

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

---

CASE NO. 2020020062

---

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

---

DECISION

JULY 2, 2020

On February 3, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Bellflower Unified School District. On March 11, 2020, OAH continued the hearing in this matter to May 5, 2020. On March 30, 2020, OAH issued a General Order continuing all special education hearings due to the Covid-19 pandemic. On April 3, 2020, OAH scheduled the matter for hearing on May 19, 2020. Administrative Law Judge Brian H. Krikorian heard this matter via Microsoft Teams video and audio conference on May 19, 20, 21, and 27, 2020. The Administrative Law Judge shall be referred to as the ALJ.

Priya Bahl-Sen represented Student. Parent attended all hearing days on the Student's behalf. Richard Brady and Marcia Brady represented Bellflower Unified. Matthew Adair attended all hearing days on Bellflower Unified's behalf.

At the parties' request, the ALJ continued the matter to June 15, 2020, for written closing briefs. The record was closed, and the case was submitted on June 15, 2020.

## ISSUES

- Did Bellflower Unified deny Student a free appropriate public education, referred to as a FAPE, by failing to design an appropriate educational program tailored to Student's unique needs, from February 2018 to February 3, 2020?
- Did Bellflower Unified deny Student a FAPE by failing to conduct comprehensive evaluations, from February 2018 to February 3, 2020?
- Did Bellflower Unified deny Student a FAPE by failing to provide an appropriate transition program for Student?

## 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 concerning 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).) Student had the burden of proof. 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).)

At the time of the hearing, Student was 17 years old and in 11th grade at Mayfair High School. Student resided within Bellflower Unified's geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism and speech or language impairment.

## ISSUE 1: DID BELLFLOWER UNIFIED DENY STUDENT A FAPE, BY FAILING TO DESIGN AN APPROPRIATE EDUCATIONAL PROGRAM TAILORED TO STUDENT'S UNIQUE NEEDS, FROM FEBRUARY 2018 TO FEBRUARY 3, 2020

Student contends that while he was scheduled to graduate in the spring of 2021, he was unprepared for his post-high school goals, and was struggling academically, primarily in reading and writing. Student contends that his reading skills remained near

his elementary school levels. Student also argues that the goals in Student's individualized education program, called an IEP, were not reasonably aimed at allowing him to progress because Student was not meeting those goals. Bellflower Unified contends that its 2018 and 2019 IEP's offered a FAPE and addressed Student's needs in all areas of disability. Bellflower Unified also argues that Student was progressing in most of his goals and towards graduation.

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.) 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.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000].)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal. 2017, No. CV16-04356-BRO) 2017 WL 2864945; see also Ed. Code, § 56345; 20 U.S.C. § 1414(d)(1)(A)(i).) An

examination of the goals in an IEP is central to the determination of whether a student received a FAPE. “[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

The IEP must include a statement of the program modifications or supports that will be provided to the student, to allow the student to advance appropriately toward attaining the annual goals; to be involved in, and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i)-(ii); Ed. Code, § 56345, subds. (a)(4)(A), and (B).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child’s present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS 1988) 213 IDELR 118.) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) 57 IDELR 128 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress]). The IEP must contain a description of how the child’s progress toward meeting the annual goals described will be measured and when

periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 20 U.S.C.A. § 1414(d)(1)(A)(iii).

An IEP team develops an IEP. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a)). Whether an IEP offers a student, a FAPE is assessed in light of information available at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective;" it must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Id.* quoting *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

## 2018-2019 IEP

On May 11, 2018, the IEP team convened for Student's annual IEP program for the 2018 to 2019 school year. At the time of the meeting, Student was completing his ninth-grade year and would be entering 10th grade. Parent informed the Bellflower Unified members of the IEP team that Student performed below standard in math, reading, writing, speaking, listening, and research/inquiry skills. Although Student passed his classes in the first semester of the ninth grade, his grades dropped from the previous school year. Student's reading fluency was at a fourth-grade level. Student's reading comprehension was at a fifth to sixth-grade level. Student enjoyed listening to

music, watching videos, and eating pizza. Student was friendly, kind, and tried his best to perform well academically.

The IEP for the 2018-2019 school year offered Student specialized academic instruction in a self-contained class for math, English, social studies, science, and general education for electives and physical education. Bellflower Unified offered Student 220 minutes daily of specialized academic instruction, 30 minutes of speech services each week, and adapted physical education. Student did not qualify for the extended school year because the IEP team found that he would “recoup skills at a rate similar to his general education peers.” Parent consented to the May 11, 2018 IEP.

## FEBRUARY 2019 IEP MEETING

On December 13, 2018, Bellflower Unified informed Parent by letter that Student was not meeting academic expectations and that Student’s permission to attend Mayfair High School on an inter-district permit was in jeopardy. As a result, Parent requested an IEP meeting. A February 8, 2019 IEP team meeting convened to discuss Student’s progress. Parent was concerned with Student’s information retention. Parent reported that Student struggled to pass his classes and earned low grades in English, History, and Biology. Parent was also concerned that Student did not have the necessary skills to succeed beyond high school. Student’s case carrier, Lyndsay Gaylord, opined that Student progressed enough to pass his classes.

Gaylord provided Parent with two emails. One of those emails was from his 10th grade English teacher, Samantha Head, who testified at the hearing. Head was an education specialist at Bellflower Unified and had a mild to moderate instruction

credential. During the 10th grade, Student received a D- the first semester in English, and a D+ grade in the second semester. Head provided all of her pupils, including Student, with the San Diego Quick Assessment test, which tests reading fluency and levels of frustration. Head tested Student three times: at the beginning of the 2018-2019 school year; before the December break; and, at the end of the 2018-2019 school year. Student scored at a fourth-grade level in reading fluency and at a fifth to sixth-grade level for reading comprehension in the December break test. Fluency is the pacing at which someone can read independently. Head read aloud to Student and provided him with other prompts and methods to understand the 10th-grade material. Student's grades also suffered because he struggled with writing. As of February 2019, Student had not met his reading or writing goals. Head opined that Student did not have the skills to reach the 10th or 11th grade level in comprehension or writing.

The second email was from Candy Gomez, an education specialist at Bellflower Unified, who had a mild to moderate instruction credential. Gomez has worked in special education since 1996, and she taught Student history in the 2018-2019 school year. Gomez opined that Student had severe reading difficulties, could not read at grade level, and struggled academically. He could not decode, recall the word pronunciations, or retain information. Student could not keep pace with the curriculum. Gomez caught Student cheating on tests twice and attributed it to his frustration and inability to do the work. Gomez did not discipline Student because she believed his actions were due solely to his disability and his inability to understand the material.

Although the IEP team discussed additional accommodations to help Student's academic progress at the meeting, the February 8, 2019 IEP document did not specify what additional accommodations, if any, the team would implement.



## 2019-2020 IEP

The IEP team met on April 24, 2019 to develop Student's annual IEP. Student was in the 11th grade for the 2019-2020 school year. Student enjoyed listening to music, watching videos, and eating pizza. Student was friendly, kind, and tried his best to perform well academically.

Student continued to perform below standard in math, reading, writing, speaking and listening, and research/inquiry skills. Teachers reported that Student was frustrated in the classroom and struggled with working independently. Student was often lost, distracted, and consistently stressed. Student's science teacher observed Student clenching his fists when unable to find answers to questions as a sign of extreme frustration. The science teacher was also concerned Student lacked independent learning skills and was not gaining any educational benefit from his classes. During the April 24, 2019 IEP team meeting, Parent requested information on how to receive one-on-one academic support for Student. The Bellflower Unified members of the IEP team responded that individualized, one-on-one support was inappropriate because it affected Student's independence. Instead, they recommended adding accommodations such as having the classroom aide check up on Student more often during class.

Bellflower Unified made the same FAPE offer to Student as it did in the May 11, 2018 IEP. The IEP added 20 minutes each month of college and career awareness services. The IEP team recommended that Student continue to receive speech and language services in the areas of semantics and pragmatics. They again concluded that Student did not qualify for extended school year services because Student did not fail any class and did not need to recover credits for graduation. Parent consented to the April 24, 2019 IEP.

## 2019-2020 SCHOOL YEAR

### SEPTEMBER 2019 IEP MEETING

At the end of the 2018-2019 school year, Student received a D in Biology, failed World History, and received a D+ in 10th grade English. Student was required to attend summer school to make up his failing grade in World History. Student made limited progress towards his IEP goals. Student told Parent he did not feel smart and felt that he could not accomplish anything. Student exhibited typical autistic behaviors such as stimming, pacing, and walking on tippy toes both at home and at school. The word stimming refers to self-stimulating behaviors, usually involving repetitive movements or sounds, and is common in students diagnosed with autism. At school, Student's stimming behavior included running around campus during lunch.

Parent requested a fall IEP meeting to discuss Student's initial progress for the school year. Parent was frustrated that Student was not progressing from 10th grade. The team met on September 25, 2019. Parent informed Bellflower Unified's IEP team members that Student was not retaining information, had low reading comprehension, and lacked self-esteem. Speech pathologist Nelly Antich and Student's teachers were concerned that Student was frustrated, lost, and distracted in class. In her speech and language sessions with Student, Antich encouraged Student to ask questions and seek help from his teachers. The meeting concluded with the Bellflower Unified IEP team members agreeing to review Student's IEP goals and progress, and have the school psychologist contact Parent after such review. Between the meeting on September 25, 2019, and the date Student filed the complaint on February 3, 2020, the school psychologist never followed up or called Parent.

## NOVEMBER 2019 IEP MEETING

On November 4, 2019, the IEP team convened to discuss an IEP Amendment. Parent again related frustration that Student was not progressing on his goals and classwork. Parent was concerned that Student was not functioning independently and became lost in new environments. For example, Student was lost going to the restroom at a new restaurant and was unable to perform simple tasks like buying a loaf of bread. Student's physical education teacher reported that Student did well in physical education and asked for help when needed. Student also did well in his art class. Student's English teacher said he did well and received one-on-one assistance when needed. Student's science teacher reported that Student did not seek help but did sometimes gaze off.

Parent was concerned that Student was being passed along and would graduate from high school without the academic or adaptive daily skills needed to function independently. Although the Bellflower Unified IEP team members offered to help Parent connect with a transition specialist, they did not add new goals, services, or modify Student's IEP. Between November 4, 2019, and the date Student filed his complaint, Bellflower Unified did not help Parent connect with a transition specialist.

## SPEECH AND MATH

The evidence showed that the speech and math goals were reasonably developed based upon the information available to the IEP team at the time of the 2018-2019 and 2019-2020 meetings, and directly addressed Student's unique needs in those areas. Student did not prove by a preponderance of the evidence that Bellflower Unified failed to appropriately design Student's speech goals and math goals in the May 11, 2018 and April 24, 2019 IEPs.

Bellflower Unified last evaluated Student's speech and language abilities on May 4, 2018. Robert D. Frankeberger, M.S., conducted this assessment but did not testify at the hearing. Frankeberger concluded that Student scored below his age and grade level and recommended the continuation of speech and language services. Bellflower Unified also assessed Student's eligibility for special education services as part of his triennial review on May 11, 2018. School psychologist Stacie Kay, M.A., conducted the assessment and prepared a written report. Kay concluded that Student needed prompting to stay on task, was frustrated easily and had difficulty in the reading comprehension. Kay further opined that Student qualified under the diagnosis of autism and exhibited maladaptive speech and cognitive styles. At the May 11, 2018 IEP meeting Student met his two 2017-2018 speech goals: to explain the meaning of 30 novel non-literal statements with 80 percent accuracy, with one to two verbal prompts, and to identify and explain the meaning of new ideas and new words with 80 percent accuracy. Student also met his math goals of linear equations.

The May 11, 2018 IEP team proposed four new goals in the areas of math, reading and comprehension, and post-high school transition for the 2018-2019 school year. The first two goals addressed reading and writing and are discussed below. The fourth goal addressed transition and is discussed in Issue Number Three.

Student's third goal addressed math. By May 2019, when given eight math problems, Student would be able to solve multi-step problems and comprehension problems with 90 percent accuracy in three out of four trials.

Student also had three speech and language goals. The first goal was that by May 2019, when presented with 10 objects or pictures, he would describe eight out of ten words associated with the target words by function, association, category, or

attribute. Student's second speech and language goal was that by May 2019, Student would be presented with three to five pictures and would be able to select two images and explain their similarities and differences with 80 percent accuracy. The third speech and language goal was that by May 2019, Student would be able to take into consideration other people's perspectives, identify communication breakdowns, and use appropriate "repairing strategies," such as offering apologies or requesting clarification, in eight out of ten opportunities.

As of the April 24, 2019 IEP meeting, Student had met all speech and language goals and was substantially achieving his math goal. Student could solve single-step math problems with a calculator with 80 percent accuracy and solve multi-step problems with 50 percent accuracy. However, he became very frustrated if he made a simple mistake and often wanted to give up. Student's teachers reported he was often lost in class and struggled with recalling information discussed recently.

The 2019-2020 IEP document had five goals, and two speech and language goals. Goal number three addressed math and provided that Student would solve 10 single step and multi-step, real-life and mathematical problems with at least 80 percent accuracy in four out of five trials by April 2020. The first speech and language goal was that Student would be able to interpret 15 unique figurative language expressions with 80 percent accuracy. The second speech and language goal was that Student would be able to interpret 15 different words with multiple meanings with 80 percent accuracy.

At the time of the hearing, Bellflower Unified had not held an annual IEP meeting for the 2020-2021 school year due to the Covid-19 pandemic. Antich credibly testified that Student continued to meet his speech and language goals for the 2019-2020

school year. Student continued to receive 30 minutes of group speech therapy each week, and much of the speech therapy was also incorporated into the curriculum.

Gaylord was Student's math teacher in 10th and 11th grade. Gaylord followed the IEP recommendations for accommodations, and credibly testified that Student was able to progress in math classes in both years. Student did a very good job of following along with the class and fulfilling the class requirements. As of the third quarter of 2020, Student was receiving a B+ in Business Math.

Student did not prove that the goals for math, and speech and language were not appropriate or that Bellflower Unified denied Student a FAPE by failing to design an appropriate educational program in the area of math and speech, tailored to Student's unique needs, from February 3, 2018 to February 3, 2020.

## READING AND WRITING

Student did not meet the reading and writing goals for the 2018-2019 school year. Rather than address the failure to achieve those goals, or provide Student additional remedial services, Bellflower Unified continued the goals to the next year. Student proved by a preponderance of the evidence that Bellflower Unified did not develop measurable annual goals, in the areas of reading and writing, that were based upon Student's present levels of academic achievement and functional performance for the 2018-2019 and 2019-2020 school years. The failure to develop appropriate goals in these areas deprived Student of an educational benefit.

The first goal of the May 11, 2018 IEP addressed reading. By May 2019, Student would be able to sequence key events from a text and cite pieces of textual evidence that identify or describe the event in three out of four trials, with 70 percent accuracy.

The second goal addressed writing. By May 2019, Student would write one to two paragraphs, including a topic or thesis sentence, supporting details, and conclude with strong self-selected transitions between sentences and paragraphs.

As of the April 24, 2019 IEP meeting, Student struggled with reading fluency and reading comprehension and was performing below grade level. Student required substantial teacher support to write sentences and paragraphs. Although Student was 15 years old, his test scores showed he was reading and comprehending at anywhere from a five year to an eleven-year old's level. Student did not meet his 2018-2019 reading and writing goals.

The April 24, 2019 IEP's reading comprehension goal was, by April of 2020, Student would cite textual evidence to support the analysis of information on four out of five trials, with a 75 percent accuracy. The writing goal from the April 24, 2019 IEP was a continuation of the writing goal from the prior year because Student had not successfully met the goal. The writing goal required Student to write one paragraph, including a topic or thesis sentence and concluding sentence with transitions in three out of four trials.

Student continued to struggle in the areas of reading fluency, reading comprehension, and writing. Both Head and Gomez used a multi-sensory approach to teaching. Their approach included flow charts, videos, pictures, audio, and sensory lessons. Despite using a multi-sensory approach to education, both Head and Gomez observed that Student was often off-topic in his responses and questions. For example, Student would raise his hand during a history discussion and ask his teacher if she liked pizza. These questions would often disrupt the class and were directly related to Student's inability to comprehend the material or follow along with the class curriculum.

Marie Rozales-Breig taught Student English in the ninth and eleventh grades. She held a master's degree in special education and a mild to moderate teaching credential. Rozales-Breig opined that Student improved in reading fluency from the ninth grade to the eleventh grade. In the ninth grade, Student's grades were a C- in the first semester and a D in the second semester. Student was at a C+ grade level in the spring of 2020. Although Student improved his reading comprehension skills when provided with sufficient support, he continued to read at the fourth and fifth-grade levels. Rozales-Breig opined that with additional services or assistance, both at school and home, Student was capable of reading beyond the fourth to fifth-grade level.

Pride Learning Center was an outside agency that Parent consulted to obtain instructional and tutoring services for Student. Pride Learning is a specialized reading center that employs the Orton-Gillingham multi-sensory approach. A Pride Learning assessor who held a special education credential evaluated Student's academic skills on January 11, 2020. She did not testify at the hearing. Director of Pride Learning, May Dabbah, reviewed the January 11, 2020 assessment findings and testified at the hearing. Dabbah held a bachelor's degree in psychology and has 27 years of teaching experience. She is an Orton-Gillingham Reading Specialist. Dabbah opined that Student was reading at the fourth to sixth-grade level, was behind in his spelling and reading skills, and struggled considerably in phonological processing skills, decoding and encoding, and reading fluency. Dabbah opined this was due to Student's autism diagnosis.

Student finished the second semester of ninth grade with a D grade in English and had low test scores in those classes. At the start of the 10th grade, Student maintained a C- to D+ grade in all his classes. By the 11th grade, Student was receiving



A and B grades in History and English, despite having failed history the year before. Student continued to receive low test scores in English. Parent was concerned that Bellflower Unified was giving Student passing grades to exit him from the program.

Coreen Youseff was Student's science teacher in ninth and tenth grade. During her class, Student had difficulty understanding the correlation between different words. Instead of comprehending and following the words, Student primarily matched them based upon rote memory. Although Youseff provided accommodations to Student, such as reducing the number of problems he had to solve and giving him more time, Student still could not process the words or understand the science concepts.

Despite repeated parental requests for help to manage Student's academic frustrations at the May 11, 2018 and April 24, 2019 team meetings, as well as confirmed reports from teachers that Student's was unable to read and write at grade level, Bellflower Unified did nothing significant to address those concerns. Bellflower Unified took no affirmative steps to modify Student's offer of FAPE, nor did Bellflower Unified adjust Student's reading and writing goals or offer any additional remedial services.

Based upon the totality of the evidence presented, Student had been reading at a fourth or fifth grade level since ninth grade, and he was not making progress. After Student failed to meet the goals for the 2018-2019 school year, failed his history class, and cheated on tests because of his inability to comprehend the material, Bellflower Unified still did not provide any interventions to help Student access his education.

Related services may be provided to individuals or small groups in a specialized area of educational need, and throughout the full continuum of educational settings. (Cal. Code Regs., tit. 5, § 3051, sub. (a)(1).) Related services, when needed, are

determined by the IEP team. (Cal. Code Regs., tit. 5, § 3051, sub. (a)(2).) Although Bellflower Unified did provide additional speech and language assistance, the IEP team did not offer any additional academic services to address Student's undisputed reading and writing deficiencies. At the very least, Bellflower Unified should have offered extended school year services to help Student work on achieving grade-level work and retaining information for the next school year. Bellflower Unified's position that extended school year services were inappropriate because Student was not failing his classes was unpersuasive. Grades notwithstanding, the evidence showed that Student struggled significantly and academically in the areas of reading, writing, and comprehension, and struggled with retaining information. This information was available to Bellflower Unified at the 2018 and 2019 IEP meetings.

Student proved that from February 3, 2018, to February 3, 2020, Bellflower Unified did not consider the full continuum of options to provide related services to Student at any of the IEP team meetings. Bellflower Unified did not offer Student a program of specialized instruction and related services which were reasonably calculated to enable Student to make progress in the areas of reading, writing, and comprehension, appropriate in light of his circumstances.

## ISSUE 2: DID BELLFLOWER UNIFIED DENY STUDENT A FAPE BY FAILING TO CONDUCT COMPREHENSIVE EVALUATIONS FROM FEBRUARY 3, 2018 TO FEBRUARY 3, 2020?

Student contends that Bellflower Unified did not conduct appropriate psychoeducational and speech and language assessments and failed to provide assistive technology, occupational therapy, or functional behavior evaluations. Bellflower Unified

alleges that it performed all assessments appropriately and that assessments in other areas were not necessary.

Federal law uses the term “evaluation” instead of the term “assessment” used by California law, but the two terms have the same meaning and are used interchangeably in this Decision. Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. (20 U.S.C. § 1414(a); 34 C.F.R. § 300.303; Ed. Code, §§ 56043(k), 56381, subd. (a).) Each public agency must ensure that assessments and other evaluation materials used to assess a child are, among other things, administered by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c); Ed. Code, §§ 56320, 56381, subd. (e); 34 C.F.R. § 300.304.) The personnel who assess the student shall prepare a written report. (Ed. Code, § 56327.) A school district’s failure to conduct appropriate assessments may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.)

An assessment must be conducted in a way that that does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability. The assessments used must also be administered by trained and knowledgeable personnel and administered following any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The personnel who assess the student shall prepare a written report that shall include, without limitation, the relevant behavior noted during the observation of the student in an appropriate setting. (Ed. Code, § 56327.)

## PSYCHOEDUCATIONAL ASSESSMENT

Kay conducted a triennial assessment in the area of psychoeducation on May 11, 2018 and prepared a written report. Kay did not testify at the hearing, and Kay's credentials were not entered into evidence.

According to her report, Kay reviewed the Student's relevant educational records and prior assessments. Kay did not specify what she considered. Kay administered only one test, the Gilliam Autism Rating Scale – Third Edition. Kay's report indicated that she observed Student in his class but did not provide detail in the report. Kay obtained input from Student's teachers and Parent and reviewed Student's health evaluation by the school nurse.

Kay found that Student used maladaptive language and exhibited common behaviors of autism, such as repetition and hand flapping. Student struggled with social interaction and displayed little reciprocal social communication. Kay opined that he met eligibility for special education services under the category of autistic-like behaviors. Kay recommended that he continue to receive multi-sensory instruction and learning style accommodations, including eye contact, point and tap signals, and preferential seating. Kay also recommended Student receive organizational and social skill enhancement, including written, oral and demonstrative directions, use of an overhead projector, graphic organizers, hands-on projects, clarification of assignments, and partnering up in-class projects.

The only psychoeducational assessment evidence presented by Student or Bellflower Unified was Kay's report. Kay did not include a detailed summary of her classroom observations in her report. Although the initials "M.A" are next to Kay's

signature, there was no evidence that the evaluation was administered by trained and knowledgeable personnel following any instructions provided by the producer of such assessments. Kay's evaluation also contains only one single objective measure, the Gilliam Autism Rating Scale.

Student proved by a preponderance of the evidence that the psychoeducational assessment was deficient as to the lack of detail in the written assessment, the failure to establish Kay's training, and the reliance upon only a single standardized test.

A district's failure to conduct appropriate assessments or to assess in all areas of suspected disability constitutes a procedural violation that may result in a substantive denial of FAPE (*Park*, supra, at 1032-3). A procedural violation of the IDEA results in a denial of FAPE if the violation:

- impeded the Student's right to a FAPE;
- significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of the FAPE to Student; or,
- caused a deprivation of educational benefits (20 USC §1415(f)(3)(E)(ii); 34 CFR § 300.513(a)(2); *W.G. v. Bd. of Trustees of Target Range Sch. Dist.*, (9th Cir. 1992) 960 F.2d 1479, 1484.)

Student argued that Kay's evaluation was deficient in that it only used one test, the Gilliam Autism Rating Scale, and that Bellflower Unified failed to assess Student in academics, social-emotional, visual, and language processing skills. Student did not establish that if Kay had undertaken additional testing, Student would have received an educational benefit. Although procedurally deficient, Kay's report found Student was

eligible for special education services and recommended the continuation of existing special education services.

A parent has meaningfully participated in the development of an IEP when, for example, Parent is informed of their child's problems, attends the IEP meetings, expresses disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 447 (9th Cir. 2010); see also *N.L. v. Knox County Schs.*, 315 F.3d 688, 693 (6th Cir.2003).) The deficits in the psychoeducational assessment did not impede Parent's right to participate in the education process of Student. Parent was included in all decision-making processes and regularly advocated for Student.

The evidence established that Student did not receive a FAPE, and Bellflower Unified deprived Student of educational benefits in the area of reading and writing comprehension. However, Student did not prove by a preponderance of the evidence that the psychoeducational evaluation was the cause of that deprivation. Therefore, the inappropriate psychoeducational assessment did not deny Student a FAPE.

## SPEECH AND LANGUAGE ASSESSMENT

Frankeberger conducted a triennial assessment in the area of speech and language on May 4, 2018 and prepared a written report. Frankeberger reviewed Student's relevant educational records and prior evaluations, administered standardized testing, and conducted informal observations. There was no detail specified as to the nature of the observations. Frankeberger used the Expressive One-Word Picture Vocabulary Test, The Word Test, Second Edition: Adolescent, Comprehensive Assessment of Spoken Language for inferences and pragmatic judgment, and

attempted the Test of Problem Solving, Second Edition-Adolescent test. Student scored in the average range for spoken vocabulary, below limits for expressive vocabulary and semantics, and below limits for inferential and pragmatic language.

Frankeberger concluded that Student presented with overall language delays in the areas of semantic and pragmatic language. Student's skills in syntax and morphology were appropriate, and his articulation was standard. On its face, the speech and language report provides sufficient detail of the standards and measures used by the examiner. Frankeberger administered four tests and attempted to conduct a fifth test. Frankeberger concluded Student met the requirements for services in speech and language and that Student continue to receive remedial services.

Student did not present any evidence from any witness or expert to support his contention that the speech and language assessment was inappropriate. There was no evidence directly challenging the speech assessment. Student did not prove that the speech and language assessment was deficient.

## OTHER ASSESSMENTS

Student contends that he did not receive a comprehensive assistive technology assessment, an occupational therapy assessment, or a functional behavior assessment. Student did not present any evidence to support his contention that Bellflower Unified's failure to conduct these assessments denied him educational benefits. Student did not show why Bellflower Unified needed to assess in the areas of assistive technology, occupational therapy assessment, or functional behavior. Bellflower Unified rebutted Student's argument with evidence showing that Bellflower Unified did not need to evaluate Student in these areas.

Each local educational agency shall ensure that a child is assessed in all areas of suspected disability. (20 USC § 1414(b)(3)(B)). However, a district is not required to assess in areas that do not affect a child's educational needs. A school district's failure to assess in all areas of suspected disability is a procedural violation and may constitute a denial of a FAPE. (*Park*, supra, at 1031-1033; California Education Code § 56320(f)).

Maricela Harvin is the Program Administrator for Bellflower Unified. Harvin oversees several elementary and secondary schools, and adult transition centers for Bellflower Unified. Harvin informally observed Student and his classroom as part of her duties. She also attended the April 2019 and September 2019 IEP meetings. Harvin opined that based upon her observation of Student, he did not require assistive technology or occupational therapy evaluations. She also opined that a functional behavior assessment would only be employed if Student manifested the need for a one-on-one aide. She did not believe Student needed that, and it would hamper his independence.

Based upon her direct observations of Student as his teacher and case carrier, Gaylord opined that Student did not need a one-on-one aide to follow him along. He did not exhibit negative behaviors during school hours. Student was compliant and agreeable and could function with occasional prompting from classroom aides. Student did well in academics and courses unrelated to reading and writing comprehension and fluency. Gaylord believed a full-time, one-on-one aide would be a crutch and make Student less independent.

Dwight Tablason was Student's Art teacher. Derek Bedell was Student's physical education teacher. Tablason opined that Student did not exhibit any behavioral or



functional problems in his art class. Student enjoyed and excelled in art. Bedell opined that Student did not have any issues with activities in the physical education class and asked for help when he needed it.

Student did not prove that Bellflower Unified denied him a FAPE by failing to provide assessments in the areas of assistive technology, occupational therapy, or functional behavior.

### ISSUE 3: DID BELLFLOWER UNIFIED DENY STUDENT A FAPE BY FAILING TO PROVIDE AN APPROPRIATE TRANSITION PROGRAM FOR STUDENT?

Student asserted that Bellflower Unified denied him a FAPE by failing to provide appropriate transition services to Student. Bellflower Unified argued that it timely provided transition goals and services and that it did not need to refer Student to a transition specialist until the 11th or 12th grade.

Beginning not later than the first IEP to be in effect when the child is 16 and updated annually after that, the IEP is to include:

- appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
- the transition services (including courses of study) needed to assist the child in reaching those goals; and
- beginning not later than one year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the

age of majority under section 1415(m) of this title. 20 USC  
§ 1414(d)(1)(A)(i)(vii)(aa)-(bb); 34 CFR §300.320(b); Education Code  
§ 56345(a)(8)

The term “transition services” means a coordinated set of activities for a child with a disability:

- designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and
- includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 USC § 1401(34); California Education Code § 56345.1(a)

Student was 16 years old in the summer of 2019. Bellflower Unified included a transition goal in Student’s 2018-2019 IEP. Goal four provided that by May 11, 2019, Student would complete interest surveys and career assessments to identify careers of interest and related educational training and requirements.

The 2019-2020 IEP had two transition goals. Goal number four was that by April 2020, Student would be able to identify and state the entrance requirements for at least two training programs that lead to his career of interest. Goal number five was that by April 2020, Student would demonstrate knowledge of the job qualifications, job requirements, educational background, and training for two jobs of interest with 70 percent accuracy.

Gaylord interviewed Student for 20-minutes in April 2019 as to Student's post-high school and career interests. Student indicated an interest in becoming a blacksmith or a pizza chef after high school. Gaylord did not prepare a report but summarized her findings in the 2019-2020 IEP. This interview occurred approximately two weeks before the April 2019 IEP meeting when Student was only 15 -years old. Therefore, the 2019-2020 IEP timely and appropriately included Gaylord's interview findings, and specific transition goals before Student turned 16 years-old in compliance with § 1414(d).

Bellflower Unified routinely referred students to a transition specialist at the end of 11th grade or the beginning of 12th grade. That specialist evaluated a student's professional desires and needs for transition and would make appropriate resource recommendations to the school and parents. Gaylord would have referred Student to a transition specialist at the end of the 2020 school year. However, she did not make the referral because of the Covid-19 pandemic and shelter in place orders. Gaylord testified she would make the referral at the beginning of the 2020-2021 school year when Student entered the 12th grade.

Bellflower Unified's inability to make the referral in 11th grade alone does not rise to the level of a FAPE denial. Bellflower Unified did not impede Parent's participation, as

Parent strongly advocated her concerns that Student was not yet capable of adult skills. Parent opined that Student's transition goals were unreasonable. Parent did not believe Student had the skills to be a blacksmith, and that being a pizza chef reflected Student's love for pizza but was not a reasonable professional goal for Student. Gaylord opined that Student's desire to become a pizza chef was consistent with his enjoyment in making things, and his creativity. There was no evidence that failure to make that referral in the 2019-2020 school year deprived Student of an educational benefit, or that the lack of a reference impeded his ability to obtain a FAPE before the end of the 11th grade.

The evidence showed that the transition goals were reasonably developed based upon the information available to the IEP team at the time of the 2018-2019 and 2019-2020 meetings, and directly addressed Student's unique needs in those areas. The fact that Parent disagreed with the practicality of Student's desire to become a blacksmith and a pizza chef did not render the transition goals unreasonable. Student did not prove that he lacked skills to meet his transition goals, or that they were unreasonable. Student participated in the transition interview with Gaylord and indicated his occupational desires. The IEP team used those desires to prepare future goals for Student. The IEP team based the transition goals on the information available at that time. Gaylord credibly testified that a referral to a specialist would typically occur at either the end of the 11th grade or the beginning of the 12th grade, and she would do so at the beginning of the 2020-2021 school year. Student did not prove that Student's transition goals in the 2018-2019 and 2019-2020 were inappropriately designed and did not meet the burden of proving by a preponderance of the evidence that Bellflower Unified did not offer an appropriate transition program to Student.

## CONCLUSIONS AND PREVAILING PARTY

As required by the 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.

Issue One: Bellflower Unified denied Student a FAPE, by failing to design an appropriate educational program tailored to Student's unique needs, in the areas of reading fluency, reading comprehension and writing, from February 3, 2018 to February 3, 2020.

Student prevailed on Issue 1.

Issue Two: Bellflower Unified did not deny Student a FAPE by failing to conduct comprehensive evaluations, from February 3, 2018 to February 3, 2020.

Bellflower Unified prevailed on Issue 2.

Issue Three: Bellflower Unified did not deny Student a FAPE by failing to provide an appropriate transition program for Student.

Bellflower Unified prevailed on Issue 3.

## REMEDIES

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C.

§ 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Puyallup, supra*, 31 F.3d. at p. 1497.)

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student’s current needs. (*Puyallup, supra*, 31 F.3d at p. 1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place” (*Reid, supra*, 401 F.3d at p. 524; *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).). However, hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.) “[E]quitable considerations are relevant in fashioning relief.” (*Burlington, supra*, 471 U.S. at p. 374.)

Pride Learning employs the Orton-Gillingham multi-sensory approach. It is used primarily for students with reading disabilities, dyslexia, and specific learning disorders. The approach is skills-based, and phonics related, which means that an individual who is struggling with reading at a particular grade level can access different levels to progress. The Orton-Gillingham approach is in the Common Core State Standards employed by California schools, including Bellflower Unified. Student did not present any evidence of whether Pride Learning is a certified non-public agency.

The evidence established that with proper reading support, Student could progress. In sixth grade, for example, Student received a program called Read Naturally. According to the May 14, 2015 IEP, Student partially met his goals of increasing his reading level from the first-grade level to the third-grade level. Once Student

transitioned to Mayfair High School in the seventh grade, he no longer received direct structured reading support, and his reading levels plateaued at the fourth-grade level.

Student requested 100 hours of speech and language services, 120 hours of social skill services, and 120 hours of academic tutoring in math. Student sought a one-on-one aide during class to keep him on task and assist him in his daily class routine. Student did not establish the need for compensatory education or services in the areas of speech and language or math because he progressed in those areas. Student's reading fluency and comprehension deficits did not impact his speech and language or math abilities. Student also did not establish he required social skill services. The evidence showed that Student was friendly, likable, and not a behavioral problem. Student did not establish that he needed daily one-on-one support.

However, Student demonstrated he was significantly behind in reading comprehension, reading fluency, and writing and earned failing, low grades because Bellflower Unified did not provide him with adequate related services in those areas from February 3, 2018, to February 3, 2020. Student also proved that Bellflower Unified should have offered extended school year services to Student in the ninth and tenth grades. Based on Bellflower Unified's school calendars, it denied Student a FAPE for a total of 85 weeks calculated as follows:

- From February 3, 2018, to June 14, 2018, there were 18 weeks of the regular 2017-2018 school year. There are typically four weeks in the extended school year.
- There were 38 weeks the regular 2018-2019 school year, and four weeks of the 2019 extended school year.

- From August 15, 2019, to February 3, 2020, the filing of the due process complaint, there were 21 weeks of the regular 2019-2020 school year.

Dabbah opined that Student needed to receive one-on-one reading instruction and that it takes between 40 to 60 hours to move up one grade level in spelling and decoding skills. Dabbah recommended that the structured multi-sensory Orton-Gillingham daily instruction program would help Student close his reading comprehension gaps as quickly as possible. Dabbah opined Student needed a minimum of 200 hours of individual instruction in spelling, reading, writing, and comprehension skills, three hours per week, at 90 dollars per hour. Pride Learning also charged 120 dollars as a registration fee. Student requested a total of 420 hours of structured multi-sensory reading and writing intervention. This calculation appeared to be based upon 60 hours needed to improve one grade level, times seven, as Student was seven grade levels behind.

Student demonstrated that a structured multi-sensory reading program was reasonable for compensatory education. In addition to Dabbah, English teacher Rozales-Breig opined that with sufficient instruction and support, a multi-sensory program such as Lindamood Bell or the Orton-Gillingham program was appropriate to help Student improve his reading and writing skills. No other witnesses opined about alternative services that might be offered to Student to recoup his reading or writing skills. Bellflower Unified did not have a comparable program either during the school day or otherwise to help Student improve his reading and writing skills.

Student's request for 420 hours was excessive. In Dabbah's uncontroverted opinion, Student would require a minimum of 200 hours and would need three hours of instruction per week. Using Dabbah's recommendation of three hours per week,



Student is entitled to a total of 255 hours of compensatory education. The hours are calculated at the rate of three hours of one-on-one instruction per week, for each of the 85 weeks that Bellflower Unified denied Student a FAPE.

Bellflower Unified shall fund Pride Learning if it is a certified non-public agency and reimburse Student or Parent for any fees and services incurred up to a total of 255 hours. If Pride Learning is not a certified non-public agency, then Bellflower Unified shall reimburse Parent at an hourly rate not to exceed 90 dollars per hour and any administrative fees, based upon proof of attendance and payment at an agency of Parent's choosing, including Pride Learning, so long as it provides an Orton-Gillingham or similar multi-structured sensory approach. Any reimbursement is not to exceed 255 hours of total instruction. Compensatory services shall be available to Student until August 31, 2022, and shall not exceed a total of 255 hours.

In the alternative, if Pride Learning is not a certified non-public agency, and Parent does not wish to seek direct reimbursement from Bellflower Unified, then within 10 business days of the date of this Decision, Bellflower Unified shall provide to Parent, in writing, the name of at least two non-public agencies with which it contracts to provide Orton-Gillingham or similar multi-structured sensory approach to Student, or with which it would consider contracting. Within 10 business days after receiving Bellflower Unified's list of non-public agencies, Parent shall inform Bellflower Unified in writing the non-public agency they selected to provide Student with Orton-Gillingham or similar multi-structured services. Within 10 business days after Parent's selection, Bellflower Unified shall arrange for direct payment with the selected non-public agency or agencies. Student shall have until August 31, 2022, to access the compensatory services hours, or they will be forfeited.

## ORDER

- Bellflower Unified shall make available to Student compensatory education to compensate for its denial of FAPE from February 3, 2018, to February 3, 2020. This compensatory education shall take the form of 255 hours of individual, one-on-one tutoring sessions, not to exceed 90 dollars per hour, in the Orton-Gillingham or similar structured multi-sensory approach.
- Bellflower Unified shall fund Pride Learning if it is a certified non-public agency and reimburse Student or Parent for any fees and services incurred up to a total of 255 hours. These services shall be available to Student until August 31, 2022.
- If Pride Learning is not a certified non-public agency, Bellflower Unified shall reimburse Parent at an hourly rate not to exceed 90 dollars per hour, based upon proof of attendance and payment at an agency of Parent's choosing, so long as the agency provides an Orton-Gillingham or similar multi-structured sensory approach. These services shall be available to Student until August 31, 2022, and shall not exceed a total of 255 hours.
- In the alternative, if Pride Learning is not a certified non-public agency, and Parent does not wish to seek direct reimbursement from Bellflower Unified, then within 10 business days of the date of this Decision, Bellflower Unified shall provide to Parent, in writing, the name of at least two non-public agencies with which it contracts to provide Orton-Gillingham or similar multi-structured sensory approach to Student, or with which it would consider contracting. Within 10 business days after receiving Bellflower Unified's list of non-public agencies, Parent shall inform Bellflower Unified in writing the non-public agency they selected to provide Student with Orton-Gillingham or similar multi-structured services. Within 10 business days after Parent's selection, Bellflower Unified shall

arrange for direct payment with the selected non-public agency or agencies. Student shall have until August 31, 2022, to access the compensatory service hours, or they will be forfeited.

- A written agreement between the parties may alter the terms of this Order. An IEP can constitute such an agreement.
- Student's other requests for relief are denied.

## RIGHT TO APPEAL THIS DECISION

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

/s/

Brian H. Krikorian  
Administrative Law Judge  
Office of Administrative Hearing