. Did Chaffey Joint Union deny Student a FAPE from August 7, 2019, through January 6, 2020, by preventing Rights Holder from participating in the IEP process?

JURISDICTION

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 main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student requested the hearing and had the burden of proof as to the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 19 years old at the time of the hearing. He resided within Chaffey Joint Union's geographic boundaries at all relevant times with his aunt, Rights Holder A, and her husband, Rights Holder B. Prior to Student turning 18 years old, Rights Holder A was legally responsible for Student's welfare and qualified as a parent as defined under the IDEA. (34 C.F.R. § 300.30(a)(4) [An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare qualifies as a parent under the IDEA].)

Student assigned educational decision-making authority to Rights Holder A following his 18th birthday. Rights Holder A held educational decision-making authority for Student at all relevant times. Student assigned Rights Holders A and B joint decision-making authority over his educational rights for the purposes of filing and prosecuting the due process hearing request in this matter.

ISSUES 1(a), 1(c), 1(d), and 1(f): DID CHAFFEY JOINT UNION FAIL TO PROPERLY RESPOND TO RIGHTS HOLDER'S REQUEST FOR AN ASSESSMENT OF STUDENT TO DETERMINE HIS ELIGIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES DURING THE 2018-2019 SCHOOL YEAR AND 2019 EXTENDED SCHOOL YEAR?

Student contends Chaffey Joint Union failed to initiate the assessment process following a request for assessment by Rights Holder A. In particular, Student asserts that email communications, a phone call, and documents exchanged between Student's non-attorney representative James Peters, III, and Chaffey Joint Union's special education director Kelly Whelan, on April 9 and 10, 2018, established Rights Holder A's request to assess Student for special education. Chaffey Joint Union contends the communications and documents exchanged failed to show an assessment request. Chaffey Joint Union also contends that Mr. Peters lacked the authority to request the assessment on behalf of Student.

A parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (34 C.F.R. § 300.301(b).) If a school district agrees to assess a student, it must give the parent a written assessment plan within 15 calendar days of referral, not counting calendar days between

the student's regular school sessions or terms or calendar days of school vacation in excess of five schooldays, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (a); 56321, subd. (a).)

In addition, a school district must provide to parents prior written notice whenever it proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." (34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) The notice must include;

1. A description of the action proposed or refused by the school district;
2. An explanation of why the school district proposed or refused to take the action;
3. A description of each assessment procedure, assessment, record, or report on which the decision was based;
4. A reminder of parents' procedural safeguards;
5. Sources for assistance;
6. The options considered and the reasons for rejecting the others; and
7. A description of other factors relevant to the decision.

(34 C.F.R. § 300.503(b); Ed. Code, § 56500.4, subd. (b).)

The procedures relating to prior written notice "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." *C.H. v. Cape Henlopen Sch. Dist.* (3rd Cir. 2010) 606 F.3d 59, 70.) Prior written notice must be sent "a reasonable time" before the public agency proposes or refuses to initiate or change the identification, evaluation,

educational placement or provision of FAPE to the child. (34 C.F.R. § 300.503(a)(1); Ed. Code, § 56500.4, subd. (a).) This provides parents a reasonable time to fully consider and respond to a school district's proposal or refusal to take action. (*Letter to Chandler*, OSEP April 26, 2012.)

A school district's failure to timely respond to a parent's request for an assessment is a procedural violation of the IDEA. However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it 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 the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

Student was born and raised in Honduras, where he completed the sixth grade. He stopped attending school in 2015, part way through his seventh grade year. He did not return to formal schooling until he enrolled at Chaffey Joint Union on April 30, 2018.

On March 30, 2018, the United States Department of Health and Human Services, Office of Refugee Resettlement, released Student to Rights Holder A, named as Student's sponsor. In sponsoring Student, Rights Holder A assumed responsibility for Student's care, safety, and well-being. Student was 17 years old when he immigrated into the United States.

Rights Holders were assisted by Mr. Peters. Chaffey Joint Union was familiar with Mr. Peters, because he advocated for Rights Holders' biological child who was also a

student at Chaffey Joint Union. He held the position of executive director of the special education law division with the Law Offices of Fazil A. Munir, Esq. However, Mr. Peters was not an attorney.

On April 9, 2018, Ms. Whelen had a telephone conversation with Mr. Peters to discuss the enrollment of two students who would be living with Rights Holders. During the call, Mr. Peters did not mention that the students had a disability, nor required a special education assessment. Mr. Peters did not provide Student's name during the call.

Ms. Whelen testified that following her conversation with Mr. Peters, she informed Los Osos High School Assistant Principal Susan Malone that Rights Holders would be enrolling new students at Los Osos High School. Ms. Whelen requested Ms. Malone assist the family with the students' enrollment.

On April 9, 2018, following his telephone conversation with Ms. Whelan, Mr. Peters emailed Ms. Whelan, informing her that "two children with special needs that we" represented would be enrolling the next day. Mr. Peters wrote "[t]hey will be attending Los Osos High School, and will require a full assessment." The students' names were not disclosed in the email. The email did not identify Rights Holders. Approximately one and a half hours later, Ms. Whelan responded by email, asking if the two students were currently high school students or incoming ninth graders. She also asked if the students currently had an IEP. Mr. Peters did not reply.

On April 10, 2018, Mr. Peters emailed Ms. Whelan documentation related to Student. One document entitled Verification of Release dated March 30, 2018, from the United States Department of Health and Human Services, Office of Refugee

Resettlement, identified Student and named Rights Holder A as his sponsor. The Verification of Release also indicated Rights Holder A's agreement to provide for Student's care, safety, and well-being. However, neither the April 10, 2018 email, nor the attached documents made any reference to a request for an assessment of Student or the April 9, 2018 email.

Mr. Peters' April 9, 2018 email did not constitute a request for a special education assessment of Student. The April 9, 2018 email did not establish that Rights Holder A requested the assessment, nor did the evidence demonstrate that she, or anyone acting on Student's behalf, authorized Mr. Peters, or anyone in his firm, to make the request. No written notice was provided to Chaffey Joint Union from Mr. Peters, his firm, or Rights Holder A which indicated the Law Offices of Fazil Munir, Esq. represented Rights Holder A with respect to matters involving Student's education. Thus, the evidence did not establish that Mr. Peters had authority to request an assessment on behalf of Student.

In addition, the April 9, 2018 email failed to identify Student. Though the attached documents to Mr. Peters' April 10, 2018 email did identify Student, the email and documents made no mention of a request for an assessment, nor did they reference the April 9, 2018 email. There was nothing contained in the April 10, 2018 email and attached documents relating them to the April 9, 2018 email's request for a full assessment. Thus, the fragmented emails, phone calls, and documents exchanged between Mr. Peters and Ms. Whelan on April 9 and 10, 2018, failed to reasonably put Chaffey Joint Union on notice that Rights Holder A explicitly sought a referral for Student to be assessed for special education.

Hence, Chaffey Joint Union was not obligated to provide Rights Holder A with an assessment plan, nor was it required to provide her with prior written notice, as there was no request from her, specific to Student, for Chaffey Joint Union to consider. Accordingly, Chaffey Joint Union did not commit a procedural violation, and thus, did not impede Rights Holder A's ability to participate in Student's education.

Student failed to meet his burden of proving that Chaffey Joint Union denied him a FAPE by failing to provide Rights Holder A with an initial assessment plan and prior written notice during the 2018-2019 school year and 2019 extended school year. Furthermore, Student failed to prove that Chaffey Joint Union denied him a FAPE by impeding Rights Holder A's ability to participate in the initial assessment and IEP decision-making processes during that same period.

ISSUES 1(b), 1(g), 2, AND 5(a) THROUGH 5(k): DID CHAFFEY JOINT UNION DENY STUDENT A FAPE BY NOT ASSESSING HIM FROM APRIL 2018, THROUGH JUNE 28, 2019?

Student Contends Chaffey Joint Union failed to meet its child find obligation when Student's academic history, grade placement, limited English language proficiency, and poor academic performance indicated he may need special education. Chaffey Joint Union contends it had no knowledge of, or reason to suspect, Student may require special education.

