BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020020631

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

DECISION

SEPTEMBER 14, 2020

On February 18, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Fremont Unified School District, called Fremont. Administrative Law Judge Cole Dalton heard this matter by videoconference on June 23, 24, 25, 2020 and July 2 and 7, 2020.

Parent represented Student. Parent attended all hearing days on Student's behalf. Student appeared during her testimony on the last day of hearing. Attorneys Alejandra Leon and Elizabeth Schwartz represented Fremont. Fremont's Special Education Director Fran English attended all hearing days on Fremont's behalf.

At the parties' request the matter was continued to August 4, 2020 for written closing briefs. The matter was continued an additional day for good cause because the parties could not file their closing briefs on August 4, 2020 due to technical issues with the e-filing system. The parties filed their closing briefs on August 5, 2020. The record was closed, and the matter was submitted on August 5, 2020.

STUDENT'S ISSUES

The issues have been chronologically ordered and re-numbered accordingly. The name of Student's charter school was corrected in Issue 4. An administrative law judge has authority to re-word and re-organize a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.).

1. Did Fremont deny Student a free appropriate public education, called a FAPE, by failing to provide appropriately qualified home instructors to address Student's unique needs arising from emotional disturbance from February 18, 2018 through June 13, 2018?
2. Did Fremont deny Student a FAPE from February 18, 2018 through the end of the 2018-2019 school year by failing to provide at least three hours of instruction a day for 175 days each calendar year?
3. Did Fremont deny Student a FAPE from February 18, 2018 through February 18, 2020, by failing to provide:
    a. appropriate home instruction?
    b. placement in one general education elective class at Kennedy High School each semester?

c. one 60-minute-session per week of one-to-one counseling with Children's Health Council?

4. Did Fremont deny Student a FAPE from February 18, 2018 through February 18, 2020, by failing to consider Parent's request for alternate means of providing academic instruction to Student, specifically, by Student's personal trainer, Varsity Tutors, or other means coordinated through the home instruction program at Circle of Independent Learning?
5. Did Fremont deny Student a FAPE by failing to give Student timely notification on the transfer of educational rights between February 20, 2018 and February 20, 2019?
6. Did Fremont deny Student a FAPE by failing to offer an appropriate placement and services in her individualized education program, called an IEP, dated February 28, 2018?
7. Did Fremont deny Student a FAPE, when Fremont failed to allow Parent to discuss violations of the August 2, 2017 Settlement Agreement at IEP team meetings taking place from February 28, 2018 through August 7, 2019?
8. Did Fremont deny Student a FAPE at the March 20, 2019 IEP team meeting by:
    a. predetermining services and accommodations?
    b. restricting the length of time for the meeting and, once it began, ending it prematurely?
    c. creating an adversarial environment, which delayed completion of Student's annual IEP?
    d. inviting the Director of Special Education to the meeting when the Program Specialist was also present?

e. significantly impeding Parent's opportunity to participate in the decision making process by failing to consider Parent's concerns for enhancing Student's education?

f. failing to offer increased counseling services and social interaction within the community, as recommended by Dr. Peterson?

9. Did Fremont deny Student a FAPE by failing to consider the results of Dr. Peterson's assessment when it proposed services and accommodations not recommended by Dr. Peterson?

10. Did Fremont deny Student a FAPE by failing to appropriately schedule the June 6, 2019 IEP team meeting and by inappropriately excusing required IEP team members during the January 17, 2020 IEP meeting?

JURISDICTION

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

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

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

Student turned 18 years of age in February 2019. Student was 19 years old at the time of the hearing and not conserved. At all relevant times, Student resided with Parent within Fremont's boundaries and was eligible for special education as a pupil with emotional disturbance due to anxiety. Student expressed in writing before the hearing and verbally during the hearing, that she gave Parent consent to file and pursue the due process complaint on her behalf. She did not say that she granted Parent the right to make other educational decisions on her behalf.

On February 27, 2017, Fremont filed a request for due process hearing, OAH Case No. 2017021203, seeking a comprehensive psychoeducational evaluation of Student to address continued school refusal. On June 16, 2017, OAH issued a Decision in Fremont's favor, ordering Parent and Student to cooperate in Fremont's comprehensive assessments during the summer of 2017.

On June 9, 2017, Student filed a request for due process hearing alleging a denial of FAPE for the 2014-2015 school year. On August 2, 2017, the parties entered into a settlement agreement to resolve that dispute, referred to as the Agreement. The Agreement did not negate OAH's prior order that Fremont conduct comprehensive assessments.

STUDENT'S ISSUES ARE LIMITED BY THE STATUTE OF LIMITATIONS

Student, in her closing brief, reasserted her argument that the statute of limitations extends beyond two years before the filing of her complaint. She bases her argument on the contention that she discovered new evidence regarding her unique mental health needs when she read Dr. Cynthia Peterson's neuropsychological assessment report dated February 4, 2019. Student also argues the statute of limitations is somehow pierced because witnesses testified about events that predated her complaint by more than two years.

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); *see also* 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or due to the local educational agency withholding of information from the parent that was required to be provided to the parent.

In *Avila v. Spokane School District 81* (9th Cir. 2017) 852 F.3d 936, the 9th Circuit held that the IDEA's two-year statute of limitations period does not prohibit parents

from seeking relief for alleged denials of FAPE that occurred more than two years earlier, provided they file their complaint within two years of the date they knew or should have known about the alleged action that forms the basis of the complaint. (See also, 20 U.S.C. § 1514(f)(3)(C).)

Student's complaint contains no allegations that either Student or Parent was prevented from filing a request for due process because of specific misrepresentations by Fremont that it had resolved the problem forming the basis of the complaint, or that Fremont withheld information from Parent or Student that was required to be given. Moreover, there was no evidence during the hearing that would establish either exception.

Likewise, neither Student's February 18, 2020 complaint nor the evidence at hearing support application of the discovery rule to extend the statute of limitations in this matter. Prior to February 18, 2018, Parent held educational rights. The evidence demonstrated Parent was well aware of Student's educational history, depression, anxiety, school avoidance, and other needs, and communicated that information to Fremont staff consistently throughout middle school and high school.

Parent shared Student's history with Dr. Peterson, who relied on Parent input throughout her February 4, 2019 report. Parent explained events he defined as traumas Student experienced over several years both in school and outside of school. Parent described the perceived effect of those traumas. The evidence did not demonstrate that Parent could not reasonably have known about an alleged action forming the basis of the complaint, beyond the statute of limitations.

Moreover, there is no legal or factual support for Student's contention the statute of limitations is pierced when witnesses testify to events that occurred more than two

years before the filing of a complaint. If this were the case, every hearing would result in lengthening the statute of limitations merely because witnesses provided background information lending context to the issues.

ISSUE 1: DID FREMONT DENY STUDENT A FAPE BY FAILING TO PROVIDE APPROPRIATELY QUALIFIED HOME INSTRUCTORS TO ADDRESS HER UNIQUE NEEDS ARISING FROM EMOTIONAL DISTURBANCE, FROM FEBRUARY 18, 2018 THROUGH JUNE 13, 2018?

Student argues that Fremont failed to provide her with home instructors who could help her effectively learn subject matter without raising her anxiety levels to the point that it affected her mental processing ability.

Fremont argues it provided qualified instructors. Fremont also argues Parent turned instructors away without giving them an opportunity to work with Student.

FREMONT PROVIDED APPROPRIATELY QUALIFIED HOME INSTRUCTORS

The IDEA does not confer upon parents the right to choose the personnel who work with their children, and assignment of staff is the prerogative of the school district. The IDEA permits districts to treat these matters as administrative decisions, which are made by school personnel. (*Letter to Wessels* (OSEP 1990) 16 IDELR 735.) Several unpublished Ninth Circuit decisions, while not binding, have held that if the assigned personnel are qualified to perform the designated service, the allocation of qualified personnel to provide services falls within the administrative discretion of the agency. (*See, Cheryl Blanchard v. Morton School Dist. et al.* (9th Cir. 2010) 385 Fed.Appx. 640 (unpublished)(*Blanchard*); *Gellerman v. Calavaras Unified School Dist.* (9th Cir. 2007) 43

F.Appx. 28 (unpublished); *Zasslow v. Menlo Park City School Dist.* (9th Cir. 2003) 60 F.Appx. 27 (unpublished).)

The IDEA does not require school districts to defer to parental preference in choice of educational providers. In *Blanchard*, the school district chose a qualified educational assistant for student. Parent hoped to have district retain an educational assistant of parent's choosing. At hearing, no independent or objective evidence demonstrated the educational assistant selected by the school district was an inadequate choice. (*Cheryl Blanchard v. Morton School Dist, et al.* (W.D. Wa) 2009 WL 481306, at p.2; affirmed by *Blanchard, supra,* at p. 1.)

Student filed her complaint on February 18, 2020. Under the statute of limitations, her claims date back two years, to February 18, 2018. Student's 2017-2018 school year ended June 13, 2018. The Agreement defined Student's 2017-2018 educational program, which covered the time period at issue here.

The Agreement required Fremont provide Student with academic instruction at home for six-hours weekly on subjects that would satisfy graduation requirements, such as science and math, and to provide one general education elective class on a high school campus. The Agreement required Fremont provide Student with related services in the form of resource specialist instruction for 20-minutes weekly at Kennedy High School to address transition goals, and individual counseling with Children's Health Council for 60-minutes weekly. The Agreement also required Fremont to convene an IEP team meeting by February 28, 2018, to develop an offer of FAPE for Student's 2018-2019 school year.

The evidence demonstrated that Fremont provided Student with credentialed teachers for home instruction through the end of the 2017-2018 school year. Student

did not present evidence that any of the instructors provided by Fremont lacked relevant qualifications to provide home instruction to Student.

Karen Russell, Fremont's special education director during the 2017-2018 school year, was familiar with Student, Parent, and the Agreement. Russell began her career in education as a school psychologist and, at the time of hearing, held the position of Director of the Mission Valley Special Education Local Plan Area. She worked in the field of education for over 20 years. Russell answered questions directly, without reservation, and exhibited a strong recollection of the events she testified about, establishing her credibility as a witness.

Two different Fremont teachers taught Student in her home from September to December 2017. In January 2018, a third teacher called and attempted to offer home instruction. In February 2018, a fourth teacher called and attempted to offer home instruction. Russell credibly recalled that all teachers Fremont offered for home instruction were credentialed.

Tia Kinser worked at Fremont for over 20 years as a teacher, resource specialist, principal, and program specialist. During the 2017-2018 school year, she worked as Fremont's program specialist and, because of her duties in that position, was familiar with the terms of the Agreement. Kinser persuasively demonstrated that Fremont only offered credentialed teachers for Student's home instruction and that, when one teacher was turned away, Fremont provided another, without delay.

Fran English became Fremont's special education director in July 2018. She had over 30 years of experience in the field of education, working as a teacher, program supervisor, director of pupil services and special education director. At hearing, English demonstrated interest in Student's well-being and ability to self-advocate. English

responded to questions directly without over-reaching. Her demeanor, knowledge of Student, and familiarity with the underlying facts of the case underscored her credibility as a witness.

English reviewed district records in preparation for hearing, and persuasively explained that many credentialed Fremont teachers were assigned to work as home instructors for Student throughout the 2017-2018 school year. She recalled the names of six credentialed teachers assigned to provide home instruction for Student. Fremont maintained a spreadsheet identifying credentialed teachers available for home instruction. Teachers made themselves available for home instruction to earn extra pay. Many teachers assigned to Student reported back that either Student refused to engage, or they were turned away from the home. Parent frequently cancelled services due to medical appointments, health needs, or other reasons.

Student did not directly challenge the qualifications of any Fremont teachers provided for home instruction during the 2017-2018 school year. Instead, Parent offered hearsay statements that tutors at a local tutoring company, Varsity Tutors, were credentialed, possibly in other states. However, whether a private company might offer other possible tutors had no bearing on whether Fremont offered appropriately qualified teachers for home instruction. Student was not entitled to her choice of service providers. (*N.R. ex rel. B.R. v. San Ramon Valley Unified School Dist.* (N.D. Cal., Jan. 25, 2007, No. C 06-1987 MHP) 2007 WL 216323, at p.7, citing *Slama ex rel. Slama v. Indep. School Dist. No. 2580* (D.Minn.2003) 259 F.Supp.2d 880, 885 (holding that district's refusal to assign the service provider of parent's choice did not constitute a denial of FAPE).)

Parent did not describe a lack of qualifications, experience, or expertise in teaching as the basis for refusing any of Fremont's home instructors or cancelling appointments. Fremont's assigned instructors had to obtain Parent's permission to provide home instruction services to Student. Parent did not identify any Fremont home instructors that he determined were unqualified.

Parent acknowledged interviewing the instructors to decide for himself whether they were a good fit for Student. Parent turned several away, for such reasons as not liking the tone of their voice. Parent also declined instructors because they could not work outside of regular school hours, specifically, nights and weekends.

Parent argued that switching teachers often disrupted Student's learning. But Student acknowledged that switching teachers felt normal and that she had gotten used to it from her middle school experience.

Student did not have a unique learning style that required a particular methodology in order to access her instruction. Dr. Peterson assessed Student in September 2018. She did not testify. Dr. Peterson described Student as isolated and having social avoidance. She described Student's immaturity, social misperception, and social sensitivity. In an interview with Dr. Peterson, Parent reported that Student had significant fear of school attendance, she had only telephonic conversations with the school psychologist, and attended IEP team meetings telephonically.

Dr. Peterson described Student's ability as average to above average. Student's work product was affected by challenges with executive functioning such as initiating action, follow through, and completion. Student needed approval and frequent reinforcement to avoid withdrawing and giving up.

Dr. Peterson concluded that, while teachers needed to be well informed regarding Student and thoughtful regarding their presentation, it was really the therapist's job to assist Student when she misperceived something or expressed sensitivity that interfered with her access to the curriculum.

Student described two teachers she successfully worked with during her educational career. She had her "best" learning experience with a private school teacher in third grade, who volunteered to work with Student for extra time during the school day. She also enjoyed her first Fremont home instructor, Valerie Hunter. Student felt encouraged and supported by both teachers.

Student had the capacity to develop successful relationships with various educational personnel during her educational career. For example, both Student and Kinser related the positive relationship Student developed with an on-campus U.S. History teacher during the 2017-2018 school year.

Fremont was not required to defer to Parent's preferred tutors over Fremont's credentialed teachers. Nor can Fremont be held accountable for Parent's refusal of qualified providers. Student showed much more flexibility and resilience than attributed to her by Parent. Student demonstrated the ability to develop meaningful working relationships with several educators. Student did not require a very specific type of person to meet her educational needs.

Fremont continuously offered qualified credentialed teachers for Student's home instruction, throughout the 2017-2018 school year. Student did not prove Fremont denied her a FAPE by failing to provide qualified home instructors from February 18, 2018 through the end of the 2017-2018 school year.

ISSUE 2: DID FREMONT DENY STUDENT A FAPE FROM FEBRUARY 18, 2018 THROUGH THE END OF THE 2018-2019 SCHOOL YEAR BY FAILING TO PROVIDE AT LEAST THREE HOURS OF DAILY INSTRUCTION FOR 175 DAYS EACH CALENDAR YEAR?

Student contends that Fremont was required to provide a minimum of three hours per day for 175 days each calendar year as the minimum amount of academic instruction required under Education Code, section 48224. In her closing brief, Student argues that Fremont failed to provide any home instructors from February 18, 2018 through the end of the 2018-2019 school year, forcing Parent to retain Varsity Tutors to provide instruction.

Fremont argues Parent repeatedly turned away credentialed teachers during the 2017-2018 school year. Fremont also argues Parent consented to an IEP that offered home instruction through Varsity Tutors for the 2018-2019 school year and that neither Parent nor Student contested provision of services by Varsity Tutors.

SECTION 48224 DID NOT REQUIRE THAT FREMONT PROVIDE STUDENT WITH THREE HOURS OF DAILY INSTRUCTION

Student's reliance on section 48224 is misplaced. Section 48224 falls under Title 2, Division 4, Part 27, Chapter 2, Article 3, of the Education Code, which identifies classes of pupils exempt from compulsory education laws that apply to children attending public schools. For example, sections 48222 and 48223 apply to children attending private schools, while sections 48225 through 48230 apply to children holding work permits.

Section 48224 provides an exemption to compulsory education for children being instructed by a credentialed tutor for at least three hours per day for 175 days each calendar year. It does not apply to children being offered tutoring as a related service in the child's IEP, as was the case here. It does not impose any obligations whatsoever on a public-school district.

Accordingly, Section 48224 was not applicable to Student from February 18, 2018 through the end of the 2018-2019 school year.

FREMONT PROVIDED STUDENT WITH HOME INSTRUCTORS REQUIRED IN THE AGREEMENT AND ACCORDING TO STUDENT'S IEPS

The evidence did not demonstrate that Fremont failed to provide Student with home instructors required under either the Agreement or subsequently agreed upon at the June 13, 2018 IEP. From February 18, 2018 through the end of the 2018-2019 school year, Fremont provided, and Student did not consistently avail herself of home instruction.

In accordance with the Agreement, Fremont was required to provide Student with six-hours per week of at home general education academic instruction by district teachers, through the end of the 2017-2018 school year. Fremont provided district teachers for home instruction consistently throughout the 2017-2018 school year, as demonstrated by Russell, Kinser, and English.

In March 2018, Parent independently retained Varsity Tutors to provide home instruction to Student. The fact that Parent preferred to use a private tutoring agency over Fremont credentialed teachers did not constitute evidence that Fremont failed to provide home instructors.

The 2018-2019 school year began August 29, 2018 and ended June 12, 2019. Student's educational program for the 2018-2019 school year was developed at two IEP team meetings, on February 2, 2018 and June 13, 2018, and is referred to as the June 13, 2018 IEP. Parent signed consent to implement the IEP on June 14, 2018.

Student's educational program for the 2018-2019 school year required Fremont to provide 720-minutes, or 12-hours, of weekly home instruction through Varsity Tutors. Neither Student nor Parent claimed that Varsity Tutors denied services required under the June 13, 2018 IEP. Rather, the evidence demonstrated that Student did not attend all the home instruction offered.

Student argues, in her closing brief, that Fremont failed to provide her with district home instructors during the 2018-2019 school year. The evidence demonstrated Fremont was required to and did provide home instruction through Varsity Tutors, not district personnel.

Accordingly, Student did not prove that she was denied a FAPE when Fremont did not provide her three hours of daily instruction from February 18, 2018 through the end of the 2018-2019 school year under Section 48224 or because Fremont did not provide district home instructors during the 2018-2019 school year.

ISSUE 3a: DID FREMONT DENY STUDENT A FAPE FROM FEBRUARY 18, 2018 THROUGH FEBRUARY 18, 2020, BY FAILING TO PROVIDE APPROPRIATE HOME INSTRUCTION?

Student argues that Fremont made only one attempt to schedule a home instructor between February 28, 2018 and February 28, 2020.

Fremont argues that it provided home instructors consistently throughout the 2017-2018 school year. Fremont also argues that during the 2018-2019 and 2019-2020 school years, Student's IEP required Varsity Tutors to provide home teachers, which it did.

FREMONT PROVIDED HOME INSTRUCTORS DURING THE 2017-2018 SCHOOL YEAR

Fremont consistently provided Student with credentialed home instructors during the 2017-2018 school year, pursuant to the terms of the Agreement. Parent turned away Fremont's instructors and retained Varsity Tutors in March, April, and May of 2018, asking Fremont for reimbursement. The fact that Student did not avail herself of instruction was not enough to prove that Fremont failed to provide instructors or that Fremont should reimburse Parent for Varsity Tutors.

Parent wanted to choose Student's teachers. An email exchange between Russell and Parent on February 26, 2018, confirmed Parent's desire to choose Varsity Tutors over accepting credentialed teachers from Fremont. Use of Varsity Tutors ran contrary to the terms of the Agreement. To work with Parent on this issue, Russell sent Parent's request to use Varsity Tutors to the Director of Secondary Education and Assistant Superintendent of Instruction. Russell also advised Parent of options regarding use of private tutors in ways that would not violate the Agreement. One of those options involved enrolling Student in a private setting and dis-enrolling her from Fremont. Another addressed alternate means of instruction available to Student in high school, Student's 2018-2019 school year.

FREMONT PROVIDED VARSITY TUTOR HOME INSTRUCTORS DURING THE 2018-2019 AND 2019-2020 SCHOOL YEAR

When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).) "There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE." (*Id.* at p. 821.) However, "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Id.* at p. 822.) The *Van Duyn* court emphasized that IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and "not to decide on its own no longer to implement part or all of the IEP." (*Ibid.*)

Student's June 13, 2018 IEP offered home instruction through Varsity Tutors. The June 13, 2018 IEP remained in effect through the filing of Student's complaint. The evidence demonstrated that Fremont provided general education home instruction through Varsity Tutors throughout the 2018-2019 school year and through the date Student filed her complaint.

Notes from Student's annual IEP team meeting on February 1, 2019 and March 20, 2019, demonstrate that Varsity Tutors provided Student with services called for in her IEPs, to the extent that Student was willing to attend. Varsity Tutor providers, Anna Fox and Julia Winslow, shared Student's progress in tutoring sessions with the IEP

teams. Fox held two-90-minute sessions of English instruction each week. Winslow held two-90-minute sessions in History each week. During the meeting, Student opined that she could not handle any additional hours with Varsity Tutors.

Student did not prove that Fremont materially failed to provide home instruction through Varsity Tutors during the 2018-2019 school year through February 18, 2020. The evidence demonstrated only that Varsity Tutors provided home instruction, but that Student did not attend all sessions. The evidence did not demonstrate that Varsity Tutors refused to provide services to Student at any time.

Student, in her closing brief, attempts to change the issue by arguing that Fremont offered only one teacher on one occasion to work with Varsity Tutors and Student during the relevant time frame, Joshua Esparza. Esparza was Student's general education teacher of record. Esparza provided Student and Varsity Tutors assistance using Student's online learning program, called APEX. He developed study guides for Student and issued grades and credits as Varsity Tutor providers were not credentialed and could not issue grades. He worked with Student during the 2018-2019 and 2019-2020 school years. Esparza was not a special education provider or home instructor required under her IEP. Accordingly, the sparse evidence presented regarding Esparza's service did not support Student's claim that Fremont materially failed to provide the general education home instruction required by the June 13, 2018 IEP.

Student did not raise an issue regarding Fremont's provision of specialized academic instruction through a resource specialist as part of her complaint. Even if she had, the evidence demonstrated that Fremont materially implemented that service. Student's June 13, 2018 IEP required Fremont to provide 60 minutes per week of specialized academic instruction through a resource specialist. During the 2018-2019

school year, Fremont provided resource services at Circle of Independent Learning, referred to as COIL. COIL operated as a charter school within Fremont, offering independent study, small group instruction, and personalized learning. The June 13, 2018 IEP did not identify resource specialist services as part of Student's home instruction.

Rebecca Olson was Student's resource specialist teacher during the 2018-2019 and 2019-2020 school years. Olson worked as an English Teacher, home hospital instructor, special day class teacher, and resource specialist. Olson demonstrated a depth of knowledge about Student's needs and IEPs. She answered questions, at hearing, directly and comprehensively, demonstrating her credibility as a witness.

Olson persuasively demonstrated, through testimony, service logs, and IEP team meeting notes, consistent attempts to instruct Student over the 2018-2019 and 2019-2020 school years. She conducted several teaching sessions during the 2018-2019 school year. Student and/or Parent refused all other attempts to schedule services throughout the 2019-2020 school year.

The evidence demonstrated that Student was regularly provided home instructors pursuant to the Agreement, from February 18, 2018 through the end of the 2017-2018 school year. Student did not argue or present evidence that Varsity Tutors materially failed to provide home instruction during the 2018-2019 and 2019-2020 school years, as required by her June 13, 2018 IEP. Moreover, the evidence demonstrated that Fremont provided Student with specialized academic instruction through Olson consistent with her June 13, 2018 IEP throughout the 2018-2019 school year. Olson continued contacting Parent and Student throughout the 2019-2020 school year to set up instruction. The fact that Student did not avail herself of home instruction

or specialized academic instruction did not demonstrate that Fremont failed to materially provide such instruction.

For these reasons, Student did not prove Fremont materially failed to provide home instruction from February 18, 2018 through the end of the 2019-2020 school year.

ISSUE 3b: DID FREMONT DENY STUDENT A FAPE FROM FEBRUARY 18, 2018 THROUGH FEBRUARY 18, 2020, BY FAILING TO PROVIDE PLACEMENT IN ONE GENERAL EDUCATION ELECTIVE CLASS AT KENNEDY HIGH SCHOOL EACH SEMESTER?

Student contends Fremont failed to enroll her in a general education elective class at Kennedy High School each semester under the terms of the Agreement.

Fremont contends it provided Student access to general education electives during the 2017-2018 school year as required by the Agreement but was not required to do so beyond the 2017-2018 school year.

The August 2, 2017 Agreement required Student be given one general education elective each semester throughout the 2017-2018 school year. When Kennedy received the request for Student to have an elective, class schedules had already been set, as they usually are, by the middle of August. At that point, elective classes were filled, and students were put on "wait lists" to enter a class as others dropped out.

Fremont reviewed course content and teacher personalities when deciding on electives to offer Student, considering her history of anxiety. Fremont wanted to place Student in a class without extensive homework. Kinser persuasively demonstrated that Kennedy allowed students to take U.S. History, math, and science as electives because of

the unavailability of other elective classes. Students favored U.S. History as it was more project based and had a more open-ended curriculum, including developing and giving speeches and conducting debates. The U.S. History class teacher was known to be welcoming, collaborative, and generally had good relationships with students.

The evidence demonstrated that Fremont provided Student with U.S. History as a general education elective in Fall 2017 and with a culinary arts class in the spring of 2018.

Neither Student's June 13, 2018 IEP, nor later IEPs, offered her placement in a general education elective course.

Fremont provided Student an elective course during the 2017-2018 school year. Student did not demonstrate that Fremont was required to provide her with an elective, pursuant to the Agreement or her IEPs, during any other time frame.

ISSUE 3c: DID FREMONT DENY STUDENT A FAPE FROM FEBRUARY 18, 2018 THROUGH FEBRUARY 18, 2020, BY FAILING TO PROVIDE ONE 60-MINUTE SESSION PER WEEK OF ONE-TO-ONE COUNSELING WITH CHILDREN'S HEALTH COUNCIL?

Student argues that Fremont failed to provide one-to-one counseling from February 28, 2018 through April 2, 2019. Student also argues the counseling was not from a licensed clinical social worker. Student, in her closing brief, did not address the time period between April 2, 2019 and February 18, 2020.

Fremont argues it was required to provide Student with one-to-one counseling for 60 minutes weekly under the terms of the Agreement and did so through Children's

Health Council during the 2017-2018 school year. Student's June 13, 2018 IEP required, and Fremont provided, school-based counseling at Kennedy for 30 minutes weekly beginning in the 2018-2019 school year. Fremont also argues that Student did not offer any evidence regarding the provision of counseling and, therefore, failed to meet her burden of proof.

Student did not produce evidence on the issue of Fremont's provision of counseling through Children's Health Council during the 2017-2018 school year. Parent sent numerous emails to Fremont providers throughout Student's middle school and high school years, but Student did not produce any emails demonstrating a complaint over deficient or lacking counseling services in 2017-2018.

Likewise, Dr. Peterson's February 4, 2019 report cited many educational disputes arising between Fremont and Parent but did not report that Fremont failed to provide Student with counseling during the 2017-2018 school year. None of the notes of IEP team meetings that occurred during the 2017-2018 school year reflect a complaint about missing counseling services. Without any supporting evidence, Parent's argument that Fremont failed to provide counseling services during the 2016-2017 and 2017-2018 school years was unpersuasive. Accordingly, Student failed to demonstrate that Fremont denied her a FAPE by failing to provide counseling services from February 18, 2018 through the end of the 2017-2018 school year.

Student's June 13, 2018 IEP offered Student school-based counseling for 30-minutes, weekly, during the 2018-2019 school year, which began August 29, 2018. Dr. Peterson's report recommended an increase in counseling services to 60-minutes, weekly, but made no mention of Fremont failing to provide Student with counseling, as required in the June 13, 2018 IEP.

School psychologist Jennifer Athanacio provided counseling to Student during the 2018-2019 and 2019-2020 school years. Athanacio worked as a school psychologist for over 12 years at the time of hearing. She conducted and analyzed assessments, provided counseling services, attended student study team and IEP team meetings, and supervised educationally related mental health services counselors. The evidence demonstrated Athanacio's genuine concern for Student's well-being and the development of a meaningful counselor-student connection. Athanacio maintained poise during extensive questioning and answered questions candidly. These factors established Anthanacio's credibility.

Athanacio contacted Parent on August 30, 2018, to initiate counseling services with Student. Athanacio consistently provided counseling services to Student at Kennedy through May 2, 2019, after which Student no longer chose to attend on campus counseling sessions. Athanacio arranged one in person meeting with Student during the 2018-2019 school year in June 2019, at a Denny's restaurant, an off-campus location of Student's choosing.

Student's 2019-2020 school year began August 28, 2019. Athanacio attempted to reach Parent by telephone on August 29, 2019. She attempted to contact Student directly by phone on September 5, 2019. Athanacio telephoned Student every Monday at 1:00 p.m. to initiate counseling sessions. Several emails produced by Student at hearing corroborate that Athanacio reached out to both Student and Parent in a reassuring and caring manner, trying to secure time for Student's counseling sessions. Parent sometimes advised Athanacio that Student was upset with Fremont administration not being supportive, although that had been Student's perception particularly while Student attended junior high school. He would report that Student

was anxious or isolating. Athanacio consistently responded to Parent's email updates with empathy and encouragement.

At Parent's request, Athanacio met Student at various restaurants to continue building rapport during the 2019-2020 school year. At the time of the January 17, 2020 IEP team meeting, she had been meeting with Student at Denny's once per month. She also continued weekly telephonic counseling sessions with Student at 1:00 p.m. each Monday. Student sometimes ended telephonic counseling sessions early, explaining she needed to use the restroom, lay down, or talk to friends either on her phone or over her computer games.

In summary, Student did not prove Fremont failed to provide Student with counseling services pursuant to the Agreement during the 2017-2018 school year. Fremont implemented Student's June 13, 2018 IEP by providing Student with 30-minute counseling sessions on a weekly basis during the 2018-2019 and 2019-2020 school years. Though Student chose not to attend every session, and ended some early, she did not prove that Fremont failed to implement her IEP, or that any such failure was material. Accordingly, Student did not prove Fremont failed to provide one 60-minute session per week with one-to-one counseling with Children's Health Council.

ISSUE 4: DID FREMONT DENY STUDENT A FAPE FROM FEBRUARY 18, 2018 THROUGH FEBRUARY 18, 2020, BY FAILING TO CONSIDER PARENT'S REQUEST FOR ALTERNATE MEANS OF PROVIDING ACADEMIC INSTRUCTION TO STUDENT, SPECIFICALLY, BY STUDENT'S PERSONAL TRAINER, VARSITY TUTORS, OR OTHER MEANS COORDINATED THROUGH THE HOME INSTRUCTION PROGRAM AT CIRCLE OF INDEPENDENT LEARNING?

Student contends Parent proposed modification of services and accommodations while maintaining COIL independent study and at home instruction programs. Student argues that, because the majority of the January 17, 2020 IEP team meeting focused on Fremont's offer of residential placement, the modification of services was not pursued by Fremont.

Fremont contends Student offered no evidence in support of this allegation. Fremont also contends that Fremont listened to Parent requests and discussed them with an open mind at IEP team meetings.

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(a); Ed. Code, § 56500.4.) 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 Bd. of Educ.* (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].)

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place. (34 C.F.R. § 300.322(d).

JUNE 13, 2018 IEP

Fremont held IEP team meetings to offer Student a FAPE for the 2018-2019 school year on February 2, 2018 and June 13, 2018. Though the February 2, 2018 IEP team meeting falls outside of the statute of limitations, discussion of the meeting underscores Parent's involvement in the development of the resulting annual IEP. Parent and Student attended the February 2, 2018 IEP team meeting, along with program specialist Kinser, assistant principal Vu, case manager Kaur, school counselor O'Neil, school psychologist Athanacio, and Student's drama teacher Tagami.

At the beginning of the meeting, Parent projected a home surveillance video from 2014, when Student attended junior high school. Parent had 16 surveillance cameras at the home, including two inside the home. The cameras record audio. Throughout the hearing, Parent referenced Student's junior high school years as being traumatic. School staff made telephone calls, sent letters, and came to Student's home, to enforce compulsory attendance laws.

The video Parent shared during the February 2, 2018 IEP team meeting showed the school principal coming to the home to address Student's attendance. Parent prepared a written transcript of the conversation with the principal, which he shared at

the IEP team meeting. Parent explained, at hearing, that he showed the surveillance video in order to explain to IEP team members the nature of the trauma Student experienced in school. Parent believed such incidents contributed to Student's school avoidance and increased her anxiety and depression.

After watching the video, the IEP team reviewed Student's strengths and areas of need, present levels of performance, and Parent concerns. Parent requested a copy of Student's comprehensive discipline report and asked for a continued supportive or positive environment for Student. Part of the positive environment involved Parent's request and Fremont's agreement that there would be no further notes sent home for absences, no student attendance review board notices, and no disciplinary consequences imposed for absences.

Fremont introduced new annual goals and, after a discussion on the goals, Parent agreed to them. Fremont made an offer of FAPE including placement, resource specialist program services, and counseling. The team discussed and added accommodations. The team reviewed Student's independent transition plan, discussed Student's anticipated graduation date and requirements, and discussed the age of majority.

On June 13, 2018, Fremont held the second session of Student's annual IEP team meeting. Parent, Executive Director of COIL Walton, Kinser, and Varsity Tutor Winslow attended. Walton explained how Student's specialized academic instruction would be implemented in COIL's independent study program.

Parent asked questions about communication between general education and special education teachers, and goals. He presented information about Student to the team, including that Student's biggest struggle was writing. He shared Student's

progress in U.S. History. He related that Student learned better with formative, verbal, and compare and contrast assignments. He provided input on incentives to increase Student's assignment completion.

Fremont IEP team members discussed adapting Student's assignments and assessments to show that she met state standards, while requiring less output. The team updated background information, present levels of performance, placement, and services pages after discussion with Parent. Parent took the IEP home to review and signed consent the following day.

During both sessions of Student's 2018 annual IEP, Fremont afforded an opportunity for Parent to participate in meetings with respect to the identification, evaluation, and educational placement of Student and the provision of FAPE to Student. Parent attended both meetings, asked questions, and provided input.

The evidence demonstrated that Parent meaningfully participated in the development of Student's 2018-2019 annual IEP because he had an opportunity to discuss the proposed IEP, his concerns were considered by the IEP team, and changes were made to the IEP. Fremont agreed to use Varsity Tutors for home instruction rather than its own credentialed teachers. The team listened to Parent's video and audio presentations, agreed to forego home visits to encourage school attendance, and updated Student's present levels and services to incorporate Parent's input. Notably, at hearing, Parent did not testify that he was denied participation in the development of Student's 2018-2019 annual IEP.

Student did not prove she was denied meaningful participation in the development of Student's June 13, 2018 annual IEP.

JANUARY 17, 2020 IEP TEAM MEETING

Fremont held Student's annual IEP team meeting on January 17, 2020. Dr. Jasmine Zartman attended as Fremont's administrative designee. Dr. Zartman held a doctorate in educational psychology. She became Fremont's program specialist in the spring of 2019. The meeting was also attended by Parent, Athanacio, Olson, Velez, and former 24-Hour Fitness personal trainer called Amy throughout the hearing. Amy had been working with Student to earn physical education credits. Student delegated in writing her right to attend the meeting and make educational decisions at the meeting to Parent.

The team reviewed present levels of performance. Parent shared that Student had been less depressed lately, describing her as mostly sad. Student had stopped taking her medications as a matter of choice, but still used melatonin for sleep. He asked if the team would accept a Kaiser hearing and vision screening. He talked about the summer job Student held in the summer of 2018 and that Student had left due to multiple medical appointments.

Parent reported Student's interest in learning Japanese, martial arts and boxing. Dr. Zartman asked about factors contributing to fewer depressive symptoms and Parent responded that Student's room was more organized. Later in the meeting, Parent shared that Student's anxiety levels greatly impacted her instruction time.

Student had been receiving online instruction through a system called APEX, with help from Varsity Tutors and Olson. However, during the 2019-2020 school year, Student refused Olson's specialized academic instruction services. Parent discussed Student's frustration using APEX. He asked that the IEP designate Amy to support

Student in her academics, along with Varsity Tutors. Amy was not a credentialed teacher. Her teaching experience was that she home schooled her son.

Olson sought Parent's input on having Student continue to receive specialized academic instruction. Parent shared that Student did not like feeling pushed. The team discussed use of a communication application, through cellular telephone and computer, to contact Student for sessions with Olson.

Parent requested that Student attend COIL again because it was flexible and worked better for Student. At the time, COIL had no openings. Dr. Zartman advised Parent how to contact COIL to monitor if an opening became available.

Parent opined that counseling sessions at Denny's worked for Student. He was open to talking to Student about doing classwork at Denny's as well. Olson expressed willingness to see Student outside of the school setting. Amy informed the IEP team that Student also liked another restaurant.

Parent opined that Student did not do well in a core support setting with other students with unique needs. Student wanted to feel normal and be around students with similar interests, who took subjects seriously.

Dr. Zartman reviewed Fremont's program offers, which included general education, resource, special day class, counseling enriched program, residential, and a blended COIL program. Dr. Zartman expressed concern about Student's social and emotional wellbeing, citing her immense difficulty accessing her education, and recommended residential placement.

Parent said he had considered residential but that it was ultimately Student's choice based upon her comfort levels and grief. Velez shared that Student had done

well with others who were open about their own challenges and believed a residential facility was an appropriate option. Athanacio shared that Student was ready for a degree of independence. Olson expressed that getting the momentum to get out the door was also a hurdle.

Parent wanted to get Student's education back on track but believed convincing Student to attend a residential placement would take baby steps. He again shared the 2014 video of a junior high school principal coming to the house to address attendance issues.

Olson made several attempts to hold a final session of Student's annual IEP. Parent did not agree to attend on any dates offered by Fremont. Nor did he provide dates upon which all team members could meet. Parent, at hearing, referenced a May 4, 2020 IEP team meeting. However, that meeting occurred after Student's due process complaint was filed and fell outside the scope of this hearing.

Fremont afforded an opportunity for Parent to participate in the January 17, 2020 meeting, and follow-up meetings, with respect to the identification, evaluation, and educational placement of Student and the provision of FAPE to Student during the statutory time frame. Parent attended Student's annual 2020 IEP team meeting, asked questions, and provided input. The evidence demonstrated that Parent meaningfully participated in the development of Student's 2020 annual IEP because Parent had an opportunity to discuss the proposed IEP and his concerns were considered by the IEP team. Changes were made at Parent's request, such as Olson agreeing to meet with Student off campus for Student to obtain specialized academic instruction. The meeting notes reflect a robust discussion regarding Student's needs from the perspective of Parent and Fremont team members.

Student did not prove Parent was denied meaningful participation at the January 17, 2020 IEP team meeting. The Fremont team member's decision not to have Varsity Tutor tutors or Amy provide Student's specialized academic instruction does not establish that the IEP team did not consider Parent's requests. Instead, Fremont declined the request on the basis that neither Amy nor Varsity Tutor providers held teaching credentials in California. The IEPs did not offer COIL as a placement because there were no openings at the time. Team members considered a hybrid program incorporating COIL in the event an opening became available. In such an event, Student would receive resource support or specialized academic instruction by Olson at the COIL campus.

In summary, Student did not prove that, from February 18, 2018 through February 18, 2020, Fremont failed to consider Parent's request for an alternate means of providing academic instruction to Student through her preferred home instruction program.

ISSUE 5: DID FREMONT DENY STUDENT A FAPE BY FAILING TO GIVE STUDENT TIMELY NOTIFICATION OF THE TRANSFER OF EDUCATIONAL RIGHTS BETWEEN FEBRUARY 20, 2018 AND FEBRUARY 20, 2019?

Student argues that Fremont was required to advise her of her educational rights between the ages of 17 and 18 and did not do so.

Fremont contends that Student was provided notice of the transfer of her educational rights upon reaching adulthood in a timely manner. Fremont further alleges that Student does not contest that she received such notice at the February 2, 2018 IEP team meeting.

No later than one year before a pupil reaches the age of 18, the IEP must include a statement that the pupil has been informed of the rights that will transfer to the pupil upon reaching the age of 18 pursuant to Section 56041.5. (Ed. Code, § 56345(g); 34 C.F.R. § 320(c).)

When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights. (Ed. Code, § 56041.5.).) However, this statute does not prohibit a non-conserved adult from assigning educational decision making authority back to his or her parents, or another representative, after the non-conserved adult is deemed to possess those rights.

On February 2, 2018, Fremont timely informed Student of the transfer of Student's educational rights. Student turned 17-years-old later in February 2018. Student's February 2, 2018 IEP team meeting was attended by, among others, case manager Varinder Kaur. Kaur interviewed Student regarding her post-secondary educational and career plans, as part of Student's individual transition planning. As another part of the planning, Kaur advised Student of the transfer of her educational rights. The IEP document specifically states that on or before Student's 17th birthday, she was advised of her rights at the age of majority. Those rights included the right to receive all information about her educational program, the right to represent herself at an IEP meeting, to make all decisions related to her education, and to sign the IEP in place of Parent. The document states that Student was advised of these rights on

February 2, 2018. The IEP meeting notes reflect that the team held a discussion of the age of majority, with Parent and Student present. Moreover, Kinser, who attended the meeting, persuasively testified that the February 2, 2018 IEP team discussed the transfer of Student's educational rights.

Student incorrectly interprets the law to require notice to be given only during the one-year period preceding Student's 18th birthday. The law does not require that a pupil be notified of the transfer of educational rights between the ages of 17 and 18, but rather before the age of 17.

Student did not prove that Fremont failed to timely inform her of the transfer of educational rights from Parent to her.

ISSUE 6: DID FREMONT DENY STUDENT A FAPE BY FAILING TO PROVIDE AN APPROPRIATE PLACEMENT AND SERVICES IN HER IEP DATED FEBRUARY 28, 2018?

In her complaint, Student alleges a denial of FAPE regarding the February 2, 2018 IEP, which she alleges violated the Agreement in some unspecified manner. Although Fremont partially prevailed on a motion to dismiss issues outside the statute of limitations, now argues that it offered a FAPE in the February 2, 2018 IEP. Fremont's February 2, 2018 offer of FAPE falls outside the statute of limitations and is not considered here. (See, *Avila*, *supra*, 852 F.3d 936.)

Student's complaint and closing brief also reference a February 28, 2018 IEP team meeting. There was no IEP team meeting on February 28, 2018.

The complaint also alleges that Student was to be provided a FAPE, once the February 2, 2018 IEP team meeting took place. To the extent Student means that Fremont failed to implement the IEP offer, as opposed to failed to offer appropriate services, OAH can consider whether Fremont materially implemented the IEP during the statutory time frame, which began February 18, 2018.

Here, Student contends Fremont did not submit evidence that it provided a FAPE to Student before the June 13, 2018 IEP. However, Student bears the burden of proof on this issue, not Fremont. Student also contends that Fremont failed to issue grades and credits toward high school graduation for Spring 2018.

In order to prevail on her implementation claim, Student must prove that any failure to implement the IEP was material, which means that the services provided to her fell significantly short of the services required by her IEP. (*Van Duyn*, *supra*, 502 F.3d at p. 822.)

The relevant time frame runs from February 18, 2018 through Parent's consent to a new offer of FAPE on June 14, 2018. Between February 18, 2018 and June 14, 2018, Student's program was governed by the terms of the Agreement, which required Fremont to provide Student with district credentialed teachers for home instruction, placement in one general education elective at Kennedy each semester, and 60-minutes of weekly individual counseling with Children's Health Council. The evidence demonstrated, as explained more fully in relation to Issues 1 through 3, that Fremont provided services required under the Agreement.

The evidence demonstrated that in Spring 2018, Student's credentialed home teachers provided by Fremont were authorized to issue grades based upon Student's work. Assigned grades were transferred to Student's high school transcript, and

regularly reviewed for credits earned and needed to graduate with a regular high school diploma. Student had not earned credits during the 2017-2018 school year because she had not completed course work.

Student did not prove Fremont materially failed to implement her program from February 18, 2018 through June 14, 2018.

ISSUE 7: DID FREMONT DENY STUDENT A FAPE, WHEN FREMONT FAILED TO ALLOW PARENT TO DISCUSS VIOLATIONS OF THE AUGUST 2, 2017 SETTLEMENT AGREEMENT AT IEP TEAM MEETINGS TAKING PLACE FROM FEBRUARY 28, 2018 THROUGH AUGUST 7, 2019?

Student contends Fremont refused multiple requests to discuss violations of the Agreement through August 7, 2019. In her closing brief, her only argument relating to this issue is that Fremont failed to conduct a meeting to discuss these violations.

Fremont contends Parent was never precluded from discussing alleged violations of the Agreement and that Student did not present evidence supporting her contentions.

Four IEP team meetings occurred within the relevant time frame. Fremont held IEP team meetings on June 13, 2018, September 14, 2018, February 1, 2019, and March 20, 2019. Parent meaningfully participated in the development of Student's IEPs. Parent provided background information, discussed perceived legal issues, and asked for and received changes to IEPs. Agendas for IEP team meetings on September 14, 2018 and March 20, 2019 included time to address Parent's needs and concerns.

English, Athanacio, Olson, Walton, Velez, Kinser, and Zartman individually described Parent's extensive participation in each of those meetings.

English described how the team provided Parent with up to 45 minutes of time before meetings to set up his audio recording equipment. At times, he used a monitor to patch people into the meeting through videoconference. Parent did not bring up the issue of the Agreement during the IEP team meetings as reflected by meeting notes and the testimony of several witnesses.

Rather, in February 2018, Parent exchanged emails with English alleging that Fremont violated the Agreement. The evidence demonstrated that English responded to each of Parent's emails regarding perceived deficiencies in implementation of the Agreement. She asked to speak with Parent on the telephone, but he insisted on having discussions over email, instead. She believed Parent's emails referred to failure to pay invoices from Varsity Tutors as called for in the Agreement. She spoke with her accounting department and confirmed payments were made to Parent.

IEP team meetings are held to develop, review, or revise the IEPS of individuals with exceptional needs. (Ed. Code, § 56341.) Student did not show that Fremont ever prevented Parent from discussing violations of the Agreement during IEP team meetings regardless of whether that discussion would have concerned the development, review, or revision of Student's educational program.

The evidence demonstrated that Parent had an opportunity to discuss proposed IEPs, had his concerns considered by the IEP team, and participated in the IEP process in a meaningful way. The evidence demonstrated that, despite the numerous misunderstandings between Parent and Fremont, the IEP team treated him as a valuable member of Student's IEP team, even after Student reached the age of majority.

Student did not prove Parent was prevented from discussing violations of the Agreement at any IEP team meetings from February 28, 2018 through August 7, 2019.

ISSUE 8a: DID FREMONT DENY STUDENT A FAPE AT THE MARCH 20, 2019 IEP MEETING BY PREDETERMINING SERVICES AND ACCOMMODATIONS?

Student contends that Fremont predetermined services and accommodations at the March 20, 2019 IEP meeting because it failed to offer the accommodations and services recommended by Dr. Peterson.

Fremont argues Student failed to offer evidence in support of this contention. Fremont also argues the March 20, 2019 IEP team meeting had not concluded with an offer of FAPE.

An education agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ*. (6th Cir. 2004) 392 F.3d 840, 858.) Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (*Vashon Island*) [A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification.].)

There was no evidence that Fremont team members met before the March 20, 2019 IEP meeting to discuss or make agreements on services and accommodations ultimately offered during the IEP meeting. The recording, as well as the purported

transcript of a portion of the meeting set forth in Student's closing brief, supports this conclusion. After Fremont considered Dr. Peterson's report, the team reviewed Student's progress in each service area. The team proposed new goals, the individual transition plan, and discussed Student's credits earned toward graduation. English provided Student with a list of placement options, including Robertson High School, an alternative school that allowed students to obtain credits toward graduation more quickly. Student expressed interest in attending Robertson. Amy shared that she attended Robertson and graduated with honors.

At hearing, Olson described Parent as shaking or trembling during the placement conversation. Many times since the meeting, Parent expressed not liking surprises and the offer of placement at Robertson was a surprise. At hearing, Student again expressed interest in exploring Robertson. She was not surprised by the offer as she already knew about Robertson as an option.

In discussing placement options, English focused her attention on Student, wanting Student to express her interests, as Student had turned 18 and had decision making authority. Fremont considered Dr. Peterson's recommendations and incorporated some of them into the IEP. Dr. Peterson recommended 60-minutes per week of counseling. Fremont agreed to increase Student's counseling services to 30-minute sessions, two times per week.

Dr. Peterson recommended an increase in Varsity Tutoring services, as a means of Student obtaining her credits more quickly. Fremont offered placement at Robertson, as a means of helping Student obtain more academic instruction and earn more credits.

Dr. Peterson recommended a social skills group and continued personal training as a means of continuing Student's contact within her community. Fremont added, as

an accommodation, support from a personal trainer to participate in physical education, which meant that Student would continue to engage in physical exercise within her community. Moreover, the Fremont team discussed increased social opportunities with peers, which would be available at the Robertson placement. Fremont did not come to the meeting with a take it or leave it attitude.

Student argues there was predetermination because English passed out a paper that was prepared before the meeting, which showed Student's credits and needs for graduation.

School district personnel may meet informally and engage in conversations on issues such as teaching methodology, lesson plans, coordination of service provision or potential services or placement, so long as they come to an IEP team meeting with an open mind. (See, e.g., *Busar v. Corpus Christi Independent School Dist.* (1995 5th Cir.) 51 F.3d 490, 494, fn. 7, *cert. denied* 516 U.S. 916 (1995); *R.S. and S.L. v. Miami-Dade County School Bd.* (2014 11th Cir.) 757 F.3d 1173, 1188-1189.)

Here, English's preparation for the IEP team meeting falls far short of showing that Fremont IEP team members came to the meeting with a take it or leave it attitude. English gathered information the IEP team needed to consider for a discussion of Student's preparedness for graduation. Exchanges with school staff to prepare a summary of credits earned and credits needed for the IEP team did not demonstrate improper decision making outside of the IEP process. There was no evidence that Fremont made its determination prior to the IEP meeting, or that Fremont provided only one option when considering services and accommodations.

There was no evidence that Fremont was unwilling to consider alternatives. Rather, Fremont offered Student a site visit to Robertson once she expressed interest in

that school. Fremont agreed to reconvene the IEP team meeting once Student had an opportunity to observe the placement and offer further input on her preferences.

Student did not present any evidence that Fremont predetermined services and accommodations at the March 20, 2019 IEP team meeting.

ISSUE 8b: DID FREMONT DENY STUDENT A FAPE AT THE MARCH 20, 2019 IEP MEETING BY RESTRICTING THE LENGTH OF TIME FOR THE MEETING AND, ONCE IT BEGAN, ENDING IT PREMATURELY?

Student contends that the two-hour-long March 20, 2019 IEP team meeting was too short and ended abruptly. On the one hand, Parent wanted all issues to be considered during one IEP team meeting. On the other hand, Parent knew that the meeting would include reviewing Dr. Peterson's evaluation and developing Student's annual IEP.

Fremont argues that Student failed to offer evidence supporting her contentions.

Fremont offered Student several IEP team meeting dates during January and February 2019 to review Dr. Peterson's evaluation and develop Student's annual IEP. Parent declined each available IEP meeting date before March 20, 2019.

The March 20, 2019 IEP team reviewed Dr. Peterson's assessment, Student's present levels of performance, presented new goals, offered accommodations and services, and discussed a range of placement options. English had, before the meeting, informed Parent if the annual IEP had not been completed, a second meeting would be arranged. After approximately two hours, the meeting ended with English offering to

assist Student in arranging a tour of Robertson. English offered at the March 20, 2019 meeting to hold a second meeting once Student toured Robertson.

The meeting, by all appearances, ended naturally after Student expressed interest in observing one of the proposed placements. The meeting did not end abruptly. Even if the meeting had ended abruptly, Student did not demonstrate how a two-hour meeting with a recess to visit a possible placement and an agreement to reconvene after the visit denied Student a FAPE.

Student did not prove Fremont denied her a FAPE by either restricting the time for the March 20, 2019 IEP team meeting or ending it abruptly.

ISSUE 8c: DID FREMONT DENY STUDENT A FAPE AT THE MARCH 20, 2019 IEP MEETING BY CREATING AN ADVERSARIAL ENVIRONMENT, WHICH DELAYED COMPLETION OF STUDENT'S ANNUAL IEP?

Student argues that Fremont created an adversarial environment during the March 20, 2019 IEP team meeting, which caused the completion of the annual IEP to be delayed for ten months.

Fremont argues that the meeting was not adversarial and that Parent delayed completion of Student's annual IEP by failing to agree to any meeting dates until January 17, 2020.

The IEP team meeting recording and English's testimony conclusively demonstrated that the March 20, 2019 IEP team meeting was not adversarial. During the meeting, Parent became upset when English began the discussion about the transfer of educational rights to Student. Parent conceded at hearing that he was insulted when

English said she was advocating for Student. Parent's reluctance to turn over the decision making process to his child does not equate to an adversarial meeting.

Once the meeting ended, Fremont intended to hold a second IEP team meeting after Student toured Robertson and could provide her own input on the potential placement offer. Student and Parent toured Robertson near the end of May 2019. Fremont offered an IEP team meeting on June 6, 2019, which Parent cancelled on June 5, 2019. Fremont made and documented multiple efforts to schedule a follow-up IEP team meeting, particularly in Fall 2019. However, it was several months before Parent agreed to an IEP team meeting on January 17, 2020. The delay in finalizing Student's annual IEP rests not with Fremont.

Student did not meet her burden of proving that the March 20, 2019 IEP team meeting was adversarial and that that caused a delay in completing Student's annual IEP.

ISSUE 8d: DID FREMONT DENY STUDENT A FAPE AT THE MARCH 20, 2019 IEP MEETING BY INVITING THE DIRECTOR OF SPECIAL EDUCATION TO THE MEETING WHEN THE PROGRAM SPECIALIST WAS ALSO PRESENT?

Student contends that English should not have been at the March 20, 2019 IEP team meeting because Dr. Zartman was also present.

Fremont contends the law does not limit the number of people who may be present at an IEP team meeting.

The IEP team must include: one or both parents or a representative chosen by the parents. It must include not less than one regular education teacher if the pupil is, or

may be, participating in the regular education environment, and not less than one special education teacher, or where appropriate, one special education provider to the student. The IEP team meeting must include a representative of the school district who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the student, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of school district resources. The meeting must include an individual who can interpret the instructional implications of assessment results. Also necessary at the discretion of the parent, guardian or school district, are other individuals with knowledge or special expertise regarding the student and, if appropriate, the student. (20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

Dr. Zartman appeared in her new position as program specialist at the March 20, 2019 IEP team meeting with English. Nothing in the IDEA or state law prohibits both a special education director and program specialist from attending the same IEP team meeting. Both could be considered mandatory meeting participants. Dr. Zartman, was a school psychologist with Fremont for several years before accepting her new position. She had the ability to interpret the instructional implications of Dr. Peterson's evaluation results. English, as Fremont's director of special education, was knowledgeable about the availability of school district resources. English evidenced this by relating the various placement options available to Student.

Student did not prove Fremont denied her a FAPE by having both a program specialist and special education director attend the same IEP team meeting.

ISSUE 8e: DID FREMONT DENY STUDENT A FAPE AT THE MARCH 20, 2019 IEP MEETING BY SIGNIFICANTLY IMPEDING PARENT'S OPPORTUNITY TO PARTICIPATE IN THE DECISION MAKING PROCESS BY FAILING TO CONSIDER PARENT'S CONCERNS FOR ENHANCING STUDENT'S EDUCATION?

Student argues that Fremont degraded and bullied Parent at the March 20, 2019 IEP team meeting when it focused on the Robertson placement offer and Student's educational decision making rights.

Fremont argues that the IEP team listened to Parent's concerns but advocated for Student when Parent provided incorrect information regarding Student's educational rights.

A parent who is provided 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. (*Fuhrmann*, *supra*, 993 F. 2d 1031, 1036).

At an IEP meeting, the parents of a child with a disability do not have a veto power over the proceeding. (*Vashon Island*, *supra*, 337 F.3d at p. 1131.) Likewise, just because the team does not adopt the program preferred by parents, does not mean that the parents have not had an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D.Hawaii 2006) 483 F.Supp.2d 1042, 1051.)

Once Student reached the age of majority in February 2019, Fremont focused more attention on her desires for her educational career. At the March 20, 2019 IEP team meeting, Fremont considered various placement options recommended by

Dr. Peterson, including residential placement. Fremont agreed with Dr. Peterson's recommendation that, since Student did not buy into the residential placement, alternatives should be considered.

Student wanted to finish high school by earning credits as quickly as possible. Fremont offered placement at Robertson, which would allow her to both earn fewer credits in order to graduate and earn them at a faster pace. Student desired a structured environment. Robertson offered a structured setting, with smaller class sizes, less noise, and fewer distractions.

Parent became upset during the IEP team meeting as the team focused their discussion of Robertson and Student's needs on Student, rather than Parent. Parent, highly protective of Student, struggled with letting go and allowing Student to exert more control over educational decision making.

Student demonstrated average to above average intelligence. She had the capacity to develop friendships and other relationships. She engaged in several hobbies both from her home and outside the home. She attended some classes at a local community college, applied for and obtained jobs.

Student had the capacity to become fully independent but required support along the way. Some districts use supported decision making, which involves developing a team of family, friends, and other trusted individuals that offer input to adult students but allow them to make final decisions regarding their education.

Here, Fremont team members tried to support Student's need for independent decision making. Fremont IEP team members did not deny Parent participation in the process by shifting attention to development of Student's decision making process.

Fremont offered Student goals and services designed to help her navigate from high school to post-high school education, employment, community living, and independent living. (20 U.S.C. §§ 1401(34), 1414(d); 34 C.F.R. §§ 300.43, 300.320(b).) Athanacio, for example, worked with Student to develop strategies for self-advocacy and determination. Fremont supported Student's development of self-advocacy and determination by holding a lengthy discussion about placement options. The team discussed Robertson at length as Student expressed interest in that option. English discussed setting up a visit at Robertson.

Parent felt left out of this process. However, it was appropriate for the March 20, 2019 IEP team to shift its focus to Student, who had been an adult and the holder of her own educational rights for over one year at the time of the meeting. Indeed, the IDEA contemplates that focus be changed by requiring that the student be informed of the transfer of rights upon attaining majority. The transfer of educational rights shifts participation and decision making responsibilities directly to non-conserved students.

Student's closing brief argues that Fremont denied parental participation at the IEP team meeting because Fremont did not explain the use of Yondr pouches at Robertson during the meeting. Robertson generally required students to place their cellular telephones in a locked pouch during classroom instruction. The evidence demonstrated that students appreciated using the pouches rather than being distracted by their phones. They learned to interact with each other during class, developed friendships, and worked on class projects rather than focusing on their phones. In other words, they became better learners and developed social skills. Robertson allowed accommodations for students who required access to their phones.

Student did not demonstrate that the lack of a discussion about Yondr pouches during the March meeting somehow denied Parent's participation in the development of her IEP. Parent was provided an opportunity to discuss the proposed IEP, expressed his concerns, had his concerns addressed by the IEP team, and visited the proposed placement before the IEP was finalized. Parent's argument, that use of Yondr pouches was somehow illegal, was neither supported by the evidence nor by the law cited in Student's closing brief.

Parent and Student participated in the March 20, 2019 IEP meeting, discussed the proposed IEP, their concerns were considered by the IEP team, and changes were made to the offer of FAPE. In other words, Parent and Student meaningfully participated in the development of the March 20, 2019 IEP.

Student did not prove Fremont denied parental participation by failing to consider Parent's concerns during the March 20, 2019 IEP team meeting.

ISSUE 8f: DID FREMONT DENY STUDENT A FAPE AT THE MARCH 20, 2019 IEP MEETING BY FAILING TO OFFER INCREASED COUNSELING SERVICES AND SOCIAL INTERACTION WITHIN THE COMMUNITY, AS RECOMMENDED BY DR. PETERSON?

Student contends Fremont failed to offer increased counseling services consistent with Dr. Peterson's recommendations in the March 20, 2019 IEP. Student also contends Fremont failed to offer opportunities for social interaction within the community.

Fremont contends Student failed to offer evidence proving her contentions.

Student's March 20, 2019 IEP team increased Student' counseling services to two 30-minute sessions per week based upon Dr. Peterson's recommendation that Student receive 60-minutes per week of counseling. Further, in response to Dr. Peterson's recommendation for a social skills group and continued personal training in the community in lieu of a physical education, Fremont added support from a personal trainer as an accommodation to increase Student's interaction within the community. The IEP team also discussed increased opportunities to socialize with peers from the community as part of the proposed placement at Robertson.

Fremont offered increased counseling services and social interaction in the community in the March 20, 2019 IEP. After Student and Parent visited Robertson, Fremont made several attempts to reconvene the IEP by the end of the school year and offer Student placement and services for the 2019-2020 school year. Parent had not agreed to Fremont's numerous attempts to hold an IEP team meeting until January 17, 2020. As Fremont had not completed the offer of FAPE, the determination of whether the offer constituted a substantively appropriate offer of FAPE cannot be made. The claim or issue is not ripe.

A claim is not ripe for resolution where it rests upon contingent future events that may not occur as anticipated, if at all. (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662.) Accordingly, a determination cannot be made on the substantive appropriateness of the March 20, 2019 IEP.

ISSUE 9: DID FREMONT DENY STUDENT A FAPE BY FAILING TO CONSIDER THE RESULTS OF DR. PETERSON'S ASSESSMENT WHEN IT PROPOSED SERVICES AND ACCOMMODATIONS NOT RECOMMENDED BY DR. PETERSON?

Student contends that Fremont did not discuss all the recommendations contained within Dr. Peterson's independent neuropsychological evaluation. Such recommendations included increased home instruction and continued physical education through Student's personal trainer.

Fremont contends Dr. Peterson's report was considered extensively discussed at the March 20, 2019 IEP meeting. Fremont also contends it made changes to Student's IEP as a result of some of Dr. Peterson's recommendations.

If a parent obtains an independent educational evaluation at public expense or shares an evaluation obtained at private expense, the district must consider the results of that evaluation when making decisions involving the provision of FAPE to the child, provided that the evaluation meets district criteria. (20 U.S.C. § 1414(d)(3); 34 CFR 300.502 (c)(1); Ed. Code § 56329, subds. (b) and (c).) Failing to review and consider an IEE in any decision it makes regarding the provision of FAPE may cause a district to commit a procedural violation of the IDEA.

While a district must consider the results of an independent educational evaluation, it has no obligation to adopt the evaluator's recommendations or conclusions. (*See*, *e.g.*, *T.S. v. Board of Educ. of the Town of Ridgefield* (2nd Cir. 1993) 10 F.3d 87; *G.D. v. Westmoreland School Dist.* (1st Cir. 1991) 930 F.2d. 942, 947.)

Fremont held an IEP team meeting on March 20, 2019 to review Dr. Peterson's evaluation. Dr. Peterson discussed Student's diagnosis, special education eligibility, her unique needs, and made recommendations for placement and services. She would have recommended residential placement for Student, but Student expressed that she was not willing to engage in the therapeutic process. Being of age, Dr. Peterson opined, meant that Student needed to buy into the offer.

Dr. Peterson recommended increasing counseling services to two times per week. Fremont responded by increasing counseling to two times per week. Dr. Peterson recommended Student continue to receive physical education through Amy as a means of connecting socially in the community. Fremont continued to offer physical education with Amy.

Dr. Peterson recommended an increase in tutoring from 12 to 15 hours per week. Her report recommended that Student obtain her credits and diploma as soon as possible. At the IEP team meeting, Student expressed that she could not tolerate additional hours with Varsity Tutors, and the recommended increase in tutoring hours would not have resulted in educational benefit, particularly here, where increased expectations could overwhelm Student and cause increased anxiety and resulting school avoidance.

Walton asked Dr. Peterson for input regarding Student's frustration using the APEX system. Dr. Peterson explained that Student's difficulty with the online credit recovery program was not Student's lack of ability but her challenge with executive functions such as initiating action, follow through, and completion.

The team discussed how Student performed better within the structure of a school. Student shared that the structure of a prior high school was best for her, even though she was not happy in that environment.

Dr. Peterson left the meeting after about an hour with Parent permission. The team continued to discuss Student's placement and services based upon their knowledge of Student and the recommendations made by Dr. Peterson. The team recommended placement at Robertson, a setting with smaller class sizes that helped students earn credits toward graduation more quickly, and in which Student expressed an interest.

Fremont considered Dr. Peterson's report and recommendations, adopting much of them into Student's IEP. The March 20, 2019 IEP team adopted services and accommodations reasonably calculated to ensure that Student made progress in light of her circumstances, even if the services and accommodations did not precisely mirror Dr. Peterson's recommendations.

Student did not prove Fremont failed to consider Dr. Peterson's assessment at the March 20, 2019 IEP team meeting.

ISSUE 10: DID FREMONT DENY STUDENT A FAPE BY FAILING TO APPROPRIATELY SCHEDULE THE JUNE 6, 2019 IEP MEETING AND BY NOT APPROPRIATELY EXCUSING REQUIRED IEP TEAM MEMBERS DURING THE JANUARY 17, 2020 IEP MEETING?

Student contends the June 6, 2019 IEP team meeting did not, and could not, take place because a required IEP team member had not submitted a written document

regarding Student's progress. Student also contends that two required IEP team members were not excused and not present at the January 17, 2020 IEP team meeting.

Fremont argues that Student cancelled the June 6, 2019 IEP team meeting because Parent needed to repair a broken water heater. Thus, any complaint regarding setting the June 6, 2019 meeting is moot. Fremont also argues that Student did not present any evidence regarding excusal of required IEP team members before the January 17, 2020 meeting.

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.* (9th Cir. 1992) 960 F.2d 1479, 1483, 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.). Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); See *Target Range*, *supra*, at 1484.)

JUNE 6, 2019 IEP TEAM MEETING

Student turned 18-years-old on February 20, 2019. However, Parent continued to demand direct contact from Fremont regarding all matters pertaining to Student's education. Student agreed with this process even though she did not assign all her educational rights to Parent. Accordingly, Fremont took steps to ensure Parent was present at each IEP team meeting or was afforded the opportunity to participate by notifying Parent of the meeting early enough to ensure he had the opportunity to attend and scheduling the meeting at a mutually agreed time and place.

Here, Dr. Zartman emailed Parent and Student on May 24, 2019 asking whether they were available for an IEP team meeting on June 6, 2019. Dr. Zartman sought an excusal for principal Velez and indicated that Walton could attend the meeting but would be a little late. Parent agreed to attend the meeting. Ms. Olson sent emails to Parent regarding an excusal of Esparza, Student's general education teacher, due to responsibilities surrounding upcoming graduation and other year-end activities.

Fremont notified Parent of the June 6, 2019 IEP team meeting date two weeks before the meeting date. Parent initially agreed to attend. Accordingly, Fremont notified Parent of the IEP team meeting early enough to ensure he had an opportunity to attend and scheduled the meeting at a mutually agreed time and place.

On June 5, 2019, Parent emailed Olson and Dr. Zartman requesting the meeting be postponed. He wanted to continue conducting informal discussions about Student's program and had to fix his broken water heater. The June 6, 2019 IEP team meeting did not take place at Parent's request, not due to any action or inaction on the part of Fremont. The allegation in the complaint that the IEP team meeting was canceled because mandatory IEP team members could not attend is contradicted by Parent's contemporaneous letter, which does not reference the absence of necessary team members.

Student did not prove she was denied a FAPE because Fremont failed to appropriately schedule and hold the June 6, 2019 IEP meeting.

JANUARY 17, 2020 IEP TEAM MEETING

Student contends that Walton was a mandatory IEP team member, did not attend the January 17, 2020 meeting and was not excused.

Student, in her closing brief, brings up additional issues not alleged in her complaint. These include the number of names on the signature page of the January 17, 2020, and that a representative from an unidentified nonpublic school should have attended the meeting. The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Fremont has not agreed to have OAH consider issues not alleged in Student's complaint. Student's issues not alleged in her complaint are not considered here.

Parent attended the January 17, 2020 meeting on Student's behalf. Student's personal trainer and family friend Amy also attended. Program specialist Dr. Zartman attended as Fremont's representative. Dr. Zartman was qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs. She had knowledge about the general education curriculum. She had knowledge about the availability of Fremont's educational resources.

School psychologist Athanacio attended the meeting. Special education teacher and Student's case manager Olson attended the meeting. Olson held a clear single subject teaching credential in English and taught general education English for over a decade. She served as a home-hospital instructor teaching multiple subjects to general and special education students for approximately 13 years. High school principal Velez attended the meeting. Fremont team members were able to interpret instructional implications of any assessments Parent sought to review.

Other than Parent, Amy, Dr. Zartman, and Athanacio, there is no evidence Fremont did or did not have all required team members present at the meeting or

whether any required members were appropriately excused from the January 17, 2020 meeting. At hearing, Parent asked Olson questions regarding the length of numerous IEP team meetings. Parent did not ask about attendees or excusals pertaining to the January 17, 2020 IEP meeting.

Student carries the burden of proof on all issues raised in her complaint and brought to hearing. Given the lack of evidence presented, she did not meet her burden of proof on this issue.

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 1: Fremont did not deny Student a free appropriate public education by failing to provide appropriately qualified at home instructors to address Student's unique needs arising from emotional disturbance from February 18, 2018 through June 13, 2018. Fremont prevailed on Issue 1.

Issue 2: Fremont did not deny Student a FAPE from February 18, 2018 through the end of the 2018-2019 school year by failing to provide at least three hours of instruction a day for 175 days each calendar year. Fremont prevailed on Issue 2.

Issue 3a: Fremont did not deny Student a FAPE from February 18, 2018 through February 18, 2020, by failing to provide appropriate home instruction. Fremont prevailed on Issue 3a.

Issue 3b: Fremont did not deny Student a FAPE from February 18, 2018 through February 18, 2020, by failing to provide placement in one general education elective class at Kennedy High School each semester. Fremont prevailed on Issue 3b.

Issue 3c: Fremont did not deny Student a FAPE from February 18, 2018 through February 18, 2020, by failing to provide one-60-minute-session per week of one-to-one counseling with Children's Health Council. Fremont prevailed on Issue 3c.

Issue 4: Fremont did not deny Student a FAPE from February 18, 2018 through February 18, 2020, by failing to consider Parent's request for alternate means of providing academic instruction to Student, specifically, by Student's personal trainer, Varsity Tutors, or other means coordinated through the home instruction program at Circle of Independent Learning. Fremont prevailed on Issue 4.

Issue 5: Fremont did not deny Student a FAPE by failing to give Student timely notification of the transfer of educational rights between February 20, 2018 and February 20, 2019. Fremont prevailed on Issue 5.

Issue 6: Fremont did not deny Student a FAPE by failing to provide an appropriate placement and services in her IEP dated February 28, 2018. Fremont prevailed on Issue 6.

Issue 7: Fremont did not deny Student a FAPE, when Fremont failed to allow Parent to discuss violations of the August 2, 2017 Settlement Agreement, at IEP team meetings taking place from February 28, 2018 through August 7, 2019. Fremont prevailed on Issue 7.

Issue 8a: Fremont did not deny Student a FAPE at the March 20, 2019 IEP meeting by predetermining services and accommodations. Fremont prevailed on Issue 8a.

Issue 8b: Fremont did not deny Student a FAPE at the March 20, 2019 IEP meeting by restricting the length of time for the meeting and, once it began, ending it prematurely. Fremont prevailed on Issue 8b.

Issue 8c: Fremont did not deny Student a FAPE at the March 20, 2019 IEP meeting by creating an adversarial environment, which delayed completion of Student's annual IEP. Fremont prevailed on Issue 8c.

Issue 8d: Fremont did not deny Student a FAPE at the March 20, 2019 IEP meeting by inviting the Director of Special Education meeting when the Program Specialist was also present. Fremont prevailed on Issue 8d.

Issue 8e: Fremont did not deny Student a FAPE at the March 20, 2019 IEP meeting by significantly impeding Parent's opportunity to participate in the decision making process by failing to consider Parent's concerns for enhancing Student's education. Fremont prevailed on Issue 8e.

Issue 8f: Fremont did not deny Student a FAPE at the March 20, 2019 IEP meeting by failing to offer increased counseling services and social interaction within the community, as recommended by Dr. Peterson. Fremont prevailed on Issue 8f.

Issue 9: Fremont did not deny Student a FAPE by failing to consider the results of Dr. Peterson's assessment when it proposed services and accommodations not recommended by Dr. Peterson. Fremont prevailed on Issue 9.

Issue 10: Fremont did not deny Student a FAPE by failing to appropriately schedule the June 6, 2019 IEP meeting and by inappropriately excusing required IEP team members during the January 17, 2020 IEP meeting. Fremont prevailed on Issue 10.

ORDER

All Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings