

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020030591
CASE NO. 2020010712

THE CONSOLIDATED MATTERS INVOLVING

PARENT ON BEHALF OF STUDENT, AND

GLENDALE UNIFIED SCHOOL DISTRICT.

DECISION

JULY 14, 2020

On January 22, 2020, Glendale Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, naming Student. On March 16, 2020, Parent on behalf of Student, filed a due process hearing request, naming Glendale Unified School District. The Office of Administrative Hearings will be called OAH. Glendale Unified School District will be called Glendale. On April 20, 2020, OAH consolidated the two cases.

Administrative Law Judge Tara Doss presided over the hearing via videoconference on the Microsoft Teams application, on May 12, 13, 14, 19, 20, 21, 26, 27, and 28, 2020, and June 2, and 11, 2020. Attorneys Mark Woodsmall, Rachel Liebert, and Nelson Chu represented Student. Parent attended on all days of hearing on behalf

of Student. Student did not attend the hearing. Attorney Melissa Hatch represented Glendale. Dr. Debra Rinder, Executive Director of Special Education, Beatriz Fojo-Bautista, Director of Special Education, and Bill Gifford, Coordinator of Special Education, attended on all days of hearing on behalf of Glendale.

At the request of the parties, OAH granted a continuance to July 6, 2020, to file written closing briefs. OAH closed the record and submitted the case for decision on July 6, 2020.

ISSUES

In this Decision, a free appropriate public education will be called a FAPE, and an individualized education program will be called an IEP. On May 11, 2020, Student withdrew Issues 1(b), 2(a), 2(b), 4(a), 4(b), 5(a), and 5(b), as listed in the May 5, 2020 Order Following Prehearing Conference. The remaining issues were renumbered as set forth below.

Student's Case:

1. Did Glendale procedurally deny Student a FAPE at the December 17, 2018 IEP team meeting, by:
 - a. failing to include accurate present levels of performance;
 - b. refusing to consider the findings of Parent's private experts;
 - c. failing to make a clear offer of FAPE; and
 - d. failing to provide appropriate prior written notice in response to Parent's request for an appropriate transition program?

2. Did Glendale substantively deny Student a FAPE in the December 17, 2018 IEP, by failing to offer:
 - a. a behavior support plan;
 - b. appropriate assistive technology services, devices, and supports;
 - c. an individualized transition plan tailored to meet Student's unique needs;
 - d. appropriate transition services; and
 - e. an appropriate placement?
3. Did Glendale procedurally deny Student a FAPE during the 2018-2019 school year, by:
 - a. failing to assess Student in the areas of educationally-related mental health services, functional behavior, and assistive technology, pursuant to the assessment plan Parent signed on February 15, 2019;
 - b. failing to timely assess Student and hold an IEP team meeting within 60 days of Parent signing the assessment plan on February 15, 2019;
 - c. failing to timely conduct Student's annual IEP team meeting on or before May 10, 2019; and
 - d. failing to provide appropriate prior written notice in response to Parent's June 21, 2019 notice of unilateral placement of Student?
4. Did Glendale procedurally deny Student a FAPE at the September 16, 2019 IEP team meeting, completed on October 1, 2019, by:
 - a. failing to make a clear offer of FAPE; and
 - b. failing to provide appropriate prior written notice in response to Parent's request for an appropriate transition program?

5. Did Glendale substantively deny Student a FAPE in the September 16, 2019 IEP, completed on October 1, 2019, by failing to offer:
 - a. a behavior support plan;
 - b. appropriate counseling services;
 - c. appropriate assistive technology services, devices, and supports;
 - d. an individualized transition plan tailored to meet Student's unique needs;
 - e. appropriate transition services; and
 - f. an appropriate placement?
6. Did Glendale procedurally deny Student a FAPE during the 2019-2020 school year, by:
 - a. failing to have an IEP in effect at the start of the school year; and
 - b. failing to provide appropriate prior written notice in response to Parent's January 24, 2020 notice of unilateral placement of Student?

Glendale's Case:

7. Was Glendale's June 14, 2019 psychoeducational assessment of Student, as amended on October 1, 2019, appropriate?
8. Did Glendale offer Student a FAPE in the IEP developed on December 17, 2018?
9. Did Glendale offer Student a FAPE in the IEP developed on September 16, 2019, and completed on October 1, 2019?

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, called IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs, and prepare them for further education, employment, and independent living; and
- 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 related 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, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and *see* 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student has the burden of proof on Student's issues, and Glendale has the burden of proof on Glendale's issues. The factual statements below 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 18 years old at the time of hearing. Student assigned the right to make educational decisions to Parent. Student resided independently at In Balance Sober Living facility, and attended school at San Pedro Valley Academy, in Tucson,

Arizona. Parent resided within Glendale's attendance boundaries at all relevant times. Student was eligible for special education under the category of other health impairment, as a result of attention deficit hyperactivity disorder.

ISSUES 1(A), 1(B), 1(C), 1(D), 2(A), 2(B), 2(C), 2(D), 2(E), AND 8: DID GLENDALE PROCEDURALLY COMPLY WITH THE IDEA AND SUBSTANTIVELY OFFER STUDENT A FAPE AT THE DECEMBER 17, 2018 IEP TEAM MEETING?

Student argued Glendale did not offer Student a FAPE at the December 17, 2018 IEP team meeting, or in IEP the team developed, for several reasons. Student argued the present levels of performance did not reflect Student's current functioning levels. Because Student's present levels of performance were inaccurately reported, Student argued Glendale failed to offer Student a behavior support plan, appropriate assistive technology supports, an individualized transition plan tailored to meet Student's unique needs, appropriate transition services to support Student's postsecondary goals and to facilitate Student's return home, and an appropriate placement. Student further argued Glendale refused to consider the opinions of In Balance Ranch and San Pedro Valley Academy staff regarding Student's readiness to transition back home from Arizona. Moreover, Student argued Glendale failed to make a clear offer of FAPE with respect to counseling services, how Glendale would support Student's substance recovery, and the details of a transition plan to facilitate Student's return home. Finally, Student argued Glendale failed to provide Parent with prior written notice in response to Parent's request for an appropriate transition program to help Student return to a Glendale program.

Glendale argued Student's December 17, 2018 IEP met all procedural and substantive requirements under the IDEA.

A FAPE means special education and related services provided to a child with a disability at public expense, that meet state educational standards and conform with the child's IEP. (20 U.S.C. §§ 1401(9), 1412(a)(1); 34 C.F.R. §§ 300.17, 300.101(a).) Parents and school personnel develop an individualized education program, referred to as 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.)

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) An IEP is a written statement for each child with a disability that is developed, reviewed, and revised based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); 34 C.F.R. § 300.320 Ed. Code, § 56032.) All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

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. (*Bd. of Educ. 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].)

There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the

procedures set forth in the IDEA. (*Rowley*, *supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit appropriate in light of the child's circumstances. (*Ibid*; *Endrew F.*, *supra*, 137 S.Ct. at p. 1000.)

IEP REQUIREMENTS

An IEP describes the child's needs, and academic and functional goals related to those needs. It also provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to:

- advance in attaining the goals,
- make progress in the general education curriculum, and
- participate in education with disabled and nondisabled peers. (20 U.S.C.

§§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

The child's needs must be described through a statement of present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1).) The goals must be measurable and designed to meet the child's needs so that the child can be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i).) The IEP must also describe how progress towards the goals developed will be measured and

reported. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3).) Annual goals should describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7).) The IEP must include an explanation of any extent to which the student will not participate with nondisabled students in the regular class and extracurricular and nonacademic activities. (20 U.S.C. § 1414(d)(1)(A)(i)(V); 34 C.F.R. § 300.320(a)(5).) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) The IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207; *see also Miller v. Bd. of Educ. of the Albuquerque Public Schools* (D.N.M. 2006) 455 F.Supp.2d 1286, 1307-1309; *aff'd on other grounds, Miller v. Bd. of Educ. of the Albuquerque Public Schools* (10th Cir. 2009) 565 F.3d 1232.) A school district has the right to select the program offered as long as the program is able to meet the student's needs. (*Letter to Richards* (OSEP January 7, 2010).)

Once a child turns 16, the IEP must include appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

the transition services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(a)(7)(b).)

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 evaluations 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); Ed. Code, § 56341.1, subd. (a).) If a child's behavior impedes the learning of the child or other children, the IEP team must consider the use of positive behavioral interventions and supports. (20 U.S.C. § 1414(d)(3)(B)(i); Ed. Code, § 56341.1, subd. (b)(1).) The team must also consider whether the child needs assistive technology devices and services. (20 U.S.C. § 1414(d)(3)(B)(v); Ed. Code, § 56341.1, subd. (b)(5).) Further, an IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).)

An IEP is not required to include the specific instructional methodologies the school district will use to educate the child. (34 C.F.R. § 300.320(d)(1); 71 Fed. Reg. 46,665 (Aug. 14, 2006).) As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) Courts are ill-equipped to second guess reasonable choices that school districts have made among appropriate instructional methods. (*T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84.) A parent's disagreement with a school district's educational methodology is insufficient to establish an IDEA violation. (*Carlson v. San Diego Unified School Dist.* (9th Cir. 2010, unpublished) 380 F. App'x 595; *see also, Lachman v. Illinois State Bd. of Educ.* (7th Cir. 1988) 852 F.2d 290, cert. denied at 488 U.S. 925 [holding that parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing for the education of a

student with a disability].) School districts may contract with another public agency to provide special education or related services. (Ed. Code, § 56369.)

Unless the parent and school district have agreed otherwise, a school district must ensure that the IEP team includes:

- the child's parents;
- at least one of the child's regular education teachers if the child is, or may be, participating in the regular education environment;
- at least one of the child's special education teachers, or, where appropriate, one of the child's special education providers;
- a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources;
- someone who can interpret any assessment results;
- at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the child; and
- whenever appropriate, the child.

(20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a).) A school district must invite the child if a purpose of the IEP team meeting is to consider the child's postsecondary goals and transition services. (34 C.F.R. § 300.321(b)(1); Ed. Code, § 56341.5, subd. (e).) If the child does not attend, the district must take other steps to ensure the child's preferences and interests are considered. (34 C.F.R. § 300.321(b)(2); Ed. Code, § 56341.5, subd. (e).)

The IEP must be reviewed at least annually, to determine whether the child is achieving the annual goals, and to revise the IEP as appropriate. (20 U.S.C. § 1414(d)(4);

34 C.F.R. § 300.324(b)(1); Ed. Code, § 56341.1, subd. (d).) Changes to an annual IEP may be made either by the entire IEP team, or through a written document to amend or modify the IEP. (20 U.S.C. § 1414(d)(3)(D) &(F); 34 C.F.R. § 300.324(a)(4) & (6).)

Parents must be members of any group making decisions on the educational placement of their child. (20 U.S.C. § 1414(e); 34 C.F.R. § 300.327; Ed. Code, § 56342.5.) When considering placement decisions, a school district must educate a child in the least restrictive environment, which means to the maximum extent appropriate, children with disabilities are educated with nondisabled peers; and that special classes or separate schooling occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a).) School districts must also ensure that a continuum of program options is available to meet the needs of children with disabilities for special education, including, but not limited to regular education, resource specialist programs, related services, special classes, and nonpublic schools. (34 C.F.R. §§ 300.115, 300.39; Ed. Code, § 56361.)

School districts must fund a public or private residential program, including nonmedical and housing expenses, if the placement is necessary to provide special education and related services to the child. (34 C.F.R. § 300.104.) When determining whether a residential program is necessary, the IEP team may consider whether the placement is required for educational purposes. (*Clovis Unified School Dist. V. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635; *see Ashland School Dist. V. R.J.* (9th Cir. 2009) 588 F.3d 1004 [holding a school district did not have to pay for a student's residential placement where the primary purpose for the placement was student's out-of-school behavior]; *see also Forest Grove School Dist. v. T.A.* (9th Cir. 2011) 638 F.3d 1234 [upholding an Oregon district court ruling that denied

reimbursement for a student's residential placement because the facts showed the placement was due to student's behavioral issues and drug use, and not educational reasons].) If, instead, the placement is "a response to medical, social, or emotional problems...quite apart from the learning process," then it cannot be considered necessary under the IDEA. (*Ibid.*)

In determining the educational placement of a child with a disability, a school district must ensure that:

- placement decisions are made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- placement decisions satisfy least restrictive environment requirements;
- placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home;
- unless the IEP specifies otherwise, the child attends the school that he or she would if nondisabled;
- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- a child is not removed from age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116; Ed. Code, § 56342.)

When analyzing whether a school district complied with the IDEA's least restrictive environment requirements, the court must consider:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the nonacademic benefits of interaction with children without disabilities;
3. the effect the student's presence would have on the teacher, and other students in the general education classroom; and
4. the cost of placing the student in a general education classroom.

(*Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H., et. al.* (9th Cir. 1994) 14 F.3d 1398, 1400-1401.)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires a further determination of whether the child has been mainstreamed to the maximum extent appropriate in light of the continuum of program options. (*Daniel R.R. v. State Bd. of Educ.* (5th Cir. 1989) 874 F.2d 1036, 1050.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

School districts have an obligation to make a formal, written offer in the IEP that clearly identifies the proposed program. This requirement creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the

educational placement of the child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d. 431, 459-460.)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to constitute a FAPE under the IDEA, it must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with educational benefit appropriate in light of the student's circumstances, in the least restrictive environment. (*Ibid.*; *Endrew F., supra*, 580 U.S. ____ [137 S.Ct. at p. 1000.]

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. (*Ibid.* (quoting *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

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*, 993 F.2d at p. 1036 [a 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].)

Procedural flaws do not automatically require a finding of a denial of a FAPE. (*W.G., et al. v. Bd. of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,1484, superseded by statute on other grounds by IDEA Amendments of 1997.)

A procedural violation only constitutes a denial of FAPE if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

A school district must provide a parent with prior written notice in a reasonable time before the school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must be provided so that parents have enough time to fully consider the change and respond to the action before it is implemented. (*Letter to Chandler*, 59 IDELR 110 (OSEP 2012).) The notice is required even if the parent proposes the change. (*Letter to Lieberman*, 52 IDELR 18 (OSEP 2008).) The notice must include:

- a description of the action proposed or refused by the school district;
- an explanation of why the school district proposes or refuses to take the action;
- a description of each assessment procedure, test, record, or report used as a basis for the proposed or refused action;
- a description of any other factors relevant to the school district's proposal or refusal;

- a statement that the parents have protection under the procedural safeguards of IDEA; and
- sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

The IEP may serve as the school district's prior written notice as long as it meets all the legal prior written notice requirements. (71 Fed.Reg. 46691 (Aug. 14, 2006).)

STUDENT'S QUALIFICATION FOR SPECIAL EDUCATION AND RESIDENTIAL PLACEMENT

Student attended private school through eighth grade. Student's challenges with distractibility and organization at school became noticeable during the later elementary years. Parent had Student privately tested, and Student was diagnosed with attention deficit hyperactivity disorder, called ADHD. Student tried medication to reduce ADHD symptoms in middle school, but Student did not like the side effects, and Parent decided to discontinue the medication. During middle school, Student struggled academically, mostly in English and math. Behaviorally, Student showed some defiance through work refusal and arguing with teacher, and was disruptive to other students through excessive talking.

For ninth grade, in the 2016-2017 school year, Parent enrolled Student at a public high school within Glendale. Student began smoking marijuana at school during the first semester of ninth grade. Student often slept in class, became defiant when teachers asked him to participate, and did not complete assignments. At the end of the first semester, Student had two Fs, three Cs, and one B.

Parent requested a special education assessment during Student's first semester of ninth grade, and at an IEP team meeting on January 27, 2017, Glendale determined Student was eligible for special education and related services under the category of other health impairment because Student's ADHD was a chronic condition that adversely affected Student's educational performance. Through the IEP, Glendale provided specialized academic instruction to Student in the area of math, and provided several instructional accommodations to support Student in the classroom. Student's academic performance and behaviors did not improve with the IEP. By the second semester of ninth grade, Student smoked marijuana daily, did not care about grades, and completely disengaged from the learning process. At the end of the school year, Student's grades dropped to two Fs, two Ds, and two Cs. Student's defiant and argumentative behavior also increased at home and were increasingly difficult for Parent to manage.

Before 10th grade started, during the 2017-2018 school year, Parent decided Student would live with Student's other parent, and disenrolled Student from Glendale. Student moved in with the other parent and enrolled in a different school district within California. The other parent did not inform the new school district that Student had an IEP, and he was placed in general education classes with no supports. While attending the new school district, Student started recreationally using prescription drugs, including opiates and muscle relaxers. Student's behavior at home was erratic and included daily arguments with the other parent. On October 21, 2017, Student was admitted to the hospital for a drug overdose, after taking a combination of several different prescription drugs. Student admitted the overdose was reckless, but denied trying to commit suicide. The hospital released Student on the same day of admittance.

On October 26, 2017, Parent reenrolled Student in Glendale, and requested an emergency IEP and full psychological evaluation, including a mental health assessment. At the same time, Parent frantically searched for an immediate placement option for Student. Parent hired an educational consultant to help find an appropriate therapeutic placement for Student. On October 30, 2017, before Student attended school within Glendale, Parent unilaterally placed Student at Elements, a therapeutic wilderness program, in Utah. Elements did not provide any academic instruction to Student. Instead, the program focused on substance recovery, mental health, and developing Student's life skills. Also, on October 30, 2017, Glendale held an IEP team meeting, with Parent in attendance, and agreed to conduct an early three-year assessment of Student. Parent consented to assessment on November 10, 2017. Due to Elements' remote location, Glendale was not able to assess Student.

On January 14, 2018, Student completed the Elements program with diagnoses in major depressive disorder, cannabis use disorder, opioid use disorder, parent-child relational problem, and ADHD. Student's attitude and behavior improved at Elements, but Student's ADHD symptoms affected self-esteem, decision-making, and healthy coping skills. Student was not a danger to himself or to others. Student's therapist at Elements recommended placement in a residential treatment center to treat Student's substance recovery and mental health challenges. Elements did not make any educational recommendations for Student.

On January 15, 2018, with the help of the educational consultant, Parent unilaterally placed Student at In Balance Ranch Academy in Huachuca City, Arizona. Parent did not consult with Glendale before deciding to change Student's placement. In Balance Ranch Academy was a therapeutic boarding school that served teens who struggled with substance abuse and mental health challenges through cognitive

behavioral therapy, group and family therapy, horse therapy, and a 12-step recovery program. Students typically stayed at In Balance Ranch for 12 to 14 months and had to achieve four different levels to complete the program. The levels required compliance with specific substance recovery, therapeutic, motivation, and behavioral goals. Levels one and two focused on stabilizing and assessing students' strengths and needs. Levels three and four focused on building habits of success to help students transition home successfully. Levels one, two, and three typically took three months each to complete. Level four typically took two to six months to complete.

San Pedro Valley Academy was the high school affiliated with In Balance Ranch. San Pedro Valley Academy offered both teacher-led and independent study courses and required students to revise and resubmit assignments until they demonstrated mastery of the subject matter with an 80 percent or better grade. Students' progress in the therapeutic program was tied to academic effort, but students were not required to complete specific academic classes or obtain a certain number of academic credits to complete the In Balance Ranch program. Other than the academic director, who held an Arizona teaching credential in social studies and English, none of the other instructors at San Pedro Valley Academy held teaching credentials. The Academy did not implement IEPs, but provided classroom and instructional accommodations to students, as needed.

MAY 2018 PSYCHOEDUCATIONAL ASSESSMENT AND IEP TEAM MEETING

Glendale assessed Student at In Balance Ranch in April 2018, and prepared a triennial psychoeducational report dated May 11, 2018. The report included assessment findings from several Glendale professionals, including a school psychologist, special education teacher, a speech and language pathologist, and an assistive technology specialist. Glendale held two IEP team meetings, on May 11, 2018, and August 20, 2018,

to review the results of the psychoeducational assessment. The IEP developed at these meetings will be referred to as the May 11, 2018 IEP.

The IEP team, including Parent, reviewed Student's present levels of performance, drafted annual goals in Student's areas of need, and discussed accommodations to support Student's learning. Student's therapist at In Balance Ranch and the San Pedro Valley Academy academic director told the IEP team that Student's depression and anxiety did not directly impact Student's academic performance, but that they did not think he was emotionally ready to return to a public school campus. The team also drafted an individualized transition plan. Glendale invited Student to the meeting, but Student did not attend. Glendale interviewed Student and assessed his postsecondary interests in the May 2018 assessment and incorporated them into the individualized transition plan. Glendale reviewed the continuum of program options, including full-time in general education, dual enrollment in general education and specialized academic instruction, full-time in a specialized program, and related services. Glendale offered Student placement at Glendale West, a self-contained therapeutic program on the Glendale High School campus, which was Student's school of residence. Glendale offered specialized academic instruction for Student's entire school day, general education physical education, 90 minutes a year of assistive technology services, 60 minutes a week of individual counseling, 60 minutes a week of parent counseling, 60 minutes a week of group counseling, and extended school year services. The IEP team determined Student's need for placement in a small, structured, therapeutic setting outweighed the benefits of being educated with nondisabled peers.

Parent told the IEP team Student was not ready to transition home. In Balance Ranch staff told the IEP team they would prepare a transition plan when Student was ready to return home. Glendale continued to offer placement at Glendale West but

recommended holding another IEP team meeting when Student was close to completing the program so the IEP team could discuss transition supports for his return to a Glendale placement. Parent did not consent to the IEP, and Student remained at In Balance Ranch.

On September 17, 2018, Parent, on behalf of Student, and Glendale entered into a final settlement agreement as a result of a due process case. Through the agreement, Parent waived the right to challenge the May 11, 2018 psychoeducational assessment report, and the May 11, 2018 IEP.

DECEMBER 17, 2018 IEP TEAM MEETING

On December 17, 2018, Glendale held an IEP team meeting at Parent's request, to discuss Student's current needs and transition from In Balance Ranch. This was an amendment to the May 11, 2018 IEP, and the IEP team relied on the May 11, 2018 psychoeducational report and IEP, and information provided by Parent and the In Balance Ranch and San Pedro Valley Academy staff, when considering Student's academic and functional needs. Because this was an amendment IEP, Glendale was not required to re-draft a complete IEP document, but rather, could modify the relevant sections of the May 11, 2018 annual IEP through a separate written document, which is what they did.

IEP TEAM

All required IEP team members attended the December 17, 2018 IEP team meeting, including Parent, the program specialist that worked with the Glendale West program, a school psychologist from Glendale High School, a therapist from Glendale West, the special education teacher and assistive technology specialist who assessed

Student, and Glendale's special education coordinator. Additionally, staff from In Balance Ranch and San Pedro Valley Academy participated in the meeting by telephone, including one of Student's teachers, the academic director, and the director of In Balance Ranch.

PRESENT LEVELS OF PERFORMANCE

The IEP team discussed Student's current needs during the meeting. According to Parent, Student was making progress. The In Balance Ranch director described the program model and told the IEP team Student needed to complete all four levels of the program in order to be successful at home. Student's estimated completion date was April 2019.

The San Pedro Valley Academy academic director reviewed Student's academic functioning. Student continued to struggle with organization and work completion, and was making slow progress in English 9 and Algebra I. In Balance offered both teacher-led and independent study courses. Student completed more work and performed better in the teacher-led courses. Student should have been in the 11th grade but only had enough credits to be an early 10th grader.

Glendale included the updated information In Balance Ranch and San Pedro Valley Academy staff provided in the notes section of the IEP. Glendale did not change Student's present levels of performance as written in the May 11, 2018 IEP, and were not required to do so. An IEP is a snapshot, and Student's present levels of performance in May 2018 reflected Student's current needs at that time, as determined by the IEP team. The December 2018 IEP accurately reflected Student's current needs and how Student's disability affected involvement and progress in the school setting, as reported by the In Balance Ranch and San Pedro Valley Academy staff, and Parent.

ANNUAL GOALS

The IEP team did not draft new goals during the December 2018 IEP team meeting. The team drafted Student's annual goals at the May 11, 2018 IEP team meeting, and Student was to work on those goals through May 9, 2019. Student had goals in reading comprehension, reading vocabulary, written language, math, executive functioning and work completion, task initiation and behavior, and postsecondary planning. The information the In Balance Ranch and San Pedro Valley Academy staff provided during the December 2018 IEP team meeting, did not identify any additional areas of need that required the creation of new goals, or revision of the existing goals.

BEHAVIOR

The May 11, 2018 IEP team considered Student's strengths, Parent's concerns, information provided by In Balance Ranch and San Pedro Valley Academy staff, and Student's academic, developmental and functional needs. The IEP team determined Student's behavior impeded the learning of self and others. Specifically, Student had difficulty initiating and completing tasks. The team considered positive behavioral interventions and offered accommodations and counseling to address Student's needs in this area. The team also drafted a behavior goal to improve Student's task initiation when independently working on assignments. Student's behaviors in May 2018 were not of an intensity to warrant the creation of a behavior support plan. In December 2018, Student continued to struggle with work completion and the intensity of those behaviors had not increased since May 2018. The San Pedro Valley Academy academic director did not indicate Student required a higher level of behavior support. Thus, the evidence did not show Glendale should have offered Student a behavior support plan.

PROGRAM ACCOMMODATIONS AND ASSISTIVE TECHNOLOGY

The IEP team did not recommend any new or different accommodations in the December 2018 IEP. The team recommended several accommodations and instructional supports for Student in the May 11, 2018 IEP, based on the May 2018 psychoeducational assessment report, and input from IEP team members. There was no information presented at the December 2018 IEP that Student's educational needs had changed, such that Student required additional or different accommodations.

The May 11, 2018 IEP offered Student 90 minutes a year in assistive technology support, and recommended Student use a word processor, a calculator, and audio books or text to speech programs, to access grade level work. This offer was based on the assistive technology assessment performed as part of the May 2018 psychoeducational assessment. Glendale did not make any changes to the offered assistive technology in the December 2018 IEP. There was no new information presented about Student's assistive technology needs at the IEP team meeting. Further, there was no information presented at the meeting indicating Student's academic needs had changed, such that Glendale's assistive technology offer should have been reviewed. Thus, the evidence did not show Glendale should have offered Student any additional assistive technology services, devices, or supports.

INDIVIDUALIZED TRANSITION PLAN

Glendale included an individualized transition plan for Student in the May 11, 2018 IEP. The transition plan was based on a transition assessment performed as part of the May 2018 psychoeducational assessment, which included a career inventory assessment and an interview with Student. The transition plan addressed Student's postsecondary interests in education and employment, and reviewed

Student's progress towards graduation. The IEP team also drafted annual goals related to Student's postsecondary education and employment needs.

Glendale did not make any changes to Student's individualized transition plan in the December 2018 IEP. Student was to work on the transition goals from the May 11, 2018 IEP, through May 9, 2019. There was no information presented at the December 2018 IEP team meeting that Student's postsecondary needs or interests had changed. Thus, the evidence did not show Glendale should have developed a new transition plan or revised the plan from May 2018.

RELATED SERVICES AND TRANSITION SERVICES

During the May 11, 2018 IEP team meeting, Glendale offered Student several related services, based on Student's present levels of performance and annual goals, as identified in the May 2018 psychoeducational assessment, and as discussed at the IEP team meeting. The start date, duration, frequency, and location of the services were delineated in the IEP.

During the December 2018 IEP team meeting, the participants discussed Student's possible transition back to Glendale from In Balance Ranch. Student's attorney asked Glendale to make an offer of FAPE that included a plan to help Student transition from In Balance Ranch to an appropriate program. In response to this request, Glendale offered educational support services to aid in Student's transition back to Glendale. These services included 1,440 minutes a month of direct behavior intervention for Student, 90 minutes a week of parent counseling, and 90 minutes a week of supervision from a social worker. The IEP stated that a behavior therapist and a case manager would work with the Glendale West therapeutic team to support Student's transition. The IEP indicated an anticipated start date, the frequency, duration,

and location of the services, which could be provided at home or at school. Glendale regularly contracted with a certified nonpublic agency to provide educational support services. In addition to the IEP services, the nonpublic agency could connect Student to non-educational community organizations that specialized in substance recovery and mental health. Parent asked questions about the services, and Glendale's program specialist, who was knowledgeable about how education support services worked, explained the process, and generally how the services would be implemented.

Parent and the In Balance Ranch participants provided input on Student's possible transition home. The In Balance Ranch director explained in general terms what a transition from In Balance Ranch would consist of, including several home visits, with the final home visit resulting in Student locating a home therapist, substance recovery meetings, a sponsor to support Student's substance recovery, and a supportive peer group. Parent expected Glendale to help Student put these things in place before Student returned home and expected Student's substance recovery needs to be part of Glendale's offered transition plan.

There was a direct connection between Student's need to have a transition plan to successfully return home, and the educational support services Glendale offered. The services were specifically designed to assist Student and Parent during Student's transition. Glendale considered input from several IEP team members, including Parent and the In Balance Ranch and San Pedro Valley Academy participants, when offering these services. Student did not offer any legal authority that would make Glendale responsible for arranging Student's substance recovery program and supports. Further, the evidence did not show Student required a substance recovery program in order to receive special education services. In December 2018, Student had not used drugs or alcohol in approximately 14 months, and substance use was not impacting Student's

ability to access general education curriculum. Glendale's responsibility was to offer services that would allow Student to attain the annual goals, and to make progress in light of Student's circumstances. The educational support services offered at the December 2018 IEP team meeting satisfied these requirements.

Student's argument that Glendale should have offered postsecondary transition services was unpersuasive. The evidence did not show Student required specific transition services to attain the postsecondary goals in the IEP. As discussed, the postsecondary goals were appropriate for Student based on Student's assessed and stated postsecondary interests. Based on Student's cognitive functioning levels, and with support from educational staff, Student could work towards meeting the goals without postsecondary transition services.

PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT

Glendale offered Student placement at Glendale West in the May 11, 2018 IEP. Glendale West, while on the Glendale High School campus, was operated by a nonpublic agency that Glendale contracted with. All the students in Glendale West struggled with academic success on a comprehensive general education campus and needed smaller classes with academic and therapeutic support. The program had approximately 12 students spanning grades nine to 12, one special education teacher, one behavior specialist, one classroom aide, and a licensed therapist on site. Most of the students had challenges with work avoidance and passive resistance, which the program curriculum addressed. A smaller number of students at times actively defied the teacher by getting out of their seat, ignoring redirection, or making verbal outbursts. The adults in the classroom provided positive behavior supports to address these behaviors. The teacher differentiated instruction based on the individual student's academic level, and

used whole group, small group, and independent study models. The goal of the program was to help the students develop coping skills so they could successfully return to a comprehensive general education campus. Glendale based its offer of Glendale West on the May 2018 psychoeducational assessment results, and input from the IEP team members that Student required a small, therapeutic environment, and specialized academic instruction, to receive educational benefit. Parent did not believe in May 2018 that Student was ready to transition home and decided to keep Student at In Balance Ranch.

Glendale did not change its offer of placement at the December 2018 IEP team meeting. As discussed, there was no information presented at the meeting to indicate Student's academic or functional needs had changed. Student continued to require academic, behavioral, and therapeutic support. Parent disagreed that Glendale West was appropriate for Student, and explained why at the meeting. Parent thought Glendale West was too restrictive, could not support Student's distractibility needs, and that the other students in the program were functioning academically lower than Student and had more significant behaviors. Parent was also concerned about Student's ability to build a relationship with a new therapist, the absence of a substance recovery program on campus, and whether Student would have access to the gym when needed to release frustration. Parent believed the Glendale West setting would have a detrimental effect on Student's anxiety, depression, self-esteem, and overall motivation for school.

The In Balance Ranch director and the San Pedro Valley Academy academic director told the IEP team Student was not ready to transition home because Student had not yet completed all four levels of the program. Their opinions were centered on Student's emotional and substance recovery needs, and not Student's educational

needs. As discussed, Student did not have to complete a specified amount of high school credits or attain a certain grade level to complete the In Balance Ranch program.

Parent requested that Glendale fund Student's placement at In Balance Ranch and an appropriate program to transition to once Student completed the In Balance Ranch program. Glendale considered input from Parents, and the In Balance Ranch and San Pedro Valley Academy staff, but disagreed with their opinions. The Glendale IEP team members believed Student could benefit from the Glendale West program. Glendale's program specialist, who worked with the Glendale West program, stated Student would benefit from the structure and embedded therapeutic supports offered in the program, along with the educational support services, which would simulate the structure provided at In Balance Ranch. In the specialist's opinion, transitioning Student home was appropriate because Student had been in a residential setting for over a year, and the longer he stayed in that type of setting, the more difficult it would be for him to reintegrate into the home community.

Glendale's special education teacher, who assessed Student as part of the May 2018 psychoeducational assessment, told the December 2018 IEP team that Glendale West was an appropriate placement for Student. At hearing, the teacher confirmed this opinion and stated Student required services from a credentialed special education teacher because Student was not making academic progress at San Pedro Valley Academy, which used a mostly independent study model, and did not offer instruction from a credentialed teacher. The teacher's opinion was based on Student's slow progress in earning high school credits for Algebra and other classes. At the time of the December 2018 IEP team meeting, Student had been enrolled in the first semester of Algebra I for almost one year and had completed only 40 percent of the course.

Glendale's placement offer at Glendale West was appropriate. Glendale was not required to fund Student's placement at In Balance Ranch, or in a transition program, simply because it was Parent's preferred program, even if the program offered greater benefit to Student in the areas of substance recovery and emotional well-being. Glendale West was able to meet Student's academic, behavioral, and therapeutic needs, as determined by the May 2018 psychoeducational assessment, and as discussed by the IEP team at both the May 2018, and December 2018 IEP team meetings. The program was designed for students who were not successful on a comprehensive campus, and who had challenges with work avoidance and defiance. Student had not been successful on a comprehensive high school campus, which in addition to substance abuse and erratic behaviors at home, led to his placement in a residential setting. Student also struggled with work avoidance and passive defiance towards teachers. Moreover, Student's annual goals and the accommodations in the May 2018 IEP, as well as the related services offered in the May 2018, and December 2018 IEPs could be implemented at Glendale West. The evidence showed Student required a structured environment where he could gain confidence through therapeutic support, and be held accountable to complete work with the help of specialized academic instruction from a credentialed special education teacher. The evidence did not show Student required a residential placement at In Balance Ranch to receive special education and related services, especially because San Pedro Valley Academy did not provide special education or implement IEPs.

Glendale West also represented the least restrictive environment for Student. The parties agreed that Student was not ready to return to a comprehensive high school campus with placement in general education classes, so it is not necessary to analyze Glendale's placement offer using the *Rachel H.* factors. Relying instead on *Daniel R.R.*,

the analysis must focus on whether the December 2018 IEP offered mainstreaming opportunities to the maximum extent possible in light of Student's circumstances. The evidence showed it did. Student had been in a residential setting for over a year, since October 2017. Glendale believed Student was ready to transition to a less restrictive environment but did not believe Student was ready for a general education setting. At the May 2018 IEP team meeting, Student's In Balance Ranch therapist and the San Pedro Valley Academy academic director stated Student's depression and anxiety would increase if transitioned to a mainstream, comprehensive campus. Furthermore, the May 2018 IEP team considered several program options, and determined Student's need for a small, therapeutic setting outweighed the benefits from being educated with nondisabled peers. While the May 2018 IEP offered mainstreaming in physical education, it was reasonable that Student needed to show success in the Glendale West program before the IEP team would consider additional mainstreaming opportunities. Student was transitioning from a very restrictive residential setting, and it was appropriate for Glendale to offer a full-time special education program to support Student's academic, behavioral, and therapeutic needs before attempting mainstreaming.

In determining Student's placement, the evidence showed Glendale considered input from IEP team members, including Parent, Glendale professionals that assessed Student in April 2018, the program specialist who was knowledgeable about the Glendale West program, and the In Balance Ranch and San Pedro Valley Academy staff. Glendale's offered placement was at Student's school of residence, satisfied least restrictive environment requirements, and therefore, was appropriate.

TEAM CONSIDERATION OF PARENT'S PRIVATE EXPERTS

The evidence showed Glendale heavily relied upon the input provided by In Balance Ranch and San Pedro Valley Academy staff. Professionals from both organizations who participated in the May, and December 2018 IEP team meetings, informed the Glendale team members about the structure of the In Balance Ranch program, Student's emotional, behavioral, and academic progress, and when Student would be ready to transition home. Glendale looked to In Balance Ranch specifically to provide recommendations to facilitate Student's successful transition home. Throughout the December 2018 IEP team meeting, Glendale's team members asked the In Balance Ranch and San Pedro Valley Academy staff questions about Student's progress and the steps Student needed to complete in order to transition home. Ultimately, Glendale disagreed with these professionals' opinions regarding what constituted an appropriate placement for Student, but such disagreement did not result in a denial of FAPE.

WRITTEN OFFER OF FAPE

Glendale's offer of counseling services was clearly written in the December 2018 IEP. The IEP offered 60 minutes a week of individual counseling, 60 minutes a week of parent counseling, 60 minutes a week of group counseling, and an additional 90 minutes a week of parent counseling through educational support services.

The December 2018 IEP clearly indicated how Glendale would address Student's substance recovery. The IEP notes indicated Glendale did not operate its own substance recovery program, but that the educational support services team would work with the family to link Student to other community agencies to help Student find a recovery support program at home.

The December 2018 IEP clearly indicated how Glendale would help facilitate Student's transition home. Glendale offered educational support services to help Student successfully transition. The start date, frequency, duration, and location of the educational support services were clearly written in the IEP. Glendale was not required to include every detail or specific methodology of how the services would be implemented. Parent's disagreement with the transition services offered does not change the fact that Glendale's offer was clearly written in the IEP.

PRIOR WRITTEN NOTICE

Glendale provided prior written notice regarding Parent's request for an appropriate transition program or plan in the December 2018 IEP and in a January 6, 2019 letter. In the IEP, Glendale provided written notice regarding their offer of educational support services, which were intended to help Student successfully transition home. The IEP indicated why Glendale proposed these services, what they relied on in offering the services, and other factors relevant to the proposed services. Glendale offered a copy of parental rights during the meeting, but Parent declined.

In the letter, Glendale responded to Parent's request for Glendale to fund Student's placement at In Balance Ranch. Glendale stated its refusal to fund the placement and repeated its offer of placement at Glendale West with related services, including educational support services to help Student successfully transition home. The letter included the data Glendale relied on in making its decision, a reference to parental rights and procedural safeguards under the IDEA, and contact information if Parent needed assistance.

The evidence showed the December 17, 2018 IEP met all procedural requirements of the IDEA, and substantively offered Student a FAPE. The IEP team

considered Student's strengths, Parent's concerns, and Student's academic, behavioral, and therapeutic needs. Glendale's placement offer at Glendale West with related services and accommodations was designed to meet Student's unique needs, comported with Student's IEP, and was reasonably calculated to provide Student with educational benefit appropriate in light of Student's circumstances, in the least restrictive environment.

ISSUES 3(A), 3(B), 3(C), AND 6(A): DID GLENDALE FAIL TO ASSESS STUDENT PURSUANT TO THE ASSESSMENT PLAN PARENT SIGNED ON FEBRUARY 15, 2019, FAIL TO TIMELY HOLD AN IEP TEAM MEETING, AND FAIL TO HAVE AN IEP IN EFFECT AT THE START OF THE 2019-2020 SCHOOL YEAR?

Student argued Glendale failed to assess Student in educationally-related mental health services, functional behavior, and assistive technology, pursuant to the assessment plan Parent signed on February 15, 2019. Student further argued Glendale failed to complete the assessments and hold an IEP team meeting within 60 days. Finally, Student argued Glendale failed to hold Student's annual IEP team meeting by May 10, 2019. As a result of Glendale's failure to timely hold an IEP team meeting, Student argued Student did not have an IEP in effect at the start of the 2019-2020 school year.

Glendale argued it assessed Student in all areas of suspected disability as identified on the assessment plan Parent signed on February 15, 2019. Glendale further argued its attempts to timely assess Student and hold an IEP were delayed by Parent. Finally, Glendale argued Student did not suffer any loss of educational benefit from the

delay in convening Student's annual IEP team review because Glendale's offer of FAPE in the May, and December 2018 IEPs was still appropriate, and Parent had no intention of consenting to a Glendale program.

When a child is referred for assessment, the school district must provide the parent with a written proposed assessment plan within 15 days of the referral. (Ed. Code, § 56321, subd. (a).) The district has 60 days from the date it receives the parent's written consent for assessment, excluding vacation and days when school is not in session in excess of five schooldays, to complete the assessments and develop an IEP, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, § 56043, subd. (f)(1).) The 60-day timeline does not apply if the parent repeatedly fails or refuses to produce the child for the assessment. (20 U.S.C. § 1414(a)(1)(C)(ii)(III); Ed. Code, § 56302.1, subd. (b)(2).)

School districts must take steps to ensure at least one parent is present at each IEP team meeting, or are given the opportunity to participate, including notifying parents of the meeting early enough, and scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) If a parent cannot attend, the school district must offer other methods of participation such as video or teleconferencing. (34 C.F.R. §§ 300.322(c), 300.328.) An IEP team meeting may only be conducted without a parent if the school district is unable to convince the parent that they should attend. (34 C.F.R. § 300.322(d).)

At the beginning of each school year, a school district must have an IEP in effect for each child with a disability within its boundaries. (34 C.F.R. § 300.323(a); Ed. Code, § 56344, subd. (c).)

A school district cannot stop implementing a student's IEP simply because the annual IEP review is overdue. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1046.) When confronted with the situation of complying with one procedural requirement of the IDEA or another, school districts must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. (*Ibid* [holding the agency's decision to prioritize the annual IEP review deadline over parent's participation at the meeting was unreasonable].) School districts are given reasonable latitude when faced with making such a determination. (*Ibid*.)

After the December 17, 2018 IEP team meeting, Glendale proposed to conduct new assessments of Student. Glendale provided Parent with two different assessment plans dated January 7, 2019, and January 11, 2019. In the January 7, 2019 assessment plan, Glendale proposed assessing Student in health, social emotional/behavior, postsecondary transition, and educationally-related mental health. In the January 11, 2019 assessment plan, Glendale proposed assessing Student in academic performance. Neither assessment plan indicated Glendale was going to conduct a functional behavior assessment or an assistive technology assessment. Parent signed both assessment plans and provided them to Glendale on February 15, 2019.

On January 6, 2019, Glendale sent a letter to Parent requesting an opportunity to observe and interview Student on his next home visit. Parent did not make Student available during any home visits because, according to Parent, there was not enough time during the visits to meet with Glendale. The letter also included releases of information for Parent to sign so Glendale assessors could communicate with the In Balance Ranch staff. Parent did not sign the releases until March 25, 2019, and did not send them to Glendale until April 2, 2019. Once Glendale received the signed releases,

the assessors started the assessment process. Student's annual IEP review was due on May 10, 2019.

In May 2019, a Glendale school psychologist and a special education teacher traveled to Arizona to observe and assess Student, and interview In Balance Ranch and San Pedro Valley Academy staff. The assessment and interviews took place on May 15 and 16, 2019. The school psychologist conducted an educationally-related mental health assessment as part of the "social emotional functioning" portion of the psychoeducational assessment. The assessors issued a written report on June 14, 2019.

On Monday, June 17, 2019, Glendale emailed a written invitation to Parent to participate in an IEP team meeting on June 26, 2019. On Friday, June 21, 2019, Student's attorney proposed June 25, 2019, for the IEP team meeting. On Monday, June 24, 2019, before communicating with Glendale, Student's attorney emailed Glendale's attorney indicating Parent was no longer available for an IEP team meeting on June 25, 2019. Glendale's attorney promptly responded that Glendale was prepared to proceed with the meeting the next day. Student's attorney promptly responded that they were not available but would work with Glendale on scheduling a different date.

On July 3, 2019, Glendale sent Parent three written invitations to participate in an IEP team meeting on either July 22, 23, or 24, 2019, and offered the option for Parent to participate on the phone. Parent responded that only July 26, 2019, would work. Glendale was not available on that day, or during August 2019, when many of the team members were on summer vacation. The parties finally agreed to meet in an IEP team meeting on September 16, 2019.

There was no evidence Glendale agreed to conduct a functional behavior assessment or assistive technology assessment as part of the assessment plans Parent

signed on February 15, 2019. Glendale's school psychologist did conduct an educationally-related mental health assessment and included the results in the June 14, 2019 psychoeducational assessment report.

The evidence showed there was more than 60 days between when Parent signed the assessment plans on February 15, 2019, and when the parties met in an IEP team meeting on September 16, 2019. The evidence also showed there were unusual circumstances that led to the lengthy delay, and that Glendale was not at fault. First, Student was in another state, and Glendale's assessors had to make travel arrangements and coordinate assessment dates with In Balance Ranch. Second, despite Glendale's request for Parent to make Student available during a home visit, Parent did not make Student available. Finally, Glendale did not receive authorization to communicate with In Balance Ranch until April 2, 2019, at which point, Glendale's assessors began the assessment process. These circumstances led to a three-month delay in conducting the assessments. Once the assessors finished collecting the assessment data, they needed time to complete the assessment report, which they did on June 14, 2019.

Glendale attempted to schedule an IEP team meeting on June 26, 2019, which was close in time to when the psychoeducational assessment report was completed. Parent was not available on that date, or ultimately, on June 25, 2019, which was the date Student's attorney proposed. To ensure parent participation at the IEP team meeting, Glendale proposed three alternative dates. Again, Parent was not available, which left the parties having to wait until Glendale's summer vacation ended and school resumed. The evidence showed Glendale made a good faith effort to complete Student's assessments and hold an IEP team meeting within 60 days, but circumstances outside of their control led to the extended delay.

The analysis is similar for Glendale's failure to hold Student's annual IEP by May 10, 2019, and failure to have an IEP in effect at the start of the 2019-2020 school year. Glendale was waiting to hold Student's annual IEP until the psychoeducational assessment was completed. Without the assessment data, the IEP team would not have all relevant information that it needed to revise Student's IEP. Further, Glendale was faced with deciding whether to hold Student's annual IEP review by the May 10, 2019 deadline, or ensuring Parent participated in the IEP team meeting. As the Ninth Circuit held in *Doug C.*, school districts are given reasonable latitude when faced with deciding to comply with one procedural requirement of IDEA over another. Here, Glendale decided to comply with IDEA's affirmative requirement to ensure parental participation at IEP team meetings. Thus, while Glendale committed procedural violations when it failed to hold Student's annual IEP by May 10, 2019, and failed to have an IEP in effect at the start of the 2019-2020 school year, Glendale's decision to prioritize parental participation was reasonable under the circumstances because Parent showed an interest in participating in the IEP process.

Moreover, the evidence did not show the procedural violations impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Student, or caused a deprivation of educational benefits to Student. The evidence suggested Parent had no intention of accepting a placement within Glendale. Parent consistently requested that Glendale fund Student's placement at In Balance Ranch. By May 2019, Student had been in a residential placement for approximately 18 months without an implemented IEP. In that time, Glendale held three IEP team meetings, and offered Student special education and related services. Parent did not consent to Glendale's offers of FAPE, and unilaterally decided to keep Student at In Balance Ranch and San Pedro Valley Academy

because Parent believed these placements were appropriate for Student. Parent was not concerned with Student receiving special education and related services. Even if Glendale held an IEP team meeting before May 10, 2019, and offered FAPE, the evidence suggested Parent was unlikely to consent to the IEP; especially because Student still had not completed the In Balance Ranch program. Further, there was no evidence that Glendale's offer of FAPE in December 17, 2018 IEP was no longer available simply because the annual IEP review deadline had passed.

Student did not prove Glendale failed to assess Student in the areas of functional behavior, assistive technology, or educationally-related mental health pursuant to the February 15, 2019 assessment plan. Student did not prove Glendale denied Student a FAPE by failing to timely assess and hold an IEP team meeting within 60 days of Parent's February 15, 2019 consent to assess. Student did not prove Glendale denied Student a FAPE by failing to hold Student's annual IEP by May 10, 2019. Finally, Student did not prove Glendale denied Student a FAPE by failing to have an IEP in effect at the start of the 2019-2020 school year.

ISSUE 3(D): DID GLENDALE PROCEDURALLY DENY STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR, BY FAILING TO PROVIDE APPROPRIATE PRIOR WRITTEN NOTICE IN RESPONSE TO PARENT'S JUNE 21, 2019 NOTICE OF UNILATERAL PLACEMENT OF STUDENT?

Student argued Glendale failed to respond to its notice that Parent decided to enroll Student in the In Balance Transition Living program and seek reimbursement from Glendale. Glendale argued it intended to discuss Student's placement at the IEP team meeting scheduled on June 26, 2019, but Parent delayed the meeting. Glendale further argued its September 13, 2019 letter to Parent met all prior written notice requirements.

Finally, Glendale argued even if its prior written notice was insufficient, Student did not suffer a loss of educational benefit and Glendale did not impede Parent's opportunity to participate in the IEP process.

On June 21, 2019, Student's attorney sent Glendale's attorney a letter indicating Parent's intention to enroll Student in the In Balance Transitional Living program and San Pedro Valley Academy-Tucson High School, in Tucson, Arizona. The letter indicated Parent would seek reimbursement for the placement at an appropriate time. On July 12, 2019, Parent on behalf of Student, filed a due process complaint against Glendale. One of the proposed resolutions was reimbursement for In Balance starting in September 2018. On July 23, 2019, Glendale responded to Student's complaint. In its response, Glendale denied Student's request for remedies on the grounds that it had procedurally and substantively offered Student a FAPE. The response indicated Glendale relied on Student's IEPs, assessment reports, and input from school personnel and Parent to offer a FAPE. Finally, the response included a reference to parental rights and who Parent could contact for assistance in understanding the rights.

On September 13, 2019, Glendale sent Parent a letter denying Parent's request for reimbursement at In Balance Ranch and In Balance Transitional Living. The letter explained that Glendale refused Parent's request for reimbursement because it had offered Student a FAPE. In making this decision, the letter stated Glendale relied on Student's records, including reports and IEPs, and input from Parent and other IEP team members. Another option Glendale considered was Student's placement at Glendale West, which Glendale maintained was appropriate to address Student's needs. Finally, the letter included a reference to parental rights and procedural safeguards and provided contact information for who Parent could contact for assistance understanding the rights. Thus, between Glendale's July 12, 2019 response to Student's complaint, and

Glendale's September 13, 2019 letter, Glendale provided appropriate prior written notice of its refusal to reimburse Parent for Student's placement at In Balance.

Additionally, Glendale provided Parent with appropriate prior written notice in a reasonable time as Parent had enough time to fully consider the change and respond to the action before it would be implemented. Parent gave notice on June 21, 2019, when Glendale was on summer vacation. Glendale resumed school for the 2019-2020 school year on August 21, 2019, and Glendale sent its prior written notice letter less than 30 days later.

ISSUE 7: WAS GLENDALE'S JUNE 14, 2019 PSYCHOEDUCATIONAL ASSESSMENT OF STUDENT, AS AMENDED ON OCTOBER 1, 2019, APPROPRIATE?

Glendale argued its June 14, 2019 psychoeducational assessment of Student, as amended on October 1, 2019, was appropriate. Student argued the psychoeducational assessment was inappropriate because it did not include an educationally-related mental health assessment or address Student's substance abuse needs.

School district evaluations of students with disabilities under the IDEA serve two purposes:

1. identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and
2. helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301, 300.303.)

A child must be assessed in all areas related to suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).) In assessing a child with a disability, the assessment must be sufficiently comprehensive to identify all the child's special education and related services needs, whether commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

Assessments must be administered by trained and knowledgeable persons, who are competent to conduct such assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), and 56322.) A credentialed school psychologist must conduct any psychological assessments. (Ed. Code, § 56324.)

In conducting an evaluation, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The school district must not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability, or determining the appropriate educational program for the child. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).) 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).) Assessments and other evaluation materials must be administered in accordance with the publisher's instructions and be used for valid and reliable purposes. (20 U.S.C. § 1414(b)(3)(A)(iii) and (v); 34 C.F.R. § 300.304(c)(1)(iii) and (v).)

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).) In addition, an assessor must produce a written report of each assessment that includes:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during the observation of the student in an appropriate setting;
- the relationship of that behavior to the student's academic and social functioning; and
- the educationally relevant health and development, and medical findings, if any.

(Ed. Code, § 56327, subds. (a)-(e).)

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.)

As discussed, Parent consented to Glendale assessing Student in several areas on February 15, 2019. A Glendale school psychologist and a special education teacher traveled to Arizona to assess Student at In Balance Ranch in May 2019. The assessors completed a written report on June 14, 2019. The purpose of the assessment was to identify Student's educational strengths and needs, and help the IEP team determine whether Student continued to need special education and related services.

Glendale assessed Student in all areas of suspected disability, pursuant to the areas identified in the assessment plans Parent signed on February 15, 2019. At hearing, Student argued Glendale should have assessed Student in functional behavior and assistive technology. The evidence did not support this argument. Glendale's program specialist, who was a board-certified behavior analyst, testified Student was not displaying any behaviors at In Balance Ranch that warranted a functional behavior assessment. The school psychologist testified that a functional behavior assessment is typically conducted when a student's behavior is so severe in the school environment that they are a threat to themselves or others, and that Student's attention and work completion challenges could be addressed through classroom supports. Glendale's assistive technology specialist testified a new assistive technology assessment was not necessary because Glendale was given no information that anything had changed with Student's placement or assistive technology needs since being assessed in April 2018. These witnesses' testimony was consistent with other witness testimony and documentary evidence, and was persuasive.

Both the school psychologist and special education teacher were trained and knowledgeable, and competent in the areas they assessed. The school psychologist held a doctorate degree in counseling, clinical, and school psychology, was a credentialed school psychologist, and worked for Glendale as a school psychologist for approximately two and a half years. The special education teacher held an education specialist instruction credential that allowed the teacher to conduct assessments and provide instruction to special education students.

The assessors used a variety of assessment tools including a review of Student's records, interviews with Student, Parent, and Student's teacher and therapist at In Balance Ranch, school observations of Student, and standardized test measures.

There was no evidence that the test instruments were not technically sound, tailored to assess specific areas of need, administered according to the publisher's instruction, or that they were discriminatory in any way. The assessment was conducted in Student's primary language of English. The assessment report was thorough and comprehensive, and gathered information to assist Student's IEP team in identifying special education and related services to address Student's needs.

The school psychologist observed Student in class, during lunch, and during standardized testing. In class, Student worked independently and appeared to be mostly on task. During lunch, Student's behavior was socially appropriate with peers. During testing, which lasted several hours, Student remained attentive throughout most of the testing, and answered questions appropriately. Student did not show any signs of impulsivity, put forth consistent effort, and the results were considered an accurate reflection of Student's abilities.

Student's cognitive abilities were estimated in the average range, which was consistent with previous testing. Student's short-term memory and ability to recall facts in isolation was weak. The report compared Student's academic test results from May 2018 and the current assessment. Student's scores were mostly consistent from the previous year's testing, with most scores being in the average range. Student showed a significant increase in reading recall, word reading fluency, and humanities, and a significant decrease in math calculation.

The school psychologist provided rating scales to Student, Parent, and Student's therapist and teachers to assess Student's executive functioning, attention, and social emotional needs. Student continued to have significant challenges with distractibility, work completion, organization, and impulsivity. Additionally, Student's low self-concept,

and difficulties with attention, impulse control, and academics appeared to be connected. Parent's ratings revealed Student's behaviors were more severe in the home setting. At school, his behavior was mostly age-appropriate, although Student's teachers noted some concerns with defiance, irritability, and difficulty overcoming stress. The psychologist concluded that Student's moods were likely to impact academic motivation and perseverance on non-preferred tasks like math.

In addition to academic testing, the special education teacher conducted a transition assessment, using a standardized test measure and an interview with Student. Student wanted to complete high school and continue his education with the goal of become a firefighter or real estate agent. Student appeared knowledgeable about the steps needed to achieve these goals. Student anticipated going to the In Balance Transitional Living program for three months, and then wanted to live independently in California.

Finally, the report reviewed Student's possible eligibility for special education under the categories of other health impairment, emotional disturbance, and specific learning disability. Student did not meet the criteria for emotional disturbance or specific learning disability, and the report explained the psychologist's basis for making that determination. While the assessment results showed Student had some depression symptoms, and other emotional challenges, the psychologist determined those symptoms occurred more at home than in school, and were not the primary cause of Student's learning challenges. Student's cognitive and academic scores were mostly in the average range, and did not indicate Student had a learning disorder. The psychologist recommended eligibility under other health impairment because Student's challenges with attention, concentration, and executive functioning skills adversely

impacted educational performance. There were no relevant health, developmental, or medical findings reported.

The school psychologist and special education teacher reviewed the assessment results at the September 16, 2019 IEP team meeting. By that time, Student had completed the In Balance Ranch program and transitioned to the In Balance Transitional Living program. Parent informed Glendale at the September 2019 meeting that Student had a new therapeutic team. Considering this new information, the school psychologist updated the June 2019 psychoeducational report. The psychologist reviewed Student's recent school records, including Student's current In Balance Transitional Living treatment plan and biopsychosocial assessment. The psychologist also interviewed Student's new therapist and head teacher at San Pedro Valley Academy-Tucson High School. The psychologist issued an updated report on October 1, 2019, and reviewed the updated information at an October 1, 2019 IEP team meeting.

Student's May 2019 psychoeducational assessment, and resulting June 14, 2019, and October 1, 2019 assessment reports, met all IDEA procedural assessment requirements. Therefore, the assessment and reports were appropriate.

ISSUES 4(A), 4(B), 5(A), 5(B), 5(C), 5(D), 5(E), 5(F), AND 9: DID GLENDALE PROCEDURALLY AND SUBSTANTIVELY OFFER STUDENT A FAPE IN THE IEP DEVELOPED ON SEPTEMBER 19, 2019, AND COMPLETED ON OCTOBER 1, 2019?

Student argued Glendale procedurally and substantively denied Student a FAPE in the September 19, 2019 IEP, completed on October 1, 2019. Specifically, Student argued Glendale failed to offer a behavior support plan, an individual transition plan

tailored to Student's unique needs, and appropriate counseling services, assistive technology, transition services, and placement. Student further argued Glendale did not describe Student's counseling, parent counseling, educational support services, or how Glendale would support Student's substance recovery, with enough specificity. Finally, Student argued Glendale failed to provide prior written notice in response to Parent's request for an appropriate transition program.

Glendale argued the September 16, 2019 IEP, as completed on October 1, 2019, satisfied all procedural and substantive IDEA requirements, and offered Student a FAPE.

SEPTEMBER 19, 2019 IEP TEAM MEETING

On September 19, 2019, Glendale held Student's annual IEP team meeting, to review the June 2019 psychoeducational assessment, and to discuss Student's transition back home. The school psychologist and special education teacher reviewed the results from the psychoeducational assessment. During the meeting, Parent informed Glendale Student had a new treatment team at In Balance Transitional Living. As such, the parties decided to reconvene the meeting on October 1, 2019, to invite the new treatment team. On October 1, 2019 meeting, the IEP team met to discuss Student's present levels of performance as reported by the In Balance Transitional Living and San Pedro Valley Academy participants, develop goals, and recommend special education placement and services. The IEP developed at the September, and October 2019 IEP team meetings, will be referred to as the September 19, 2019 IEP. Glendale offered Parent a copy of parental rights and procedural safeguards, but Parent declined.

IEP TEAM

All required IEP team members attended the meetings, including Parent, the school psychologist and special education teacher who assessed Student, the program specialist familiar with Glendale West, Student's In Balance Transitional Living therapist, the San Pedro Valley Academy academic director, and two San Pedro Valley Academy instructors. All participants had the opportunity to provide input regarding Student's academic, behavioral, and therapeutic needs. Glendale invited Student to the meeting, but Student did not attend.

PRESENT LEVELS OF PERFORMANCE

The present levels of performance described Student's academic achievement and functional performance with a summary from the June 2019 psychoeducational assessment report, and the October 2019 update that included how Student's disability affected his involvement and progress in the general education curriculum. Additionally, information from Parent and In Balance Transitional Living participants was included, ensuring that the present levels of performance were up-to-date and accurate.

At the In Balance Transitional Living program, Student was not required to attend school. Student was enrolled in two classes, Algebra I and a writing course. Student still struggled with executive functioning and problem-solving skills. Student's school motivation was low, and he would often leave the school mid-day when he needed a break. Math continued to be Student's most difficult subject. The San Pedro Valley Academy math instructor stated at the meeting that Student struggled with basic math concepts. The instructor was not a credentialed teacher and had no special education training.

Student's self-esteem and defiance were also a concern. In counseling, Student was working on pausing before reacting to a situation. In Balance Transitional Living used an incentive-based behavioral system, where residents earned 50 dollars each week, and were docked pay if they did not fulfill their obligations.

ANNUAL GOALS

The IEP team drafted 10 annual goals. Each goal had a baseline that was related to Student's present levels of performance, including input from Parent, In Balance and San Pedro Valley Academy staff, and the results from the June, and October 2019 assessment reports. There were two social emotional goals. In the first goal, Student was to identify feelings and use a distress coping skill when confronted with real or imagined situations. In the second goal, Student was to practice appropriate ways to respond and justify the response when roleplaying different situations. There were two executive functioning goals. In the first goal, Student was to problem solve on how to complete an assignment during an independent work period. In the second goal, Student was to use a planner and a checklist to keep track of, and check assignments for neatness and completion.

There were four academic goals in reading comprehension, reading vocabulary, written language, and math. Finally, there were two postsecondary goals. The first was in education training, and Student was to use technology and adult support to research postsecondary education programs related to Student's career goals, and write a one-page summary regarding the programs. The second was in employment, and Student was to create a slide show on how to become a firefighter.

Each goal was measurable and designed to help Student make progress in Glendale's offered program, and to meet Student's academic, executive functioning, and

therapeutic needs. Each goal indicated how progress would be measured, and which educational or therapeutic professional would be responsible for helping Student reach the goals. Based on Student's baseline performance, the goals described what Student could reasonably expect to accomplish with a 12-month period. Therefore, the annual goals were appropriate.

BEHAVIOR SUPPORT PLAN

The IEP team determined Student's behavior impeded the learning of self and others due to Student's challenges with time on task and task initiation of schoolwork. Glendale offered accommodations, individual counseling, and a behavior goal to address Student's behaviors. The evidence did not show Student required a behavior support plan. Student's behaviors in September 2019, were like Student's behaviors in December 2018. Student did not display any significant external behaviors that impacted educational performance. The behaviors Student did display related to attention and work completion were appropriately addressed in the executive functioning goals, and the IEP accommodations.

INDIVIDUALIZED TRANSITION PLAN

The IEP team developed an individual transition plan. The plan was based on the postsecondary assessment conducted as part of the May 2019 psychoeducational assessment, including an interview of Student. Student still wanted to be a firefighter or real estate agent. The plan contained one goal each in postsecondary education, employment, and independent living. Student's education goal was to attend community college. Student's employment goal was to become a firefighter. Student's independent living goal was to live on his own and get a driver's license. The plan included activities to support the goals, including researching community colleges to

determine whether they offer a fire science program, researching how to become a firefighter in California, and researching the requirements to earn a driver's license. The activities were directly related to the stated goals, and the goals were directly related to Student's stated postsecondary and career interests. The plan also reviewed Student's status towards graduation. Student had completed 100 credits and needed 120 additional credits to graduate. The transition plan was appropriate.

RELATED SERVICES

Glendale continued to offer the same related services from the May 11, 2018, and December 17, 2018 IEPs. Specifically, Glendale offered 1,740 minutes a week of specialized academic instruction, 90 minutes a year of assistive technology services, 60 minutes a week of individual counseling, 60 minutes a week of parent counseling, 60 minutes of group counseling, and extended school year services. Additionally, Glendale offered transition support through the education support services team, including 1,440 minutes a month of behavior intervention services, 90 minutes a week of parent counseling, and 90 minutes a week of social work supervision services. The IEP included a projected start date for the services, as well as the anticipated frequency, location, and duration of the services. The educational support services were to start a minimum of two weeks before Student returned home, and Glendale would hold an IEP team meeting within 30 days of Student's return to determine if any changes to the educational program were needed.

Glendale offered these services to help Student make progress on the proposed annual goals, and to help Student be successful in the school environment. Glendale's offer of related services exceeded the supports Student received at In Balance Transitional Living and San Pedro Valley Academy. For example, at San Pedro Valley

Academy, Student did not receive any special education instruction, or any instruction from a credentialed teacher. Additionally, Glendale offered more counseling than Student received at In Balance Transitional Living.

Counseling

Glendale's offer of counseling services was appropriate. Student would receive more counseling in the Glendale West program than in the In Balance Transitional Living program. At In Balance Transitional Living, Student only received individual therapy once a week and participated in family therapy every other week. Moreover, the counseling Glendale offered would be both school-based and through a nonpublic agency, which could address other emotional challenges Student experienced as part of his transition home.

Student's arguments that Glendale's offered counseling was inappropriate because it did not provide therapy on an "as needed" basis, did not specify whether Student's therapist would have experience with substance abuse or how Student would build rapport with the therapist, and did not specify what other students would be in group therapy with Student, were unpersuasive. The law does not require Glendale to offer services with that level of specificity. Moreover, Glendale's offer of counseling was appropriately designed to support Student's transition to a less restrictive environment, and to assist Student in meeting the IEP goals and make progress in the Glendale West program, so that Student could eventually return to a general education setting.

Transition Services

Student's argument that Glendale should have offered transition services was unpersuasive. There was no evidence presented that Student required specific transition

services to meet the postsecondary goals in the IEP. As discussed, the postsecondary goals were appropriate for Student based on Student's assessed and stated postsecondary career and independent living plans. Based on Student's functioning levels, and with support from educational staff, Student could work towards meeting the goals without transition services.

Glendale's offer of related services, including counseling and transition services, was appropriate, as they were designed to assist Student benefit from special education and make progress in the Glendale West program, and they were directly related to Student's present levels of performance and annual goals.

ACCOMMODATIONS AND ASSISTIVE TECHNOLOGY

Glendale continued to offer several accommodations to address Student's challenges with attention, organization skills, and academic performance. Specifically, Glendale offered note-taking support, preferential seating, a home-to-school communication system, graphic organizers, visual check lists, shortened and simplified instructions, repeated instructions, extended time on tests and to complete assignments, and access to a separate study area for tests. These accommodations were designed to help Student attain the annual goals and make progress in Glendale's offered program. There was no evidence that showed Student required additional or different accommodations to access the curriculum.

The IEP continued to offer Student 90 minutes a year of assistive technology services, and use of a word processor, a calculator, and audio book or text to speech. The offered assistive technology was reflected on the accommodations page in the IEP. Although Student had changed placements since being assessed for assistive

technology in April 2018, there was no evidence that showed Glendale should have offered services different from what was offered in the May 2018 IEP.

Thus, the IEP accommodations and Glendale's offered assistive technology were appropriate.

PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT

Glendale continued to offer Student placement in the Glendale West program, with Student's entire school day being in a self-contained special education program, except for general education physical education. For the reasons already discussed, Glendale West was an appropriate program for Student, in the least restrictive environment, and continued to be appropriate in September, and October 2019. Student's academic, functional, and therapeutic needs had not significantly changed since the December 2018 IEP. The San Pedro Valley Academy instructors reported Student still had challenges with attention, organization, and work completion. Student was making minimal academic progress and was significantly deficient in high school credits. Based on credits, Student was still in the 10th grade. Chronologically, Student should have been in the 12th grade. In more than 20 months at San Pedro Valley Academy, Student had not yet completed the equivalent of one year of high school, and was still enrolled in the first semester of Algebra I.

Glendale's IEP team members expressed strong opinions at the IEP team meeting for why Glendale West was appropriate for Student. The program specialist stated a concern that Student had been in residential treatment for too long and would have difficulty transitioning back to the home community the more time passed. The program specialist also stated Student required an educational setting that provided stimulating academic instruction from a special education teacher, and that San Pedro

Valley Academy was not equipped to support Student's academic needs. The school psychologist stated the team should focus on addressing Student's academic needs in a less restrictive environment where Student would have more independence, while still having support services to transition back into the home community.

Parent's opinion that Glendale West was not appropriate for Student was inconsistent with the June, and October 2019 assessment reports, the reports from In Balance Transitional Living and San Pedro Valley Academy staff, and with other documentary evidence that showed Student required a small, therapeutic setting with specialized academic instruction from a credentialed special education teacher. The Glendale IEP team members considered the San Pedro Valley Academy academic director's opinion that Student would likely "walk away from education" if placed in a program with special needs students, but ultimately determined Student's need for specialized academic instruction in an environment less restrictive than residential placement was the most appropriate option for Student to complete high school. Student was a special needs student, and had specific needs related to ADHD, executive functioning deficits, and to a lesser degree, anxiety and defiant behaviors. The evidence showed Student would not receive an educational benefit in any program that did not directly address these needs.

Moreover, Student was already in a program with students who had therapeutic and behavioral needs. Irrespective of whether the students at In Balance Ranch or Transitional Living had IEPs, they all had special needs the program addressed through therapy, substance recovery, and behavioral management. Glendale West had a similar student population, as well as, the academic, behavioral, and therapeutic supports to help Student make progress in the general education curriculum, in a less restrictive environment.

In determining Student's placement, the evidence showed Glendale considered input from IEP team members, including Parent, Glendale professionals that assessed Student in May 2019, the program specialist who was knowledgeable about the Glendale West program, and the In Balance Transitional Living and San Pedro Valley Academy staff. Glendale's offered placement was at Student's school of residence, satisfied least restrictive environment requirements, and therefore, was appropriate.

WRITTEN OFFER

The IEP offer for counseling services and educational support services was clear. As discussed, the IEP included the anticipated start date, frequency, duration, and location of the services. The IEP notes further described the educational support services. Glendale did not offer substance recovery as part of the IEP, so was not required to include the specifics of a substance recovery program in the IEP. While not required, the IEP notes did discuss how Glendale's educational support services could work with other community organizations to connect the family to non-educational supports like a substance recovery program.

PRIOR WRITTEN NOTICE

During the September, and October 2019 IEP team meetings, the team members had an in-depth discussion regarding Student's possible transition home. Parent did not specifically request that Glendale provide a transition program but did ask questions regarding Glendale's offered educational support services. The program specialist and special education teacher present at the meeting reviewed educational support services and the Glendale West program in detail, and that discussion was reflected in the IEP notes. The IEP notes clearly reflected Glendale's offer of educational support services and that these services were being offered to support Student's transition back to the

home community. The IEP notes also clearly reflected Glendale's opinion on why In Balance Transitional Living and San Pedro Valley Academy were not appropriate placements for Student, and what information the Glendale participants based their opinions on. Glendale also offered Parent a copy of parental rights and procedural safeguards, but Parent declined.

The evidence did not show that Glendale was required to provide Parent with prior written notice because Parent did not make a specific request for a transition program during the IEP team meeting. However, the September, and October 2019 IEP notes met the prior written notice requirements with respect to Glendale's offer of educational support services. Moreover, the IEP notes and supporting testimony showed that Parent meaningfully participated in the decision-making process regarding the provision of FAPE to Student, and that Parent had the opportunity to consider and respond to Glendale's offer.

The evidence showed the September 16, 2019 IEP, as completed on October 1, 2019, met all procedural requirements of IDEA, and substantively offered Student a FAPE. The IEP team considered Student's strengths, Parent's concerns, and Student's academic, behavioral, and therapeutic needs. Glendale's placement offer at Glendale West with related services and accommodations was designed to meet Student's unique needs, comported with Student's IEP, and was reasonably calculated to provide Student with educational benefit appropriate in light of Student's circumstances, in the least restrictive environment.

ISSUE 6(B): DID GLENDALE PROCEDRUALLY DENY STUDENT A FAPE DURING THE 2019-2020 SCHOOL YEAR, BY FAILING TO PROVIDE APPROPRIATE PRIOR WRITTEN NOTICE IN RESPONSE TO PARENT'S JANUARY 24, 2020 NOTICE OF UNILATERAL PLACEMENT OF STUDENT?

Student argued Glendale failed to respond to Parent's January 24, 2020 notice that Student enrolled at In Balance Sober Living facility and San Pedro Valley Academy-Tucson High School. Glendale argued it was not required to provide Parent with prior written notice because at the time of Parent's notice of placement, the parties were actively engaged in a due process case where placement was at issue. Glendale further argued if it was required to provide prior written notice, it did so in an April 30, 2020 letter to Parent.

On January 22, 2020, Glendale filed the due process complaint at issue here to seek a ruling from OAH that it offered Student a FAPE. On January 24, 2020, Parent emailed Glendale notice that Student would enroll at In Balance Sober Living facility and San Pedro Valley Academy-Tucson High School on February 11, 2020. Student filed the due process complaint at issue here on March 16, 2020. One of the proposed resolutions was for Glendale to reimburse Parent for the In Balance programs, including the Sober Living program. On March 27, 2020, Glendale responded to the complaint, including Student's request for reimbursement. Glendale denied Student's request for reimbursement because it had offered Student a FAPE.

On April 30, 2020, Glendale sent a prior written notice letter to Parent and Student denying Parent's request for reimbursement, along with other requests. The explanation for Glendale's denial was that it offered Student FAPE in the Glendale West program. In making its decision, the letter indicated Glendale relied on student records,

assessment reports, and IEPs. The letter included a description of other factors considered, a notice of parental rights and procedural safeguards, and contact information for who Parent could contact for further assistance.

Glendale's April 30, 2020 letter met the prior written notice requirements regarding Glendale's refusal to reimburse Parent for the unilateral private placement. Further, any delay in Glendale providing prior written notice was reasonable, as the parties were actively engaged in litigating this case. Moreover, the evidence did not show the delay in Glendale sending a formal prior written notice letter impeded Student's right to a FAPE or deprived Student of educational benefits, or significantly impeded Parent's opportunity to participate in the decision-making process.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Glendale prevailed on all issues heard and decided. Specifically:

1. On Issue 1:
 - a. Student did not prove Glendale procedurally denied Student a FAPE at the December 17, 2018 IEP by failing to include accurate present levels of performance. Glendale prevailed on Issue 1(a).
 - b. Student did not prove Glendale procedurally denied Student a FAPE at the December 17, 2018 IEP by refusing to consider the findings of Parent's private experts. Glendale prevailed on Issue 1(b).
 - c. Student did not prove Glendale procedurally denied Student a FAPE at the December 17, 2018 IEP by failing to make a clear offer of FAPE. Glendale prevailed on Issue 1(c).

- d. Student did not prove Glendale procedurally denied Student a FAPE at the December 17, 2018 IEP by failing to provide appropriate prior written notice in response to Parent's request for an appropriate transition program.

Glendale prevailed on Issue 1(d).

2. On Issue 2:

- a. Student did not prove Glendale substantively denied Student a FAPE in the December 17, 2018 IEP by failing to offer a behavior support plan. Glendale prevailed on Issue 2(a).
- b. Student did not prove Glendale substantively denied Student a FAPE in the December 17, 2018 IEP by failing to offer appropriate assistive technology services, devices, and supports. Glendale prevailed on Issue 2(b).
- c. Student did not prove Glendale substantively denied Student a FAPE in the December 17, 2018 IEP by failing to offer an individualized transition plan tailored to meet Student's unique needs. Glendale prevailed on Issue 2(c).
- d. Student did not prove Glendale substantively denied Student a FAPE in the December 17, 2018 IEP by failing to offer appropriate transition services. Glendale prevailed on Issue 2(d).
- e. Student did not prove Glendale substantively denied Student a FAPE in the December 17, 2018 IEP by failing to offer an appropriate placement. Glendale prevailed on Issue 2(e).

3. On Issue 3:

- a. Student did not prove Glendale procedurally denied Student a FAPE during the 2018-2019 school year by failing to assess Student in the areas of educationally-related mental health services, functional behavior, and assistive technology, pursuant to the assessment plan Parent signed on February 15, 2019. Glendale prevailed on Issue 3(a).

- b. Student did not prove Glendale procedurally denied Student a FAPE during the 2018-2019 school year by failing to timely assess Student and hold an IEP team meeting within 60 days of Parent signing the assessment plan on February 15, 2019. Glendale prevailed on Issue 3(b).
- c. Student did not prove Glendale procedurally denied Student a FAPE during the 2018-2019 school year by failing to timely conduct Student's annual IEP team meeting on or before May 10, 2019. Glendale prevailed on Issue 3(c).
- d. Student did not prove Glendale procedurally denied Student a FAPE during the 2018-2019 school year by failing to provide prior written notice in response to Parent's June 21, 2019 notice of unilateral placement of Student. Glendale prevailed on Issue 3(d).

4. On Issue 4:

- a. Student did not prove Glendale procedurally denied Student a FAPE at the September 16, 2019 IEP team meeting, completed on October 1, 2019, by failing to make a clear offer of FAPE. Glendale prevailed on Issue 4(a).
- b. Student did not provide Glendale procedurally denied Student a FAPE at the September 16, 2019 IEP team meeting, completed on October 1, 2019, by failing to provide appropriate prior written notice in response to Parent's request for an appropriate transition program. Glendale prevailed on Issue 4(b).

5. On Issue 5:

- a. Student did not prove Glendale substantively denied Student a FAPE in the September 16, 2019 IEP, completed on October 1, 2019, by failing to offer a behavior support plan. Glendale prevailed on Issue 5(a).

- b. Student did not prove Glendale substantively denied Student a FAPE in the September 16, 2019 IEP, completed on October 1, 2019, by failing to offer appropriate counseling services. Glendale prevailed on Issue 5(b).
 - c. Student did not prove Glendale substantively denied Student a FAPE in the September 16, 2019 IEP, completed on October 1, 2019, by failing to offer appropriate assistive technology services, devices, and supports. Glendale prevailed on Issue 5(c).
 - d. Student did not prove Glendale substantively denied Student a FAPE in the September 16, 2019 IEP, completed on October 1, 2019, by failing to offer an individualized transition plan tailored to meet Student's unique needs. Glendale prevailed on Issue 5(d).
 - e. Student did not prove Glendale substantively denied Student a FAPE in the September 16, 2019 IEP, completed on October 1, 2019, by failing to offer appropriate transition services. Glendale prevailed on Issue 5(e).
 - f. Student did not prove Glendale substantively denied Student a FAPE in the September 16, 2019 IEP, completed on October 1, 2019, by failing to offer an appropriate placement. Glendale prevailed on Issue 5(f).
6. On Issue 6:
- a. Student did not prove Glendale procedurally denied Student a FAPE, during the 2019-2020 school year, by failing to have an IEP in effect at the start of the school year. Glendale prevailed on Issue 6(a).
 - b. Student did not prove Glendale procedurally denied Student a FAPE, during the 2019-2020 school year, by failing to provide appropriate prior written notice in response to Parent's January 24, 2020 notice of unilateral placement of Student. Glendale prevailed on Issue 6(b).

7. On Issue 7, Glendale proved its June 14, 2019 psychoeducational assess of Student, as amended on October 1, 2019, was appropriate. Glendale prevailed on Issue 7.
8. On Issue 8, Glendale proved it offered Student a FAPE in the IEP developed on December 17, 2018. Glendale prevailed on Issue 8.
9. On Issue 9, Glendale proved it offered Student a FAPE in the IEP developed on September 16, 2019, and completed on October 1, 2019. Glendale prevailed on Issue 9.

ORDER

1. All of Student's claims for relief are denied.
2. If Student decides to attend school within Glendale, and seeks special education services, Glendale may implement the September 16, 2019 IEP, completed on October 1, 2019, without Student's or Parent's consent.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Tara Doss

Administrative Law Judge

Office of Administrative Hearings