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state that are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R.

§ 300.111(a).) This duty is commonly referred to as “child find.” California law specifically incorporates child find in Education Code section 56301, subdivision (a).

A school district’s child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (*Cari Rae S.*.) The school district’s duty for child find is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) The threshold for suspecting that a child has a disability is relatively low. (*Cari Rae S., supra*, at p. 1195.) A school district’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot circumvent that responsibility by way of informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121.) The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time, and not based upon hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031,1041 (*Fuhrmann*).)

If a school district agrees to assess a child, the school district is required to complete an assessment and hold an IEP team meeting to review the results within 60 days of receiving written parental consent to assess, exclusive of school vacations in excess of five schooldays and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

The evidence did not support Student's contentions that Chaffey Joint Union should have assessed him for special education from April 2018, through June 28, 2019. No persuasive evidence demonstrated Chaffey Joint Union had knowledge of, or had reason to suspect, Student had a disability that necessitated a referral for assessments prior to April 18, 2019.

Student's Chaffey Joint Union enrollment forms contradicted Mr. Peters' claim that Student was a child with special needs. Rights Holders completed Student's enrollment forms dated April 11, 2018, which indicated that his primary language was Spanish and he completed sixth grade in Honduras. He received counseling, English language development, and speech and language services in Honduras. However, Rights Holders also indicated in the enrollment forms that Student had no serious illness, injury, disability, special needs, operations or conditions that warranted an assessment or interventions. They also indicated that Student had not been in special education in the past. An additional enrollment form entitled Declaration of Residency and Responsibility completed by Rights Holder A, signed May 1, 2018, indicated "No" to the question of whether Student was a special education student. In addition, Chaffey Joint Union was not provided with a copy of Student's educational records from Honduras. Thus, there was no indication that Student required an assessment for special education.

Entering Chaffey Joint Union, Student knew little to no English and had missed years of formal schooling. Chaffey Joint Union administered the English Language Proficiency Assessment for California to assess Student's understanding of English. Student scored a one across all domains, placing him in the beginning stage of English language skills development. As part of the enrollment process, Ms. Malone explained to the family that Rights Holder A had a choice of keeping Student at Los Osos High School or placing him in the Newcomer Program at Chaffey High School.

The Newcomer Program was the only program within Chaffey Joint Union to serve students who were in the beginning stage of English language skills development, who required a level one program. The Newcomer Program served students with little to no English language proficiency. Rights Holder A opted to place Student in the Newcomer Program. His first day at the Newcomer Program was May 1, 2018. The 2018-2019 school year ended on May 23, 2018.

Chaffey Joint Union promoted Student to the 12th grade for the 2018-2019 school year. For the first quarter of that year, Student received an F in United States history, world history, math, biology, and English language development reading. He received a C in English language development. His first semester grades were Fs in United States history, world history, and math; a D plus in English language development; a D in biology; and a C minus in English language development reading.

Student's English language development reading teacher, Ellen Tremblay, testified at the hearing. Ms. Tremblay was an educator for 22 years. She spent her teaching career working with English language learners. She was as an English literacy and reading teacher with Chaffey Joint Union for the past 11 years. She held a multiple

subject professional clear credential with a bilingual, cross-cultural language and academic development authorization with an emphasis in Spanish.

Ms. Tremblay shared that Student, like other new students in the Newcomer Program, was like a “deer in the headlight.” She described that he experienced culture shock when he first entered the program. However, since the start of the 2018-2019 school year, Ms. Tremblay noticed Student to be happier, and enjoyed spending time with friends.

World history teacher Michael Haselwander and social sciences teacher Oscar Segovia testified. Both taught Student during the 2018-2019 school year. They, along with Ms. Tremblay, described Student as polite, friendly, jovial, and hardworking, who put a lot of effort in the classroom. Student asked questions, sought clarity to instruction, and focused when working on assignments. He had no negative behaviors at school.

Mr. Haselwander’s class was taught in English and supported by bilingual Spanish instructional assistants. He taught in the Newcomer Program for the past three years. He testified that Student’s poor grades in the first semester were typical for new students in the Newcomer Program. He explained that students in their first semester needed time to adjust, get acclimated with the instruction and classroom routines, and to understand what was expected of them. Students performed better following a full semester of instruction.

Mr. Segovia provided similar testimony regarding students in their first year in the Newcomer Program. He had 21 years of experience working with English language learners. Mr. Segovia was fluent in Spanish. His social studies class was taught in English, supported by bilingual Spanish instructional assistants.

Mr. Segovia taught in the Newcomer Program for the past four years. He opined students in their first semester in the Newcomer Program typically required time to adjust to the program's expectations and routines. Thus, Student's academic struggles in the first semester did not surprise him. He found Student's classroom performance equal with similarly situated peers.

Typical of students in their first full year in the Newcomer Program, Student's grades improved after completing a full semester. The third quarter of the 2018-2019 school year began on January 7, 2019, and ended on March 8, 2019. For the third quarter, Student received an A plus in English language development reading, a B in English language development, a B minus in United States history and world history, a C in biology, and a D in math.

In English Language development reading, Student scored 99.81 percent on assignments, quizzes, and tests for the third quarter. This was a significant improvement from his score of 56.23 percent from August 15, 2018, to October 5, 2018, and 70.18 percent from October 12, 2018, to December 20, 2018. He attended school regularly in the third quarter, with five excused absences out of 42 school days. He had no trancies.

However, Student's school attendance dropped in the fourth quarter of the 2018-2019 school year. The fourth quarter began on March 11, 2019, and ended on May 23, 2019. He was now 18 years old and no longer compelled to attend school under California law. (Ed. Code, §43200, subd. (a) [Each person between the ages of six and 18 years old not exempted is subject to compulsory full-time education].) During that period, Student had three excused absences. He was truant for 15 days. In total, Student missed 18 school days out of 49 in the fourth quarter.

As a result, Student's grades declined. He received Fs in all his classes for the second semester, with the exception of world history in which he received a D.

Student's contention that his poor attendance and grades were evidence of a suspected disability was not supported by the evidence. Student reported that some of his absences were due to medical appointments and meetings with his immigration attorney. What's more, Ms. Tremblay testified that it was not uncommon for students to stop attending the Newcomer Program to seek full-time employment once they turned 18 years old. Thus, the evidence did not link his poor attendance to a suspected disability. Rather, the evidence suggested that his education became less of a priority once he became an adult.

Furthermore, the evidence was clear that Student's failing grades were the result of his excessive absences from school, not a disability. Each of the teachers who testified, along with school counselor Jose Rangel, attributed Student's poor grades to his poor attendance. Student also reported to Chaffey Joint Union school psychologist Saul Rivera and speech-language pathologist Claudia Ceballos that his grades declined due to his poor attendance in the fourth quarter. He missed valuable instruction and opportunities to practice new skills during his absences. Hence, the evidence did not establish that Chaffey Joint Union had reason to suspect he had a disability based on his poor grades.

On April 9, 2019, English language development teacher Leonard Sanchez reported to Ms. Whelan that Student did not demonstrate any academic or behavior problems that would indicate a disability. Student progressed at a normal rate in language acquisition. Student was outgoing, responded to questions, presented in class, and read aloud in class.

On April 9, 2019, Ms. Tremblay reported that Student had not performed well on formal tests, but did not demonstrate a disability in her class. Student was shy and scared when he first started in the Newcomer Program, but made a lot of progress since then. Student became accustomed to school routines. Though Student did not score well on formal assessments, he was engaged and on-task in class. Student asked clarifying questions and completed assignments with some assistance if needed. He appropriately prioritized his assignments.

On April 9, 2019, Mr. Rangel reported that Student went through an adjustment period when he began at Chaffey Joint Union. He noted that Student adjusted well and was earning positive grades.

Rights Holder B testified at the hearing. He shared that Student's poor grades concerned him. However, he offered no explanation as to why Rights Holders did not request Chaffey Joint Union assess Student during the first semester of the 2018-2019 school year, when he received poor grades. In addition, there was no evidence that Student struggled with assignments at home.

Student was well behaved at school and made positive strides socially and academically during the 2018-2019 school year. The evidence demonstrated, but for his excessive absences, he would have continued to make progress. Therefore, Chaffey Joint Union had no reason to suspect Student had a disability that may have required special education.

Nonetheless, Chaffey Joint Union agreed to assess Student and allowed him to return to Chaffey Joint Union for the 2019-2020 year. On April 19, 2019, Chaffey Joint Union presented Rights Holder A with an assessment plan dated April 18, 2019. The

April 18, 2019 assessment plan proposed to assess Student in the areas of academic achievement, health, intellectual development, language and speech communication development, social emotional functioning, behavior, adaptive behavior, and post-secondary transition. The plan also proposed to use alternative means of assessing Student using audio and visual recording. On May 14, 2019, Rights Holder A provided written consent to the assessment plan, with the exception to the use of audio and visual recordings as alternative means of assessments. She promptly returned the consented assessment plan to Chaffey Joint Union.

Chaffey Joint Union had 60 days from May 14, 2019, exclusive of school vacations in excess of five schooldays, to complete Student's assessments and to convene an IEP team meeting to review the results. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).) Chaffey Joint Union's last day of school for the 2018-2019 school year was May 23, 2019. The 2019 extended school year began on May 28, 2019, and ended on June 28, 2019. Chaffey Joint Union's first day of the 2019-2020 school year was August 7, 2019. Thus, Chaffey Joint Union was not required to complete its assessments of Student prior to June 28, 2019.

In addition, there was no persuasive evidence that supported Student's claim that he required an assessment for assistive technology, temporary special needs assistance, or occupational therapy at any point in this case. The evidence failed to demonstrate Student had a suspected area of need that required assessments in those areas. Accordingly, Student failed to meet his burden of proving that Chaffey Joint Unified denied him a FAPE by failing to assess him prior to June 28, 2019, in the areas of functional behavior, academic achievement, intellectual development, social emotional functioning, behavior, speech and language communication development, adaptive

behavior, post-secondary transition, health, assistive technology, temporary special needs assistance, or occupational therapy.

ISSUES 1(e), 1(h), 3(a) THROUGH 3(l) and 4(a) THROUGH 4(f): DID STUDENT REQUIRE APPROPRIATE GOALS, INTERVENTIONS, BEHAVIOR THERAPY, SPEECH AND LANGUAGE SERVICES, OCCUPATIONAL THERAPY SERVICES, ASSISTIVE TECHNOLOGY ASSISTANCE, A ONE-TO-ONE AIDE, EXTENDED SCHOOL YEAR SERVICES, AND TRAINING FOR RIGHTS HOLDER TO RECEIVE A FAPE FROM APRIL 2018, THROUGH THE 2018-2019 SCHOOL YEAR AND 2019 EXTENDED SCHOOL YEAR?

Student contends that Chaffey Joint Union denied him a FAPE by not offering him goals, interventions, services, and training for Rights Holder A from April 2018, through the 2019 extended school year. However, Student offered no argument in his closing brief to support his contentions. Chaffey Joint Union contends Student was not eligible for special education and related services, and therefore, it was not required to offer him goals, interventions, training, or services through an IEP.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Only children with certain qualifying disabilities are eligible for special education. For purposes of special education eligibility, the term “child with a disability” means a child with, as relevant here, an intellectual disability; a speech or language impairment; or a specific learning disability; and who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3)(A)(i), (ii); 34 C.F.R. § 300.8(a)(1).)

Special education is required for individuals who are defined in part as individuals whose “impairment...requires instruction, services, or both, which cannot be provided with modification of the regular school program...” (Ed. Code, § 56026, subd. (b).) California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.)

In California, related services are called designated instruction and services, and must be provided “as may be required to assist an individual with exceptional needs to benefit from special education...” (Ed. Code, § 56363, subd. (a).) Related services include transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401.)

Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) The development of an IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams, supra*, 195 F.3d at 1149.)

The evidence did not establish that Student was a child with a disability, whose impairment required instruction, services, or both, which could not be provided with modification of his regular school program. At school, Student was studious, engaged, and had no behavioral issues. He was polite, friendly, and social. Student was new to the United States, understood little to no English, and missed years of formal education. Yet, following a semester to adjust to his new environment, he made meaningful progress in the Newcomer Program. His poor grades were a direct result of his poor

attendance, neither of which were a result of a disability. In light of the information available between April 2018, and through the 2019 extended school year, Student was not eligible for special education, and therefore, not entitled to an IEP. Hence, Chaffey Joint Union was not obligated to develop and offer Student goals, interventions, and services, or training as part of an IEP. Therefore, Student did not meet his burden of proving Chaffey Joint Union denied him a FAPE by failing to offer him goals, interventions, services, and training for Rights Holder A from April 2018, through the 2019 extended school year.

ISSUES 6(b), 6(c), 6(d)(i), 6(d)(ii), 6(d)(iii) AND 6(d)(iv): DID CHAFFEY JOINT UNION CONDUCT APPROPRIATE ASSESSMENTS IN THE AREAS OF PSYCHOEDUCATION, SOCIAL EMOTIONAL HEALTH, AND SPEECH AND LANGUAGE FROM AUGUST 7, 2019, THROUGH JANUARY 6, 2020?

Student contends Chaffey Joint Union school psychologist Mr. Rivera was biased against finding Student eligible for special education. Student argues he failed to conduct an appropriate psychoeducational assessment by dismissing the findings that supported Student's eligibility for special education in favor of those which supported his predetermined conclusion that Student did not have a qualifying disability.

Student offered no contentions in his closing brief as to the appropriateness of Chaffey Joint Union's speech and language assessment of Student or the assessment of his social emotional health. Chaffey Joint Union contends Student failed to prove the September 27, 2019 psychoeducational and speech and language assessments were inappropriate.

Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e).)

A school district must assess a special education student in all areas of suspected disability, including, if appropriate, health, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) In assessing a child with a disability, the assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

Assessments must be conducted by individuals who are knowledgeable of the student's disability. (Ed. Code, § 56320, subd. (g).) The assessments must also be conducted by persons competent to perform the assessment. (Ed Code, § 56322.) The competency of an assessor is determined by the local educational agency. (*Ibid.*) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).)

Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Tests must be selected and administered to

produce results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).)

School districts are required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that would assist in determining the educational needs of a child. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) Assessments must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, along with physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need. (34 C.F.R. § 300.304(c)(2).)

Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory. (20 U.S.C. § 1414(a)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The materials must also be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(ii); Ed. Code, § 56320, subd. (a).)

PSYCHOEDUCATION AND SOCIAL EMOTIONAL HEALTH

The April 18, 2019 assessment plan called for a special education teacher to assess Student's academic achievement and post-secondary transition, a nurse for his health, and a speech-language pathologist to assess his speech and language communication development. A school psychologist would assess his intellectual development, social emotional and behavioral functioning, and adaptive behavior.

Mr. Rivera conducted Student's psychoeducational assessment. He testified at the hearing. He was a school psychologist for 18 years. He estimated conducting between 1600 to 1800 psychoeducational assessments in his career. He was fluent in Spanish and estimated 30 to 40 percent of his assessments involved the use of Spanish. His psychoeducational assessment involved reviewing Student's background and educational records, observing Student at school, interviewing Student, Rights Holders, and teachers, obtaining a sample of Student's writing, and testing. His findings, conclusions, and recommendations were contained in a written report dated September 27, 2019.

Student's contention that Chaffey Joint Union improperly assigned the school nurse to assess his social emotional health is without merit. As called for in the April 18, 2019 assessment plan, Mr. Rivera assessed Student's social emotional health, not the school nurse. Accordingly, Student did not prove that Chaffey Joint Union denied him a FAPE by having a school nurse assess his social emotional health.

Student does not challenge Mr. Rivera's qualification to conduct a psychoeducational assessment, nor that Student was not assessed in the areas called for in the April 18, 2019 assessment plan. Student also does not question whether the test instruments Mr. Rivera used were validated, properly normed, and not racially, culturally, or sexually biased. Student also does not contend Mr. Rivera failed to use the instruments for the purposes they were designed for. He also does not claim Mr. Rivera failed to administer the tests in accordance with the instructions provided by the producers of the tests, or that their results were inaccurate. Moreover, Student does not allege Mr. Rivera failed to administer the tests in Student's primary language.

Student's primary contention centers on Mr. Rivera's interpretation of Student's performance on the standardized assessments of his intellectual functioning and processing abilities. Student accuses Mr. Rivera of bias; discounting the results of the standardized assessment results to support his predetermined conclusion that Student did not have a qualifying disability to be eligible for special education and related services.

Student's expert David Paltin, Ph.D. testified. Dr. Paltin was a licensed clinical psychologist with over 28 years of experience. He specialized in child psychodiagnostics, child assessments, and forensics. He also consulted on, and conducted, independent psychoeducational assessments. He estimated conducting between 1200 to 1400 psychoeducational assessments in his career. He did not conduct speech and language assessments, but assessed language processing as it related to neurocognitive functioning.

Dr. Paltin first met Student over the phone in late August 2019. He observed Student at school in September 2019, and met with him in person in January 2020. Rights Holder B interpreted for Dr. Paltin and Student in their meetings. Dr. Paltin briefly attended the September 27, 2019 IEP team meeting by phone. He reviewed Student's educational records, the September 27, 2019 speech and language assessment report, and the September 27, 2019 psychoeducational assessment report. He spoke to one teacher during his school observation, but did not testify as to what was shared by the teacher or what he observed at the school other than his observation of the computer class. He did not speak to any other teacher. He did not test Student. He did not prepare an assessment report.

Dr. Paltin opined that Mr. Rivera improperly rejected the standardized test results for ambiguous data derived from indirect measures, such as surveys and questionnaires. Dr. Paltin charged Mr. Rivera of confirmatory bias by discounting the standardized test results and directing his assessment towards a particular outcome. Student contends Mr. Rivera's recommendation that Student did not qualify for special education under the categories of specific learning disability and intellectual disability was biased and unreliable.

However, the evidence demonstrated otherwise. Mr. Rivera approached his psychoeducational assessment with care. He exercised a healthy level of caution in interpreting Student's scores on measures of intellectual abilities.

Student's scores on the English Language Proficiency Assessment indicated he was in the beginning stage of acquiring the English language. In addition, Student's performance on the Bateria-IV Pruebas de Habilidades Cognitivas, referred to as Bateria-4, revealed that his comprehension and general knowledge of the Spanish language fell in the well below average range. The Bateria-4 was a Spanish assessment that provided measures of overall intellectual ability, and measurements in a number of concentrated areas, such as comprehension and knowledge. Mr. Rivera opined in his report that Student's language related abilities in Spanish were poor. He attributed this to Student's limited school experience and speaking a Spanish dialect. Student spoke a native dialect of Honduras, which made it difficult for him to understand certain Spanish words, as some of the terms and vocabulary he used were different than normally used by Spanish speakers. Thus, Mr. Rivera cautioned that Student's performance on language intensive tasks should be interpreted with care in light of his very poor language skills in both Spanish and English.

Mr. Rivera exercised sound judgment in selecting and administering tests that measured Student's general intellectual ability. He administered three tests: the Universal Nonverbal Intelligence Test, Second Edition, referred to as UNIT-2, the Kaufman Assessment Battery for Children, Second Edition's Nonverbal Index, referred to as Kaufman Nonverbal Index, and the Bateria-4. The UNIT-2 and Kauffman Nonverbal Index were designed to reduce the impact of language. Student's full-scale battery standard score of 70 on the UNIT-2 fell in the below average range. His score of 61 on the Kaufman Nonverbal Index fell in the well below average range. His general intellectual ability standard score of 55 on the Bateria-4 also fell in the well below average range. However, unlike the UNIT-2 and Kaufman Nonverbal Index, Student's Bateria-4 general intellectual ability standard score was impacted by his poor language skills, weighed down by his poor performance on the comprehension and general knowledge subtests.

Mr. Rivera persuasively explained the general intellectual ability scores were not an accurate reflection of Student's overall intellectual ability due to his diverse scores on the subtests. He opined this was a challenge in interpreting the overall scores. For example, Student's standard score of 55 on the Kaufman Nonverbal Index's hand movements subtest fell in the well below average range. His standard score of 60 on Index's story completion subtest fell in the well below average range as well. In contrast, his pattern recognition subtest score of 75 fell in the below average range, and his block counting subtest standard score of 80 was in the low average range.

Similarly, his scores on the Bateria-4's subtests greatly varied. He had a standard score of 55 on the letter pattern matching subtest, which fell in the well below average range. On the other hand, he received standard scores of 81, 83, and 85 on

phonological processing, picture recognition, and visualization respectively, each falling in the low average range.

Mr. Rivera's doubts as to the validity of Student's overall general intellectual ability scores were further supported when comparing Student's performance on subtests between the three intellectual ability tests. The Bateria-4's numbers reversed subtest required Student to repeat in reverse order a series of numbers. It measured his short term recall abilities, an aspect of his working memory. His standard score of 46 fell in the well below average range. In comparison, his scores on the UNIT-2's working memory subtests fell in the below average to low average range.

Rather than rely on the overall intellectual ability scores, Mr. Rivera delved deeper into the tests to focus on Student's performance on tasks that involved nonverbal thinking and reasoning skills. Mr. Rivera explained that fluid non-verbal thinking and reasoning skills were more strongly correlated with general intellectual ability. These skills represent a person's ability to think and reason abstractly and to solve problems independent of acquired knowledge.

The Kauffman Nonverbal Index's triangles subtest measured Student's non-verbal reasoning skills. The triangles subtest required Student to replicate a design using triangles, with each side of the triangle shaded a different color. Language had little to no influence. His standard score of 80 fell in the low average range.

The UNIT-2's cube design subtest was a similar non-verbal reasoning measure. The cube design subtest asked Student to reproduce a diagram using cubes. He received a scaled score of seven. At the hearing, Mr. Rivera explained that a scaled score of seven was equivalent to a standard score of 85, which fell in the low average

range. Hence, Mr. Rivera opined the subtests showed that Student's fluid, nonverbal reasoning scores were stronger than those suggested by his overall scores of intellectual abilities.

Moreover, Student's classroom performance supported Mr. Rivera's view that Student's general intellectual ability was better than what the standard assessment measures indicated. Mr. Rivera opined that his classroom performance was inconsistent with his well below average scores in general intellectual ability. Mr. Rivera explained that it was unlikely for a student with a general intellectual ability standard score of 55 to make the progress Student made in the Newcomer Program, and such a student would have had difficulty expressing themselves, understanding classroom expectations, and following instructions.

That was not the case with Student. Despite his poor English and Spanish language abilities and years of not attending school, Student performed well in the classroom once he adjusted to the Newcomer Program. His performance in the third quarter of the 2018-2019 school year reflected Student's ability to meet the demands of the general education classroom.

Rights Holders reported that Student received help from Rights Holder A on assignments, but Student had no problems completing his homework. They believed Student to be motivated with school, but did not feel Student was making progress.

However, Student's teachers reported that Student was performing on par with similarly situated peers. His third quarter grades reflected his ability to meet the academic demands in the Newcomer Program. The evidence pointed to his poor attendance, not a disability, to be the root cause of his poor grades.

Hence, Mr. Rivera wisely discounted the weight of Student overall intellectual ability scores on the standardized assessments. He did not ignore them. Rather, he balanced the scores accordingly with Student's performance on measures that were more closely correlated with general intellectual ability; input from Student, Rights Holders and teachers; observations; and data from classroom assignment, quizzes, and tests.

Mr. Rivera considered information from diverse sources, thoughtfully analyzed the data, and prudently factored Student's cultural and educational background, his limited understanding of English, and poor Spanish language related abilities into his analysis. His attention to, and weight given to the results of the standardized assessments were sound. His findings and conclusions unbiased. Accordingly, his psychoeducational assessment report and testimony were given substantial weight.

Mr. Rivera was an experienced and trained school psychologist qualified to conduct the psychoeducational assessment. He used a variety of technically sound tests, and unbiased strategies to gather relevant functional, developmental, and academic information of Student. He administered tests in conformance with the instructions provided by the producer of such tests. The tests and assessment materials administered were not racially, culturally, or sexually discriminatory, and were provided and administered in Student's primary language. Mr. Rivera considered and appropriately weighed the results of the tests, his classroom performance, and input from Student, his teachers, and Rights Holders. The psychoeducational assessment was comprehensive, conducted in a manner consistent with the law, and met all legal requirements. Therefore, Student failed to meet his burden of proving that Chaffey Joint Union denied him a FAPE by failing to conduct a psychoeducational assessment that met legal requirements.

SPEECH AND LANGUAGE ASSESSMENT

Speech-language pathologists Rhea Lynch and Claudia Ceballos conducted a speech and language assessment of Student. Their findings, conclusions, and recommendations were presented in a written report dated September 27, 2019. Ms. Ceballos testified at the hearing. Ms. Ceballos was a speech-language pathologist since 2001, 12 of those years with Chaffey Joint Union. She conducted on average 20 to 30 speech and language assessments each year. She was fluent in Spanish. She estimated five assessments each year involved students who spoke primarily Spanish.

Student does not challenge the qualifications of the assessors, or whether the instruments the assessors used were validated, properly normed, and not racially, culturally, or sexually biased. Student also does not contend the assessors failed to use the assessment instruments that were administered for the purposes they were designed for and administered the tests in accordance with the instructions provided by the producers of the tests, and their results were accurate. Moreover, Student does not allege the assessors failed to administer the tests in Student's primary language. Instead, Student alleges the speech and language assessment was legally deficient based on Chaffey Joint Union's school psychologist administering the bilingual articulation and phonology assessment, and the assessors' failure to use formal voice, fluency of speech, and pragmatic social language assessments.

The evidence does not support Student's claims. First, speech-language pathologist, Ms. Ceballos, assessed Student in the areas of articulation and phonology, not the school psychologist. Second, Ms. Ceballos credibly testified she did not require the use of formal assessments to assess Student's voice, fluency of speech, and pragmatic social language. There was no evidence to the contrary. She adequately

assessed these areas informally, through conversations with Student. By speaking with Student, Ms. Ceballos confidently assessed the quality of his voice, pitch, loudness, rhythm, and rate. She opined his voice to be appropriate for his age and gender. Thus, she competently determined his voice not to be an area of need, and therefore, no formal assessment was needed.

Third, Ms. Ceballos persuasively determined Student's fluency of speech was age appropriate based on her conversations with him in Spanish. Student could communicate effectively. At the hearing, Ms. Ceballos testified she met with Student approximately four to five times, spending between four and a half to five hours with him in total. Student did not stutter, and only repeated a word once during all the conversations she had with him. She persuasively determined fluency of speech not to be an area of need, and thus, no formal assessment was needed.

Finally, Ms. Ceballos convincingly concluded that Student's pragmatic social language functioning was not an area of need. Student was social, engaged with his peers and developed friendships. He was shy, but easy to talk to. In conversation, he maintained appropriate eye contact and demonstrated adequate body language skills. She observed him during his testing to be attentive, motivated, and focused. He initiated conversations, asked questions, and made comments when conversing. He responded in detail when asked simple, open-ended questions. Ms. Ceballos persuasively opined that Student's pragmatic social language was age appropriate, and not an area of suspected disability. Therefore, no formal language assessment was required.

In summary, the evidence did not establish a need for Chaffey Joint Union to use formal assessment measures to assess Student in the areas of voice, fluency of speech,

and pragmatic social language. In addition, Ms. Ceballos, a bilingual-Spanish speech-language pathologist, not a school psychologist, assessed Student's articulation and phonology skills. Therefore, Student failed to meet his burden of proving Chaffey Joint Union denied him a FAPE by assigning a school psychologist to conduct a bilingual articulation and phonology assessment; and not administering formal assessments in the areas of voice, fluency of speech, and pragmatic social language.

ISSUES 6(a)(i), 6(a)(ii), AND 6(a)(iii): DID STUDENT QUALIFY FOR SPECIAL EDUCATION AND RELATED SERVICES DUE TO A SPECIFIC LEARNING DISABILITY, SPEECH OR LANGUAGE IMPAIRMENT, OR INTELLECTUAL DISABILITY FROM AUGUST 7, 2019, THROUGH JANUARY 6, 2020?

Student's closing argument generally contends he had a disability and should have qualified for special education. Chaffey Joint Union contends Student was not eligible for special education and related services.

In determining if a child is an individual with exceptional needs, a school district must consider information from a variety of sources. (34 C.F.R. § 300.306(c)(1)(i).) These sources include aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. (*Ibid.*) The school district must also ensure that information obtained from all of these sources is documented and carefully considered. (34 C.F.R. § 300.306(c)(1)(ii).)

Students whose educational needs are due primarily to limited English proficiency; a lack of instruction in reading or mathematics; or environmental, cultural, or economic factors are not individuals with exceptions needs unless the student otherwise

meets special education eligibility requirements. (Ed. Code, § 56026, subd. (e).) The decision as to whether a child qualifies for special education is made by the IEP team. (Cal. Code Regs., tit. 5, § 3030, subd. (a).) The IEP team shall take into account all the relevant material which is available on the child. (*Ibid.*)

SPECIFIC LEARNING DISABILITY

A child qualifies for special education under the category of specific learning disability if the child has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. (Ed. Code, § 56337, subd. (a).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) Specific learning disability eligibility does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage, or limited English proficiency. (Ed. Code, § 56337, subd. (a); (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(A).)

A district may take into consideration whether a pupil has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning by computing and measuring mathematical differences between ability and achievement scores on standardized testing. (Ed. Code, § 56337, subd. (b).) If standardized tests are considered valid for a student, a severe discrepancy is demonstrated by comparing standardized achievement

and ability test scores and finding that they are more than 1.5 standard deviations apart, or test scores differences that are 22 points, or more, apart, taking into account a standard error measurement of up to four points. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

In addition, a discrepancy shall not be primarily the result of limited school experience or poor school attendance. (Cal. Code Regs., tit. 5, § 3030.) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) and (e); Cal. Code Regs., tit. 5, § 3030.) Furthermore, a child who has a specific learning disability may not be eligible for special education if the child's needs can be met with modification of the general education classroom. (*Hood v. Encinitas Union School Dist.* (9th Cir. 2007) 486 F.3d 1099, 1106-1107 [decided under former Ed. Code, § 56337].)

Student returned to the Newcomer Program for the 2019-2020 school year. The first quarter of the 2019-2020 school year began on August 7, 2019, and ended on October 4, 2019. Student was truant from school on two days. He had one excused absence. His regular school attendance for the first quarter helped him earn As in Spanish II and wood design, a B plus in computer, a B in English language development, a B minus in English language development reading, and a D minus in math.

However, Student missed a significant amount of school in the second quarter. He was truant from school for 28 days and had four excused absences. He missed a total of 32 out of 47 school days in the second quarter. As expected, his grades suffered. He received a B in computer, a C in Spanish II, and Fs in the remaining classes. He was truant from school on January 6, 2020, the first day of the third quarter.

In an interview with Mr. Rivera, Student shared that he was not held back a grade or received special education when he attended school in Honduras. He had no discipline issues then. Student reported that he did not find any of his current classes difficult, but acknowledged difficulty in math. He explained that he had not been exposed to the math content in Honduras. He did not identify a “least favorite” class. Student reported spending about two hours each day studying at home, but opined he could do better in school if he spent more time studying.

In an interview with Mr. Rivera, Rights Holders reported not being certain as to why Student struggled with school work. It was their hope that Student could be proficient in basic academic subjects.

Mr. Rivera administered the Bateria-4 Pruebas de Aprovechamiento to assess Student’s academic achievement. Student performed in the low average range in basic reading skills with a standard score of 83. His standard scores of 70 in reading fluency and reading comprehension fell in the below average range. His performance in math calculation and problem solving fell in the well below average range, with standard scores of 64 and 65 respectively. In writing, his written expression standard score of 77 fell in the below average range.

The IEP team convened for Student’s initial IEP review on September 27, 2019. Mr. Rivera presented his psychoeducational assessment report. Ms. Lynch and Ms. Ceballos presented their speech and language assessment report. Chaffey Joint Union’s IEP team determined Student did not qualify for special education.

Mr. Rivera opined in his psychoeducational assessment report that to reduce bias in the assessments of bilingual students, assessors should rely on a variety of

standardized assessments along with classroom based scores and grades instead of the simple discrepancy model to identify a specific learning disability. At the IEP team meeting, he acknowledged Student had some weakness in his short-term memory. Mr. Rivera opined that Student's auditory processing, visual processing, fine sensory-motor skills, and cognitive abilities were consistent with estimated intelligence, but relatively weak when compared to peers his age. However, he also found Student's cultural and environmental experiences, and his social economic status to be significant contributors to Student academic struggles. Mr. Rivera recommended Student not qualify for special education under the category of specific learning disability.

Dr. Paltin disagreed. At the hearing, he opined that Student had deficits in memory processing, visual-spatial processing, and cognitive proficiency. He recommended Student qualify for special education, which he characterized as cognitive processing differences and language functioning differences, based on the results of the standardized tests administered. Dr. Paltin opined the results of the standardized tests were valid.

However, Dr. Paltin's conclusions relied too heavily on the results of the standardized assessments of Student's intelligence. Unlike Mr. Rivera, Dr. Paltin relied primarily on the standardized assessments, without giving appropriate weight to Student's cultural and educational background, his limited English proficiency, his weakness in the Spanish language, his classroom performance, the correlation between his poor attendance and poor grades, observations by teachers and assessors, and Student's own account. He offered no opinion as to how Student's overall performance in the classroom was consistent with a disability. He did not opine as to how Student's poor attendance negatively impacted his performance at school, or how a disability, and

not his poor attendance, was the cause of his academic struggles. Dr. Paltin offered no persuasive opinion as to how Student's memory processing, visual-spatial processing, and cognitive proficiency had an impact on school performance, or why Student required special education services to access the curriculum. Accordingly, his testimony was not persuasive.

Student's academic struggles did not stem from a psychological processing deficit, but rather a result of years of no schooling, his limited understanding of the English language, and most importantly, his poor attendance at Chaffey High School. Like many of the other Newcomer Program students, he needed time to adjust to the demands of the Newcomer Program and his new surroundings at Chaffey High School. Once acclimated, he was able to perform well in the classroom.

Student's performance on standardized tests of intellectual abilities were not valid representations of his intelligence. His academic achievement was on par with his estimated general intellectual abilities, which Mr. Rivera persuasively found to be in the below average to low average range. Even assuming the standardized tests of Student's intelligence were valid, there was no discrepancy between those scores and his scores for academic achievement that indicated his academic achievement was 1.5 standard deviations, or 22 points or more, below his intellectual abilities. Accordingly, Student failed to meet his burden of proving Chaffey Joint Union denied him a FAPE by not finding him eligible for special education under the category of specific learning disability.

SPEECH OR LANGUAGE IMPAIRMENT

A child is eligible for special education and related services for a language or speech disorder if the child demonstrates difficulty understanding or using spoken

language to such an extent that it adversely affects the child's educational performance and cannot be corrected without special education and related services. (Ed. Code, § 56333.) To be eligible for special education and related services, the difficulty in understanding or using spoke language, must be the result of the following:

1. An articulation disorder, such that the child's production of speech significantly interferes with communication and attracts adverse attention;
2. An abnormal voice characterized by persistent, defective voice quality, pitch, or loudness;
3. Fluency difficulties that result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the child and the listener;
4. Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the child's language performance level is significantly below those of the child's peers; and
5. Hearing loss which results in a language or speech disorder and significantly affects educational performance.

(Ed. Code, § 56333, subd. (a)-(e).).

A child has an expressive or receptive language disorder if the child's assessment results in:

1. a score of at least 1.5 standard deviations below the mean, or below the seventh percentile, for the child's chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics, or

2. a score of at least 1.5 standard deviations below the mean or the score is below the seventh percentile for the child's chronological age or developmental level on one or more standardized tests listed in subdivision (A) and displays inappropriate or inadequate usage of expressive or receptive language.
(Cal. Code Regs., tit. 5, § 3030, subd. (b)(11)(D).)

The evidence did not support Student's claims that he had a language or speech disorder that qualified him for special education and related services. Student did not have an articulation disorder, problems with speech fluency, or voice abnormalities. Ms. Ceballos assessed his oral motor skills which she found to be adequate. Ms. Ceballos also obtained an informal language sample in Spanish. Student used three to 11 words sentences to describe his interest. Ms. Ceballos testified that the ability to use 11-word sentences that were grammatically correct was appropriate for his age. Student could converse effectively, without stuttering or repeating words or sentences. His voice was normal, with adequate quality, pitch, loudness, rhythm, and rate for his age and gender.

In addition, Student's expressive and receptive language skills were appropriate for his age. He initiated conversations, asked questions, made comments, and used appropriate body language when conversing. He was social, and connected with his peers to develop friendships. He had no problems expressing himself in his native language.

Dr. Paltin opined that based on the Student's scores on the standardized assessments, Student had a language disorder, and therefore, met special education eligibility requirements. Specifically, Dr. Paltin referred to Student's score on the Expressive One-Word Picture Vocabulary Test, Fourth Edition, Spanish-Bilingual Edition.

The Expressive One-Word Picture Vocabulary Test measured Student's expressive vocabulary and word retrieval in Spanish. Student was asked to name objects, actions, and concepts pictured in illustrations. He received a standard score of 82, which fell in the 10th percentile. However, Ms. Ceballos explained in her assessment report and at the hearing, that the test was normed for students who had not missed extended periods of schooling and therefore, his scores should be viewed with considerable caution. Student's medical, educational, academic history, and school attendance were unclear. Therefore, she opined that it was unfair, and to Student's disadvantage, to compare him with same age peers with no significant educational gaps.

Dr. Paltin also relied on Student's performance on the Clinical Examination of Language Fundamentals, Fourth Edition, Spanish Edition's recalling sentences and word classes subtests to support his recommendation. The Clinical Examination of Language Fundamentals assessed a person's language and communication strengths and weaknesses. Student's scaled score of five on the recalling sentences subtest fell in the below average range, ranking in the fifth percentile. His scaled score of 2 on the word classes subtest was well below average, falling in the 0.4 percentile. In contrast, Student's word definitions subtest scaled score of 14 was above average and fell in the 91st percentile. Dr. Paltin explained the word definitions score skewed Student's overall core language standard score of 82, which fell in the 12th percentile. He opined that without this outlier scaled score of 14, Student's core language standard score would have been much lower.

However, Ms. Ceballos convincingly clarified that it was Student's performance on the word classes subtest that was the outlier and without that outlier score his core language standard score would have been higher. She testified that Student's poor

performance on the word classes subtest was due to his lack of familiarity with the relationships between words. She opined that his limited schooling and personal experiences, not a disorder, impacted his understanding of word relationships.

The word classes subtest required Student to select two words out of four that were most closely associated and to explain why the words were associated. For example, Student selected ball and stickers because he placed stickers on his ball; and kitchen cabinet and lock because he understood locks to be placed on kitchen cabinets.

Ms. Ceballos explained that Student was drawing from his own experiences and selecting words that were relevant to him, and not making selections based on the general understanding of the relationships between the words. He understood what the word meant, as demonstrated by his score on the word definitions subtest. She testified that understanding word relationships was a skill that was generally taught and practiced at school. She opined that his limited schooling made it difficult for him to understand which words were most closely related. As a result, Ms. Ceballos opined that Student's performance on the word classes subtest scaled score did not accurately reflect his language abilities and that his core language standard score underestimated his language and communication functioning.

Student did not meet the legal definition of an individual with a speech or language impairment under the IDEA. None of Student's standard scores on the assessments fell below 1.5 deviations from the mean, or below the seventh percentile in the areas of morphology, syntax, semantics, or pragmatics. He did not display inappropriate or inadequate use of expressive or receptive language. Ms. Ceballos persuasively found Student's voice to be appropriate for his age and gender. His

fluency of speech was not an area of concern. Furthermore, she found him to be easy to talk to. He had no problems with his pragmatic social language functioning.

The evidence did not establish Student had a language disorder that qualified him for special education and related services. Therefore, Student failed to prove that Chaffey Joint Union denied him a FAPE by failing to find him eligible for special education under the category of speech or language impairment.

INTELLECTUAL DISABILITY

A child qualifies for special education if the child has a significantly below average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects the child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(6).)

Student did not qualify for special education under the category of intellectual disability. Mr. Rivera credibly explained that Student's overall scores on standardized assessments underestimated his general intellectual abilities. Student's performance on measures that assessed his fluid nonverbal reasoning and thinking skills and his classroom performance demonstrated that his intellectual abilities were much stronger than what his standardized test scores suggested. Further, Student reported to Mr. Rivera that he received marks of 70s or better, mostly 80s and 90s, in preparatory school in Honduras. Student explained the scores were equivalent to C, B, and A grades. Mr. Rivera persuasively determined Student's general intellectual abilities fell in the below average to low average range.

In addition, Student had adaptive skills to manage the demands of school. Rights Holder A completed two rating scales to measure Student's daily living skills.

On the Adaptive Behavioral Assessment System, Third Edition, Rights Holder A rated Student well below average in his ability communicate with others, engage and plan recreational activities, use resources and function in the community, and to care for himself. However, on the Rating Scales of Impairment, Rights Holder A rated Student as having no impairment in his ability to care for himself. In addition, teacher surveys did not reveal deficits in Student's ability to function in school. Observations and teacher reports showed that his adaptive skills in the classroom and during unstructured time at school were adequate.

The evidence did not demonstrate that Student had significantly below average general intellectual functioning, that existed concurrently with deficits in adaptive behavior. Accordingly, Student did not qualify for special education as a child with an intellectual disability. In summary, Student failed to prove that he qualified for special education under the categories of specific learning disability, speech or language impairment, or intellectual disability. Therefore, Student failed to meet his burden of proving Chaffey Joint Union denied him a FAPE by failing to find him eligible for special education from August 7, 2019, through January 6, 2020.

ISSUES 6(e)(i), 6(e)(ii), AND 6(e)(iii): DID STUDENT REQUIRE GOALS IN THE AREAS OF EXPRESSIVE VOCABULARY, RECEPTIVE VOCABULARY, AND FOLLOWING DIRECTIONS FROM AUGUST 7, 2019, THROUGH JANUARY 6, 2020?

Student's closing argument made no contentions related to goals in the areas of expressive vocabulary, receptive vocabulary, or following directions. Chaffey Joint Union contends Student failed to prove he required goals in these areas.

The evidence did not demonstrate that Student required special education or related services from August 7, 2019, through January 6, 2020. Student had no disability that qualified him for special education and related services during that period. Accordingly, Chaffey Joint Union was not required to offer Student an IEP with goals in the areas of expressive and receptive vocabulary, and following directions. Therefore, Student failed to meet his burden of proving that Chaffey Joint Union denied him a FAPE by failing to offer goals in the areas of expressive vocabulary, receptive vocabulary, and following directions.

ISSUE 7: DID CHAFFEY JOINT UNION PREVENT RIGHTS HOLDER FROM PARTICIPATING IN THE IEP PROCESS FROM AUGUST 7, 2019, THROUGH JANUARY 6, 2020?

Student contends Chaffey Joint Union impeded Rights Holder A from meaningfully participating in the September 27, 2019 IEP team meeting by preventing Dr. Paltin from providing his expertise, moving forward with the IEP team meeting without her presence, and failing to record the entire meeting in Spanish. Chaffey Joint Union contends it did not impede Rights Holder A's ability to meaningfully participate in the September 27, 2019 IEP team meeting.

A school district is required to conduct not just an IEP team meeting, but also a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485; *Fuhrmann, supra*, 993 F.2d at p. 1036.) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully

participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 960 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

The IEP team meeting on September 27, 2019, was scheduled to begin at 1:00 p.m. and end at 3:00 p.m. On September 27, 2019, prior to the IEP team meeting, Ms. Whelen emailed Rights Holder B, and copied Mr. Peters, the September 27, 2019 psychoeducational assessment report, September 27, 2019 speech and language assessment report, a health report, and parents' procedural safeguards. Ms. Whelen mistakenly informed Mr. Peters that the IEP team meeting would start at 1:30 p.m. and that the IEP team would be calling him at that time. Ms. Whelen provided Mr. Peters the number for Chaffey High School in the event the team could not reach him.

Monica Plascencia-McCort was a school psychologist for Chaffey Joint Union assigned to facilitate the IEP team meeting. She left several messages with Mr. Peters and Rights Holders at approximately 1:00 p.m. Ms. Plascencia-McCort provided Mr. Peters with her cellphone number. The IEP team reached Mr. Peters at approximately 1:15 p.m. Mr. Peters explained the miscommunication and that he, Dr. Paltin, and Rights Holder A were not expecting to meet until 1:30 p.m. The IEP team agreed to delay the start of the meeting to 1:30 p.m.

Approximately between 1:30 p.m. and 1:50 p.m., Mr. Peters could not be patched through to the meeting's phone. Dr. Paltin and Rights Holder A were conferenced into

the meeting through Mr. Peters' phone when Mr. Peters was finally patched through to the meeting. The meeting began at approximately 1:50 p.m. Chaffey Joint Union audio recorded the meeting. The recording was admitted into evidence.

Present at the meeting from Chaffey Joint Union were Ms. Plascencia-McCort, special education advisor Matt Badawai, general education teacher Brenton Tatum, Ms. Lynch, Ms. Ceballos, Mr. Rivera, Mr. Rangel, Ms. Tremblay, and Spanish interpreter Albert Garcia. Due to the late start, Mr. Peters inquired if the meeting could be extended beyond 3:00 p.m. Ms. Plascencia-McCort indicated it could not.

The meeting began with introductions. Rights Holder A had no questions related to her procedural rights and safeguards and declined an explanation of the rights and safeguards. The IEP team turned to Mr. Rivera's presentation of the psychoeducational assessment report. Mr. Peters suggested that Mr. Rivera not read the report verbatim, but rather to focus his presentation on his key points and highlights.

A few minutes into Mr. Rivera's presentation, Mr. Peters and Dr. Paltin interjected to allow Dr. Paltin to ask a question. Ms. Plascencia-McCort asked Dr. Paltin to hold off on his questions until Mr. Rivera completed presenting his assessment, as she believed Mr. Rivera's presentation could provide the answers to his questions.

Mr. Peters disagreed, and insisted Dr. Paltin ask his question. Mr. Peters explained that Dr. Paltin's availability that day was limited and he wanted to give Dr. Paltin the opportunity to ask his questions. Dr. Paltin asked a few questions which Mr. Rivera answered. When Dr. Paltin began to question Mr. Rivera's conclusions, Ms. Plascencia-McCort insisted that Dr. Paltin hold his questions until Mr. Rivera completed presenting the psychoeducational assessment report. Mr. Peters continued

to disagree, and insisted that Dr. Paltin not be interrupted. Mr. Peters began to talk over Ms. Plascencia-McCort, who then began to raise her voice to be heard over Mr. Peters. Mr. Rivera could not review his report over the interruptions. Therefore, Ms. Plascencia-McCort took Mr. Peters, Dr. Paltin, and Rights Holder A off the phone's speaker to allow Mr. Rivera to present his assessment. Mr. Peters, Dr. Paltin, and Rights Holder A remained on the line and could hear the other participants over the phone.

Ms. Plascencia-McCort testified at the hearing. She was a school psychologist for 10 years. She estimated attending 300 IEP team meetings a year. She facilitated approximately 20 IEP team meetings a year for the past five years. She recalled previously facilitating four to five IEP team meetings with Mr. Peters. She described Mr. Peters as confrontational, who spoke over other participants.

Mr. Rivera continued with his presentation while Mr. Garcia interpreted into the telephone. Mr. Peters continued to raise his voice over the phone. Within minutes, Mr. Garcia informed the team that "they hung up," referring to Mr. Peters. This occurred at about 2:07 p.m. Ms. Plascencia-McCort called and left a message for Mr. Peters to rejoin the meeting. Mr. Peters, Dr. Paltin, and Rights Holder A did not call back. After waiting five minutes, Chaffey Joint Union's IEP team moved forward with the meeting. The meeting ended at approximately 3:25 p.m.

On October 8, 2019, Mr. Peters emailed Ms. Whelan requesting an attached letter he prepared be made part of the September 27, 2019 IEP document. The letter went into detail of Mr. Peters' attempts on September 27, 2019 to initially join the IEP team meeting by phone. Mr. Peters' explained in the letter that the school phone operator connected Mr. Peters, with Dr. Paltin and Rights Holder A on the line, to the phone at the meeting, only to get a recording. Mr. Peters wrote that for 28 minutes, he

attempted to connect with the IEP team. The letter noted that he was able to reach the team around 1:56 p.m. However, the IEP team meeting notes indicated 1:50 p.m. Regardless, the meeting began on or about 1:50 p.m.

However, the letter did not support Student's contention. It discredited Student's claim that Mr. Peters, along with Dr. Paltin and Rights Holder A, were disconnected and they attempted to call and rejoin the meeting after it started at approximately 1:50 p.m. Mr. Peters made no mention in the letter of any effort on his part, or by Dr. Paltin and Rights Holder A, to rejoin the IEP team meeting after, as Student's claims, Mr. Peters was disconnected. Rather, the evidence established that Mr. Peters hung up. Chaffey Joint Union did not disconnect his call. The meeting continued for another hour, until approximately 3:25 p.m. Mr. Peters, Dr. Paltin, and Rights Holder A were free to rejoin the meeting that afternoon. They chose not to.

Further, Student's claim that Chaffey Joint Union's failure to interpret the remainder of the IEP team meeting on audio after Mr. Peters hung up impeded Rights Holder A from meaningful participation is misplaced. Mr. Garcia was present for the meeting to interpret for Rights Holder A, not for Chaffey Joint Union to record the meeting in Spanish. Hence, when Rights Holder A left the meeting, Mr. Garcia was no longer required to provide interpretation. No other IEP team member needed an interpreter. Furthermore, Student failed to demonstrate that transcribing the audio recording into Spanish could not have served Rights Holder A's needs.

The evidence did not establish that Chaffey Joint Union significantly impeded Rights Holder A's ability to participate in the IEP process from August 7, 2019, through January 6, 2020. The delay in starting the IEP meeting did not significantly impede her participation. In addition, Chaffey Joint Union's request for Dr. Paltin to hold his

questions until after Mr. Rivera completed his presentation of the psychoeducational assessment report was not a significant impediment to her participation. His questions could have been answered either at the end of the meeting or in a follow-up meeting had Rights Holder A requested one. She made no request to reconvene an IEP team meeting prior to January 6, 2020.

Furthermore, Mr. Peters ended his call to the IEP team meeting, disconnecting Rights Holder A. Chaffey Joint Union did not prevent Rights Holder A, Mr. Peters, or Dr. Paltin from rejoining the meeting by phone. They chose not to. Further, Student failed to demonstrate that any harm came from Chaffey Joint Union's actions as Student did not qualify for special education services. (*R.B., ex rel. F.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 942.)

Student failed to point to any evidence where Chaffey Joint Union significantly impeded Rights Holder A's ability to meaningfully participate in the September 27, 2019 IEP team meeting or at any other occasion from August 7, 2019, through January 6, 2020. Therefore, Student failed to meet his burden of proving Chaffey Joint Union denied him a FAPE by preventing Rights Holder A from participating in the IEP process during that period.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Issues 1(a), 1(c), 1(d), and 1(f): Chaffey Joint Union did not deny Student a FAPE for the 2018-2019 school year and 2019 extended school year by failing to either

provide Rights Holder with an initial assessment plan or prior written notice in response to Rights Holder's request to assess Student for special education. Furthermore, Chaffey Joint Union did not deny Rights Holder the opportunity to participate in the initial assessment decision-making process, nor did it impair Rights Holder's ability to participate in the IEP decision-making process. Chaffey Joint Union prevailed on Issues 1(a), 1(c), 1(d), and 1(f).

Issues 1(b), 1(g), 2, and 5(a) through 5(k): Chaffey Joint Union did not deny Student a FAPE by not assessing him from April 2018, through June 28, 2019, in all areas of suspected disabilities, including the areas of functional behavior, academic achievement, intellectual development, social emotional, behavior, speech and language communication development, adaptive behavior, post-secondary transition, health, assistive technology, temporary special needs assistance, and occupational therapy. Chaffey Joint Union prevailed on Issues 1(b), 1(g), 2, 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 5(g), 5(h), 5(i), 5(j), and 5(k).

Issues 1(e), 1(h), 3(a) through 3(l), and 4(a) through 4(f): Chaffey Joint Union did not deny Student a FAPE by failing to offer Rights Holder training or to offer Student interventions for the 2018-2019 school year and extended school year. In addition, Chaffey Joint Union did not deny Student a FAPE from April 2018, through June 28, 2019, by failing to develop appropriate goals in the areas of academics, need for extra help, need for more study time, tutoring, timely completion of assignments, class preparation, organization, spending more time on assignments, more effort on assignments, homework completion, assignment completion, and test preparation. Furthermore, Chaffey Joint Union did not deny Student a FAPE during the same period by failing to offer Student behavior therapy services, speech and language services,

occupational therapy services, assistive technology assistance, a one-to-one aide, and extended school year services. Chaffey Joint Union prevailed on Issues 1(e), 1(h), 3(a), 3(b), 3(c), 3(d), 3(e), 3(f), 3(g), 3(h), 3(i), 3(j), 3(k), 3(l), 4(a), 4(b), 4(c), 4(d), 4(e), and 4(f).

Issues 6(b), 6(c), and 6(d)(i) through 6(d)(iv): Chaffey Joint Union did not deny Student a FAPE from August 7, 2019, through January 6, 2020, by failing to conduct an appropriate psychoeducational assessment and speech and language assessment. In addition, Chaffey Joint Union did not deny Student a FAPE by having the school nurse assess his social emotional health. Chaffey Joint Union prevailed on Issues 6(b), 6(c), and 6(d)(i), 6(d)(ii), 6(d)(iii), and 6(d)(iv).

Issues 6(a)(i), 6(a)(ii), and 6(a)(iii): Chaffey Joint Union did not deny Student a FAPE from August 7, 2019, through January 6, 2020, by failing to find him eligible for special education and related services under the categories of specific learning disability, speech or language impairment, or intellectual disability. Chaffey Joint Union prevailed on Issues 6(a)(i), 6(a)(ii), and 6(a)(iii).

Issues 6(e)(i), 6(e)(ii), and 6(e)(iii): Chaffey Joint Union did not deny Student a FAPE from August 7, 2019, through January 6, 2020, by failing to offer goals in the areas of expressive vocabulary, receptive vocabulary, and following directions. Chaffey Joint Union prevailed on Issues 6(e)(i), 6(e)(ii), and 6(e)(iii).

Issue 7: Chaffey Joint Union did not deny Student a FAPE from August 7, 2019, through January 6, 2020, by preventing Rights Holder from participating in the IEP process. Chaffey Joint Union prevailed on Issue 7.

ORDER

All Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings