

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019100729

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GREENFIELD UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

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DECISION

MARCH 11, 2020

On October 18, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Greenfield Union School District, naming Student. OAH granted Student's request for a continuance on November 4, 2019. Administrative Law Judge Kara Hatfield heard this matter in Bakersfield on January 7, 8, 14, and 15, 2020.

Attorney Darren Bogié represented Greenfield. Director of Support Services Melissa Ortiz attended the hearing on January 7, 8, and 14, 2020. Assistant Director of Support Services Laura Amason attended the hearing on January 15, 2020. Mother, also

referred to as Parent, represented Student. Mother telephonically attended all hearing days on Student's behalf. Student did not attend the hearing.

At the parties' request, OAH continued the matter to February 18, 2020, for written closing briefs. The record was closed, and the matter was submitted on February 18, 2020.

## ISSUES

Did Greenfield offer Student a free appropriate public education, called a FAPE, in the August 30, 2019 individualized education program, called an IEP, such that Greenfield may implement the IEP without Parent's consent?

## 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 et seq. (all references to the Code of Federal Regulations are to the 2006 version); Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

(20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case, Greenfield requested the hearing and bears the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing, Student was eight years old and in second grade, but was not attending school. Student resided within Greenfield's geographic boundaries at all relevant times. Student was eligible for special education under the primary eligibility category of Autism, the secondary eligibility category of Speech/Language Impairment, and a third eligibility category of Intellectual Disability.

ISSUE: DID GREENFIELD OFFER STUDENT A FAPE IN THE AUGUST 30, 2019 IEP, SUCH THAT GREENFIELD MAY IMPLEMENT THE IEP WITHOUT PARENT'S CONSENT?

Greenfield asserts it complied with all procedural and substantive requirements in developing and offering the goals, placement, related services, supports, and accommodations contained in the August 30, 2019 IEP, such that the IEP offered

Student a FAPE. Accordingly, Greenfield requests an order permitting the school district to implement the IEP without Parent's consent.

Parent did not agree with the August 30, 2019 IEP and refused to consent to it. Student argued the IEP did not offer Student a FAPE because Greenfield denied Parent participation in the development of the IEP by making unilateral decisions, failing to timely assess and review assessments in the areas of functional behavior and motor development, and failing to consider alternative placements, including in a program operated by the Kern County Superintendent of Schools, or what Parent ambiguously called "homeschool."

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) 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. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000] (*Endrew F.*).

“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) [in California, related services are also called designated instruction and services].)

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.)

The IDEA requires that school districts establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) A written explanation of all the procedural safeguards under the IDEA shall be included in the notice of a parent’s or guardian’s rights. (Ed. Code, § 56321, subd. (a).) A copy of the procedural safeguards must be given by a school district to a parent of a child with a disability a minimum of once a year. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a); Ed. Code, § 56301, subd. (d)(2).) The notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent. (20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.504.)

Education Code section 56500.1, subdivision (b) requires that parents be informed about procedural safeguards at an IEP team meeting.

The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Ibid.*) Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 892.)

Procedurally, the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b) & (c); Ed. Code, §§ 56304, 56341.) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) In addition to other requirements, the notice must indicate the purpose, time, location of the meeting, and who will be in attendance. (34 C.F.R. § 300.322(b)(1)(i).) It must also inform the parents of the provisions in 34 Code of Federal Regulations part 300.321(a)(6) and (c) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child. (34 C.F.R. § 300.322(b)(1)(ii).)

Unless excused in writing by the parent, the IEP team is required to include:

- one or both of the student's parents or their representative;
- a regular education teacher if a student is, or may be, participating in the regular education environment;
- a special education teacher;
- 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 the instructional implications of assessment results; and
- at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the child.

(20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].) Finally, whenever appropriate, the child with the disability should be present. (20 U.S.C. § 1414(d)(1)(B)(vii); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b)(7).)

States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483 (*Target Range*) [superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 939.]) To fulfill the goal of parental participation in the IEP process, the school district is required to conduct a

meaningful IEP meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) 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 v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

The fact that it may be difficult to schedule meetings or to work with a parent does not excuse a failure to include the parent in the IEP team meeting. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1045 (*Doug C.*); see also 34 C.F.R. § 300.322(c) & (d) ["If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls" and must "keep a record of its attempts to arrange a mutually agreed on time and place . . .".]) When confronted with competing IDEA procedural requirements, the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of FAPE. (*Id.* at p. 1046.) In reviewing an agency's actions in such a scenario, the agency will have reasonable latitude in making that determination. (*Ibid.*)

A school district denies Student a FAPE where it holds an IEP team meeting to consider placement and services without parents even where parents had already decided the student would not be attending a district school. (*D.B. ex rel. Roberts v. Santa Monica-Malibu Unified School Dist.* (June 1, 2015, No. 13-55665) (9th Cir. 2015) 606 Fed. Appx. 359, 360 [nonpub. opn.]; see also *Anchorage School Dist. v. M.P.*, 689 F.3d 1047, 1055 ["[T]he IDEA, its implementing regulations, and our case law all



emphasize the importance of parental involvement and advocacy, even when the parents' preferences do not align with those of the educational agency."].)

The IDEA permits school districts to conduct IEP team meetings without parents when the district is unable to convince parents to attend. The district must keep a record of its attempts to arrange a mutually agreed time and place, such as:

- detailed records of telephone calls made or attempted and the results of those calls;
- copies of correspondence sent to the parents and any responses received; and
- detailed records of visits made to the parent's home or place of employment and the results of those visits.

(34 C.F.R. § 300.322(d)(1)-(3).)

California Education Code section 56345 is a statutory framework for the IEP, and provides a nearly step-by-step analytical approach to developing an individualized program of instruction and services for a student who requires special education. An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum, and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320; Ed. Code, § 56345, subd. (a)(1) & (2).) An IEP must include a description of how progress towards the goals developed will be measured and reported. (Ed Code, § 56345, subd. (a)(3).)

An IEP must include a statement of the special education and related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable, that will be provided to the student, and program modifications or supports for school personnel, that will be provided to enable the student to advance appropriately toward attaining the annual goals, being involved in and making progress in the general education curriculum and participate in extracurricular and nonacademic activities, and to be educated and participate with other individuals with exceptional needs and nondisabled pupils. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).)

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. (Ed. Code, § 56345, subd. (a)(5).)

The IEP must include a statement of individual appropriate accommodations that are necessary to measure academic achievement and functional performance of the student on state and districtwide assessments. (Ed. Code, § 56345, subd. (a)(6).)

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); Ed. Code, § 56345, subd. (a)(7).) Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included, and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).)

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).)

Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. (20 U.S.C. § 1414(a); 34 C.F.R. § 300.303; Ed. Code, §§ 56043(k), 56381, subd. (a).) A local educational agency must conduct a reassessment at least once every three years, called a triennial reassessment, unless the parent and the agency agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) The agency must also conduct a reassessment if it determines the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321(a).) Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1); Ed. Code, § 56381, subd. (f).) Parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parent of all the children. (34 C.F.R. § 300.300(d)(1); Ed. Code, § 56321, subd. (e).)

When a student is referred for assessment, the school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral (with limited exceptions not applicable in this case). (Ed. Code, § 56321, subd. (a).) The

parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision, and the assessment may begin immediately upon receipt of the parent's consent. (Ed. Code, § 56321, subd. (c)(4).)

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, subds. (c) & (f), 56302.1, subd. (a), 56381, subd. (a).)

Each public agency must ensure that assessments and other evaluation materials used to assess a child are, among other things, administered by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c); 34 C.F.R. § 300.304; Ed. Code, §§ 56320, 56322, 56381, subd. (e).) The personnel who assess the student shall prepare a written report. (Ed. Code, § 56327.) A school district's failure to conduct appropriate assessments may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.)

The assessment must be conducted in a way that:

- uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;
- does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and
- uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(20 U.S.C. §§ 1414(b)(2)(A)-(C); 34 C.F.R. §300.304(b); see Ed. Code, § 56320.)

The assessments used must be:

- selected and administered so as not to be discriminatory on a racial, cultural, or sex basis;
- provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
- used for purposes for which the assessments are valid and reliable;
- administered by trained and knowledgeable personnel; and
- administered in accordance with any instructions provided by the producer of such assessments.

(Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (e); see 20 U.S.C. § 1414(b) & (c); 34 C.F.R. § 300.304(c).)

The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where the concern prompting the assessment was reading skills deficit].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).) Assessors must be knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd. (g).)

The personnel who assess the student shall prepare a written report that shall include, without limitation, the following:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during observation of the student in an appropriate setting;
- the relationship of that behavior to the student's academic and social functioning;
- the educationally relevant health, development, and medical findings, if any;
- if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and
- consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment.

(Ed. Code, § 56327.) Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent, and an IEP team meeting must be held to consider the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, §§ 56302.1, subd. (a), 56329 subd. (a).) The IEP team must consider the assessments in determining the child's educational program. (20 U.S.C. § 1414(d)(3)(iii); 34 C.F.R. § 300.324(a)(1)(iii) (2006).)

The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San*

*Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106), reversed in part on other grounds by *Schaffer, supra*, 546 U.S. 49, 56-58.).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) An examination of the

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

School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and that special classes or separate schooling occur only if the nature or severity of the 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); Ed. Code, § 56031.)

The continuum of program options includes, but is “not necessarily” limited to, in increasing order of restrictiveness:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and



- instruction using telecommunication, and instruction in the home, in hospitals, or other institutions.

(Ed. Code, § 56361.)

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

- the placement decision is 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, and takes into account the requirement that children be educated in the least restrictive environment;
- 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 non-disabled;
- 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 with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(34 C.F.R. § 300.116.)

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

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

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5<sup>th</sup> Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*).])

However, the Ninth Circuit has also found that a general education placement is not the least restrictive environment for every special needs child. In *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830 (*Poolaw*), the Ninth Circuit considered the *Rachel H.* factors and determined that a general education classroom was not the least restrictive environment for the child in question. The Court acknowledged that there was a tension within the IDEA between the requirement that a district provide children with a FAPE to meet their unique needs and the preference for mainstreaming. The Court stated:

In some cases, such as where the child's handicap is particularly severe, it will be impossible to provide any meaningful education to the student in a mainstream environment. In these situations, continued mainstreaming would be inappropriate and educators may recommend placing the child in a special education environment. This allows educators to comply with the Act's main requirement – that at the child receive a free appropriate

public education. Thus, “the Act’s mandate for a free appropriate public education qualifies and limits its mandate for education in the regular classroom.”

(*Poolaw, supra*, 67 F.3d at p. 834, citing *Daniel R.R., supra*, 874 F.2d at p. 1044.)

If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.)

A school district may have two or more equally appropriate locations that meet the child’s special education and related service needs, and school administrators have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement. (71 Fed.Reg. 46588 (Aug.14, 2006).) The IDEA does not remove from school authorities control over decisions as to where to allocate resources and locate instructional facilities. (*Letter to Angelo* (OSEP September 13, 1988).) However, special classes that serve students with similar and more intensive educational needs must be made available. (Ed. Code, § 56364.2, subd. (a).)

While the law requires the IEP team to consider the specific school campus a student will attend with attention to how close the campus is to the child’s home and what school the child would attend if he or she was non-disabled, the law does not require that a school district place a child at his neighborhood school if there is no program available there to meet his needs. (See, e.g. *McLaughlin v. Holt Public Sch. Bd.*

*of Educ.* (6th Cir. 2003) 320 F.3d 663, 672 [least restrictive environment provisions and regulations do not mandate placement in neighborhood school]; *Hudson v. Bloomfield Hills Public Sch.* (6th Cir.1997) 108 F.3d 112 [IDEA does not require placement in neighborhood school]; *Urban v. Jefferson Cnty. Sch. Dist.* (10th Cir. 1996) 89 F.3d 720, 727 [IDEA does not give student a right to placement at a neighborhood school]; *Wilson v. Marana Unified Sch. Dist. No. 6 of Pima Cnty.* (9th Cir. 1984) 735 F.2d 1178 [school district may assign the child to a school 30 minutes away because the teacher certified in the child's disability was assigned there, rather than move the service to the neighborhood school].) No one factor is determinative in placement, and parental preference cannot be either the sole or predominant factor in placement decisions. (See, e.g., *Letter to Burton* (OSERS March 20, 1991); *Letter to Anonymous* (OSEP April 20, 1994); *Letter to Bina* (OSERS November 5, 1991).)

If a child's behavior interferes with his learning or the learning of others, the IDEA requires the IEP team, in developing the IEP, to "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

An IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).)

The Ninth Circuit has observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. A district has an obligation to make a formal, written offer in the IEP that clearly identifies the proposed

program. The requirement of a coherent, formal, written offer 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 (*Union*); *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d. 431, 459-460.)

If a district determines that a proposed special education program component to which a parent does not consent is necessary to provide a FAPE, the district shall initiate a due process hearing. (Ed. Code, § 56346, subd. (f); *I.R. ex rel. E.N. v. L.A. Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1165 (*I.R.*).

*I.R.* clarified that Education Code section 56346, subdivision (f), requires a school district to “expeditiously” request a due process hearing when a district determines, for a student who is already receiving special education and related services, any portion of an IEP to which a parent does not consent is necessary to provide the student with a FAPE. (805 F.3d at p. 1169.) The Ninth Circuit explained, “If, in the school district’s judgment, the child is not receiving a FAPE, the district must act with reasonable promptness to correct that problem by adjudicating the differences with the parents. The reason for this urgency is that it is the child who suffers in the meantime.” (*Id.* at p. 1170.)

In a district-filed case conducted pursuant to Education Code section 56505, a hearing officer shall not base a decision solely on nonsubstantive procedural errors unless the ALJ finds the nonsubstantive procedural errors resulted in the loss of an

educational opportunity to the student or interfered with the opportunity of the student's parent to participate in the formulation process of the IEP. (Ed. Code, § 56505, subd. (j).)

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 a disabled pupil to constitute a FAPE under the IDEA, a school district's offer 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 a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an "education . . . designed according to the parent's desires."].) 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. (*Ibid.*) A school district has the right to select the program offered, as long as the program is able to meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards* (OSEP January 7, 2010).) The Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to

grant the parent a veto over any individual IEP provision. (*Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

The IEP document dated August 30, 2019, resulted from a lengthy and contentious process that began in March 2018. It reflected the outcome of many processes pursued, discussions had, and conclusions reached over 18 months. To evaluate whether Greenfield offered Student a FAPE in the August 30, 2019 IEP, it is necessary to consider Student's circumstances and the events that contributed to the development as well as final offer of special education and related services in the August 30, 2019 IEP.

Greenfield did not have a preschool program, so when Student was first found to be eligible for special education and related services in March 2016, when he was four years old, he attended preschool at a program provided by the Kern County Superintendent of Schools, called Kern County. In March 2017, when Student was five, Kern County conducted another psychoeducational evaluation and a speech and language assessment for his annual IEP and to guide planning for Student's transition to kindergarten the next school year. Kern County also wrote a preschool transition report, which recommended Student attend "a placement with a small student/teacher ratio, daily opportunities for small group instruction of all presented material, and where discrete teaching is utilized yet socialization is continuously supported for his Kindergarten year."

For the 2017-2018 school year, Student attended a Greenfield elementary school with a special day class for students with mild to moderate needs, in kindergarten through second grade. There were four adults and 10 students. Student had difficulty staying on task and required significant levels of prompting to participate in classroom

lessons. He eloped or ran away from staff during non-preferred activities, transitions to non-preferred activities, and also to gain access to preferred items and activities.

In March 2018, Greenfield's school psychologist evaluated whether Student required additional assistance. Student required direct and frequent prompting to engage with instructional activities and obtain educational benefit. He required a one-to-one aide for adult proximity, daily monitoring, and prompts including physical assistance to stay on task. The school psychologist recommended Student's progress be monitored at quarterly benchmarks corresponding to goals and objectives. The school psychologist proposed a schedule to fade the aide support as Student achieved various goals during the specific class periods of the day, according to the schedule of the special day class at that elementary school.

Greenfield held IEP team meetings on March 16, April 4, and May 4, 2018, for Student's annual IEP, and to review the Special Circumstances Instructional Assistance evaluation report prepared by the school psychologist. The document dated March 16, 2018, included notes of all three IEP team meetings and reflected the final outcome of all the discussions on the goals, placement, and services Greenfield offered. Parent attended all three meetings and at the March 16, 2018 IEP team meeting, she agreed to implementing the one-to-one aide throughout Student's school day.

Parent requested changes to proposed goals in the annual IEP, and Greenfield adjusted some goals based on Parent's requests. Parent also made demands for information about minute details of daily classroom and school goings on. Parent requested Student be evaluated for placement in a deaf and hard of hearing program, rather than a class for students with behavioral needs. Parent also wanted a placement operated by Kern County, not Greenfield. During the April and May 2018 IEP team



meetings, Greenfield staff reviewed with Parent information about the level of services and supports Student needed, what Greenfield could provide, and the types of services and supports Kern County had available.

For the 2018-2019 school year, Greenfield reorganized its special education programs and did not have a special day class program for first graders at the school Student attended for kindergarten. There was a special day class at Valle Verde Elementary School, within Greenfield. The Valle Verde class had a small student-to-adult ratio and worked on academic, social, communication, and motor skills, and was capable of implementing Student's IEP. Parent did not agree to that placement. Greenfield described to Parent the special education program available at the school Student would attend based on his residence, but for his need for specialized instruction and related services. Greenfield informed Parent the special education classroom program at the school closest to Student's home could not provide Student adequate support. Parent requested placement in a program operated by Kern County. Greenfield informed Parent it had an appropriate program for Student at Valle Verde, but offered to convene another IEP team meeting and have Kern County personnel attend to discuss the continuum of placement options.

On June 25, 2018, Greenfield convened another IEP team meeting and two representatives from Kern County attended. Parent participated by telephone. Kern County personnel explained that while local school districts within the county provided programs for students with mild-to-moderate disabilities, Kern County provided programs for students with moderate-to-severe disabilities when the local school districts did not have a placement appropriate for a student's needs. The programs were similar to those Greenfield provided, in that they involved whole group

instruction, small group instruction, and “possibly some one-to-one with students using an icon exchange communication system.”

Greenfield reiterated it was offering a structured special day class with speech and language therapy, and behavior intervention services with 5.5 hours of a one-to-one aide per day. Greenfield had also offered Student transportation to Valle Verde as a related service.

Parent stated Student made progress in the Kern County preschool program and she wanted him in a Kern County program again. She asked why Kern County was not offering Student a program now. Kern County stated it attended the meeting to discuss its programs, but it was not responsible for offering placement.

Parent expressed her concern of invasion of her privacy, and declined Greenfield’s offer of placement and services because she did not feel the services from Greenfield could meet Student’s needs. She stated she was not comfortable with Greenfield and did not want any offer from the school district. She informed the IEP team Greenfield would not have any more contact with Student. She voiced concern that Student’s home school did not have a program, she had asked for a program to be made available at that school for him, but Greenfield had denied her request. Parent continued complaining that Valle Verde was far from her home and she did not have transportation. She demanded to know why Student could not be kept in the community in which he lived. She again stated she declined Greenfield’s offer of placement, informed the IEP team she would be contacting the California Department of Education, stated the meeting was over, and hung up the phone.

Greenfield updated the Present Levels of Academic Achievement and Functional Performance page in the narrative section, beyond what had been documented in the March 16, 2018 annual IEP present levels of performance grid and narrative.

Parent did not consent to the March 16, 2018 IEP, finalized on May 4, 2018. However, Student attended first grade at Valle Verde in the special day class. Credentialed special education teacher Carol Plemmons taught Student during the 2018-2019 regular school year. Greenfield convened an IEP team meeting on October 12, 2018, to conduct a parent/teacher conference and review the IEP, because Student was attending a different school, with a different teacher, and a different daily structure. Parent attended by telephone.

During kindergarten, Student participated in whole group instruction. At the Valle Verde classroom, Student also worked in small groups and transitioned to the small groups. He was successful during whole group instruction, but had difficulty transitioning to small groups and exhibited escape behaviors, such as eloping, not finishing work, and sometimes dropping to the floor, which included hitting his head on the way down on a desk, wall, or the ground. Greenfield sent Parent a graph regarding the daily number of episodes and their total duration, documented during Student's small group rotations on 14 days between September 17 and October 8, 2018. Greenfield recommended revising the March 16, 2018 IEP goals numbered 9 and 10, regarding social-emotional functioning, to align with the classroom schedule and the behaviors Student was exhibiting at Valle Verde. Student's off-task behaviors included running around the classroom, attempting to climb on tables, screaming and crying, and throwing himself on the ground, totaling an average of approximately 60 minutes daily during small group rotations. Greenfield recommended conducting a functional behavior analysis assessment. Parent agreed.

Parent requested an occupational therapy assessment, and Greenfield agreed to add that to the assessment plan. Greenfield told Parent the two assessments would drive Student's goals and objectives and based on the assessment results, services might be recommended. Greenfield told Parent an IEP team meeting would be held when the assessments were completed to review the assessment results and recommendations. But Greenfield did not send Parent an assessment plan.

Greenfield updated the Present Levels of Academic Achievement and Functional Performance grid page and the narrative section, beyond what was documented in the March 16, 2018 annual IEP.

Greenfield convened an IEP team meeting on November 16, 2018. Parent attended by telephone. Parent received the draft IEP from the last meeting and a progress report, but refused to discuss them. Parent engaged in a lengthy tirade against Greenfield about the behavior data since Student started at Valle Verde. Greenfield tried to focus Parent to address one topic at a time, and Parent refused, melding many concerns simultaneously and preventing the IEP team from responding to any individual, specific concerns Parent raised.

Parent continued to argue with Greenfield about Student's behaviors and the director stated Parent had been "offered an assessment plan for a Functional Behavior Assessment" at the October 12, 2018 IEP team meeting. The director asserted Parent had not agreed to the functional behavior assessment. At a later point in the meeting, the director brought up the assessment plan again and Parent stated, "[W]e can't get to that until we fix other things."

Parent continuously accused Greenfield of excluding her or denying her participation. She was repeatedly provided information responsive to her questions or

concerns, but having that information made no difference and Parent continued to harp on the same topics as if Greenfield had not already responded to her questions. The conversation went in circles and the director first tried to get the IEP team meeting to take a break, and later to end the meeting. Parent accused Greenfield of violating her rights and lying to her. Eventually the meeting ended with an agreement to reconvene on another date.

The IEP team met again on December 14, 2018. Parent attended by telephone. Between the November 16 and December 14, 2018 IEP team meetings, Greenfield sent Parent another graph sheet documenting Student's off-task behaviors. The data was sorted by number of episodes and total time daily, including the time period reported earlier as well as dates since the IEP team meeting in October. The data covered 40 school days from September 17 through December 10, 2018. Overall, the number of daily episodes decreased and over time had declined. Also, the total daily duration of off-task behaviors significantly decreased and over time had markedly declined to an average of 11.4 minutes per day in the last nine days of data collected.

The IEP team convened again on January 23, 2019. Parent initially attended by telephone. Greenfield provided another small group rotation data graph to Parent before the meeting, adding data for another 13 school days, during which time Student had very few behavioral episodes and the daily time total averaged 3.5 minutes.

Greenfield reviewed with Parent the parent rights it had emailed to Parent and explained Parent's rights. Greenfield then reviewed an agenda and the time allotted for each area.

Parent then stated she was calling "recess." She gave the IEP team permission to proceed that day without her, and hung up the phone. She sent Greenfield staff an email to the same effect moments later.

The remaining members of the IEP team held the meeting and discussed Student's then-current functioning. After reviewing Student's sensory needs, his patterns of behavior, preoccupation with specific people and things in the classroom, behaviors of rigidity, under reactions and overreactions to stimuli in the classroom, and his fistful pencil grip, the IEP team again recommended an assessment by an occupational therapist.

The small group rotation data showed that from the beginning of the school year through January 18, 2019, Student's off-task behaviors decreased 93.5 percent. The IEP team credited consistency in the classroom expectations, and targeted interventions by the one-to-one aide. One school psychologist reported to the IEP team that Student's behaviors were stable and there were no behaviors that warranted a functional behavior assessment. Another school psychologist reported the 93.5 percent decrease of Student's behaviors indicated there was no need for a functional behavior assessment. Student's teacher Ms. Plemmons agreed Student's behaviors in the classroom had improved and he was able to participate in the small group rotation, so no functional behavior assessment was needed. The IEP team agreed a functional behavior assessment was no longer warranted.

The speech-language pathologist shared progress on Student's communication goals and objectives. The school nurse shared the log of times Student came to the health office. He had asthma and an inhaler. He had food allergies and had a special meal plan, ate in a designated area for lunch at Parent's request, and there was an

EpiPen at school. He had medicine for eczema to be applied at school if needed. No health assessments had been completed because Parent opted out of health assessments. The teacher had routines in her classroom to address Student's health needs, such as all staff washing their hands first thing in the morning, no food in the classroom unless it was something Student was not allergic to, students and staff washed their hands as they entered and left the classroom, and tables and the cool-down area were wiped down as needed. Student had scheduled restroom breaks and was able to verbally request to use the bathroom between the scheduled bathroom breaks.

Ms. Plemmons reported Student read 43 correct words per minute in first grade-level passages, a score within the average range. He knew 150 sight words. When asked "wh" questions, he repeated the "wh" question the teacher asked him rather than answering the question. For one of his writing goals, Student was able to write one word to complete a sentence frame. For his other writing goal, he initially began using a fist grip and when verbally prompted, switched to the tripod grasp. Because he was exhibiting on-task behavior, he could participate in math groups and work on his math goal of addition. He needed support from the teacher and to use manipulatives to solve simple addition problems. He could catch and toss a ball with an adult from approximately three feet away, and he played catch with peers and staff. He cut lines using student scissors.

Student could line up when transitioning to small groups and he transitioned to the next group. For demonstrating positive behaviors, he was able to pick his reward/reinforcer. He was very pleasant with his peers. His teacher had not observed Student initiate conversations with others, but he was very aware of what was going on

and he understood more social cues. He was constantly looking for social cues from his peers to see what was expected of him. Student could participate during whole group and small group instruction, and had a classroom job. He was able to take turns with peers to come up to the SmartBoard. He had a favorite peer, and when it was Student's turn to select another student to come to the SmartBoard, he often chose that peer.

The IEP team reviewed Student's services. Valle Verde's daily schedule and Wednesday minimum days had changed and the IEP needed to be corrected to note that Student received specialized academic instruction 1,445 minutes per week, an increase from 1,385 under a prior schedule. Student still was in the general education setting 18 percent of the time. Greenfield's offer of placement and services was specialized academic instruction 1,445 minutes of per week, a one-to-one aide 5.5 hours per day, speech and language therapy 160 minutes per month, health and nursing services 15 minutes per month, and behavior intervention services 30 minutes per month.

All the information stated above was written into the notes of the IEP team meeting held on January 23, 2019, after Parent excused herself from the meeting. Questions or comments Parent had emailed to the director were also discussed with the IEP team. That discussion of Parent's concerns was also documented in the notes of the IEP team meeting.

Greenfield updated the Present Levels of Academic Achievement and Functional Performance page narrative section with information in four categories as of January 22, 2019, beyond what had been documented in the October 12, 2018 IEP present levels of performance grid and narrative.



Greenfield sent Parent a copy of the IEP document, dated November 18, 2018, and the IEP team meeting notes for all three dates on which the IEP team met. Parent received a written summary of Student's current program and functioning as of January 23, 2019. Despite Parent's failure to participate in the meeting, she was informed about Student's progress and received a response from Greenfield to the concerns she had emailed Greenfield before the meeting.

Greenfield also sent Parent a copy of the Notice of Procedural Safeguards and Parents' Rights, and an assessment plan seeking Parent's permission for an occupational therapist to evaluate Student's motor development. The assessment plan described the evaluation as an assessment to measure how well a child coordinates body movements in small and large muscle activities, and possibly also a measurement of perceptual skills. The assessment plan stated Parent would be invited to an IEP team meeting to discuss the results, and no IEP would result from the assessment without Parent's written consent, and no special education services would be provided to Student without Parent's consent. The assessment plan was dated January 23, 2019. No evidence established the date on which it was sent to Parent. Parent signed consent on February 19, 2019.

Greenfield sent Parent a notice of an IEP team meeting to be held on March 5, 2019, at 8:30 a.m. The meeting notice was dated February 19, 2019. On February 21, 2019, Parent signed the notice and indicated she would attend by telephone, and provided a phone number.

Greenfield sent Parent a progress report on March 4, 2019, identifying the goals and objectives from Student's March 2018 IEP and noting whether Student had only met some objectives, met the annual goal, or exceeded the annual goal.

On March 5, 2019, shortly before the IEP team meeting was scheduled to begin, Parent emailed Greenfield and Kern County a letter stating she was "calling 'Recess' for" the IEP team meeting that date. She claimed she "did not receive second trimester written report with report card as described in individualized educational plan. At this time, more information and data is currently being gathered and/or reviewed." She requested Greenfield send home with Student all copies of the IEP convened that morning. She stated she would request another IEP team meeting as a "continuum meeting" at a later time.

Greenfield interpreted Parent's letter as permission and even a request for the IEP team to go forward without Parent, and to put the contents of the meeting in writing and send it to Parent. Greenfield called Parent at 8:44 a.m. to get clarification, specifically about whether she gave the IEP team permission to proceed without her. Parent did not answer the phone and the director was not able to leave a message. Greenfield called again one minute later. Parent did not answer, but the director left a voicemail message asking for clarification regarding her emailed letter, specifically about giving the IEP team permission to proceed without her.

The IEP team proceeded with the IEP team members present. The IEP team considered Student's pre-academic/academic levels, cognitive functioning, communication, motor abilities and/or recreation/leisure, vocational/prevocational/community access, self-care/independent living, social-emotional/behavioral functioning, health status, and general education participation. Student's present levels of performance were documented on the second and third pages of the IEP, in the Present Levels of Academic Achievement and Functional Performance grid page and narrative page. They were also documented on the proposed goals pages as Student's baseline in each goal area.

Student's present levels of performance were reviewed by qualified Greenfield staff. Special education teacher Ms. Plemmons provided information about Student's progress on many of his March 2018 goals. He met both of his reading goals. He met his writing goal of filling in the three words in a sentence frame. He did not meet his other writing goal because he still required verbal prompts to grasp his pencil correctly and Ms. Plemmons recommended continuing the writing goal for holding any writing instrument with a tripod hold. Student met his math goal of solving single-digit addition equations. He met the goal of using his communication binder to express what he wanted or needed. He met one motor goal as he could catch, toss, and bounce back a ball with peers and adults at a distance of four feet. He met the other motor goal as he could cut a simple line with angles and curves. He met his social-emotional goal of following directions during transitions.

Student was able to independently participate in whole group instruction, without any prompts from his one-to-one aide, by sitting in a designated spot, listening to direct instruction, participating in discussion, participating in choral responses, participating in whole class activities, engaging in turn taking, and raising his hand to participate. Student followed a visual schedule. He completed work and sometimes finished the task ahead of his peers. He understood rules and expectations across school environments, such as the classroom, playground, cafeteria, and library.

The school psychologist reported Student made excellent growth during the school year with his behavior. In both small group and whole group instructional settings, Student consistently listened to instructions, repeated behavioral and work expectations, exhibited appropriate behavior during instructional periods, and completed work as directed. His off-task behavior duration had decreased from an average of 62 minutes daily in September and October to four minutes daily since

December 2018. There was a 94 percent reduction in off-task behavior from September 17, 2018, to February 28, 2019. Student met his transition goal and increased his on-task behavior.

The speech-language pathologist reported Student met three of his communication goals. He met his safety signs goal, his articulation goal to produce clusters at the word level, and naming common objects goal. He did not meet his goal requiring him to say a "he/she-plus-is-plus-verb-plus-object" sentence independently with minimal verbal cues. The speech-language pathologist recommended revising the goal and continuing it. She also proposed a classification/category goal, and an articulation goal for using clusters at the phrase and sentence level.

Greenfield updated the Present Levels of Academic Achievement and Functional Performance page grid and narrative section, in nearly every category.

Student's areas of unique need were reading, writing, math, social-emotional functioning, and communication.

Student recognized over 150 sight words and read 41 correct words per minute in first grade passages. To be successful with the core curriculum, Student needed to increase his reading fluency. The proposed reading goal was for Student to read orally from a second grade text with 50 correct words per minute, as measured by teacher-recorded data. The special education teacher would work on this goal. The goal contained two interim objectives, for Student to orally read 50 correct words per minute at the first grade level by the end of the school year, and then 40 correct words per minute at the second grade level by November of the next school year.

In writing, Student could not independently write one complete sentence with a noun and a verb. He was able to complete a sentence frame with a word bank of three words. One proposed writing goal was for Student to be given an image or visual reference and to independently write one complete sentence with a noun or pronoun and a verb in two out of three trials as measured by work samples. The special education teacher would work on this goal.

Student was not frequently accurate with his grip on writing instruments. He was able to hold a writing instrument with a fist grip or tripod hold, but wrote with a fist grip. He could be redirected to hold his pencil appropriately or use a pencil grip. A second proposed writing goal was for Student to hold any writing instrument with a tripod hold to complete writing tasks and stay in lined boundaries with no more than two verbal prompts, with 90 percent accuracy on two of three days, as measured by teacher and staff observations and data. The special education teacher would work on this goal.

In math, Student could add numbers equaling less than 10 with 85 percent accuracy, and had just begun subtracting numbers under five, with 65 percent accuracy. One proposed math goal was for Student to add numbers equaling less than 15, using strategies such as counting on, using manipulatives, or a number line, with 80 percent accuracy, as measured by work samples and observation record. The special education teacher would work on this goal.

A second proposed math goal was for Student to subtract numbers under 10, using strategies such as using manipulatives, or a number line, with 80 percent accuracy, as measured by work samples and observation record. The special education teacher would work on this goal.

In social-emotional functioning, Student was able to participate in small group center rotations daily with one-to-one aide support seated closely to Student, providing on-task prompting as needed, and/or assistance with work completion as needed. In his then-current academic setting, there were a daily total of 90 minutes of small group instruction for math and English language arts. Student was able to participate in small group instruction an average of 86 minutes per day with one-to-one aide support. When he was off-task, he sometimes cried, ran in the classroom to get the teacher, and crawled under tables or desks to get to the teacher. The proposed social-emotional functioning goal was for Student to independently participate in small group instruction in the special education classroom for 60 minutes daily by following the small group behavior and word expectations, as measured by teacher-recorded data. The school psychologist and special education teacher would work on this goal.

In communication, Student met his March 2018 articulation goal for two-element clusters at the word level, and pronounced these types of sounds correctly 80 percent of the time. One proposed communication goal was for Student to be given assorted objects, pictures, or words, and for him to correctly produce two-element clusters, such as /fl/, /fr/, and /sl/, in phrases and short sentences with minimal verbal cues, with 80 percent accuracy in 3 out of 4 trials as measured by observation record. The speech-language pathologist would work on this goal.

Student met his March 2018 vocabulary goal for identifying and naming objects or pictures, but struggled to independently sort objects by category. He could classify items by category with maximum cueing with 63 percent accuracy. Another proposed communication goal was for Student to be given assorted objects, pictures, and/or words, and he would classify items by category with minimal verbal cues with 80 percent

accuracy in three out of four trials as measured by observation record. The speech-language pathologist would work on this goal.

Student did not meet his March 2018 expressive communication goal. He was able to independently label nouns and verbs in single word utterances, and repeat a "he/she-plus-is-plus-verb-plus-object" sentence with 80 percent accuracy. To continue building Student's expressive language, a third proposed communication goal was for Student to be given assorted objects, pictures, and/or words, and with moderate verbal cues, he would use "he/she-plus-is-plus-verb-ing" phrases with 80 percent accuracy as measured by work samples and observation record. The speech-language pathologist would work on this goal.

The meeting notes documented that the proposed goals would not be implemented until Parent gave consent.

The school nurse reviewed Student's health status. He continued to have severe food allergies and asthma. The school had his emergency medications and also had medications for eczema and skin scratches and scrapes. Student had a special meals form on file for the school year and he sat at a separate lunch table per Parent's request. The school continued to implement Student's medical doctor's orders limiting outdoor physical activity as specified due to outdoor weather and air quality.

The IEP team reviewed the schedule to progressively decrease the amount of support and time for one-to-one aide from the March 16, 2018 Special Circumstances Instructional Assistance report, but the aide fading schedule did not address his current program. It had been written based on the times of day and content by class periods from kindergarten at a different elementary school. The IEP team revised the aide fading schedule to meet Student's then-current needs and program. The IEP team

meeting notes stated the new aide fading schedule was attached to the IEP along with the previous fading schedule to show the revisions made. However, the copy of the March 5, 2019 IEP received into evidence at the hearing did not have these former and revised fading schedules included. The fact that the IEP team proposed to fade out the one-to-one aide during whole group instruction, with the aide remaining in the classroom to provide support to Student as needed, was documented in the IEP team meeting notes and Greenfield informed Parent when it sent her the IEP document, regardless of whether she in fact received the described schedule documents or not.

The IEP team discussed the proposed accommodations and updated the one-to-one aide support based on Student's current needs. Student use a pencil grip, icon exchange communication system, and visual schedule. His behavior did not impede the learning of himself or others.

The IEP team discussed the least restrictive environment for Student and continued to recommend the structured special day class. Greenfield offered Student specialized academic instruction for 1,445 minutes weekly in a structured special day class, speech and language therapy for 160 minutes per month, health and nursing services for 15 minutes per month, and behavior intervention services for 30 minutes per month. Greenfield offered a one-to-one aide for 3.25 hours per day of direct support, and 2.25 hours per day of support based on Student's needs. Greenfield continued to offer Student curb-to-curb bus transportation.

The IEP team discussed extended school year services. The IEP team recommended Student participate in extended school year because his on-task behavior had improved during the school year and the school break might affect his on-task



behavior. The IEP described the days and dates of extended school year and the special education and related services Greenfield offered Student.

Greenfield sent Parent the draft IEP with its meeting notes, and a permission form for extended school year. Parent did not respond. On March 29, 2019, Greenfield sent Parent a prior written notice requesting Parent sign consent to the IEP, and the extended school year form, so Greenfield could implement the necessary goals for Student and enroll him in extended school year.

Greenfield also invited Parent to an IEP team meeting on April 8, 2019, at 8:30 a.m. Greenfield desired to review the March 5, 2019 IEP with Parent. Parent did not respond to the invitation.

On April 8, 2019, at 8:30 a.m., Greenfield convened an IEP team meeting to answer questions Parent might have had regarding the March 5, 2019 IEP. The director called Parent at 8:34 a.m., Parent did not answer, and the director left a message with a phone number for Parent to contact to participate in the IEP team meeting.

Two minutes later, the director called another phone number for Parent, Parent did not answer, and there was no answering machine or voicemail to leave a message. The IEP team waited until 9:00 a.m. for Parent to return the call. Parent did not call back, and Greenfield did not proceed with the IEP team meeting. By email later that day, Parent requested Greenfield not convene the IEP team meeting without her. She stated she had "called 'Recess'" and also that she was not going to send Student to extended school year.

Parent's email indicated she had received the March 5, 2019 IEP's present levels of performance, proposed goals, and offer of placement and services.

Greenfield sent Parent a notice, dated April 4, 2019, for another IEP team meeting on April 24, 2019. Again, Greenfield desired to include Parent in the development of Student's IEP. The purpose of the proposed meeting was to discuss revisions to parts of the IEP without doing a full review, and to discuss the results of the assessment by the occupational therapist.

The night of April 23, 2019, Parent emailed Greenfield and Kern County indicating she would not attend the April 24, 2019 IEP team meeting. Parent's message was convoluted and difficult to understand. Parts of the letter suggested Parent had received the request for parent input on the questionnaire form of the "Sensory Processing Measure Auto Score Form (W-466A)" as part of the assessment by the occupational therapist, but Parent complained she had not been given "written notice of proposed action." This comment ignored the fact that Parent had requested the assessment by an occupational therapist, and had received and signed consent on the assessment plan, which had given her notice of the assessment.

Parent requested a copy of the occupational therapy assessment, before an IEP team meeting could be held, and she objected to the IEP team meeting to discuss the assessment without her. Parent requested a specific school psychologist not attend Student's IEP team meetings anymore, and that only another specific school psychologist attend.

On April 24, 2019, Greenfield convened an IEP team meeting for Student. This meeting occurred 64 days after the date Parent signed consent to the assessment by the occupational therapist. The director told other members of the IEP team Parent had emailed her the night before requesting a copy of the occupational therapy assessment report and draft IEP, and stating she would not participate in the IEP team meeting

because she had not lifted the “recess.” The IEP team selected two possible dates for another meeting, and then ended without any substantive discussion.

On April 24, 2019, Greenfield responded to Parent’s email and attached the occupational therapist’s assessment report and a draft IEP. Greenfield offered Parent two IEP team meeting dates, May 13 or 15, 2019, at 8:30 a.m. The April 24, 2019 IEP document Greenfield sent to Parent did not contain the present levels of performance pages as developed during the March 5, 2019 annual IEP team meeting. Instead, the present levels of performance grid and narrative pages reverted back to those attached to the November 16, 2018 IEP document as modified on January 23, 2019. But the meeting date on these pages was April 24, 2019. However, the April 24, 2019 IEP document attached the nine proposed annual goals developed at the March 5, 2019 annual IEP team meeting. Those annuals goals pages included statements of Student’s baselines of ability in the goal areas as of March 2019.

On April 25, 2019, Parent emailed Greenfield and Kern County a message complaining Greenfield reviewed results of the occupational therapy report on April 24, 2019 and demanded Greenfield give her “written prior notice” “for (OT) remediation program and additional (OT) assessment decision, being it wasn’t discussed at 4/24/2019 meeting yesterday.” She again stated, “Parent has elected Motion to Recess 1/23/2019, 3/5/2019, and 4/24/2019 currently, however Parent . . . motions to maintain ‘Recess’ for proposed opening 5/13/2019 or 5/15/2019 presently.”

On May 2, 2019, Greenfield acknowledged receipt of Parent’s April 25, 2019 letter. On May 8, 2019, Greenfield sent Parent a prior written notice of its proposed action to hold an IEP team meeting on May 15, 2019, to review with Parent the IEP drafted on March 5, 2019 and to review the occupational therapist’s assessment to

discuss accommodations, placement, and services for Student. Because Parent had not provided permission for the IEP team to proceed without her on April 24, 2019, the IEP team had not discussed the assessment results, services, or goals. Greenfield informed Parent it was important to hold an IEP team meeting to review the occupational therapist's assessment and to discuss his present levels of performance, goals, accommodations, and services to ensure Student was receiving a FAPE and that his needs were currently being addressed and met in the current educational setting.

Greenfield acknowledged Parent had "made a 'motion for recess'" but emphasized to Parent that the IDEA considered parent participation a key part of the IEP development process and made parents mandatory members of the IEP team. Greenfield encouraged Parent to participate in the upcoming IEP development for Student and stated her participation was important.

Greenfield stated it made several attempts to reach Parent to schedule the IEP team meeting for Student. Greenfield again proposed the IEP team meeting date of May 15, 2019 at 8:30 a.m. and enclosed another copy of an IEP team meeting notice for that date. Greenfield requested Parent sign and return the notice by May 13, 2019, and stated if Greenfield did not receive a signed copy of the IEP team meeting notice, Greenfield would proceed with the IEP meeting and again contact Parent on the scheduled date and time.

On the night of May 8, 2019, Parent emailed Greenfield and Kern County requesting Kern County Consortium SELPA Executive Director Julianna Gaines or another elected member attend the IEP team meeting on May 15, 2019.

On the night of Sunday, May 12, 2019, Parent emailed Greenfield and Kern County. She attached a four-page letter, dated May 12, 2019, modeled after the

type of prior written notice a school district typically sends to a parent. The letter was convoluted and difficult to understand. But it reiterated what Parent repeatedly stated, that “[t]he motion stands at ‘recessed’ for reasons of gathering data collection and further individualized development for IEP 5/15/2019 at this time.” Parent quoted information from the occupational therapist’s assessment report and inferred things from it, specifically that the occupational therapist was making statements applicable to Student, when the content of the report only indicated the items listed were survey questions on the specific assessment instrument. Parent read in the draft IEP that occupational therapy service was going to start on April 24, 2019 and she objected because the occupational therapy report had not been reviewed.

On May 15, 2019, Greenfield convened an IEP team meeting. Greenfield understood Parent’s May 2019 letter to be permission for the IEP team to go forward with the review of the occupational therapist assessment without Parent and with SELPA director Gaines participating. SELPA director Gaines attended. The other participants were the occupational therapist who did the assessment, two school psychologists, Greenfield’s director of support services, Student’s special education teacher Ms. Plemmons, the school nurse, and a speech-language pathologist.

The occupational therapist reviewed the assessment report with the IEP team. The assessor was a licensed occupational therapist. She used a variety of assessment tools and strategies to gather information about Student’s motor skills and sensory processing. The assessment procedures did not discriminate based on sex, gender, culture, language, race, ethnicity, or disability. All assessments were given in Student’s native language of English. The tests used had been validated for the specific purpose for which they were developed, and the assessments were given in accordance with the instructions provided by the producer of each test.

Amongst other tests, the occupational therapist administered the Sensory Processing Measure, an integrated system of rating scales consisting of three forms for the home, the main classroom, and the school environment. Student's special education teacher rated Student. Because Parent declined to complete and return the home form, only classroom scores were obtained. Because of this, the occupational therapist chose an alternate sensory processing measure that relied only on Student's functional performance in the classroom and school environment, the Sensory Profile School Companion 2. Student's teacher Ms. Plemmons completed more rating scales.

Parent first declined to participate in evaluating Student's motor skills and sensory processing needs by refusing to complete the Sensory Processing Measure home form, of which she had acknowledged receipt. She then again declined to participate in helping Greenfield understand Student's motor skill and sensory processing needs by refusing to participate in an IEP team meeting to review the results of the assessment and develop any necessary goals and related services, supports, or accommodations.

The occupational therapist concluded Student demonstrated needs in pencil grasp consistency, fine motor skills, visual motor integration, manual dexterity/coordination, visual perceptual skills, sensory processing and modulation, and participation in non-preferred tasks. She recommended school-based occupational therapy to support Student's fine and visual motor skills, and sensory processing and modulation in his educational program. She also recommended trying a pencil grip and paper with grids, bright lines, or bold lines, and other strategies to support Student's educational progress.

The occupational therapist shared details about her assessment with the IEP team, and the information was noted in the IEP team meeting notes. Specifically, she recommended 60 minutes per month of direct occupational therapy.

The IEP team reviewed more behavioral data collected during Student's small group rotations. During March and early April 2019, Student's off-task behaviors averaged approximately three minutes daily, and from early April through May 14, 2019, they averaged approximately five minutes daily. The IEP team discussed two specific days in late April on which Student was off-task for 39 and 35 minutes, respectively, and climbed on his teacher and under tables. Without those two days, Student's off-task behaviors averaged 1.95 minutes each day, with zero episodes on 13 of 21 days from early April through mid-May.

The IEP team discussed whether Student needed a sensory goal and if so, whether it should be separate or combined into a goal that had already been proposed. Because Student's sensory needs occurred during small group rotations, the IEP team agreed to revise the proposed social-emotional functioning goal at the March 5, 2019 annual IEP team meeting to include sensory strategies, and to add the occupational therapist as a provider related to the proposed social-emotional functioning goal. The occupational therapist and special education classroom teacher agreed to work together to develop sensory activities for Student to address his over reactions and under-reactions to the environment.

At the conclusion of the meeting, the director informed all participants that services and goal implementation could not start until Greenfield obtained parental permission.

On May 24, 2019, Parent emailed Greenfield and Kern County, attaching a five-page letter that was convoluted and difficult to understand. Parent wanted to have an IEP team meeting one week before the first day of school, scheduled to resume on August 14, 2019, after she would have received Student's third trimester reporting and observed him over summer vacation. Parent requested the Kern County SELPA director attend the future meeting. Parent again referred to information in the occupational therapist's assessment report and inferred things from it, specifically that the occupational therapist was making statements applicable to Student, when the content of the report only indicated the items listed were survey questions on the specific assessment instrument. Parent misunderstood and believed the teacher had reported to the occupational therapist that Student was unable to do a great many things, and then contradictorily told the IEP team about Student's great ability to participate in classroom instruction and activities. She called these "incongruent results."

On June 20, 2019, Greenfield sent Parent a notice of IEP team meeting dated June 11, 2019, for a meeting on August 30, 2019, along with a prior written notice in response to Parent's request for an IEP team meeting on August 7, 2019. Greenfield informed Parent it was not available on her requested meeting date, and proposed a date within the statutory timeline for convening a meeting in response to a parent's request, taking into account the summer break. Greenfield again encouraged Parent to participate in IEP team meetings and stated it was important for her to participate. Greenfield requested Parent to sign and return the IEP team meeting notice by August 23, 2019, and informed Parent if she did not sign it the IEP team would meet and contact her on August 30 at 8:30 a.m.

Parent did not send Student to school when it began for the 2019-2020 school year. Initially Parent represented the delay in Student's return was because Parent was



obtaining a letter from a pediatrician related to updated information for medication forms the 2019-2020 school year. But on August 18 or 19, 2019, Parent sent Greenfield a letter stating she disagreed with the classroom and campus placement. She stated, "Arrangements for [homeschool] [*sic*] should convene, as soon as possible, for new elected changes to come this year."

On August 20, 2019, Greenfield wrote Parent regarding her letters dated May 24 and August 18, 2019. Greenfield again proposed August 30, 2019, at 8:30 a.m. to meet in response to Parent's May 24, 2019 request for an IEP team meeting, and August 18, 2019 request for "homeschool" placement. Greenfield reiterated that while Parent's May 24 letter again made a "motion for recess," it also requested a meeting and Greenfield once again encouraged Parent to attend on August 30, 2019, so Greenfield could have Parent's "input and participation."

Greenfield stated the IEP team would "discuss [Parent's] services and placement request at the August 30, 2019 IEP team meeting." Greenfield again sent Parent the annual IEP for March 5, 2019, which included the information regarding what happened on April 8, 2019, and the IEP after reviewing the occupational therapist's assessment, for April 24, 2019, which included the information regarding what happened on May 15, 2019. Greenfield sent Parent an IEP team meeting notice for August 30, 2019, at 8:30 a.m., and a copy of parents' procedural safeguards and rights.

On the night of August 21, 2019, Parent emailed Greenfield and Kern County a message with the subject line "[Homeschool August 2019-2020 Affidavit current School Year]." (*Sic*) Parent attached a letter dated August 21, 2019. The letter was unclear what Parent was attempting to do. She used the word "cancelled" with respect to the

IEP team meeting on August 30, 2019. She also stated, " . . . Parent elected 'Homeschool' under [California EC Section 33190 and 48222] at this time." (*Sic.*)

Greenfield did not understand what Parent's August 21, 2019 letter meant. One staff person believed Parent was cancelling the August 30, 2019 IEP team meeting. Greenfield wrote Parent on August 28, 2019. The letter was substantially similar to the other prior written notice letters it sent Parent in response to her prior letters, but added Greenfield also intended at the August 30, 2019 IEP team meeting to obtain clarification regarding what appeared to be a request by Parent for "homeschool" placement.

On August 29, 2019, Parent emailed Greenfield and Kern County a message that appeared to be requesting "homeschool." However, Parent's letter was incoherent and Greenfield did not understand what Parent meant.

Greenfield convened an IEP team meeting on August 30, 2019. Greenfield's director and assistant director of support services, the school nurse, a school psychologist, Ms. Gaines from Kern County, Student's first grade teacher Ms. Plemmons, the speech-language pathologist, and the assistant principal of Valle Verde attended. Parent did not personally appear. After waiting a while, Greenfield called Parent and received a busy signal. Greenfield called another number for Parent and left a message stating the IEP team meeting was happening and requesting Parent call back to participate.

Greenfield reviewed that the purpose of the meeting was threefold. First, the meeting was in response to Parent's request to revisit the May 15, 2019 IEP, which was a continuation of the annual IEP team meeting started on March 5, 2019, and the review of the new motor development and sensory processing assessment started on April 24, 2019. The IEP team meeting was also held to review goals and discuss goal

“enhancements” Parent alluded to in a letter. Also, the meeting was held to receive Parent input about her observations of Student over the summer. Finally, the meeting was held to discuss the recent letters from Parent requesting home schooling.

On August 30, 2019, the IEP team used what Greenfield described as “the last IEP documentation” to review, but it was mixed pieces from multiple prior IEP documents. The result was the August 30, 2019 IEP started from the IEP document dated April 24, 2019, which did not contain the present levels of performance pages as developed during the March 5, 2019 annual IEP team meeting. Instead, the present levels of performance grid and narrative pages were the older ones from the November 16, 2018 IEP document, as modified on January 23, 2019. But the meeting date on these pages was August 30, 2019. The August 30, 2019 IEP document attached the nine proposed annual goals developed at the March 5, 2019 annual IEP team meeting. Those annuals goals pages included statements of Student’s baselines of ability in the goal areas as of March 2019.

The speech-language pathologist reviewed the communication goals from the March 16, 2018 IEP, with a view of what Student had been able to do on approximately May 30, 2019, at the end of the 2018-2019 school year. Student met the goal of naming 50 objects and that had become a developed skill. He could label a noun and a verb separately, but had difficulty using noun/verb/object together in a sentence. He identified five safety signs: the stop sign, walk and don’t walk signs, and red and green lights. He could say words with two-element clusters, specifically consonant blends /fl/, /fr/, and /sl/. In the March 5, 2019 annual IEP, the proposed goal was to continue using consonant blends at the word and phrase level. On August 30, the IEP team believed the communication goal proposed in March 2019 was still needed because Student had difficulty speaking in complete sentences.

The IEP team agreed the three communication goals from the March 5, 2019 IEP continued to address Student's communication needs.

The special education teacher reviewed the academic goals from the March 2018 IEP, and the progress made on them based on the end-of-the-school-year progress report. In May 2019, Student was orally reading 74 correct words per minute in a first grade passage, and knew 200 sight words. The proposed reading goal from March 2019 called for Student to orally read 50 correct words per minute in a second grade passage. Based on Student's progress in the last trimester of the school year, the IEP team believed the reading fluency goal could be increased because data suggested Student was learning an average of 1.7 words per week in the last school year. The IEP team revised the proposed reading goal to have Student orally read 117 correct words per minute in a second grade passage.

After repeated readings of core curriculum text, Student was able to receptively answer, with 65 percent accuracy, "who" and "what" questions by pointing, but he was not able to answer those questions verbally. The IEP team discussed adding a reading comprehension goal to support Student verbally answer questions about grade-level core curriculum text. A new proposed reading goal was for Student to verbally answer "who" and "what" questions about grade-level text after repeated readings, with 80 percent accuracy in two out of three trials, as measured by teacher-recorded data. The special education teacher would work on this goal.

Based on Student's abilities at the end of May 2019, the IEP team recommended no changes to the two proposed writing goals, with the exception that at the IEP team meeting on May 5, 2019, after reviewing the occupational therapist's assessment, the writing goal regarding using a tripod grip had been supplemented by adding

occupational therapy support to the person responsible for the goal. The proposed goal after the August 30, 2019 IEP team meeting continued that notation.

Student had achieved his March 2018 math goal for addition. The IEP team reviewed Student's grade-level math computation abilities at the end of May 2019, and concluded Student struggled to solve addition and subtraction without using manipulatives. The IEP team revised both of the proposed math goals to build Student's capacity through his use of manipulatives. The IEP team revised the math addition goal to increase the difficulty by aiming for Student to add numbers equaling less than 20, not 15. The IEP team revised the math subtraction goal to increase the difficulty by aiming for Student to subtract numbers under 20, not 10.

The IEP team discussed the proposed social-emotional functioning goal from the March 5, 2019 IEP, and considered Student's classroom performance during the last month of the school year. Student did not display interfering behaviors during the 90 minutes of small group rotations. The IEP team revised the proposed goal to include language about reducing the one-to-one aide as contemplated in the fading schedule. The revised proposed goal was for Student to independently participate in small group instruction in the special education classroom for 60 minutes daily by fading the aide support 60 minutes during 90-minute small group rotations, and following the small group behavior and word expectations, as measured by teacher-recorded data. The school psychologist, special education teacher, and occupational therapist would work on this goal.

Based on Student's progress at the end of the prior school year and the revisions to the proposed goals, Student required specialized instruction with same-age peers in a classroom with a small student-to-teacher ratio. He also benefited from small group

instruction of all presented materials. The IEP team considered the least restrictive environment for Student, including the level of his individual needs reflected on the IEP, removal from general education only when the nature or severity of the educational needs are such that education in general classes with supplementary aids and supports cannot be achieved satisfactorily, placement with age-appropriate peers and participation with students without disabilities to the maximum extent appropriate in non-academic and extracurricular activities, and any potential harmful effect on the social and personal needs, the level of educational functioning, or the quality of the services Student needed.

The IEP team considered placement for Student:

- in a general education class with special education monitoring, consultation, collaboration, accommodations, or modifications;
- in a general education class with special education services provided individually or in small groups in the classroom;
- in a general education class with special education services provided individually or in small groups outside the classroom;
- in a special education class with part-time integration for academics in a general education classroom; and
- in a special education classroom integration into nonacademic and extracurricular activities.

The IEP team agreed Student required placement in a special education classroom. The IEP specified Student would participate in lunch and recess with general education students for 315 minutes per week, accompanied by a one-to-one aide, and attend assemblies and special school events with general education students as they

occurred, accompanied by a one-to-one aide, to support Student's socialization. The front page of the IEP specified Student would spend 10 percent of his school day in general education, but the page in the IEP titled Least Restrictive Environment specified Student would spend 18 percent of his school day doing these activities, as last noted on the November 16, 2018 IEP, as amended on January 23, 2019.

The IEP team agreed specialized academic instruction for 1,385 minutes per week in a special day class, speech and language therapy for 160 minutes monthly, health and nursing services for 15 minutes monthly, behavior intervention services for 30 minutes monthly, and occupational therapy for 60 minutes monthly would address Student's needs. That is what Greenfield offered Student. The IEP specified these services would begin on August 30, 2019 and end on March 5, 2020, the time for Student's next annual IEP.

The IEP indicated Student would receive transportation to school by bus provided by Greenfield, from curb to curb. The IEP specified student would receive 5.5 hours of one-to-one aide support each day divided into 3.25 hours of direct support and 2.25 hours of support based on Student's needs, in accordance with the fading plan that had been developed.

The IEP specified approximately 16 accommodations Student needed to be involved and progress in the core curriculum.

The IEP team discussed Greenfield's confusion over Parent's request for homeschool. Greenfield did not offer a home school program. It did have home instruction for disabled students for whom home instruction was the least restrictive environment, typically due to complex medical needs such as a compromised immune system or brittle bone syndrome, and supported by a doctor's statement of medical

necessity. The IEP team did not know if Parent was requesting home instruction as Student's placement through the IEP, or was notifying Greenfield she was going to disenroll Student from Greenfield and enroll Student in a homeschool program.

The IEP team had considered what placement was Student's least restrictive environment and believed Student could be satisfactorily educated at a public school in a special day class with integration into non-academic and/or extracurricular activities, such as recess, lunch, assemblies, and school special events. Based on the most recent data and information Greenfield had as of August 30, 2019, no one who attended the IEP team meeting thought home instruction was the appropriate placement for Student. The IEP team acknowledged that without Parent's participation, it was difficult to know whether home instruction was necessary, because Parent might have had additional information unknown to Greenfield.

However, Parent had repeatedly refused to provide assessment data or participate in IEP team meetings by her declaration of what she called "recess." Letters from Parent did not disclose information related to Student's abilities, deficits, status, or needs. Student made significant progress in all areas of need during the 2018-2019 school year in the special education classroom, supported by a one-to-one aide, and with the related services of speech and language therapy, occupational therapy, and transportation, and other accommodations and modifications. Greenfield reasonably believed Student would continue to make progress appropriate in light of his circumstances in the 2019-2020 school year with updated goals in the same placement and with the same related services, supports, and accommodations, and that Student did not require a placement in home instruction to obtain educational benefit.



The August 30, 2019 IEP did not address extended school year for the summer of 2020. Student was due for his triennial reassessment and annual IEP in March 2020, well before the next extended school year.

On September 10, 2019, Greenfield sent Parent a copy of the August 30, 2019 IEP and a prior written notice. Parent did not provide consent to the IEP and continued through the time of the hearing to keep Student at home.

Between March 2018 and August 30, 2019, Greenfield repeatedly sent Parent a copy of the notice of parents' procedural safeguards and rights. Greenfield had reviewed and explained them at an IEP team meeting in which Parent participated. The notice included a full explanation of all procedural safeguards and was written in language understandable to the general public and provided in Parent's native language. Parent was also informed about procedural safeguards at IEP team meetings.

Parent was invited to attend numerous IEP team meetings both by notice forms and written letters. The notices indicated the purpose, times, and locations of the meetings and who would attend by job description and/or individual's names. Notices informed parents of their ability to invite other individuals to the IEP team meeting who had knowledge or special expertise about the student. Greenfield sent the notices of IEP team meetings early enough to allow Parent the opportunity to attend. Parent never requested to reschedule a meeting based on her inability to attend on the date or at the time Greenfield proposed, but only declined to attend meetings based on vague assertions she was waiting for more information or just on the principle that she had "called recess." Greenfield's notice form offered parents the opportunity to participate in the IEP team meetings by telephone and sometimes Parent selected that option.

The IEP team meetings Greenfield convened had all required participants. Specifically, for the August 30, 2019 IEP team meeting Parent was invited and repeatedly encouraged by Greenfield to attend but she refused. Student's special education teacher from the prior school year attended. Greenfield had multiple administrators who were qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, knowledgeable about the general education curriculum, and knowledgeable about available resources. The school nurse and speech-language pathologist who had worked with Student in the prior school year attended. A school psychologist attended. And the Kern County SELPA Executive Director, whom Parent had requested to be present, attended.

Between March and December 2018 Parent participated in seven IEP team meetings. She expressed disagreement with the IEP team and requested revisions in the IEPs. Parent was not always satisfied with the outcome of those IEP team meetings but she meaningfully participated in the development of Student's IEPs.

Between January and August 2019, Greenfield invited Parent to six IEP team meetings, which Parent refused to attend. Greenfield adequately documented its efforts to invite and encourage Parent to participate in the development of Student's IEPs. Parent sometimes gave consent for Greenfield to convene IEP team meetings without her, and sometimes Parent expressed frustration that Greenfield was trying to convene meetings when Parent had "called recess." Whether with Parent's explicit consent or without knowing whether Parent agreed to Greenfield meeting without her, Greenfield convened IEP team meetings and took careful notes and sent them to Parent after the meetings along with prior written notices. Parent often responded in writing, expressing concerns and disagreements with the information documented in the IEP.

At the March 5, 2019 annual IEP team meeting, Greenfield began by reviewing Student's present levels of academic achievement and functional performance and considering how Student's disabilities affected his involvement and progress in the general education curriculum. The IEP team determined Student's areas of unique need and proposed goals designed to meet his needs that result from his disabilities to enable him to be involved in and make progress in the general education curriculum and meet his other educational needs that result from his disabilities. The goals the IEP team developed were measurable and were based upon Student's present levels of academic achievement and functional performance. Student had a reasonable chance of attaining each goal within a year. The IEP included appropriate objective criteria evaluation procedures and schedules for determining whether the annual goals were being achieved and stated how Student's progress toward the goals would be measured.

At the time of Student's annual IEP on March 5, 2019, a motor development assessment was in process. Parent contends Greenfield agreed during the October 12, 2018 IEP team meeting to have an occupational therapist assess Student, but did not promptly provide Parent an assessment plan. This Decision does not determine whether Greenfield satisfied requirements regarding the timeliness of providing Parent an assessment plan and only considers whether Greenfield timely assessed Student after receiving Parent's consent to the assessment she requested because the IEP offer at issue occurred after the occupational therapy assessment.

Greenfield convened an IEP team meeting on April 24, 2019, to review the results of the motor development assessment, 64 days after Parent consented. The meeting to review the assessment results was scheduled four days after the statutory deadline. This was a nonsubstantive procedural error that did not result in the loss of educational

opportunity to Student or interfere with the opportunity of Parent to participate in the formulation process of the August 30, 2019 IEP. Parent requested to postpone the April 24, 2019 IEP team meeting to have time to review the assessment report and additional data. Greenfield convened the IEP team on May 15, 2019 to review the occupational therapist's assessment results and consider their implications on Student's educational program. The IEP team considered Student's need for any additional goals and decided to have the occupational therapist support Student in achieving his social-emotional functioning goal as it related to sensory processing during small group instruction, and his writing goal as it related to motor coordination in holding a writing instrument. Greenfield offered Student 60 minutes per month of direct occupational therapy service. That offer was appropriate in May 2019, and remained appropriate on August 30, 2019.

The goals and services Greenfield offered in March and May were reconsidered at the IEP team meeting on August 30, 2019, to consider any adjustments based on Student's progress at the end of the prior school year and any information Parent was willing to provide. The IEP team reconsidered Student's present levels of academic achievement and functional performance and adjusted goals to make them appropriately challenging given the growth Student had demonstrated at the end of first grade. The IEP team considered the appropriate placement for Student to work on his goals and discussed the continuum of program options in increasing order of restrictiveness. The IEP team considered the necessary factors and determined Student's least restrictive environment was a special day class, with integration with general education students for non-academic and extracurricular activities. As of August 30, 2019, Ms. Plemmons's classroom at Valle Verde was an appropriate placement for Student for the 2019-2020 school year.

Greenfield did not understand what Parent was seeking in terms of an education for Student at his home. Parent's letters on the subject were confusing and Parent refused to participate in an IEP team meeting for Greenfield to gain a better understanding of Parent's desires. Based on the information available to Greenfield as of August 30, 2019, home instruction as a placement in Student's IEP would have been too restrictive and unnecessary. An IEP placement of home instruction was not reasonably calculated to enable Student to make progress appropriate in light his circumstances.

The IEP team reconsidered the related services, supports, accommodations, and modifications Student would require to work on his goals in the special day class placement. The IEP team agreed that based on Student's successful participation in small group rotations of the end of the prior school year, the one-to-one aide fade out schedule developed on March 5, 2019, was appropriate. Greenfield offered Student 160 minutes per month of speech and language therapy to begin on August 30, 2019, and end at the time of Student's next annual IEP team meeting on or about March 5, 2020. The evidence established this level of support was sufficient to enable Student to benefit from special education. Greenfield offered Student 60 minutes per month of occupational therapy to begin on August 30, 2019, and end of the time of Student's next annual IEP team meeting on or about March 5, 2020. The evidence established that this level of support was sufficient to enable Student to benefit from special education. The evidence established the full day one-to-one aide, health and nursing services for 15 minutes monthly, and behavior intervention services for 30 minutes monthly were sufficient to enable Student to benefit from special education. The evidence established Greenfield offered Student sufficient supports, accommodations, and modifications in the August 30, 2019 IEP.

The August 30, 2019 IEP presented a coherent, formal, written offer specifying the placement Greenfield offered and the additional assistance to supplement a placement. Although the present levels of academic achievement and functional performance grid and narrative pages included in the August 30, 2019 IEP were not accurate at that time and reflected data from January 2019, prior to the updated present levels grid and narrative being created on March 5, 2019, this discrepancy did not result in the loss of an educational opportunity to Student or interfere with the opportunity of Parent to participate in the formulation process of the IEP. Accurate present levels of performance as of August 30, 2019, were reflected in the baseline data in the updated annual goals and objectives attached to the August 30, 2019 IEP.

By a preponderance of the evidence, Greenfield adequately demonstrated the August 30, 2019 IEP offered Student a FAPE.

## CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Issue: Greenfield offered Student a FAPE in the August 30, 2019 IEP. Greenfield prevailed on the only issue.

## ORDER

Greenfield may implement the August 30, 2019 IEP without Parent's consent if Parent wishes to avail Student of special education and related services.

## RIGHT TO APPEAL THIS DECISION

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

/s/

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings