

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2021100504

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GROSSMONT UNION HIGH SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

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DECISION

APRIL 1, 2022

On October 18, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Grossmont Union High School District, referred to as Grossmont, naming Parent on behalf of Student. OAH granted a continuance of this matter on October 27, 2021. Administrative Law Judge Jennifer Kelly heard this matter on February 8, 9 and 10, 2022 by videoconference.

Attorneys Sarah Sutherland and Aundrea Cardoza represented Grossmont. Rose Tagnesi, Director of Special Education, attended the hearing on behalf of Grossmont.

Attorney Paul A. Hefley, Jr. represented Student. Parent attended all hearing days on Student's behalf. Student attended partial hearing days.

The ALJ granted the parties' request for a continuance to March 7, 2022 to allow the parties to submit written closing briefs. The parties filed closing briefs, the record was closed, and the matter was submitted on March 7, 2022.

## ISSUE

Did the program and services Grossmont Union High School District offered Student in the October 6, 2021 individualized education program, known as IEP, constitute a free appropriate public education, known as FAPE, in the least restrictive environment?

## JURISDICTION

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

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

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

Student was 16 years old and in the 11th grade at the time of hearing. Student initially enrolled in Helix Charter High School, referred to as Helix, a public charter school within Grossmont's jurisdiction for the 2019-2020 school year, during Student's ninth grade year. Student resided with Parent within Grossmont at all relevant times. Student was diagnosed with generalized anxiety disorder in the seventh grade. Student was found eligible for special education under the category of emotional disturbance in December 2018, during eighth grade. Student's last agreed upon IEP placed Student in a general education classroom at Helix with specialized academic instruction in a social skills class, described as a special education class offering group instruction, and services and accommodations, which addressed Student's anxiety and school avoidance behaviors.

ISSUE: DID THE PROGRAM AND SERVICES GROSSMONT UNION HIGH SCHOOL DISTRICT OFFERED STUDENT IN THE OCTOBER 6, 2021 IEP CONSTITUTE A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

Grossmont contended the program, services, and placement offered in the IEP developed on October 6, 2021, offered Student FAPE in the least restrictive environment. Grossmont contended the information available to the October 6, 2021 IEP team showed Student's emotional disturbance resulted in anxiety and dysregulation that required placement and services only available at MERIT Academy, a separate special education facility within Grossmont that could support Student's social, emotional, and behavioral needs throughout the school day. Further, Grossmont contended Student could not receive a FAPE at Helix.

Student contended Grossmont's offer of FAPE in the October 6, 2021 IEP failed to meet the procedural and substantive requirements of the IDEA. Specifically, Student asserted Grossmont predetermined its offer of FAPE and impeded Parent's ability to meaningfully participate in the development of the October 6, 2021 IEP by failing to provide Parent with all available program options. Further, Student contended a general education teacher did not attend the entire IEP team meeting and Grossmont failed to make a clear offer of FAPE.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel

develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); 34 C.F.R. §§ 300.320, 300.321, and 300.501; Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), & 56363, subd. (a).)

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

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

The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.) The IEP must describe the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations

that will be provided to the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); 34 C.F.R. § 300.320(a); Ed. Code, § 56032; *Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105.)

When a school district seeks to demonstrate it offered a FAPE, the legal analysis has two prongs. First, the school district must comply with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the school district must prove that the IEP developed through those procedures was designed to meet the child's unique needs and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*; *Endrew F., supra*, 137 S.Ct. at p. 1000.)

A determination regarding whether a child received a FAPE must be based on substantive grounds. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f).) Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 67 F.3d 877, 892.) A procedural violation results in liability for a denial of FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(ii); Ed. Code, § 56505, subd. (f)(2); *see W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) An offer of FAPE must be specific and in writing to comply with the procedural requirements of the IDEA. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; 20 U.S.C. § 1415(b)(3).)

The Ninth Circuit Court of Appeals has endorsed the snapshot rule, explaining that a school district's determinations regarding special education are based on what

was objectively reasonable for it to conclude given the information the district had at the time. A school district cannot be judged exclusively in hindsight, but instead an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

## STUDENT'S ENROLLMENT AT HELIX FOR THE 2019-2020 SCHOOL YEAR

Helix has a more rigorous general education program and graduation requirements than other schools within Grossmont, as required by Helix's approved charter and the Charter Schools Act. (Ed. Code, § 47600, et seq.) Grossmont is the lead educational agency responsible for ensuring that students with disabilities attending Helix receive a FAPE, as required by the IDEA and California law. (Ed. Code, §§ 47646, 47641, subd. (a).) Grossmont and Helix are sometimes referred to interchangeably throughout this Decision.

Grossmont first became aware of Student in spring 2019, when she was enrolled in the eighth grade in the La Mesa-Spring Valley School District. Helix's school psychologist Danicka Thibodo and special education teacher Dawna Lomprey attended Student's May 15, 2019 IEP team meeting to facilitate Student's transition from eighth grade to ninth grade at Helix for the 2019-2020 school year. Student's May 15, 2019 IEP team changed Student's placement to home hospital instruction. The May 15, 2019 IEP offered Student 30 minutes of weekly individual counseling by an educationally related mental health services counselor, 232 minutes of weekly specialized academic

instruction, consultation between Student's special education teacher, counselor, and home hospital teacher, and accommodations to address Student's social-emotional needs.

### OCTOBER 29, 2019 IEP TEAM MEETING AT HELIX

Grossmont convened an annual IEP team meeting on October 29, 2019. Parent and Student attended the IEP team meeting. The IEP team addressed Student's social-emotional and behavioral needs. Student demonstrated anxiety in class and was referred by her general education teachers to Helix's wellness center, a safe place on campus staffed by school social workers where students in crisis could de-escalate. Student became non-communicative during episodes of anxiety and her teachers had difficulty helping her regulate her anxiety. At the time of the October 29, 2019 IEP team meeting, approximately 12 weeks after the start of the school year on August 7, 2019, Student had 123 period absences, representing a 52 percent absence rate for the first grading period. Student was failing three of her five classes.

Based on the information available to Grossmont at the time of the October 29, 2019 IEP team meeting, Grossmont developed four annual goals to address Student's areas of need in writing, attendance, social-emotional, and vocational. The IEP team discussed a continuum of educational settings, related services to support Student's goals, and accommodations.

Grossmont offered Student placement in a general education setting at Helix. To support Student's program, the IEP team drafted extensive accommodations to address Student's classroom anxiety and work completion problems, including flexible seating to



ensure auditory and visual access, use of noise-cancelling headphones, the ability to listen to music while working independently, communicating with teachers and staff in written instead of verbal form, and the ability to text Parent when anxious. Further, the IEP offered Student a safe place to access on campus when she felt emotionally escalated and monthly consultation between Student's special education and general education teachers and staff.

## FEBRUARY 27, 2020 IEP TEAM MEETING TO REVIEW STUDENT'S LACK OF PROGRESS

A school district is required to convene an IEP team meeting whenever the student demonstrates a lack of expected progress towards the annual goals and in the general education setting. (Ed. Code, § 56341.1, subd. (d)(1).) School districts are required to assess a student in all areas of suspected disability, including in the area of mental health, to provide a FAPE. (20 U.S.C. § 1414(d)(3)(B)(i); Ed. Code, § 56341.1, subd. (b)(1).)

Grossmont held an addendum IEP team meeting for Student on February 27, 2020. The purpose of the IEP team meeting was to consider changes to Student's educational program and offer additional support. Parent attended the meeting.

Student's academic performance and behaviors did not improve. Student did not attend school regularly. Parent drove Student to school each day, but Student's anxiety prevented her from getting out of the car. Parent believed Student was socially and emotionally behind her peers. Student had 51 all day absences, representing 45 percent

of the total school days, and 226 period absences. Student was failing four of her five classes. Student was not accessing her bi-weekly educationally related mental health services at Helix due to non-attendance.

Grossmont quickly attempted to resolve this issue. Grossmont proposed advancing Student's triennial evaluation and reassessing Student in the areas of academics, intellectual development, social-emotional/behavior and educationally related mental health services. The proposed assessments would provide the IEP team with information to guide the team in identifying Student's current needs and would help the team propose appropriate goals, services, and placement. Grossmont gave Parent an assessment plan on February 27, 2020, and Parent consented to the proposed assessments on February 28, 2020.

Grossmont also proposed an increase in Student's specialized academic instruction in the study skills class from every other day to every day, in the hopes that this change would improve Student's attendance and work completion. This change increased Student's specialized academic instruction from 270 minutes to 443 minutes weekly. Parent consented to the changes and signed the IEP amendment on February 27, 2020.

On March 13, 2020, Grossmont's schools, including Helix, closed due to the COVID-19 pandemic. Student attended the remainder of the 2019-2020 school year through distance learning.

## 2020-2021 SCHOOL YEAR

The first day of the 2020-2021 school year at Helix was August 17, 2020. Helix started the 2020-2021 school year in distance learning because of the COVID-19 pandemic. Student was entering her 10th grade year Grossmont conducted an educationally related mental health services assessment and prepared a written report dated May 13, 2020. Grossmont also conducted a multidisciplinary evaluation and written report dated August 26, 2020. The IEP team, including Parent, reviewed and considered the results of the assessments at the October 8, 2020 IEP team meeting.

### EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT AND MAY 13, 2020 REPORT

School psychologists Danicka Thibodo and Jacqueline Guzman conducted the educationally related mental health services assessment. Special education teacher Dawna Lomprey contributed to the assessment. The purpose of the assessment was to evaluate Student's current levels of social-emotional functioning and determine what special education and related services Student required. The assessment included consultations between school psychologists Thibodo and Guzman, a review of academic transcripts and attendance records, and interviews with Parent, Student, and Student's teachers. The findings, conclusions, and recommendations were contained in the May 13, 2020 written report.

School psychologist Thibodo testified at hearing. Thibodo held a bachelor's degree in social work and a masters' degree in education and school psychology. She held a pupil personnel services credential and a school based mental health certificate. She had worked as a school psychologist at Helix since 2016. Thibodo was responsible

for conducting assessments of students, preparing assessment reports, scheduling and attending IEP team meetings, assisting school administration, teachers and staff on the identification and implementation of placement alternatives and providing direct and indirect educationally related mental health services.

Thibodo was familiar with Student. Thibodo first met Student in January 2020. Thibodo saw Student in the wellness center on numerous occasions. She also knew Student from conducting assessments and attending IEP team meetings. Thibodo's testimony reflected genuine care and concern for Student. Her substantial experience and detailed recollection of the facts which were consistent with the documentary evidence rendered her testimony persuasive.

Student exhibited anxiety in the school setting. She had 51 all day absences as of February 28, 2020. She spent most of the school day in the wellness center. She rarely engaged in group discussions. She pulled her hood up over her face. She would not engage with other students when asked to participate. She preferred to work alone. Student's teachers had difficulty determining her skillset because of Student's absences. Student could transition between classes but did not make eye contact with her teachers or staff. She displayed anxiety during classes and would leave the class without letting her teachers know and would not return when directed to do so. When Student was anxious, she would not communicate or respond to her teachers.

The educationally related mental health services assessment and report determined that Student was not benefiting from her educational program. Student would benefit from individual and group therapy, a highly structured learning environment with embedded behavior supports, crisis intervention services, a safety

plan, and family coordination services. The educationally related mental health services assessment and report determined Student required a more restrictive learning environment.

## MULTIDISCIPLINARY EVALUATION AND REPORT DATED AUGUST 26, 2020

Grossmont conducted a multidisciplinary evaluation and report dated August 26, 2020. The evaluation was based on observations, Student and teacher interviews, Parent's input, and results from formal assessments and rating scales. Student was assessed using standardized and non-standardized tests, including the Woodcock Johnson IV Tests of Achievement, Behavior Assessment System for Children, 3rd Edition, and Scales for Assessing Emotional Disturbance, 2nd Edition.

Dawna Lomprey was an experienced teacher with over 20 years of experience. She held a bachelor's degree in sociology and a mild to moderate special education credential. She had worked as a special education teacher at Helix since 2007 and was the Department Chair for the Mild/Moderate Special Education Department and a co-teacher in the math department. Lomprey had substantial experience in administering assessments and developing IEPs.

Lomprey testified at hearing regarding the results of the multidisciplinary evaluation and report. Lomprey's extensive experience as a special education teacher, straightforward demeanor, and detailed recollection of the facts rendered her testimony persuasive. Lomprey's testimony was given substantial weight.

Student's overall intellectual ability was in the average to well-above average range. Student's reading and writing abilities were in the well-above to extremely above average range. Student's math skills, including math calculation and math problem solving skills, were in the average range. Nevertheless, Student was failing her classes.

On rating scales, Student's teachers reported clinically significant symptoms in the areas of anxiety, depression, internalizing problems, withdrawal, behavioral symptoms, and social skills. Student reported clinically significant symptoms in the areas of anxiety, sense of inadequacy, and somatization. Further, Student reported excessive worrying, nervousness, and an inability to relax. Student also reported being dissatisfied with her ability to perform a variety of tasks even when putting forth substantial effort, and disliking school.

School psychologist Thibodo provided rating scales from the Scales for Assessing Emotional Disturbance to special education teacher Lomprey, a general education teacher, and Parent. This tool is designed to assist in identifying students with emotional disturbance. Lomprey and Student's general education teacher rated Student indicative of emotional disturbance in the areas of relationship problems and unhappiness or depression. Parent rated Student indicative of emotional disturbance in the areas of physical symptoms and fears. Parent reported Student did not independently complete assigned homework, had poor homework skills, lacked self-confidence, was overly sensitive, and was rejected or avoided by peers.

The multidisciplinary evaluation and August 26, 2020 report recommended Student continue to remain eligible for special education under the category of emotional disturbance.

## OCTOBER 9, 2020 ANNUAL IEP TEAM MEETING

Grossmont held three IEP team meetings on August 26, 2020, September 2, 2020, and October 9, 2020 to review the results of the educationally related mental health services assessment and multidisciplinary evaluation and develop Student's annual IEP. The IEP developed at these meetings will be referred to as the October 9, 2020 IEP. At the time of the IEP team meetings, Helix and Grossmont's other schools were operating under a distance learning model, as defined by the California Legislature in Senate Bill No. 98.

Parent and Student attended the August 26, 2020, September 2, 2020, and October 9, 2020 IEP team meetings. All required participants attended the IEP team meetings. Also, a school psychologist from MERIT Academy (Making Education Relevant, Innovative and Therapeutic), referred to as MERIT, a school within the Grossmont district, attended the August 26, 2020 IEP team meeting.

The IEP team reviewed the results of the educationally related mental health services assessment and multidisciplinary evaluation reports. The IEP team agreed with the recommendation from the multidisciplinary evaluation that Student continued to qualify for special education under the eligibility category of emotional disturbance. The IEP team further agreed that Student required a smaller, highly structured educational environment to address her social-emotional needs. Student exhibited an inability to build or maintain satisfactory interpersonal relationships with peers and teachers. Student demonstrated a general pervasive mood of unhappiness or depression and displayed inappropriate behavior or feelings under normal circumstances. Student's anxiety caused her to miss a significant amount of instructional time in the classroom.

The IEP team discussed Student's present levels of performance. Student had not actively engaged in her classes during distance learning from March 13, 2020 through June 2020. Student would frequently miss class. When she attended class, she turned off her camera and did not ask or respond to questions. Student did not engage in conversations with other students. Student fixated on assignments and would not submit them if they did not meet Student's expectations. Student was not on track to graduate in four years.

Student's overall reading Lexile was 1,510, demonstrating she was college ready. However, Student had difficulty in timed and formal writing. She had not turned in a majority of her writing assignments due to absences. Student completed most of her math assignments and her math teacher did not report any concerns at the time.

The IEP team developed four new annual goals in the areas of social-emotional and vocational. The team also developed an individual transition plan and included three post-secondary goals in training or education, employment, and independent living.

The IEP team discussed and determined Student needed additional program accommodations to meet her IEP goals. The IEP added a graphic organizer and assignment calendar to be completed by Student to support her organizational skills, reduced assignment lengths for classes within the A through G courses and provided additional time to complete assessments in an alternate setting. A through G courses are those that high school students must complete to be minimally eligible for admission to the University of California and California State University. The IEP team further determined Student's curriculum, assessments, and expectations in academic classes should be modified. Parent tentatively agreed that modifications to Student's



curriculum was necessary for Student to make progress. This modification of curriculum meant Student would no longer take A through G classes. The IEP team discussed and agreed to move Student's graduation date to 2024, which effectively extended Student's graduation date by one year, to allow her to complete the necessary credits to obtain a high school diploma.

The IEP team discussed whether Student would benefit from a change of placement to a smaller setting with therapeutic supports. School psychologist Thibodo described the counseling enriched program at MERIT. Alicia Owens, MERIT's school psychologist at the time, further described MERIT's program to the IEP team. Owens explained the high degree of social-emotional and behavioral support provided to students who academically functioned at grade level, but who required social-emotional supports not available on a comprehensive general education campus. Parent agreed to consider a change of placement to MERIT. The IEP team determined Student's continued placement at Helix would continue due to the COVID-19 pandemic. The IEP team considered the effects of making a change of placement during the pandemic and school closures and the importance of maintaining Student's relationships with her teachers and service providers, including her educationally related mental health services provider with whom Student had formed a trusting relationship.

The October 9, 2020 IEP offer of FAPE was supplementary aids and services in the general education classroom setting at Helix. The October 9, 2020 IEP offered

- 443 minutes weekly specialized academic instruction in the social skills class,
- 12 sessions of individual counseling by a nonpublic agency,
- 60 minutes of yearly college awareness services, and
- 60 minutes of yearly career awareness services.

The IEP also offered extensive program accommodations. The IEP team agreed to reconvene to further discuss placement at MERIT. Parent consented to the October 9, 2020 IEP on October 16, 2020.

## FEBRUARY 4, 2021 IEP TEAM MEETING AND ATTEMPTED TOUR OF MERIT

Grossmont held an IEP team meeting for Student on February 4, 2021. The purpose of the meeting was to review Student's progress. All required IEP team members attended, including Parent, Student, school psychologist Thibodo, and special education teacher Lomprey.

The IEP team discussed Student's present levels of performance. Student had limited engagement in her classes during distance learning. Student seldom engaged in video class sessions and would not respond to teachers or staff during on-site tutorial sessions. Student completed few assignments and was failing all of her classes. Student attended most of her educationally related mental health services appointments and was building a good therapeutic relationship with her therapist.

Grossmont offered in-person asynchronous support three days a week for special education students starting in fall 2020. Student attended approximately three classes in person over a two-week period. Lomprey observed Student during these classes. Student sat quietly by herself at the back of the room. She did not engage with her peers or teachers. She did not follow instructions, such as taking out her materials when requested. When asked a question by Lomprey, Student asked to be left alone. Lomprey tried to engage with Student. Student pushed herself down into her seat, breathed heavily, pulled her sweatshirt over her head, and disengaged.

Parent was concerned Student was not connecting with her teachers during distance learning and the material was not challenging enough for Student. Parent wanted Student to take college level classes. The IEP team again discussed a change of placement to MERIT and the benefits of the social-emotional support embedded in MERIT's program. Parent agreed to tour MERIT.

On February 11, 2021, Parent and Student attempted to tour MERIT with Owens. Student appeared anxious and could not participate in the tour. Student did not make eye contact with Owens or respond to her greeting or questions. Student rocked back and forth, hummed to herself, and appeared anxious. Owens suggested, and Parent agreed, to reschedule the tour due to Student's anxiety.

Owens sent Parent a follow up email to Parent on February 24, 2021. Owens suggested the tour be rescheduled and that special education teacher Lomprey accompany Parent and Student to provide reassurance and support to Student. Parent did not respond to Owens' email.

Between April 1, and May 10, 2021, representatives of Helix, including the school psychologist, special education teacher, and educationally related mental health services provider, made 16 attempts to reach Parent by telephone and email. Other than one email from Parent to Lomprey on April 27, 2021, stating not to contact her, Parent was nonresponsive.

## 2021-2022 SCHOOL YEAR

The first day of school for the 2021-2022 school year at Helix was August 4, 2021. The IEP team met on August 18, 2021, to review Student's progress towards her annual goals and to discuss a change of placement.

The IEP team discussed Student's present levels of performance. Parent believed Student's mental health was the major barrier to Student accessing her education. Student's goal was to pass the high school proficiency examination and begin taking classes at the community college. Student had earned only 25 credits, which was far short of the 110 to 130 credits typically earned by the start of an 11th grade year. Student wanted to participate in independent study and prepare for the high school proficiency examination.

The IEP team discussed a continuum of placement options. The IEP team considered that classes at MERIT would not meet the A through G requirements. The IEP team, including Parent, agreed Student would benefit from the structured, therapeutic program at MERIT. An IEP amendment dated August 25, 2021, changed the services page and offer of FAPE to add placement at MERIT. The special education and related services page was amended to add 1,760 minutes weekly specialized academic instruction, which aligned with the instructional minutes at MERIT. In addition, the IEP added 1,760 minutes of weekly behavior intervention services, based on the daily behavior intervention services embedded in MERIT's program. The IEP also offered Student 120 minutes of monthly individual counseling and 30 minutes of monthly parent counseling.

The IEP team reconvened on September 2, 2021. Parent asked about Helix Virtual Academy, an independent study program offered by Helix, which required students to work independently and to meet specific deadlines. This program did not offer specialized academic instruction or provide onsite support. It was not within the continuum of placement options for students with disabilities authorized by the IDEA.

The Helix IEP team members did not believe independent study would provide Student with the social and emotional support she required. The IEP team explained to Parent that independent study was different from the distance learning program, and Student would not receive direct virtual instruction by a teacher, tutorials, or in-person learning. Student failed at distance learning, and therefore it was reasonable for Grossmont to believe Student would not succeed with independent study.

The IEP team answered Parent's questions about MERIT. Parent reiterated that Student had formed a solid connection with her educationally related mental health therapist and requested he continue to work with Student. The IEP team agreed. Parent told the IEP team she would like to tour MERIT before consenting to the IEP.

Grossmont provided Parent a prior written notice letter on September 3, 2021. The notice advised Parent that Grossmont did not believe independent study was appropriate for Student to make expected progress towards her goals and receive an educational benefit. Instead, Grossmont believed Student needed more mental health and instructional support and reiterated its offer of placement at MERIT.

#### THE OCTOBER 6, 2021 IEP TEAM MEETING AND OFFER OF FAPE

The IEP team met on October 6, 2021 to finalize Student's annual IEP. The IEP team continued their discussion of their offer of FAPE as preliminarily discussed at the August 18, 2021, and September 2, 2021 IEP team meetings.

## GROSSMONT TIMELY HELD THE IEP TEAM MEETING AND GAVE PARENT PROCEDURAL SAFEGUARDS

State and federal law require districts to provide the parent of a child eligible for special education with a copy of a notice of procedural safeguards upon initial referral, and thereafter at least once a year, as part of any assessment plan, and at other designated times. (20 U.S.C. §§ 1415(a), 1415(d); 34 C.F.R. § 300.504(a); Ed. Code, § 56321, subd. (a).) The notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent. (20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.504; Ed. Code, § 56321, subd (a).) At each IEP team meeting, the district must inform the parent of state and federal procedural safeguards. (Ed. Code, § 56500.1, subd. (b).)

Parent was offered a copy of the procedural safeguards at the October 6, 2021 IEP team meeting, and Parent declined because she already had a copy.

## REQUIRED IEP TEAM MEMBERS

Grossmont contended all necessary team members attended the October 6, 2021 IEP team meeting.

Student contended the IEP team was not properly constituted because the general education teacher was excused early. Although Parent verbally consented to the general education teacher's early excusal, Parent did not provide written consent. Student further argued the general education teacher should have submitted written

input prior to the IEP team meeting since the issue of Student's curriculum was discussed. Student contended Grossmont should have invited Student's private mental health care provider to the October 6, 2021 IEP team meeting.

An IEP is developed by an IEP team. The IEP team must include:

1. one or both of a student's parents;
2. no less than one general education teacher;
3. no less than one special education teacher or, if appropriate, a special education provider of the student;
4. a representative of the school district who is qualified to provide or supervise specially designed instruction, and is knowledgeable about the general education curriculum and the availability of district resources;
5. an individual who can interpret instructional implications of assessment results;
6. at the discretion of the parent or district, any other individual who has knowledge or special expertise regarding the student, including related services personnel, as appropriate; and
7. whenever appropriate, the student with exceptional needs.

(20 U.S.C. § 1414(d)(1)(B)(i)-(iv); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b); 56342.5.)

Required team members may be excused from an IEP team under two conditions. First, an IEP team member may be excused if the parent agrees in writing that the team member's attendance is not necessary because that team member's area of the

curriculum or related services are not being modified or discussed at the meeting. (20 U.S.C. § 1414(d)(1)(C)(i); Ed. Code § 56341, subd. (f) through (h).) Second, an IEP team member may be excused if the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent and school district consent in writing, and the excused member provides written input to the IEP team prior to the meeting. (20 U.S.C. § 1414(d)(1)(C)(ii); 34 C.F.R. § 300.321(e)(2); Ed. Code, § 56341, subd. (f).) If more than one regular education teacher is providing instruction services to the child, one regular education teacher may be designated by the school district to represent the others. (Ed. Code, § 56341, subd. (b)(2).) Any team member who is qualified to interpret the results of any assessment may do so. (20 U.S.C. § 1414(d)(1)(B)(v); 34 C.F.R. § 300.321(a)(5); Ed. Code, § 56341, subd. (b)(5).)

An IEP team must include at least one general education teacher, and the failure to do so is a procedural violation under the IDEA. (*M.L. v. Federal Way School Dist.* (9th Cir. 2004) 394 F.3d 634, 640.) As discussed in *R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 939, after the 1997 amendments to the IDEA, the presence of the child's current general education teacher is no longer required for the IEP team. The general education teacher who appropriately serves on the IEP team is the teacher who will, or who may, be responsible for implementing portions of the IEP. (*Id.*; see also *Hensley v. Colville School Dist.* (Wash Ct. App. 2009) 148 Wash.App.1032, 2009 WL 249281, *cert. denied.*, (2010) 130 S.Ct. 1517 [teacher who will, or may, be responsible for implementing portions of the IEP is an appropriate IEP team member, even when the teacher did not participate in the discussion but attended the meeting and agreed with the final IEP]; see 34 C.F.R. Pt. 300 App. A—Question 26 (1999).)



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

Grossmont included all necessary members at the October 6, 2021 IEP team meeting, except a general education teacher. Specifically, Grossmont failed to have a general education teacher present for the entirety of the meeting and to obtain Parent's written consent for the teacher's early excusal. Parent's verbal agreement to excuse the teacher was not legally compliant. This failure was a procedural violation. (20 U.S.C. § 1414(d)(1)(C); Ed. Code § 56341, subd. (f) through (h).)

However, Grossmont's procedural violation did not result in a loss of educational opportunity or seriously infringe on Parent's opportunity to participate in the IEP formulation process. (*L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2009) 556 F.3d 900, 909; *Mahoney v. Carlsbad Unified School Dist.* (S.D. Cal., April 8, 2009, No. 08-CV-1860 H(NLS) 2009 WL 1010061, \*5, *affd.* (9th Cir. 2011) 430 Fed. Appx. 562.) Two general education teachers participated in development of the October 6, 2021 IEP. General education teacher Victor Aguilar attended the September 2, 2021 IEP team meeting in which the issue of Student's placement was discussed. The September 2, 2021 IEP team addressed Parent's questions about Helix Virtual Academy and MERIT, and Parent indicated her tentative consent to placement at MERIT, subject to conducting a tour. General education teacher Brian Patterson attended and participated in part of the October 6, 2021 IEP team meeting. Patterson was Student's world history teacher. He reviewed the subject matter being covered in world history for the current quarter.

Although Patterson had not taught Student due to Student's absences, Patterson was a general education teacher responsible for implementing Student's IEP. Accordingly, Patterson was an appropriate general education teacher for the October 6, 2021 IEP team. No persuasive evidence established that Patterson's continued participation at the October 6, 2021 IEP would have assisted the IEP team in devising a program that was better tailored to Student's abilities and needs as the IEP team had all the required information it needed from Patterson.

Parent meaningfully participated in development of the October 6, 2021 IEP. Parent participated, asked questions, expressed disagreement and concerns, contributed to goals, and stated Student's desire to participate in independent study. Other IEP team members who were knowledgeable about MERIT's curriculum and other programs within the Grossmont district, including school psychologist Thibodo and Assistant Director of Special Education Savannah Sturges, attended the October 6, 2021 IEP team meeting. Sturges offered to answer Parent's questions, but Parent declined her request on the basis she wanted all answers in writing. The IEP team had sufficient information about Student based upon recent assessments and observations of Student and gathering and reviewing information, including information from general education teachers, for the nine IEP team meetings held between October 29, 2019 and October 6, 2021, to lead a meaningful discussion about Student's present levels of performance, needs and recommendations for placement. Therefore, the procedural violation of not having a general education teacher present for the entirety of the October 6, 2021 IEP team meeting did not deny Student educational benefit or deny Parent's meaningful participation in development of the October 6, 2021 IEP.

## LEGAL REQUIREMENTS FOR THE IEP DOCUMENT

The IEP must comprehensively describe the child's educational needs and the corresponding special education and related services that meet those needs. (*School Comm of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 368.) The IEP must identify the special education and related services and supplementary aids and services, including program modifications or supports. (*Id.* at p. 368; 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.324(a)(2)(iv); Ed. Code, § 56345, subd. (a)(4).)

The IEP must contain a statement of measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum and meet each of the student's other educational needs that result from the disability. (20 U.S.C. § 1414(d)(1)(A)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The IEP must also describe how progress towards the goals developed will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) Annual goals should describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

The IDEA and California law require that by the time a child with a disability turns the age of 16, the school must have an IEP in effect that includes "appropriate measurable postsecondary goals based upon age-appropriate transition assessments

related to training, education, employment, and where appropriate, independent living skills.” (20 U.S.C. § 1414(d)(1)(A)(VIII)(aa); 34 C.F.R. § 300.320(b)(1); Ed Code, § 56345, subd. (a),(8)(A).) The IEP must provide transition services “needed to assist the child in reaching those goals.” (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(bb); 34 C.F.R. § 300.320(b)(2); Ed. Code, § 56345, subd. (a)(8)(B).)

An IEP must also contain a statement of appropriate accommodations necessary to measure the student’s academic achievement and functional performance on state and districtwide assessments. (20 U.S.C. § 1414(d)(1)(A)(VI)(bb); 34 C.F.R. § 300.320(a)(6); Ed. Code, § 56345, subd. (a)(6)(A).) An IEP must indicate whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).)

An IEP must document its rationale for placement in other than the student’s school and classroom they would otherwise attend if not disabled. (34 C.F.R. § 300.116; 71 Fed. Reg. 46, 588 (August 14, 2006); Cal. Code Regs., tit. 5, § 3042.) The IEP must indicate why the student’s disability prevents their needs from being met in a less restrictive environment even with the use of supplementary aides and services. (*Ibid*) The IDEA does not confer on the student an absolute right to placement in her neighborhood school, but that the IEP explain why the neighborhood school may not be properly suited to address the student’s educational needs.

The IEP is to be read as a whole. There is no requirement that necessary information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii)(I) & (II); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).) An IEP is not required to include the particular methodologies that

will be used in instruction. (34 C.F.R. § 300.320(d)(1); 71 Fed. Reg. 46,665 (Aug. 14, 2006).) As long as a school district provides an appropriate education, methodology is left up to the school district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.)

The procedural requirement of a formal IEP offer creates a clear record and eliminates troublesome factual disputes years later about what placement and services were offered. (*Union, supra*, 15 F.3d at p. 1526.) A formal written offer is, therefore, more than a mere technicality, and this requirement is vigorously enforced. (*Ibid*.) The school district must offer a single, specific program, in the form of a clear, coherent offer which parents can reasonably evaluate and decide whether to accept or reject. (*Glendale Unified Sch. Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp.2d 1093, 1107-1108.) This requirement "should be enforced rigorously" as it creates a clear record to help eliminate factual disputes. (*Union, supra*, 15 F.3d at p. 1526.) It also assists the parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Ibid*; *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 459-460.) The formal IEP offer may be clarified by a prior written notice. (20 U.S.C. § 1415(b)(2)(B)(3); 34 C.F.R. § 300.503; *Union, supra*, 15 F.3d at p. 1526.)

The October 6, 2021 IEP was comprehensive and contained all statutorily required information. For instance, it included:

- Student's present levels of academic achievement and functional performance;
- an analysis of how Student's disability affected her involvement and progress in the general education curriculum;

- a statement of six measurable annual goals, including transition goals, designed to meet Student's unique needs and allow her to make educational progress;
- a statement of how Student's goal performance would be measured and reported to Parent;
- a description of related services along with projected start dates and duration, frequency, and location of services, supports and accommodations; and
- the percentage of time Student would not be participating in the general education setting with typical peers.

Grossmont met its burden of proving the IEP document complied with procedural requirements.

## GROSSMONT APPROPRIATELY DESCRIBED STUDENT'S PRESENT LEVELS OF PERFORMANCE

The child's needs must be described through a statement of present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.

(20 U.S.C. § 1414(d)(1)(A)(I)(aa); 34 C.F.R. § 300.320(a)(1).)

Grossmont developed Student's October 6, 2021 annual IEP based upon its recent assessments and information from Parent and qualified staff. Grossmont considered Student's academic performance, social-emotional functioning and behavior, which represented all areas of suspected need stemming from Student's disability. The team relied on Student's recent educationally related mental health services assessment

and multidisciplinary evaluation. The team also relied on current information from Student's teachers, educationally related mental health services providers, Parent and Student.

Student enjoyed writing, reading, and drawing. Student had a well-developed vocabulary and could engage in conversations with her private therapist. Student continued to struggle with attendance and work completion. Student had not completed her ninth grade English or algebra classes. Student told the IEP team she did not want to return to on campus learning and instead, wanted to take the high school exit examination. Student had missed approximately 90 percent of the 2020-2021 school year and was failing all classes. As of the October 6, 2021 IEP team meeting, Student had earned 25 of the 220 credits necessary to meet graduation requirements.

Student's social-emotional and behavioral functioning continued to be areas of concerns, which affected her ability to access the curriculum and make educational progress. Student made minimal progress on her social and behavioral IEP goals and produced minimal academic work. When Student did attend school, she sat at the back of the class, put her head down or slumped in her chair, and did not respond to questions. Student did not engage with her peers or teachers.

The October 6, 2021 IEP reflected Student's current social-emotional needs and how Student's disability affected involvement and progress in the regular school setting, as reported by Student's teachers, staff, and Parent. The IEP team determined Student required social-emotional goals to assist her in accessing her education. Accordingly, the areas of need targeted by the social-emotional goals were appropriate.

## GROSSMONT DEVELOPED APPROPRIATE AND MEASURABLE GOALS

Grossmont contended all goals in the October 6, 2021 IEP were appropriate and measurable. Student contended the goals were inappropriate because they did not address Student's attendance and work avoidance issues.

The IEP team developed three social-emotional goals based on information from Student's 2020 educationally related mental health services and psychoeducational assessments, and input from Helix staff, service providers, Parent, and Student. Each goal had a baseline that described Student's current functioning, was easy to understand, and included a clear description of how to collect data and measure Student's progress.

The first goal required Student to select two trusted adults to assist her with de-escalation when she felt stressed or anxious. This goal related to Student's anxiety in the classroom setting and resulting withdrawal and work avoidance behaviors. Student's general education teacher and special education teacher were responsible for monitoring Student's progress. Both Student and Parent participated in the development of this goal and identified Student's math teacher as one of the trusted adults Student could rely on.

The second goal required Student to initiate or respond in an academic or social conversation, with one to two prompts, with 75 percent accuracy. This goal related to Student's lack of interaction with teachers and peers. The general education teachers and special education staff were responsible for monitoring Student's progress through charting Student's conversations.



The third goal required Student to recognize her anticipated level of anxiety in a hypothetical or role-playing situation using a visual rating system, and to self-identify an appropriate de-escalation technique in four-out-of-five trials. This goal related to Student's anxiety and work avoidance due to her high levels of anxiety. Student's educationally related mental health services counselor was responsible for monitoring progress on this goal. Student expressed her understanding that this goal focused on recognizing situations which triggered her anxiety. Parent verbally agreed this goal was appropriate.

Parent and Student gave their input about the goals during the meeting. Specifically, they stated the goals did not apply because Student was not returning to in-person learning, but instead, intended to take the high school proficiency examination.

In addition to the social-emotional goals, the October 6, 2021 IEP included an individualized transition plan with three transition goals. The evidence established Grossmont conducted a transition assessment the prior year in developing Student's October 9, 2020 IEP. Lomprey attempted to conduct a transition interview with Student prior to the October 6, 2021 IEP team meeting, but Parent told her all questions had to be provided to Student in writing. Lomprey provided Student the questions in writing but did not receive a response from Parent or Student.

The first transition goal was for Student to attend a two-year college. Student would review course offerings at a local two-year college to find courses of interest and tour the college campus to determine if she was interested in attending. The second transition goal was to find employment. Student would engage in volunteer work to

develop work experience and prepare a resume. Special education teacher Lomprey, Parent, and Student were responsible for measuring completion of these goals.

The third goal was for Student to manage her bank account. To attain this goal, Student would compare different computers and purchase a computer. Student and Parent would measure this goal. Parent and Student each contributed to, and agreed with, the transition goals.

The goals met Student's social-emotional needs resulting from her disability, particularly her anxiety and school avoidance. The goals were developed to enable Student to be involved and make progress in the general education curriculum. Student's contention the IEP failed to include attendance and work completion goals was unpersuasive. The three social-emotional goals were designed to help Student reduce her anxiety, engage in conversations with teachers and peers, and recognize triggers for anxiety and develop de-escalation techniques. These goals related to Student's areas of need in school and work avoidance. At hearing, no evidence was introduced that Student required additional goals to meet her unique needs.

In sum, all goals developed at the October 6, 2021 IEP team meeting were measurable, directly related to Student's social-emotional needs, and designed to help Student make progress in Grossmont's offered program. Further, each goal indicated how progress would be measured and which educational or therapeutic professional would be responsible for helping Student attain the goals. At hearing, Thibodo and Lomprey knowledgeably and credibly opined the goals addressed Student's areas of need and reflected the progress Student could be expected to make in the following 12 months. Therefore, the goals met both the procedural and substantive IDEA requirements.

## GROSSMONT OFFERED APPROPRIATE SPECIAL EDUCATION, RELATED SERVICES, AND ACCOMMODATIONS

Grossmont contended its offer of special education, related services and accommodations addressed Student's needs and were substantively appropriate.

Student contended Grossmont failed to address Student's needs in the area of school avoidance and should have provided wrap around services, or in-home services, to assist Student in attending school.

The IEP must identify the special education and related services and supplementary aids and services, including program modifications or supports. (*Burlington v. Department of Educ., supra*, 471 at p. 368; 20 U.S.C. § 1414(d)(1)(A)(IV); 34 C.F.R. § 300.324(a)(2)(iv); Ed. Code, § 56345, subd. (a)(4).) The frequency, location and duration of a related service is an IEP team decision that must be included in the school district's written offer of FAPE. (20 U.S.C. § 1414(d)(1)(A)(VII); 34 C.F.R. § 300.320(a)(4) & (a)(7); Ed. Code, § 56345, subd. (a)(7).) If a child's behavior impedes the learning of the child or other children, the IEP team must consider the use of positive behavioral interventions and supports. (20 U.S.C. § 1414(d)(3)(B)(i); Ed. Code, § 56341.1, subd. (b)(1).) The IEP must also provide transition services needed to assist the child in reaching any included post-secondary goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(bb); 34 C.F.R. § 300.320(b)(2); Ed. Code, § 56345, subd. (a)(8).) The IEP must contain an explanation of the extent to which the student will not participate with nondisabled children in the regular class. (20 U.S.C. § 1414(d)(1)(A)(V); 34 C.F.R. § 300.320(a)(5); Ed. Code, § 56345, subd. (a)(5).) An IEP must indicate whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).)

An IEP must also contain a statement of appropriate accommodations necessary to measure the student's academic achievement and functional performance on state and districtwide assessments. (20 U.S.C. § 1414(d)(1)(A)(VI)(aa); 34 C.F.R. § 300.320(a)(6); Ed. Code, § 56345, subd. (a)(6).)

The October 6, 2021 IEP offered Student the following special education and services:

- 1,760 minutes of weekly specialized academic instruction;
- 1,760 minutes of weekly behavior intervention services;
- 120 minutes of monthly individual counseling services;
- 30 minutes of weekly group counseling and guidance;
- 30 minutes of monthly parent counseling; and
- 60 minutes of yearly college awareness services.

The IEP team determined Student's behavior impeded her learning. Specifically, Student had difficulty attending school, completing work and interacting with her teachers and peers. On the basis of all the school-based information including report cards, attendance records, assessments and observations, Student required a program that, like MERIT, could serve students with emotional and behavioral problems. To address Student's behavioral needs, the IEP offered Student 1,760 minutes weekly specialized academic instruction and 1,760 minutes weekly behavior intervention services to be delivered at MERIT. Student would have access to a school-wide token system that rewards pro-social and on-task behaviors. Academic instruction would be provided in a small group setting. Student would have access to additional staff for mental health and academic support, access to a full-time, on-site therapist for regularly scheduled therapy sessions and crisis intervention. Student would be allowed to take supervised breaks throughout class as needed.

The IEP offered an extensive array of accommodations, supports and related services that consisted of, among other things, flexible seating, use of headphones and music, access to a safe place on campus, use of a telephone to text Parent, a graphic organizer to assist with organization, and extended time to complete assignments, individual and group counseling, and Parent counseling, all of which were reasonably calculated and adequate to aide Student in meeting her goals.

The October 6, 2021 IEP stated that 100 percent of Student's school day would be in the regular class and extracurricular and non-academic activities. This was a clerical error. This error was corrected in a different section of the IEP which stated Student would not participate in the regular class, or extracurricular or non-academic activities because Student required a smaller setting with integrated mental health support.

Student was offered testing accommodations on statewide assessments in English Language Arts, math, and science. Student's assessments would take place in a separate setting at a beneficial time with special lighting or acoustics, adaptive furniture, and simplified test directions. Student was provided 50 percent additional time for assessments.

The IEP did not determine Student required extended school year services, and the evidence did not prove Student required these services.

Student argued Grossmont's offer of FAPE did not offer reasonable supports and services to access her educational program, namely, wraparound, or in-home services, to assist Student in getting to school. Wraparound services generally refer to a comprehensive treatment modality for children and teens needing intensive supports in

their home, such as getting ready for and going to school. At hearing, the weight of the evidence proved Student was able to get ready for school and drive to school with Parent but sometimes refused to get out of the car. No evidence was offered that the IEP team, including Parent or Student's educationally related mental health services provider, discussed the need for wraparound services at the time. The weight of the evidence proved the October 6, 201 IEP offer of behavior intervention services delivered through the therapeutic program at MERIT was reasonably calculated to address Student's school attendance issues.

Student also argued Grossmont should have communicated with Student's private mental health care provider prior to developing the IEP. Student generally argued Student's outside therapist may have provided information to better understand Student's social-emotional needs. However, Parent did not request that any such provider be included in the IEP team meeting. Student offered no evidence at hearing indicating Student's social-emotional needs had changed or additional information was available to the October 6, 2021 IEP team which would have changed Grossmont's offer of special education, related services and accommodations. Further, Student's educationally related mental health services providers attended the August 18, 2021 and October 6, 2021 IEP team meetings, were familiar with Student's social-emotional needs, and contributed to development of Student's program.

In sum, the October 6, 2021 IEP offer of special education, related services and accommodations was appropriate in light of Student's unique needs and reasonably calculated to enable Student to make progress appropriate in light of her circumstances. The IEP described the academic instruction, related services and supports and set forth

the projected start date, length, frequency, and duration of instructions, services and supports. The IEP offer of specialized instruction was appropriate in light of the information that was available to the IEP team at the time.

## GROSSMONT OFFERED APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Grossmont contended it offered and made available to Student a FAPE in the least restrictive environment through placement at a therapeutic, structured, educational setting with integrated mental health and behavioral services at MERIT. Grossmont further contended Student needed more behavior and emotional support than she would receive in a general education setting to ensure Student received meaningful educational benefit appropriate in light of her circumstances.

Student contended Grossmont prevented Parent from meaningfully participating in the placement decision and did not provide her a variety of placement options.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, comported with the student's IEP, and was in the least restrictive environment, then the school district provided a FAPE, even if the student's parents preferred another program, and even if the parent's preferred program would have resulted in greater educational benefit. (*Ibid.*; *Endrew F., supra*, 580 U.S. \_\_\_\_ [137 S.Ct. at p. 1000.]

To meet its substantive obligation under the IDEA, a school must offer an IEP “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*M.C. by & through M.N. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) (quoting *Endrew F.*, *supra*, 137 S.Ct. at p. 1000.) A school district must take into consideration not only a child’s academic needs, but also her “social and emotional needs that affect academic progress, school behavior and socialization.” (*City of San Diego v. California Special Edu. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

The IEP need not conform to a parent’s wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an “education ... designed according to the parent’s desires”], citing *Rowley*, *supra*, 458 U.S. at p. 207.) Parents, no matter how well-intentioned, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley*, *supra*, 458 U.S. at p. 208.) Whether a student was offered or denied a FAPE is determined by what was reasonable at the time the IEP was developed, not in hindsight. (*Adams*, *supra*, at p. 1149, citing *Fuhrman*, *supra*, 993 F.2d at p. 1041.)

A specific educational placement is that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) In determining the educational placement of a child with a disability, a school district must ensure the placement decision is made by a group of persons including the parents and other persons knowledgeable about the child. Parents are an essential part of the group making the placement decision. (34 C.F.R. §§ 300.116(a)(1), § 300.501(c).) The IEP team must consider the meaning of the evaluation data and the placement options and



consider educating the child in the least restrictive environment. (34 C.F.R. §§ 300.114, 300.118; Ed. Code, § 56342, subd. (b).) Placement is determined annually and is based on the child's IEP. It must be as close as possible to the child's home school that he or she would attend if non-disabled unless the IEP team determines otherwise. (*Id.*)

School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aides and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, §§ 56031, 56033.5.) In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or the quality of services that he or she needs. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1, subd. (a).)

School districts must have available a continuum of program options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a); Ed. Code, § 56360.) The continuum of program options must include, but is not limited to,

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, non-sectarian schools;
- state special schools;

- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication in the home, hospitals, or institutions.” (34 C.F.R. § 300.115; Ed. Code, §§ 56360, 56361.)

A school district is only required to consider those placements on the continuum that may be appropriate for the particular child. A school district is not required to discuss all options “so long as alternative options are available.” (*L.S. v. Newark Unified School Dist.* (N.D. Cal. May 22, 2006, No. C 05-03241 JSW) 2006 WL 1390661, at \*6.)

The IDEA does not define therapeutic placement. However, therapeutic placements typically consist of small classes with emotional and/or behavioral supports. (See, e.g., *Bedford Public Schools*. (Mass. SEA, October 26, 2020) 120 LRP 33490) [appropriate placement for a teen with post-traumatic stress disorder was in a “substantially separate, small placement with embedded therapeutic supports due to his increasing behavioral needs.”].) Because therapeutic placements likely require a student’s removal from the general education environment, they are one of the more restrictive placements on the least restrictive environment continuum. (34 C.F.R. § 300.115.)

When determining whether a placement is in the least restrictive environment for a child with a disability, four factors must be evaluated and balanced. These factors include: the educational benefits of full-time placement in a regular classroom; the non-academic benefits of full-time placement in a regular classroom; the effect the presence of the child with a disability has on the teacher and children in a regular classroom; and the cost of placing the child with a disability full-time in a regular classroom. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Bd. of Educ.* (5th Cir. 1989) 874 F.2d 1036, 1050; *B.S. ex rel. R.S. v. Placentia-Yorba Linda Unified School Dist.* (9th Cir. 2009) 306 Fed.Appx. 397, 400.)

Here, overwhelming evidence showed Student required a more restrictive placement than a regular classroom. This fact was not disputed by Student. Student was unable to keep pace with the class curriculum due to her school and work avoidance. Student required a smaller, more structured placement with integrated mental health and behavioral services, like the one offered at MERIT, to benefit from her IEP. Grossmont engaged in an open discussion with Parent at multiple IEP team meetings regarding Student's placement and needs. Grossmont considered input from Parent, along with information provided by Grossmont's school psychologist, special education teacher, educationally related mental health services provider, general education teachers, and recent assessments.

As to the first *Rachel H.* factor, Student's lack of progress on her goals resulted from Student's failure to attend school and turn in work and inability to interact with her teachers and peers. Although Student had average to above-average intellectual abilities, she was failing her classes due to school and work avoidance caused by her anxiety. Student was not benefitting from inclusion in the general education environment. Student rarely attended school and when she did, she avoided her teachers and peers by sitting in the back of the room, slumping in her chair, and not

responding to questions. During in-person instruction, Student often left the general education classroom and spent a majority of her school time in the wellness center. Student did not appear to have friends at school and spent most of her time alone.

Owens testified at hearing. At the time of hearing, Owens had been promoted to MERIT's site administrator. Owens held a bachelor's degree in psychology, a masters' degree in school psychology, and pupil personnel services and administrative services credentials. Owens had been a school psychologist since 2008. She had substantial experience conducting psychoeducational, functional behavior, and educationally related mental health services assessments. She served as Grossmont's educationally related mental health services case manager from 2012 through 2017, and as the case manager for students in nonpublic schools, residential treatment centers, and other programs. She was MERIT's interim site administrator from August 2020 until she became the site administrator at the beginning of the 2021-2022 school year. Owens' substantial experience as a school psychologist and careful demeanor rendered her testimony persuasive. Her testimony was afforded significant weight.

Although students at MERIT functioned academically at grade level, the program offered a self-contained special education program with social-emotional supports that were not offered on a comprehensive general education campus. All students worked towards a high school diploma, which would permit them to attend a two-year community college upon graduation.

Owens persuasively opined MERIT could implement Student's IEP. Owens' testimony was credible based on her significant experience as a school psychologist, her understanding of students with social and emotional needs, and her review of Student's

IEP and annual goals. All the students at MERIT struggled with academic success on a comprehensive general education campus and benefitted from smaller classes with academic and therapeutic support. MERIT had six classrooms with a one-teacher-to-three-student ratio. Each classroom had a special education teacher, an instructional aide, and a mental health resource specialist. A licensed school psychologist was on the school site and available to provide regular counseling and assist students who were in crisis. The program focused on providing positive behavior supports and teaching coping methods. Students could write, draw, listen to music, or go for a walk with staff when their behaviors escalated. The classrooms were equipped with therapy balls, comfortable seating, and an adjoining quiet room where students could de-escalate.

Thibodo's testimony was consistent with Owens regarding why the IEP team believed placement at MERIT was appropriate for Student. She explained the small class size, imbedded behavior supports, and on-site counseling services were appropriate to meet Student's social-emotional needs. These services were not available at Helix, and Student would benefit from a structured therapeutic program.

Lomprey also persuasively opined MERIT was appropriate for Student. At hearing, Lomprey explained how Student's emotional health negatively impacted her ability to access her educational program. Lomprey believed the small class size, imbedded behavioral support, and access to counseling services at MERIT would enable Student to access her educational program and make progress towards her goals. Lomprey's substantial experience as a special education teacher, her straightforward testimony, and detailed recollection of the facts rendered her testimony credible and persuasive. Lomprey's testimony was given substantial weight.

Student offered no credible evidence disputing the appropriateness of this placement or impugning the qualifications of Grossmont's witnesses. Student's argument that Lomprey's opinion about the appropriateness of MERIT program should be discounted because she was not personally familiar with the program and was unaware of whether other students had been referred to MERIT, was unpersuasive. As an experienced educator and member of the IEP team, and based upon her familiarity with Student, Lomprey was qualified to form an opinion about whether MERIT was appropriate for Student, based on information obtained from Thibodo and Owens, and her professional experience and credentials.

While Parent's testimony reflected genuine care and concern for Student, it was often contradictory and unfocused. Parent told the IEP team MERIT was an appropriate placement, but she testified she did not understand the MERIT program. Parent was frustrated by the October 6, 2021 IEP team members' failure to identify other placement options besides MERIT, although the IEP team discussed multiple placement options at prior IEP team meetings. Parent obstructed the October 6, 2021 IEP team's attempts to review the IEP by constantly interrupting and asking off-topic questions, and then, ultimately refusing to explain what questions she had concerning the proposed offer of placement. Parent offered no testimony that negated the appropriateness of Grossmont's offer of placement. Parent's inconsistencies rendered her opinion regarding whether MERIT was appropriate for Student unpersuasive.

The first factor under *Rachel H.* weighed in favor of a more restrictive placement.

The second factor under *Rachel H.* considers whether the nonacademic benefits of the present placement are outweighed by a more restrictive placement. Student consistently refused most of her mainstreaming opportunities and received minimal nonacademic benefits in the general education classroom and while on campus. Student isolated herself in the wellness center and did not meaningfully interact or communicate with her teachers and peers. Grossmont's educationally related mental health services assessment and multidisciplinary evaluation determined Student did not benefit from the general education environment. Grossmont proved the nonacademic benefits of placement in a general education classroom were outweighed by the therapeutic supports provided at MERIT. The second factor under *Rachel H.* weighed in favor of a more restrictive placement.

The third factor under *Rachel H.* considers the effect the student has on the student's general education teacher and peers. No evidence was offered that Student had a negative impact on her peers. The evidence established Student's general education teachers and special education teacher had difficulty interacting with Student because Student would either withdraw or become anxious. Student would not respond to verbal questions, would slump down in chair, pull her sweater over her head, and breathe heavily. During distance learning, Student would not respond to teachers' questions, frequently turned off her camera, or did not attend. These behaviors prevented Student's teachers from being able to communicate with Student or instruct her. Therefore, this factor weighed in favor of a more restrictive placement.

The fourth factor under *Rachel H.* considers the costs of mainstreaming the student. Here, the issue of cost was not a factor in determining Student's placement. Accordingly, the fourth factor is neutral.

Balancing the *Rachel H.* factors, along with persuasive testimony from Grossmont's staff and Student's poor academic and functional performance, Student did not receive educational benefit from full inclusion in general education. Student required a more restrictive placement. Student's anxiety prevented her from benefiting from the general education environment, even with the use of supplementary aids and services. Grossmont's placement offer at MERIT with related services and accommodations was designed to meet Student's unique needs, comported with Student's IEP, and was reasonably calculated to provide Student with educational benefit appropriate in light of Student's circumstances, in the least restrictive environment.

## PREDETERMINATION, PARENTAL PARTICIPATION AND CLEAR OFFER

Grossmont contended Parent attended and participated in all three of the IEP team meetings that resulted in the October 6, 2021 IEP. Grossmont further contended it solicited, considered, and incorporated input from Parent in the development of Student's educational program. Grossmont contended it made a clear offer of FAPE.

Student contended Parent was denied the ability to meaningfully participate in the development of the October 6, 2021 IEP because Grossmont predetermined the offer of placement and services. Student further contended Grossmont denied Parent's meaningful participation by not offering other placements on the continuum of placement options, and specifically, by refusing to answer her questions about other placement options within Grossmont. Student further argued the offer of FAPE was unclear.



Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances in which placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.2d 840, 857-859.) Predetermination occurs when an educational agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. v. Las Virgenes Unified School Dist.* (9th Cir. July 3, 2007, No. 05-56485 239) Fed.Appx.342, 344-345 [nonpub. opn.].) A district may not arrive at an IEP team meeting with a take or leave it offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

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.) The IEP team must consider the concerns of the parent throughout the IEP process. (20 U.S.C. § 1414(d)(1)(B)(i), (d)(3)(A)(ii), (d)(4)(ii)(III); 34 C.F.R. § 300.343(c) (2)(iii); Ed. Code, § 56341.1, subd. (a)(2).) Parents play a "significant" role in the development of an IEP. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524; 20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. §§ 300.322, 300.344(a)(1); Ed. Code, § 56341, subd. (b)(1).) The Ninth Circuit has emphasized that parental participation safeguards are among the most important procedural safeguards in the IDEA, and procedural violations that interfere with parental participation in the IEP formulation process "undermine the very essence of the IDEA." (*Amanda J., supra*, 967 F.3d at p. 892.) An educational agency must therefore permit a child's parents meaningful participation in the IEP process. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132.)

A school district is required to allow a parent meaningful participation in an IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP team meeting, expresses her disagreement regarding the IEP team's conclusion, and requests revisions in the IEP. (*N.L. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way.]) A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification. (*Vashon Island, supra*, 337 F.3d at p. 1131.)

However, an IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw, supra*, 238 F.Supp.2d at p. 129 [IDEA did not provide for an "education ... designed according to the parent's desires."]; *J.R. v. Sylvan Union School Dist.* (E.D. Cal., March 10, 2008, No. CIV S-06-2136 LKK GGH PS) 2008 WL 68295, \*\*10-11.) A school district's refusal to adopt the placement, services, or goals advanced 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.) The school district is ultimately responsible for ensuring that a student is offered an appropriate program. An IEP team should not offer an inappropriate placement simply to honor the parents' wishes for the child to be educated in a particular setting. (*J.W. v. Fresno, supra*, 626 F.3d 431 [while the district had an obligation to consider the parents' input, it also had to ensure that it offered the student a FAPE].) If the IEP team cannot reach consensus, the school district must determine

services and provide parent with prior written notice. (*Letter to Richards* (OSEP 2010).) The relevant question in considering whether there has been predetermination is whether the school district came to the IEP team meeting with an open mind. (*Deal, supra*, 392 F.3d at p. 858.)

A school district must make a formal written offer in the IEP that clearly identifies the proposed program. (*Union, supra*, 15 F.3d 1519, 1526.) An IEP offer must be sufficiently clear that a parent can understand and make an intelligent decision whether to accept or reject the offer. (*Ibid.*) The IEP is to be read as a whole. There is no requirement that necessary information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).)

Student did not demonstrate Grossmont predetermined Student's placement or did not allow Parent to meaningfully participate in the IEP development process. There was no evidence that any of the IEP team members had been instructed as to what their view should be on placement prior to the IEP team meetings on August 18, 2021, September 2, 2021, and October 6, 2021. While Grossmont and Parent began exploring the possibility of Student attending MERIT at the August 26, 2020 IEP team meeting, there was no evidence Grossmont had decided to offer placement there before discussing the triennial assessments and addressing Parent's questions and concerns. This is supported as the October 9, 2020 IEP continued offer of placement at Helix due to the COVID-19 pandemic, and the IEP team's desire to provide Parent the opportunity to tour MERIT. Parent and Student briefly visited MERIT and met with Owens on February 11, 2021. The August 18, 2021, and September 2, 2021 IEP team meetings

included a discussion regarding the continuum of placement options, including a general education placement with supplementary aids and services, and specialized academic instruction in a special education setting. Parent participated in the discussion about placement and services, asked questions, and expressed disagreement. Grossmont considered Parent's request to place Student in the independent study at Helix Virtual Academy, but ultimately, decided that placement was inappropriate to meet Student's social-emotional needs.

During the October 6, 2021 IEP team meeting, Grossmont's Assistant Director of Special Education Savannah Sturges made repeated offers to answer Parent's questions. Parent declined Sturges' offers and requested Sturges provide responses to Parent in writing. Sturges suggested that Parent send her an email with all of her questions, but Parent did not. No evidence was offered that Parent followed-up with Sturges or that Sturges did not respond to Parent's questions. Further, Grossmont considered Parent's concerns and proposals in multiple IEP team meetings leading up to the October 6, 2021 IEP team meeting.

Similar to the facts in *Vashon Island*, Parent continuously disagreed with Grossmont's placement plan for Student and the parties did not reach consensus on Student's placement. (*Vashon Island, supra*, 337 F.3d at pp. 1132-1133 [Where a school district has repeatedly provided a parent with the opportunity to participate meaningfully in the IEP process, school district has satisfied its obligation to ensure parental participation.].) Parent was uncooperative at the October 6, 2021 IEP team meeting and sought to exercise a veto power over Grossmont's offer of FAPE.

Here, Grossmont made a clear, specific offer of placement which Parent understood and had sufficient information to evaluate. The IEP provided Parent sufficiently clear details as to the proposed placement and services such that she could reasonably be expected to understand it and decide whether to accept the offer. Although Parent did not accept the IEP offer of placement, this was based on her dissatisfaction with the offer, not confusion about the offer.

Student's argument that the offer of specialized academic instruction was unclear because it provided it would be delivered both individually and in a group setting but did not delineate how much time was delineated for each, was unpersuasive. The manner of delivery of services is left to a school district's expertise and discretion. (*R.P. ex rel. C.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d. 1117, 1122.) There is no requirement that that an IEP offer must indicate whether the services will be provided in individual or group settings. (34 C.F.R. § 300.320(d)(1).) As recently discussed by the Ninth Circuit Court of Appeals, whether services will be provided in individual or group settings falls under the specific methodology of delivering the services, an aspect left to the discretion of the school districts. (*Crofts v. Issaquah Sch. Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048, 1054 ["[O]nce a court determines the requirements of the [IDEA] have been met, questions of methodology are for resolution by the States."] (quoting *Rowley, supra*, 458 U.S. 176, 208).)

Here, the offer of special academic instruction and behavior intervention services aligned with the daily imbedded special academic instruction and behavior intervention services in the MERIT classroom. The MERIT program was extensively discussed by the IEP team, including Parent, and no persuasive evidence established the offer of specialized academic instruction was unclear.

In sum, the evidence proved Grossmont did not predetermine Student's offer of FAPE or deny Parent meaningful participation in development of the October 6, 2021 IEP. The October 6, 2021 IEP provided Parent sufficiently clear details as to the proposed placement and services such that she could reasonably be expected to understand it and decide whether to accept or reject the offer.

## PRIOR WRITTEN NOTICE

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

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

- a statement that the parents have protection under the procedural safeguards of IDEA; and
- sources for the parents to contact to obtain assistance.

(20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4, subd. (b).)

The formal IEP offer may be clarified by a prior written notice. (20 U.S.C. § 1415(b)(1)(C); 34 C.F.R. § 300.503; *Union, supra*, 15 F.3d at p. 1526 [permitting prior written notice letter to clarify placement offer].)

Grossmont provided prior written notice to Parent on October 14, 2021 confirming the offer of FAPE in the October 6, 2021 IEP including placement at MERIT. The prior written notice advised Parent that Grossmont believed the October 6, 2021 offer of FAPE, including the change of placement to MERIT and related services, were necessary for Student to make progress and receive an educational benefit. The prior written notice included the data Grossmont relied on in making its decision, included a copy of procedural safeguards, and contact information if Parent needed assistance. Grossmont also offered Parent an opportunity meet again with the IEP team to discuss Grossmont's placement offer and to attend mediation.

Grossmont proved the October 6, 2021 IEP met all procedural requirements of the IDEA, and substantively offered Student a FAPE. The IEP contained all required content and was sufficiently detailed. The IEP team created correctly identified Student's present levels of performance, developed measurable goals in all areas of need, offered services and accommodations to support the goals, and offered placement appropriate for Student based on her social-emotional, behavioral, and academic needs. In sum, the October 6, 2021 IEP was designed to meet Student's

unique needs and was reasonably calculated to enable Student to receive an educational benefit appropriate in light of her circumstances, based on the information available to the IEP team at the time. Therefore, the October 6, 2021 IEP offered Student a FAPE in the least restrictive environment.

Grossmont met its burden of proving the October 6, 2021 IEP offered Student placement in the least restrictive environment based on the information available to the team at that time. (*Daniel R.R.*, *supra*, 874 F.2d at p. 874; *Adams*, *supra*, 195 F.3d at p. 1149.) Grossmont timely filed a request for due process hearing to prove the sufficiency of its offer. (Ed. Code, § 56346, subd. (f); *I.R. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169.)

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subd. (d), the hearing decision must indicate the extent to which each party prevailed on each issue heard and decided. Grossmont prevailed on the sole issue in this matter. Specifically, Grossmont proved the individual education program, known as IEP, proposed by Grossmont Union High School in the October 6, 2021 IEP constituted a free appropriate public education, known as FAPE, in the least restrictive environment.

## ORDER

Grossmont Union High School District may implement the October 6, 2021 IEP without parental consent if Student seeks to attend school and receive special education and related services from Grossmont Union High School District.



## RIGHT TO APPEAL THIS DECISION

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

/s/

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings