

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021100329

PARENTS ON BEHALF OF STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT.

DECISION

June 29, 2022

On October 11, 2021, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Grossmont Union High School District. The matter was continued for good cause on October 22, 2021. A due process hearing request is referred to as a complaint.

OAH granted Student's first motion to amend the complaint. The first amended complaint was deemed filed on January 13, 2022. On February 23, 2022, OAH granted

Student's second motion to amend the complaint. The second amended complaint was deemed filed February 23, 2022. OAH continued the matter for good cause on March 30, 2022, and April 20, 2022.

Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on May 3, 4, 5, 9, 11, 12, and 13, 2022.

Attorneys Wendy Dumlao and Erica Mortenson represented Student. Parents attended each hearing day on Student's behalf. Student did not attend the hearing.

Attorneys Sarah Sutherland and Whitney Antrim represented Grossmont Union. Director of Special Education Rose Tagnesi attended each hearing day on Grossmont Union's behalf.

At the parties' request, the matter was continued to May 31, 2022, for the parties to submit written closing briefs. The record was closed, and the matter was submitted for decision on May 31, 2022.

ISSUES

The following are the issues heard and decided in this matter. Free appropriate public education is referred to as FAPE. Individualized education program is called IEP.

1. Did Grossmont Union deny Student a FAPE by offering an unclear and inconsistent 30-day interim IEP, developed on April 14, and May 12, 2021, that failed to accurately reflect the offer of general education classes in physical education and an elective class?

2. Did Grossmont Union deny Student a FAPE by failing to offer Student a comparable IEP, by offering Student general education courses at the April 14, and May 12, 2021 IEP team meetings?
3. Did Grossmont Union deny Student a FAPE by failing to offer Student an appropriate placement at the April 14, May 12, August 25, and November 17, 2021 IEP team meetings?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the 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 (2006); 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

At the hearing, the party filing the complaint has the burden of proof by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review in IDEA administrative hearing decisions is preponderance of the evidence].) Here, Student requested the hearing and had the burden of proof as to the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 15 years old and in ninth grade at the time of the hearing. Student resided within Grossmont Union's geographic boundaries at all relevant times and attended Sierra School of San Diego, a nonpublic school, at the time of the hearing. He was eligible for special education and related services under the categories of autism and speech or language impairment.

ISSUE 1: DID GROSSMONT UNION OFFER AN UNCLEAR AND INCONSISTENT 30-DAY INTERIM IEP, DEVELOPED ON APRIL 14, AND MAY 12, 2021, BY FAILING TO ACCURATELY REFLECT THE OFFER OF GENERAL EDUCATION CLASSES IN PHYSICAL EDUCATION AND AN ELECTIVE?

Student contends Grossmont Union's offer of four special education classes, not five, and two general education classes for the 2021-2022 school year, was inconsistent

with the written offer of FAPE. In addition, Student argues that the amendments to the IEP developed on April 14, and May 12, 2021, and subsequent prior written notices that stated a fifth specialized academic class to be determined based on Student's interest was not clear or specific. Grossmont Union contends its written offer of FAPE was consistent and unambiguous.

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 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the "modus operandi" of the IDEA, "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, *cert. den.* (1994), 513 U.S. 965 (*Union*), the Ninth Circuit held that a school district is required by the IDEA to make a clear, written IEP offer that parents can understand. The purpose of a written offer is to provide parents the opportunity to consider seriously whether a school district's proposed placement is appropriate under the IDEA, and to help parents decide whether to oppose or accept the placement with supplemental services. (*Id.* at p. 1526). *Union* emphasized the need for rigorous compliance with this requirement, finding that the requirement of a formal, written offer creates a clear record which helps to eliminate subsequent factual disputes regarding when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a

placement, if any. (*Ibid*, see also 20 U.S.C. § 1415 (b)(1)(C).) Failure to make a clear written IEP offer is a procedural violation of the IDEA. (*Union, supra*, 15 F.3d at p. 1526.)

However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(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 (*Target Range*).)

A preponderance of the evidence established that Grossmont Union's offer of five special education classes and one general education physical education class was clear and consistent throughout the relevant time period. In addition, Grossmont Union's proposal at the May 12, 2021 IEP team meeting to enroll student in a fifth special education elective class to be later determined did not violate Parents' and Student's rights under *Union*.

DECEMBER 17, 2020 IEP

Student attended Santee School District's Cajon Park School, from kindergarten through eighth grade. Santee assessed Student in the Fall of 2020, during Student's eighth grade year. The assessors' findings, conclusions, and recommendations were contained in separate reports: the December 17 2020 Multidisciplinary Triennial Evaluation, the September 22, 2020 Adapted Physical Education Assessment, the October 16, 2020 Occupational Therapy Evaluation, and a school nurse's health assessment.

IEP team meetings were held on December 17, 2020, and January 22, 2021, to review the assessments and develop Student's annual IEP, referred to as the December 17, 2020 IEP. The IEP team identified English language arts, mathematics, social emotional functioning, behavior, communication and language, gross motor functioning, and safety as Student's areas of need. The December 17, 2020 IEP offered 15 goals to address these needs.

The December 17, 2020 IEP offered accommodations that included the use of a keyboard for writing assignments, a calculator and other calculation devices, a scribe, and opportunities to be read, and text-to-speech of, reading passages. The IEP also offered listing and breaking up tasks, monitoring Student's test responses, providing directions in a variety of modalities, and gaining Student's attention before speaking to him. Additionally, the IEP offered reduced distractions from other students, and also reduced distractions by Student of his peers, along with giving Student frequent breaks.

Daily program modifications in the December 17, 2020 IEP included providing Student partial grades based on individual progress and effort, a focus of mastering functional math concepts, and shortened assignments to help him master concepts. In addition, multiple prompts to Student would be limited, and he would be given extended time between prompts to respond. The IEP offered Student visual schedules and supports, and sensory breaks embedded into his school day, with sensory tools to help him self-regulate and complete tasks. The IEP also offered an incentive system and a private location for Student to change into his physical education uniform. Additionally, the IEP offered monthly consultations between the special education teacher and other services providers.

The December 17, 2020 IEP offered 1,800 minutes a year of adapted physical education services, 780 minutes a year of occupational therapy, 1,260 minutes a year of speech and language services, 1,430 minutes a week of specialized academic instruction, and 376 minutes each day of intensive individual services in the form of a one-to-one aide. The IEP offered to continue these services at the same weekly or daily frequency for the extended school year. The IEP also offered 600 minutes a month of behavior intervention services by a board certified behavior analyst, referred to as a BCBA. Parents provided written consent to the December 17, 2020 IEP on February 4, 2021.

IEP team meetings were held on April 14, and May 12, 2021, to discuss Student's transition to high school, referred to as the transition IEP team meetings. Students at Santee matriculated to Grossmont Union for high school. Specifically, a majority of Cajon Park's students transitioned to Grossmont Union's Santana High School. However, prior to the IEP team reconvening on May 12, 2021, Parents provided Grossmont Union written notice of Parents' request to place Student in Sierra School for the 2021-2022 school year. Sierra School was a private school located in San Diego County, and certified as a nonpublic school for students with disabilities by the California Department of Education.

Among those that attended the transition IEP team meetings were Parents, Student's attorney, and BCBA Lindsay Dodds. Dodds began providing Student applied behavioral analysis, called ABA, therapy in the home in 2015. In 2017, Dodds began consulting with staff at Cajon Park to support Student. However, Dodds stopped providing ABA services to Student at home and stopped consulting with Santee after she left her agency in September 2020. Dodds attended the December 17, 2020 IEP team meeting at the request of Parents. Through a new agency, Dodds resumed providing ABA services to Student at home and consulting with Santee in April 2021.

Santee's IEP team members included, among others, Student's special education teacher Jennifer Navallez and adapted physical education specialist Thor Stibor. Navallez taught Student in a mild-to-moderate special day class for four years, from fifth grade to eighth grade. Navallez also assessed Student's academic achievement in the Fall of 2020, and her findings and recommendations were contained in the December 17, 2020 multidisciplinary assessment report.

Stibor taught Student since Student was three years old, until Student completed eighth grade. During Student's eighth grade year, Stibor provided Student adapted physical education instruction twice a week, for 30 minutes per session. Stibor also conducted an adapted physical education assessment of Student in the Fall of 2020, and prepared the September 22, 2020 Adapted Physical Education Assessment report.

Grossmont Union participated in the transition IEP meetings. Special education teacher Kathryn Horning, school psychologist Tracy Freeman, and program specialist Pamela Johnson were among the Grossmont Union members that attended.

The IEP team discussed Student's transition to Grossmont Union for Student's ninth grade year. The December 17, 2020 IEP was amended to reflect Grossmont Union's offer of FAPE for the 2021-2022 school year, which included placement in a moderate/severe special day class at Santana High. The amendments to the December 17, 2020 IEP are referred to as the April 14, 2021 Transition IEP. The April 14, 2021 Transition IEP did not amend the December 17, 2020 IEP's offer of goals, accommodations, supports, and program modifications.

As part of the April 17, 2021 Transition IEP, Grossmont Union offered 1,310 minutes a week of specialized academic instruction, to begin on August 10, 2021, Grossmont Union's first day of instruction for the 2021-2022 school year. 1,310 minutes

a week of specialized academic instruction equated to five special education classes. The Transition IEP also calculated that Student would spend 17 percent of his school day in, and 83 percent out, of the general education setting.

At the May 12, 2021 IEP team meeting, and noted in the April 14, 2021 Transition IEP meeting notes, Horning proposed a class schedule based on Student's December 17, 2020 IEP goals. Horning taught Santana High's moderate/severe special day class. The proposed classes included five special education classes for English, math, health, a course entitled pathways to positive community membership, and an elective to be determined based on Student's interests. The sole general education class proposed was physical education, with push-in support from an adapted physical education specialist.

Grossmont Union also offered 1,572 minutes a week of intensive individual services in the form of a one-to-one aide to support Student throughout his school day. The frequency and duration of December 17, 2020 IEP's remaining services were unchanged, and the services' end-date remained December 16, 2021.

The IEP team also discussed the difficulties Student was expected to experience in his transition to high school. Student did not respond well to changes, and the transition to high school involved a new school both larger in size and student population, new teachers and services providers, a new one-to-one aide, and changes to his routine. To support Student's transition to Santana High and to maintain a level of consistency, the April 14, 2021 Transition IEP also offered for Grossmont Union to contract with Dodds and her agency to provide 600 minutes a month of consultation, in addition to 50 hours of consultation to help support Student's high school transition at

the start of the school year. The IEP team discussed allocating time from the 50 hours of consultation to train Student's new one-to-one aide prior to the start of the school year.

Parents enrolled Student in Grossmont Union in April 2021. Parents did not consent to the April 14, 2021 Transition IEP.

On May 25, 2021, Grossmont Union provided Parents with a prior written notice of Grossmont Union's denial of Parents' request to place Student at Sierra School. Grossmont Union restated its offer of FAPE, which included 1,310 minutes a week of specialized academic instruction, with Student spending 83 percent of the school day out of the general education setting.

On June 18, 2021, Parents provided Grossmont Union a written list of disagreements related to the transition IEP team meetings, and the April 14, 2021 Transition IEP. Parents' listed concerns included an assertion that the April 14, 2021 Transition IEP was unclear regarding the IEP team's discussion about the amount of time Student would spend in the general education setting compared to the special education setting. Parents also claimed the percentage of specialized academic instruction and general education was not accurate based on the offer of FAPE made at the transition IEP team meetings. Parents signed the April 14, 2021 Transition IEP on June 17, 2021, noting "I do not agree with the transition IEP."

On June 24, 2021, Grossmont Union provided Parents with a prior written notice of its decision to deny Parents' request to place Student at Sierra School. The prior written notice repeated Grossmont Union's offer of FAPE, which included 1,310 minutes a week of specialized academic instruction. The notice also explained that the 1,310 minutes of specialized academic instruction would be delivered through five special education classes, and specified the same classes outlined in the April 14, 2021

Transition IEP team meeting notes, with the fifth special education elective class to be determined at a later date and would be based on Student's interests and needs. The sixth class would be general education physical education class, with adapted physical education specialist support. The offer of FAPE did not include a second general education class.

On August 2, 2021, Parents provided Grossmont Union with written notice of Parents' intention to privately place Student and seek reimbursement from Grossmont Union for the placement. The notice did not name the school Parents planned to send Student.

On August 4, 2021, Grossmont Union provided Parents with prior written notice denying Parents' request to fund Student's placement at a nonpublic school. Grossmont Union's offer of FAPE, with 1,310 minutes of specialized academic instruction, described in the August 4, 2021 prior written notice was consistent with the April 14, 2021 Transition IEP and Grossmont Union's June 24, 2021 prior written notice.

Prior to the start of the 2021-2022 school year, Grossmont Union generated a class schedule which assigned Student to four special education classes and two general education classes. The two general education classes were physical education and Career Pathways, a year-long elective course for ninth graders to explore, learn, and apply introductory skills in different industries. Parents learned of the two general education classes on Student's schedule on or about August 11, 2021. Student did not attend Grossmont Union during the 2021-2022 school year.

An IEP team meeting was held on August 25, 2021, to discuss Parents' decision to unilaterally place Student in a nonpublic school and to seek reimbursement from Grossmont Union for the placement. Parents did not express concerns about the

general education classes on Student's class schedule at the meeting. Grossmont Union denied Parents' request to fund a private placement, and did not make any changes to the April 14, 2021 Transition IEP's offer of FAPE. Parents continued to withhold their consent to the April 14, 2021 Transition IEP.

The evidence established that the April 14, 2021 Transition IEP's offer of special education and general education classes was clear and consistent. The April 14, 2021 Transition IEP's offer of 1,310 minutes a week of specialized academic instruction, which equated to five special education classes, was clearly written in the Transition IEP and in Grossmont Union's June 24, and August 4, 2021 prior written notices. Neither the April 14, 2021 Transition IEP, nor the prior written notices that followed, proposed a second general education class. Grossmont Union's offer of special education and general education classes was clearly written in the April 14, 2021 Transition IEP to provide Parents an opportunity to consider seriously whether Grossmont Union's proposed specialized academic instruction was appropriate, and allowed Parents to make an informed decision whether to oppose or accept Grossmont Union's offer of FAPE.

Furthermore, the class schedule generated by Grossmont Union did not constitute a change in the offer of FAPE. Student argues that the April 14, 2021 Transition IEP was inconsistent and unclear because the Transition IEP offered only one special education elective class and one general education class, and Grossmont Union eventually offered two general education classes in physical education and an elective. However, Student's argument wrongly assumes the class schedule generated for Student constituted a change in Grossmont Union's offer of FAPE. It did not.

Horning testified at the hearing and described her role in the course selection process. Following transition IEP team meetings, Horning consulted a guidance counselor to develop a tentative schedule for incoming Student's with IEPs. Prior to the start of the following school year when teachers returned from summer break, Horning reviewed the class schedule generated, consulted with parents and students to make necessary adjustments to the class schedule, and worked with a guidance counselor to adjust the class schedule to align with a student's IEP and the IEP team's discussion at the transition IEP team meetings. The schedule was finalized prior to the start of the school year.

However, Parents did not respond to Grossmont Union's efforts to discuss Student's class assignments. On July 30, 2021, program specialist Johnson emailed Parents and invited them to meet with special education teacher Teresa Stailey, who covered Horning's classroom for the first few months of the 2021-2022 school year while Horning was out on leave. Johnson requested Parents propose a time the following week to schedule a meeting between Stailey and Parents. Johnson's email also reminded Parents of Link Day the following week. Link Day was an opportunity for incoming ninth graders to go to the school, receive their class schedules, and tour the school to familiarize themselves with the campus.

Stailey also contacted Parents in early August 2021, and requested they contact Stailey to discuss Stailey's concerns about Student's classes. Parents did not contact Johnson about scheduling a meeting between Parents and Stailey, nor did Parents contact Stailey to discuss Student's classes. Student also did not attend Link Day. Grossmont Union's efforts to involve Parents in the class selection process were met with silence from Parents.

Horning persuasively explained that the April 14, 2021 Transition IEP's offer of FAPE remained unchanged, and the class schedule would be conformed to the special education and general education classes offered in the Transition IEP, and as discussed in the transition IEP team meetings. That did not occur, as Parents did not respond to Grossmont Union's requests to review Student's class assignments, and Grossmont Union refrained from unilaterally selecting a fifth special education elective class without Parents' participation.

In addition, Grossmont Union's proposed fifth special education class to be determined at a later date did not violate Student's rights under *Union* for a clear written offer of FAPE. At the May 12, 2021 IEP team meeting, Parents shared that Student enjoyed science. The IEP team discussed the possibility of assigning him to a special education elective science class.

However, Johnson testified that available elective classes were not yet known at the time of the May 12, 2021 IEP team meeting. Johnson explained that Santana High's master schedule, which consisted of a school's classes and the teachers assigned to the classes, was developed over the months leading up to the next school year, as schools reviewed responses from incoming students as to their school and class preferences. The master schedule was adjusted based on the number of anticipated students for a class, and further adjusted based on the students who ultimately decided to attend the school, until the schedule was finalized shortly before the start of the school year.

Therefore, a fifth special education elective class could not be specifically identified at the April and May IEP team meetings because the master schedule of classes for the 2021-2022 school year had yet to be finalized, and the fifth special education elective class would be assigned near the start of the school year as Horning

explained. The offer of a fifth special education elective class to be determined at a future date was as clear and as specific as possible in light of the information available at the time of the April 14, and May 12, 2021 IEP team meetings, and therefore, the clarity and specificity of the April 14, 2021 Transition IEP was legally sufficient. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 [whether a school district offered a FAPE is determined by looking to what was reasonable at the time, not in hindsight].)

However, even if the subsequent assignment of two general education classes or the absence of an identified fifth special education elective class resulted in a procedural violation, any inconsistency or lack of clarity did not result in a denial of a FAPE. Neither the assignment of two general education classes, nor the unidentified special education elective class significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, deprived Student of educational benefit, or impeded Student's right to a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).; see *Target Range, supra*, 960 F.2d p.1484.)

In a June 18, 2021 letter to Grossmont Union, Parents did not include in their list of disagreements, confusion, or concern about the April 14, 2021 Transition IEP's failure to identify the specific fifth special education elective class. Parents also did not communicate to Grossmont Union any concern about the two general education classes in Student's class schedule upon learning of the schedule on or about August 11, 2021. Additionally, Parents did not express concerns, confusion, or question Grossmont Union's IEP team members at the August 25, 2021 IEP team meeting about the two general education classes in Student's class schedule, nor the absence of a fifth special education elective class.

In addition, on September 28, 2021, Parents, through Student's attorney, provided Grossmont Union a letter listing Parents' disagreements with the August 25, 2021 IEP team meeting notes. However, none of Parents' listed disagreements concerned the two general education classes in Student's class schedule, or the absence of fifth special education elective class.

The IEP team met again on November 17, 2021. Parents again did not express concerns, confusion, or question Grossmont Union's IEP team members at the meeting about the two general education classes in Student's class schedule, nor the fifth special education elective class. Accordingly, Student failed to prove that Grossmont Union significantly impeded Parents from meaningfully participating in the decision-making process regarding the provision of a FAPE to Student by either assigning Student to two general education classes, or by failing to identify the fifth special education elective class

Furthermore, the evidence demonstrated that the two general education classes and the unspecified fifth special education elective class had no impact on Parents' decision to reject Grossmont Union's offer of FAPE, or not to send Student to Santana High. Accordingly, the evidence failed to establish that the assignment of two general education classes or the unspecified special education elective class impeded Student's right to a FAPE, nor deprived him of educational benefit.

In sum, the April 14, 2021 Transition IEP did not fail to accurately reflect the offer of general education classes in physical education and an elective, as only one general education class was offered as FAPE. The Transition IEP clearly and consistently offered only one general education class in physical education. No general education elective class was offered as part of Grossmont Union's offer of FAPE. The offer of FAPE was

clear and consistent at 1,310 minutes each week of specialized academic instruction, consisting of five special education classes. The class schedule for Student did not change the FAPE offer. Accordingly, Student failed meet his burden of proving Grossmont Union denied him a FAPE by offering an unclear and inconsistent 30-day interim IEP that failed to reflect an offer of two general education classes in physical education and an elective.

ISSUE 2: DID GROSSMONT UNION FAIL TO OFFER STUDENT A COMPARABLE PROGRAM, BY OFFERING STUDENT GENERAL EDUCATION COURSES AT THE APRIL 14, AND MAY 12, 2021 IEP TEAM MEETINGS?

Student contends Grossmont Union offered Student general education classes, which Student claims was not comparable to the program Student received at Santee. Student also argues that Grossmont Union failed to offer adapted physical education services comparable to the services provided to Student at Santee.

However, Student's second amended complaint did not allege a failure on the part of Grossmont Union to offer comparable adapted physical education services. Instead, Issue 2 of the second amended complaint was limited to the comparability of special education classes and general education classes provided by Santee and offered by Grossmont Union. Student's second amended complaint claims Grossmont Union's assignment of Student in two general education classes and four special education classes was not comparable to the program Student received at Santee. The party requesting the hearing is limited to the issues alleged in the complaint unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Accordingly, the Decision makes no determination as to the comparability of Grossmont Union's offer of

adapted physical education services. Grossmont Union contends its offer of a physical education class in the regular education setting was comparable to the program Student received at Santee.

Student contends Grossmont Union had the burden of proving Grossmont Union's offer of a general education class was comparable to the program provided to Student by Santee. Student's contention, and reliance on *Parent v. Charter Oak Unified School District*, (March 11, 2021) OAH Case Number 2020100198 (*Charter Oak*), was unpersuasive. In *Charter Oak*, OAH treated the school district's contention that it offered that student a comparable program as an affirmative defense to the school district's failure to conduct an IEP team meeting or have an IEP in place by the start of the school year; IDEA procedural violations which the school district conceded it committed. Accordingly, OAH held that the school district carried the burden of proving its affirmative defense that despite the procedural violation, no substantive FAPE denial occurred because the school district offered the student a comparable program.

In contrast, Grossmont Union does not concede failing to offer Student a comparable program or any other significant procedural violations, like the school district in *Charter Oak*. Accordingly, the burden of proof remained with Student as to whether Grossmont Union denied Student a FAPE by failing to offer him a comparable program as it related to general education classes. (*Schaffer, supra*, 546 U.S. at pp. 57-58.)

California law requires that a student with an IEP who transfers during the same academic calendar, from one school district to another school district under the same special education local plan area, be provided by the new school district, without delay, services comparable to those described in the student's existing IEP, unless the parent

and the new school district agree to develop, adopt, and implement a new IEP. (Ed. Code, § 56325, subd. (a)(2).) However, California law is silent as to students who transfer during the summer and start a new school district at the beginning of a school year, implying that the transferee district must either follow the last agreed upon IEP in a comparable way, or develop a new IEP for the student at the beginning of the school year.

The evidence established that Grossmont Union did not fail to offer Student a comparable program with respect to general education classes at the April 14, and May 12, 2021 IEP team meetings. As discussed in Issue 1, Grossmont Union offered Student only one general education class for physical education. The offer of one general education physical education class was comparable to Student's program at Santee.

In seventh grade, Student spent five periods of his school day in special education classes, with physical education his only general education course. However, Santee suspended in-person instruction in March 2020, due to the COVID-19 pandemic.

Santee students returned to the classroom on a modified schedule for the 2020-2021 school year. However, due to ongoing COVID-19 concerns, Santee suspended physical education classes for all students for the entire school year. Therefore, Student did not participate in any general education class during the 2020-2021 school year.

However, the December 17, 2020 IEP's offer of 1,430 minutes a week of group specialized academic instruction in a separate classroom was consistent with five special education classes. The IEP also calculated that Student would spend 76 percent of his school day out of the general education setting, and 24 percent in the general education setting.

Student's program at Santee consisted of five special education classes and one general education physical education class. Student's inability to participate in his physical education class for the 2020-2021 school year was due to Santee's policy to suspend physical education classes for all of its students, and not because Student could not access and benefit from physical education in the general education setting. Unlike Santee, Grossmont Union did not have such a policy, and Grossmont Union's students could participate in a general education physical education class for the 2021-2020 school year.

Consequently, Grossmont Union did not fail to offer a comparable program related to general education classes at the April 14, and May 12, 2021 IEP team meetings. Grossmont Union's offer of one general education class for physical education was comparable to the program Student was provided at Santee. Accordingly, Student failed to meet his burden of proving Grossmont Union denied him a FAPE by offering him a comparable program that included a general education class at the April 14, and May 12, 2021 IEP team meetings.

ISSUE 3: DID GROSSMONT UNION FAIL TO OFFER STUDENT AN APPROPRIATE PLACEMENT AT THE APRIL 14, MAY 12, AUGUST 25, AND NOVEMBER 17, 2021 IEP TEAM MEETINGS?

Student contends Santana High was not an appropriate placement because Santana High was too large, had too many students, and did not have an adequate sensory room. Grossmont Union contends its offer of placement at Santana High was appropriate and the least restrictive environment.

Student's closing brief detailed what transpired during the April 14, May 12, August 25, and November 17, 2020 IEP team meetings, including various concerns Parents raised regarding Grossmont Union's representations and offers of support, services, and placement. However, the issues for hearing are limited to the claims specifically raised in Student's second amended complaint, and do not include all of the problems raised by Parents at IEP team meetings, in correspondences, or in Student's closing brief.

While Student failed to allege in his complaint or in his closing brief that Grossmont Union failed to offer appropriate school personnel to implement the December 17, 2020 IEP or April 14, 2021 Transition IEP; witness testimony addressed whether Student required a registered behavior technician, referred to as an RBT, to act as his one-to-one aide, and a BCBA on-site at school at all times. Accordingly, to the extent Student's general challenge to Grossmont Union's placement offer encompassed the unique combination of placement personnel, this Decision will address the problems raised by Student at hearing with respect to the personnel available at Santana High to implement behavior supports and services offered by Grossmont Union.

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. (*Rowley, supra*, 458 U.S. at pp. 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500 (abrogated in part on other grounds by *Schaffer v. Weast, supra*, 546 U.S. at pp. 56-58), citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

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 aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1.) The Ninth Circuit stated a four-factor evaluation to determine whether a placement is in the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*)). The four factors are:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of interaction with children who were not disabled;

3. the effect the child will have on the teacher and children in the regular class; and
4. the costs of mainstreaming the student.

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

School districts, as part of a special education local plan area, must have available a continuum of program options to meet the needs of individuals with exceptional needs for special education and related services as required by the IDEA and related federal regulations. (34 C.F.R. § 300.115; Ed. Code, § 56360.) The continuum of program options includes, but is not limited to

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes; and
- nonpublic, nonsectarian schools.

(34 C.F.R. § 300.115; Ed. Code, § 56361.) In California, a specific educational placement is defined as the unique combination of facilities, personnel, location or equipment necessary to provide instructional services to a special education student as specified in the student's IEP. (Cal. Code Regs. tit. 5, § 3042. subd. (a).)

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, not the program

preferred by a student or parent. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Bd. Of Educ.* (3rd Cir. 1993) 993 F.2d 1031.)

LEAST RESTRICTIVE ENVIRONMENT

The evidence established that Santana High's moderate/severe special education class was the least restrictive environment. Under the *Rachel H.* factors, Student required a more restrictive setting outside of the regular education setting for academics, but benefitted from mainstreaming opportunities in the general education setting.

As to the first *Rachel H.* factor, Student was performing much lower across all academic areas compared to his nondisabled peers. Based on the Fall 2020 assessments, Student's overall intelligence fell in the poor range. Academically, Student performed significantly poor on assessments. His standard scores fell below 40 in reading comprehension, reading fluency, mathematics problem solving, and written expression. His standard score for math calculations was 46, also significantly low. Further, Student required a device to form simple, complete sentences during structured language activities. His writing skills were also poor as he wrote slowly, inconsistently spaced letters, and required adapted paper with bold raised lines to keep his writing correctly sized and straight. He required instruction in a small group setting, with support from his one-to-one aide for individualized instruction, and to remain on task. Therefore, Student could not access his academics in the general education setting.

As to the second *Rachel H.* factor, Student's interactions with nondisabled peers at Cajon Park were limited to brief, cordial greetings due to his communication deficits.

Though his receptive language was an area of relative strength, his functional communication skills were poor. He rarely initiated interactions with peers, and required verbal prompts to engage in back-and-forth exchanges with peers and staff.

Despite Student's limited interactions with nondisabled peers, Navalvez reported to the IEP team on April 14, 2021, and testified, that Student enjoyed mainstreaming opportunities to observe general education classes. He was curious about the work other students performed and listened intently to their presentations. Navalvez strongly encouraged that Student continue to receive similar mainstreaming opportunities. Thus, mainstreaming opportunities with nondisabled peers offered some benefit to Student.

As to the third *Rachel H.* factor, Student's problem behaviors would have been disruptive to teachers and students in the regular classroom. Though Student could participate in the general education physical education class with the support of his one-to-one aide, his behaviors could not be appropriately managed in the regular classroom without interfering with lessons. Student occasionally got aggressive with staff and got upset if someone could not understand what he was communicating. His protests and tantrums were disruptive and required him to be removed from the classroom. He got into the personal space of others. Student would also elope from his seating area. Therefore, Student would impede instruction in the regular classroom. Neither party offered evidence as to the fourth *Rachel H.* factor relating to cost, nor was cost a factor in the ultimate outcome of this Decision. Accordingly, the regular education setting for academic instruction was not appropriate for Student.

Furthermore, Horning persuasively opined that Santana High's moderate/severe special day class was appropriate for Student based on his needs and academic and functional abilities. The special day class had a small student to adult ratio, with

approximately 13 students, one teacher, and two adult classroom aides. The class also offered a curriculum to support Student's English language arts and mathematic needs, with a focus on real-world application of functional skills. In addition, a majority of the students in the moderate/severe special day class were highly verbal, giving Student opportunities to improve his communication skills within the classroom. Accordingly, a separate class setting for small group specialized academic instruction, with access to nondisabled peers in physical education class, and mainstreaming opportunities during breaks, and classroom observations was the least restrictive environment for Student.

It is also notable that the placement sought by Student, and supported by his experts, was a more restrictive nonpublic school. At a nonpublic school, Student would have less opportunities to mainstream or socialize with his nondisabled peers.

SANTANA HIGH'S CAMPUS AND STUDENT POPULATION SIZES

The evidence did not support Student's contention that Santana High's campus size and student population was too large as to impede Student from accessing his education. Student successfully accessed his program at Cajon Park, and the evidence demonstrated the differences between Santana High and Cajon Park with respect to campus size and student population was not significant, and would not impede Student's ability to receive a meaningful educational benefit at Santana High.

As discussed in Issue 1, the April 14, 2021 Transition IEP offered to place Student in a moderate/severe special day class at Santana High for the 2021-2022 school year. At the April 14, 2021 IEP team meeting, Parents shared their concern that Santana High was too large of a campus which would make it difficult for Student to get from one place to another. Parents were also concerned that the number of students at Santana High would overwhelm Student.

Father testified that Student's limited mobility due to his cerebral palsy and foot alignment would make navigating Santana High difficult for Student. In addition, Father testified that Student's safety was at risk by having to walk through Santana High's student parking lot to get to his physical education class.

However, the evidence did not support Parents' concerns, and Student failed to offer persuasive evidence to support his claim that Santana High was too large and had too many students. Dodds was concerned about the size of Santana High's campus and the number of students at the school. However, Dodds did not opine at the transition IEP team meetings, or at the hearing, that Santana High's campus size and student population size were barriers that could not be successfully addressed through supports and services. Dodd's concerns involved Student's transition to Santana High and the expected changes and difficulties with a larger, more populated school, a new one-to-one aide, new teachers and services providers, and a new routine. However, Dodds offered no opinion that the various changes to Student's program could not be properly addressed for Student to succeed at Santana High. She failed to testify that Student would not be able to access or succeed at Santana High if he were provided the supports and services offered in his IEP.

Student's doctor, Pritha Dalal, M.D., prepared a letter dated May 14, 2021, provided to Grossmont Union in May 2021, indicating that Student had difficulty walking for distances greater than 30 to 40 yards without a break due to Student's cerebral palsy, autism, and foot alignment. Dr. Dalal opined Student would benefit from a smaller school environment that he can navigate easier.

However, no evidence was offered that Dr. Dalal observed Student at Cajon Park or at any other school setting, or that Dr. Dalal spoke with staff at Cajon Park or

Grossmont Union, or considered Santee's 2020 assessments of Student. Further, Dr. Dalal's letter offered no explanation of Student's ability to successfully walk the Cajon Park campus, and why Student would not have the same success at Santana High. Therefore, Dr. Dalal's written opinion was not persuasive.

Similarly, the testimony and written report of Student's expert Jill Weckerly, Ph.D., was not persuasive. Student hired Dr. Weckerly to evaluate Student's cognitive and emotional functioning. Her evaluation of Student began in May 2021. Dr. Weckerly's findings, conclusions, and recommendations were presented in a written report completed in September 2021. Parents provided Dr. Weckerly's report to Grossmont Union on September 28, 2021.

Dr. Weckerly was a clinical psychologist for the San Diego Unified School District's Mental Health Resource Center from 2002 to 2021. As a member of the Mental Health Resource Center's interdisciplinary team, she diagnosed, assessed, and treated children and adolescents with mental health needs.

In 20 years of private practice, Dr. Weckerly conducted neuropsychological and neuropsychiatric testing and diagnostic consultations, with a focus on

- neurodevelopmental disorders,
- learning disabilities,
- attention deficit hyperactivity disorder,
- bipolar mood disorders,
- mood and anxiety disorders and
- explosive behavior disorders.

She also conducted neuropsychological and psychoeducational evaluations for various school districts within the county of San Diego, neighboring counties, and at the request

of parents. She had a master's degree in linguistics and two doctorates, one in cognitive science and linguistics, the other in clinical psychology. Dr. Weckerly had previously assessed Student in 2017, but was not involved in Student's education or conducted any other assessments of Student until 2021.

As part of her evaluation, Dr. Weckerly reviewed Student's medical and educational records, including Santee's December 17, 2020 multidisciplinary assessment report, and reports of Student's IEP progress as of June 24, 2021. She considered information from Father, Dodds, and Navalvez.

In addition, Student attended Sierra School for four weeks during the summer of 2021. Parents then reenrolled Student in Sierra School for the 2021-2022 school year. Dr. Weckerly considered information from Sierra School teacher Melissa Rivera, Sierra School BCBA Catherine Corrado, and Student's one-to-one aide at Sierra School. Dr. Weckerly also observed Student at Cajon Park on May 24, 2021, and at Sierra School on July 14, 2021. She administered assessment tools that measured Student's

- intellectual development,
- academic achievement,
- attention,
- working memory,
- visual processing,
- autism,
- adaptive functioning,
- executive functioning, and
- emotional functioning.

Dr. Weckerly's written report recommended, among other supports and strategies, that Student be placed in a small, structured, educational environment with systemic interventions targeted to those with autism. She also recommended that Student be supported by an aide with training in ABA and access to a BCBA-level supervisor for consultation. Dr. Weckerly also opined that Student required a BCBA-level staff member on-site at Student's school to support Student's transition to a new school. She further opined that it would be "difficult to see" how Student's needs could be met on a large school site without undue loss of instructional time given the number of variables that needed to come together, such as having a well-trained aide, on-site support from a BCBA during the transition to a new school, schedule adjustments, traveling through a larger campus, access to a sensory room that met Student's needs, and adjusting to the return of Horning when she returned from leave.

The IEP team convened on November 17, 2021, to review Dr. Weckerly's assessment report. At the meeting, Dr. Weckerly opined that Santana High was not a good match for Student, and that Student would likely lose instructional time during a transition. Dr. Weckerly was concerned that Student would not be able to navigate or have the endurance to travel a larger campus due to his cerebral palsy. She was also concerned Student would have difficulty safely navigating the school as he was prone to bump into others in the hallway.

Dr. Weckerly testified at the hearing and offered the same opinion that Santana High was not appropriate for Student. She opined that a lot had to come together for the placement at Santana High to work. She toured Santana High for about an hour in August 2021, while school was in session, and observed the school's moderate/severe

special day class, walked parts of the campus, and saw students transition. She opined that based on Student's mobility issues and inability to walk long distances, the size of Santana High's campus would be a problem for Student.

However, the evidence did not support the concerns of Student's experts, including Dr. Weckerly. Rather, a preponderance of the evidence established that Santana High's campus size and student population would not impede Student's ability to access his education. For example, in comparison, Cajon Park was a comprehensive campus consisting of students from kindergarten through eighth grade, with an estimated 1,000 students enrolled during each of the 2020-2021 and 2021-2022 school years. Classrooms for kindergarten to fifth grade were located in one area of the campus, and sixth to eighth grade in another area. Students could access the entire campus without restrictions, and the entire school shared areas for lunch and gatherings. While a large in campus size and student population, there was no persuasive evidence provided that showed Student had difficulty navigating the Cajon Park campus or accessing his education at that site.

Santana High had a larger student population, between 1,700 to 1,800 students, compared to Cajon Park. The school was about a mile away from Cajon Park. Santana High's school campus, with its more developed sports fields and additional facilities, and a student park lot, was also physically larger compared to Cajon Park.

Grossmont Unified's school psychologist Freeman testified. Freeman was familiar with both Cajon Park and Santana High. She spent weeks each school year during the Spring semester at Cajon Park to attend transition IEP team meetings. She was familiar with the size of Cajon Park, and could knowledgeably compare its size to Santana High,

where she was assigned the past eight years. She persuasively described Santana High as comparable in size to Cajon Park, with classroom buildings situated closely for easy mobility.

Stibor, Navallez, and instructional aide Debra Shands testified at the hearing and offered persuasive testimony establishing Santana High was an appropriate placement. Shands was Student's one-to-one aide from the time Student was three and half years old, until Student completed eighth grade. For 10 years Shands shadowed him throughout the school day at Cajon Park. Navallez, Stibor, and Shands were the witnesses most familiar with Student's academic and functional abilities in a large school setting, with years of experience working directly with Student. Accordingly, their written opinions and testimony were persuasive and given substantial weight.

Navallez testified that Student could use the stairs and walk through the Cajon Park campus, such as to the library and cafeteria, without physical support. Stibor echoed Navallez's observations that Student had no problems physically navigating the lower and upper areas of Cajon Park. In addition, Shands did not report any concerns about Student's mobility to traverse the Cajon Park campus, nor concerns about his stamina, or ability to navigate the hallways with other students. Stibor, Navallez, and Shands each observed that Student did not display mobility issues at school or bump into others in the hallway.

In addition, Student needed prompting by Shands to get to his destination as he would get distracted. Student responded well to prompts and was easily redirected. Student did not elope from Shands when transitioning between classes. Student offered no persuasive evidence that Student could not safely walk through a school parking lot with the help of an aide as he transitioned between classes.

Student's recent assessments at Santee also established that Student had no difficulty maneuvering a large school campus. In the Fall of 2020, the school nurse found no concerns about Student's mobility. In addition, the September 22, 2020 Adapted Physical Education Assessment found Student would typically run and walk half a mile in physical education class and complete physical fitness workouts for 20 to 30 minutes continuously. Student's stamina was not a problem at school.

Furthermore, Santee's Fall 2020 occupational therapy assessment found Student could navigate his school environment and find classrooms and office with the supervision of his aide. In conducting the Fall 2020 occupational therapy assessment, Santee's occupational therapist reviewed Student's records, interviewed Navalez, observed Student, and administered measurement tools.

One measurement tool used by the assessor was the EASY-OT assessment. The EASY-OT consisted of four different performance-based observational checklists and developmental assessment forms. The assessment was valid for student in grades preschool through 12th grade, and could be used for students with severe cognitive impairments, autism, and physical disabilities. The EASY-OT assessed a student's skills in the areas of fine and gross motor, visual perception, visual-motor, and self-help, and included an observation of a student's classroom performance. As to Student's gross motor skills, the assessor found Student could navigate the school campus, including opening doors, and ascend and descend stairs with the use of the handrail; taking one step at a time, with both feet on the step before taking the next step.

In addition, the occupational therapist observed Student to safely navigate the various school surfaces such as concrete and dirt, and stairs if supervised. Student also

moved around obstacles such as chairs and desks, and located rooms on campus such as the school office, nurse's office, and bathroom, without problems. The assessor persuasively opined that Student's ability to navigate the classroom and campus were areas of relative strength. Student offered no persuasive evidence to suggest Student could not apply those same strengths at Santana High.

Dr. Weckerly's experience and training were extensive; however, her understanding and impressions of Student's placement needs did not align with Santee's credible assessments and the testimony from persuasive witnesses with more extensive, frequent, and direct experiences with Student in the school setting. She did not consider the April 14, 2021 Transition IEP, and the September 22, 2020 adapted physical education assessment report as part of her assessment, nor did she interview Shands.

In addition, Dr. Weckerly did not observe Student transitioning between classes at Cajon Park, or observe Student in a general education setting. Furthermore, she offered no persuasive explanation as to why Student successfully tolerated changes to a new school, routine, one-to-one aide, and teacher at Sierra School, and why similar changes at Santana High would be too challenging for Student. Dr. Weckerly did not offer an explanation regarding the findings of Santee's assessors that Student could safely navigate his school environment and find classrooms and offices with the supervision of his aide. Accordingly, her opinion that Santana High was not an appropriate placement for Student was not persuasive.

In addition, the evidence did not demonstrate the additional number of students at Santana High compared to Cajon Park would overwhelm Student. Student was

SENSORY ROOM

Student's contention that Santana High did not have an adequate sensory room was not supported by the evidence. Student required a sensory room to self-regulate. To meet this need, Grossmont offered Student a sensory room at Santana High as part of the IEP offer. Student acknowledged that a sensory room was offered, but complains it was not an appropriate size to meet Student's unique needs.

During hearing, Dodds testified that Student paced to regulate and needed an enclosed space large enough to allow him to pace. Dodds explained that too large of a space, or an open space, may only increase Student's excitement, and was therefore not recommended. Dodds opined that the rectangular sensory room at Cajon Park was the right size and shape.

Dodds toured Santana High following the May 12, 2021 IEP team meeting. She testified that the proposed sensory room at Santana may not have enough space to allow Student to pace. Father also toured Santana High and observed the proposed sensory room in May 2021. Santana High's proposed sensory room at the time of Father's tour was not setup for use because, as Horning explained at the hearing, none of Horning's students at the time required the use of sensory room. Father testified that the size of Santana High's proposed sensory room was too small.

However, the actual dimension of the Santana High's proposed sensory room was not established, nor was there testimony or any evidence to show that Student required a sensory room with a specific configuration or a minimum square footage. Furthermore, no testimony or evidence was offered to describe the nature of Student's pacing that necessitated a room larger than any available room at Santana High. The

evidence failed to show, for example, that Student paced in long laps, or typically walked so many paces before turning and pacing back so many paces, and therefore, required a room with at least so many feet in length and width. Dobbs and Father testified only that Student needed a room large enough to allow him to pace. In addition, Dr. Weckerly did not observe Student using the sensory rooms at Cajon Park or Sierra School to pace and self-regulate, and therefore could not persuasively substantiate Parents' and Dobbs' concerns. Assertions that Santana's sensory room was simply not large enough was not persuasive.

The evidence did not establish that Santana High's campus size and student population size were barriers to Student's education, or that its sensory room was too small to meet his sensory needs. Accordingly, Student failed to meet his burden of proving Grossmont Union denied Student a FAPE at the April 14, May 12, August 25, and November 17, 2021 IEP team meetings by failing to offer an appropriate placement based on the size of Santana High's proposed sensory room.

BEHAVIOR SUPPORT PERSONNEL

The evidence did not support Student's claims that he required an RBT to function as his one-to-one aide or a BCBA on-site at school. An RBT was trained in ABA and board certified to provide ABA therapy. RBTs receive 40 hours of training prior to certification, are supervised by a BCBA, and are recertified each year by the supervising BCBA. A person trained in ABA, but not an RBT, sometimes referred to as a behavior interventionist, does not have the same certification requirements of an RBT.

Student's physician, Michael McManus, M.D., prepared a letter dated February 1, 2021, provided to Grossmont Union prior to June 24, 2021. Dr. McManus treated Student for autism, with a focus on medication management and supportive

psychotherapy. He noted that Student enjoyed school, and with the support of Student's family and school, had made very good academic progress. He opined that Student's school program with a small student to teacher ratio, and support from a one-to-one aide, was necessary due to Student's autism, which at times could be severe. Dr. McManus explained that Student could become intensely anxious, agitated, or frustrated, which could result in repetitive and stereotypic behaviors that required skilled and rapid intervention. Dr. McManus further opined that Student's educational needs could best be met, and he could achieve the highest level of academic success, in a nonpublic school setting, with staff trained in educating persons with autism.

However, Dr. McManus failed to explain why Student required a nonpublic school when Student was successful at Cajon Park, a comprehensive public school. Furthermore, Dr. McManus offered no explanation as to why another public school with a class that had a small teacher to student ratio, and staff trained and experienced in educating students with autism could not also successfully serve Student. For these reasons, Dr. McManus's recommendation for only a nonpublic school was not supported by a preponderance of evidence, nor was it persuasive.

Student did not require a dedicated RBT to support him. Grossmont Union offered a robust program that included 50 hours of BCBA consultation at the start of the school year, provided by Dodds and her agency to support Student's transition to high school. A primary objective of the 50 hours of BCBA consultation was to train Student's new one-to-one aide just prior to, and during the first weeks of the school year. Dodds opined this was an appropriate offer to meet Student's behavior needs, stating the

50 hours was a “great start” to train an aide. Moreover, Santana High employed instructional aides trained to support students with behavioral challenges.

In addition, Shands’s demonstrated ability to effectively support Student was further evidence that an RBT was not needed to support Student’s behavioral needs. Shands was not a behavior interventionist for Santee, nor an RBT, but could effectively redirect and respond to Student’s problem behaviors once familiar with Student’s problem behaviors, and after receiving ABA training from Dodds.

Furthermore, Student’s attendance at Sierra School for the 2021-2022 school year was further evidence he did not require an RBT as an aide. Student attended Sierra School for four weeks during the summer of 2021. Sierra School assigned Student a behavior specialist as his one-to-one aide during the summer. A behavior specialist did not have the same level of training as an RBT. At hearing, Corrado explained that during the 2021 summer, with less staffing needs, the behavior specialist was available to provide the individualized support to Student, but typically, Sierra School’s behavior specialist supported the entire school, and did not provide one-to-one support. For the 2021-2022 school year, Sierra School assigned Student a different one-to-one aide who was not a behavior specialist or an RBT. Corrado persuasively testified that Student did not require full-time one-to-one support by a behavior specialist or RBT.

Given the foregoing, a preponderance of the evidence established that an instructional aide with behavioral training, trained by a Dodds and her agency, as offered by Grossmont, was reasonably calculated to meet Student’s behavioral needs at Santana High. Accordingly, Student did not require an RBT, or an aide with equivalent training, to support him as a one-to-one aide.

Furthermore, Student did not require a BCBA on-site at school at all times. Cajon Park did not have a dedicated BCBA on site at Cajon Park, yet Student's behavioral needs were met, and he was able to access his education.

In addition, Santana High's moderate/severe special day class was taught by Horning, who was a BCBA for 10 years, with experience working with children with autism and behavior problems. Horning was a special education teacher for four years, with a moderate/severe credential, allowing her to teach students with moderate to severe disabilities. She had a master's degree in special education, with an emphasis in autism.

Horning was also an autism specialist for a school district from September 2016 to June 2018. As an autism specialist, Horning developed, coordinated, and implemented educational programs for students with autism in special education and general education settings.

Horning also worked for a nonpublic agency/school for eight years. She began as a teacher at the nonpublic school for three years. In 2011, she transitioned to a lead site supervisor. As a lead site supervisor, she completed functional behavior assessments, wrote behavior reduction and educational support plans, and trained school staff, behavior interventionists, clinical supervisors, and families on ABA methodologies. Horning also collaborated with school personnel on IEP goals and classroom behavior support plans.

In 2013, Horning was promoted to an area manager, overseeing a staff of approximately 60 behavioral interventionists and case supervisors. As an area manager, she consulted with teachers and school district personnel on writing functional assessments and IEPs, and oversaw the implementation of multiple methodologies for behavioral therapy for children with autism in the home, school, and clinic settings.

The evidence established that the personnel available to Student at Santana High, which included aides with behavior training, 50 hours of BCBA consultation by Dodds and her agency at the onset of the 2021-2022 school year, in addition to the 600 minutes a month of ongoing BCBA consultation services, along with Horning's experience and training, could support Student's behavioral needs. Therefore, a dedicated BCBA at Santana High or an RBT to provide one-to-one support was not required for Student to receive a FAPE.

Furthermore, the evidence demonstrated that the April 14, 2021 Transition IEP's accommodations, supports, program modifications, specialized academic instruction and related services, which carried over from the December 17, 2020 IEP, with inconsequential adjustments to the minutes of specialized academic instruction and individualized aide support to coincide with Grossmont Union's daily instructional time, were appropriate to meet Student's needs at Santana High. A preponderance of the evidence established that the December 17, 2020 IEP, as delivered in Cajon Park, met Student's needs, enabled him to access his education, and make meaningful educational progress. Parents acknowledged at the April 14, 2021 IEP team meeting, and Student's experts agreed, that Student's program at Cajon Park was appropriate, as Dr. Weckerly opinioned at the hearing that the program at Cajon Park was working for Student,

and that Student was benefitting from the program. Therefore, Grossmont Union reasonably calculated that the same program of accommodations, supports, program modifications, specialized academic instruction, and related services as offered in the April 14, 2021 IEP, could meet Student's needs to enable him to access and benefit from his education at Santana High.

In sum, Student failed to prove that Santana High's campus size and student population were barriers to Student's educational success. He also failed to prove Santana High did not have an adequate sensory room, or that the personnel available at Santana High could not support his needs.

Finally, the evidence established that Grossmont Union's program offer at Santana High was the least restrictive environment that maximized Student's opportunities to mainstream in light of the continuum of program options. The placement at Santana High with its unique combination of location, facilities, equipment, and personnel was reasonably calculated to enable Student to meaningfully benefit from his education. Accordingly, Student failed to meet his burden of proving Grossmont Union denied him a FAPE by failing to offer an appropriate placement at the April 14, May 12, August 25, and November 17, 2021 IEP team meetings.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1:

Grossmont Union did not deny Student a FAPE by offering an unclear and inconsistent 30-day interim IEP, developed on April 14, and May 12, 2021, that failed to accurately reflect the offer of general education classes in physical education and an elective class.

Grossmont Union prevailed on Issue 1.

ISSUE 2:

Grossmont Union did not deny Student a FAPE by failing to offer Student a comparable program, by offering Student a general education course at the April 14 and May 12, 2021 IEP team meetings.

Grossmont Union prevailed on Issue 2.

ISSUE 3:

Grossmont Union did not deny Student a FAPE by failing to offer Student an appropriate placement at the April 14, May 12, August 25, and November 17, 2021 IEP team meetings.

Grossmont Union prevailed on Issue 3.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings