

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT.

CASE NO. 2023070441

DECISION

January 8, 2024

On July 17, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Grossmont Union High School District, called Grossmont Union. On August 17, 2023, OAH granted the parties' joint request to continue the hearing to October 31, 2023. Administrative Law Judge Laurie Gorsline heard this matter by videoconference on October 31 and November 1, 2, 7, 8 and 9, 2023.

Meagan Nunez represented Student. Parent attended all hearing days on Student's behalf. Iris Gomez represented Grossmont Union. David Napoleon, Interim Director of Special Education, attended all hearing days on Grossmont Union's behalf.

At the parties' request the matter was continued to November 30, 2023, for written closing briefs. The record was closed, and the matter was submitted on November 30, 2023.

## ISSUES

The day before the hearing began, Student withdrew the following issues listed in the Order Following Prehearing Conference for Hearing by Videoconference dated October 23, 2023:

- Under 1.a, issues 1, 2, and 5;
- Issue 1.b;
- Issue 1.e;
- Issue 1.f;
- Issue 1.g;
- Issue 2.a;
- Under 2.b, issues 1, 2, 5, and 9;
- Issue 2.c;
- Issue 2.d;
- Issue 2.f;
- Issue 2.g; and
- Issue 2.h.

On the first day of hearing, Student further clarified that in Issue 1, the 2022-2023 regular school year was not at issue, only the 2023 extended school year.

The remaining issues for hearing, as clarified on the first day of hearing and reflected on the record, are stated below. For clarity of the record, the remaining issues for hearing have not been renumbered, but are listed with the same numbers and letters as set forth in the Order Following Prehearing Conference. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Grossmont Union deny Student a FAPE during the 2023 extended school year by:
  - a. Failing to offer Student appropriate services and supports in the May 2023 IEP in the following areas:
    3. Behavior?
    4. Transition plan to a comprehensive campus?
    6. Specialized academic instruction?
    7. Counseling and guidance?
    8. Occupational therapy?
    9. Extended school year?
  - c. Failing to make a clear and specific offer of FAPE at the May 2023 IEP?
  - d. Failing to offer Student an appropriate educational placement in the May 2023 IEP?

(This space is intentionally blank. Text continues on following page.)

2. Did Grossmont Union deny Student a FAPE during the 2023-2024 school year, including extended school year 2024, by:
  - b. Failing to offer Student appropriate services and supports in the July 13, 2023 IEP, in the following areas:
    3. Behavior?
    4. Transition plan to a comprehensive campus?
    6. Specialized academic instruction?
    7. Counseling and guidance?
    8. Occupational therapy?
  - e. Failing to offer Student an appropriate educational placement in the July 13, 2023 IEP?

## JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case, Student 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 an 18-year-old young man at the time of the hearing. Student assigned his educational rights to Parent on May 5, 2023. In October 2023, a court appointed Parent as Student's conservator. Student resided within Grossmont Union's geographic boundaries at all relevant times. Student was first eligible for special education and related services in 2008, and as of at least December 2, 2021, Student was eligible under the primary category of autism and secondary category of speech or language impairment.

Student attended school at Grossmont Union's Valhalla High School, called Valhalla, until November 2020, during his 10th-grade year, when Parent unilaterally, privately placed him at a non-public school called Sierra School of San Diego. From November 2020 through the time of hearing, Student attended Sierra School. He completed 12th grade at the end of the 2022-2023 school year. At the time of the

hearing, Student was participating in Sierra School's adult transition program during the 2023-2024 school year. Student never re-enrolled in a Grossmont Union school after he began attending Sierra School in November 2020.

## BACKGROUND

### STUDENT'S HISTORY OF DISTANCE LEARNING AND IN-PERSON LEARNING DURING THE 2019-2020 AND 2020-2021 SCHOOL YEARS

Student attended school in-person at Valhalla for most of ninth grade, during the 2019-2020 school year. Because of the COVID-19 pandemic, he participated in distance learning, otherwise known as online learning, between March 2020 and the end of that school year. Student continued to participate in distance learning during the 2020-2021 school year at Valhalla until Parent chose to enroll him at Sierra School in November 2020. Student continued to participate in distance learning at Sierra School until sometime in the spring of 2021, when he began participating in a hybrid program, comprised of both online and in-person learning. He participated in in-person learning during the 2021-2022 school year. During the 2021-2022 school year, Student was enrolled in a modified curriculum at Sierra School that would lead to a certificate of completion, not a regular high school diploma.

### THE 2020 DISPUTE AND JANUARY 8, 2021 AGREEMENT

Parent filed a due process hearing request with OAH in November 2020, alleging a denial of FAPE during the 2019-2020 and 2020-2021 school years, which Grossmont Union denied.

On January 8, 2021, the parties agreed in writing that

- Student's October 13, 2020 IEP, which included placement at a Grossmont Union comprehensive school site, was the last agreed-upon IEP for Student and that Student was a voluntarily, parentally placed private school student at Sierra School, and
- his attendance at Sierra School was not a placement through the IEP process or a FAPE determination by Grossmont Union.

The parties also agreed that Grossmont Union would reimburse Parent for tuition at Sierra School through December 31, 2021. Student's October 13, 2020 IEP was not part of the hearing exhibits.

The parties also agreed Grossmont Union would conduct a three-year re-evaluation of Student. Grossmont Union was required to convene an IEP team meeting within legal timelines to review the assessments and develop a new IEP for Student for the 2021-2022 school year. The parties agreed that through the term of the agreement, Grossmont Union was not otherwise required to convene IEP team meetings or responsible for implementing Student's IEP. The term of the agreement was through December 31, 2021, or until Grossmont Union made a complete offer of FAPE after it reassessed Student, whichever was earlier.

## THE 2021 THREE-YEAR REASSESSMENTS AND DECEMBER 2, 2021 IEP

Pursuant to the January 8, 2021 written agreement, Grossmont Union conducted a multidisciplinary special education evaluation documented in a psychoeducational report dated November 17, 2021. The assessment team included a school psychologist,

and Tenzin Peling, who was a credentialed education specialist, who later became Grossmont Union's assistant director of special education sometime around 2021 or 2022. The assessment instruments included record review, interviews, observation, and a series of standardized or norm-referenced tests and rating scales. A standardized test of intelligence producing an intelligence quotient score was not administered because Student was African American. (See *Larry P. v. Riles* (9th Cir. 1984) 793 F.2d 969.)

Grossmont Union made an offer of special education and related services in an IEP dated December 2, 2021 IEP, developed over the course of three IEP team meetings on December 2 and 17, 2021, and January 11, 2022. The IEP team meetings were attended by Parent, Parent's lay advocate Barbara Major, and representatives from both Grossmont Union and Sierra School, among others. The notes documented the IEP team agreed that coursework toward a certificate of completion was an appropriate course of study.

Grossmont Union offered Student placement in a comprehensive-school educational program with specialized academic instruction in a course of study on a modified curriculum leading to a certificate of completion. Specifically, Grossmont Union offered Student goals in the areas of

- English language arts,
- math,
- social/emotional/behavioral functioning,
- vocational skills,
- adaptive skills,
- pragmatics, and
- receptive and expressive language.



Grossmont Union offered Student specialized academic instruction for 1,036 minutes weekly in a special day class for academics. The IEP listed the specialized academic instruction minutes as provided "daily" instead of weekly, but that was a typographical error. The IEP also offered 1,100 minutes a year of group language and speech services, and 50 minutes a year of group instruction in each of the following areas: college awareness, career awareness, and mentoring. Grossmont Union also offered Student an extended school year program with specialized academic instruction and speech services. Grossmont Union offered Student placement 47 percent of the school day outside the regular classroom/activities and 53 percent in the regular classroom/activities. Grossmont Union offered Student all the special education and related services at Valhalla, a comprehensive school site.

## THE 2022 DISPUTE AND THE APRIL 20, 2022 AGREEMENT

Parent did not agree with the offer of FAPE made in the December 2, 2021 IEP. On or around February 24, 2022, Parent requested Grossmont Union allow Student to remain privately placed at Sierra School and reimburse Parent for tuition.

On April 20, 2022, the parties agreed in writing that Student's December 2, 2021 IEP, including placement at a Grossmont Union comprehensive school site, was the last agreed-upon IEP for Student. The parties also agreed Student's continued placement at Sierra School was as a voluntary, parentally selected, private-school placement, not a placement through the IEP process or a FAPE determination by Grossmont Union. The parties also agreed Grossmont Union would reimburse Parent for tuition she had paid or would pay to Sierra School from January 1, 2022, through June 16, 2023.

The parties also agreed Grossmont Union would conduct re-evaluations in the areas of vocation and social/emotional functioning and that Grossmont Union would send Parent an assessment plan no later than March 1, 2023. Grossmont Union was required to convene an IEP team meeting within legal timelines to review the re-evaluations and develop a new IEP for Student. The parties agreed that through the term of the agreement, Grossmont Union was not otherwise required to convene IEP team meetings or continue to develop or implement Student's IEP. In the April 2022 agreement, Grossmont Union retained the right to attend meetings held by Sierra School, and Parent was required to provide Grossmont Union with five days written notice of those meetings.

The term of the agreement was through June 5, 2023, or until Grossmont Union made a complete offer of FAPE after it reassessed Student, whichever was earlier. Grossmont Union's sole responsibility throughout the term of the agreement was to reimburse Parent for tuition at Sierra School. If Parent wanted Student to attend a Grossmont Union school at any time during the term of the agreement, Parent was required to provide Grossmont Union with at least 30 days prior written notice. In that case, the special education and related services offered in the IEP dated December 2, 2021, was what Student would receive as his stay-put program, unless and until the parties agreed to something else.

On March 1, 2023, Grossmont Union provided Parent an assessment plan for evaluation in the areas of social-emotional functioning/behavior and post-secondary transition. Parent signed and returned it by email on Sunday, March 12, 2023. Grossmont Union was on spring recess and there were no classes from April 3 through 14, 2023. That two-week period extended the time for Grossmont Union to complete its assessments and hold an IEP team meeting. (See Ed. Code, §§ 56043,

subds. (c) & (f), 56344, subd. (a) [a school district has 60 days from the date it receives the parent's written consent for assessment, excluding vacation and days when school is not in session in excess of five schooldays, to complete the assessments and develop an IEP, unless the parent agrees in writing to an extension].)

Pursuant to the April 2022 written agreement, Grossmont Union conducted a re-evaluation of Student in spring 2023. The assessment team included Grossmont Union program specialist Peter Grogan who was a credentialed special education teacher, and credentialed school psychologist Malinahi Armendariz. The assessment instruments included a record review, interviews, observations, and standardized rating scales completed by Parent and Student's Sierra School teacher.

Sierra School attempted to schedule an IEP team meeting with Grossmont Union and Parent for May 12, 2023. In anticipation of holding an IEP team meeting on May 12, 2023, Grossmont Union prepared a draft IEP dated May 12, 2023, including a draft individual transition plan. However, by May 1, 2023, Sierra School informed Parent that Grossmont Union personnel were not available on May 12, 2023, and the IEP team meeting would have to be held later in May 2023.

Sierra School held its own meeting on May 12, 2023, without any Grossmont Union representatives and prepared its own private education plan for Student, which it called an "individual education plan." The May 12, 2023 meeting convened by Sierra School was not an IEP team meeting as that term is defined under the IDEA and the California Education Code, and the Sierra School individual education plan was not an IEP.

Sierra School's individual education plan offered a certificate of completion course of study with an anticipated completion date of June 2027, along with

occupational therapy and counseling services, each for 960 minutes per year, speech and language therapy for 1,920 minutes a year, 366 minutes of daily specialized academic instruction, and extended school year services. Sierra School's education plan contained information from a transition assessment, including input from Student and his teacher, and post-secondary proposed goals. Parent consented to Sierra School's individual education plan on May 13, 2023, and Parent sent a copy of the plan to Grossmont Union on May 18, 2023.

### PARENT OBTAINED A PRIVATE ASSESSMENT IN MAY 2023

On March 7, 2023, Parent wrote an email to licensed clinical psychologist Jill Weckerly, Ph.D. requesting an assessment to determine if Sierra School was still meeting Student's needs. Dr. Weckerly, in private practice since 2001, first met Student in 2019 when Parent contacted Dr. Weckerly and requested a psychoeducational evaluation. By March 7, 2023, Dr. Weckerly had twice assessed Student, which included a 2021 independent psychoeducational evaluation. In the March 7, 2023 email, Parent stated she left it up to Dr. Weckerly to determine whether an entirely new psychoeducational assessment was needed or whether a "partial assessment/observation" would suffice to speak at an IEP team meeting about the appropriateness of Student's placement.

On March 16, 2023, Dr. Weckerly agreed to update her assessment by doing an observation, a records review, interviews, and rating scales. Dr. Weckerly completed an evaluation of Student on May 9 and 15, 2023. The evaluation included administration of an academic achievement test, behavior rating scales, and adaptive behavior rating scales. Dr. Weckerly documented the results of her independent assessment in a May 2023 report. On May 23, 2023, Parent sent a copy of Dr. Weckerly's evaluation report to Grogan.

## GROSSMONT UNION CONVENED A MAY 24, 2023 IEP TEAM MEETING

After Grossmont Union conducted its spring 2023 re-evaluation, Grossmont Union prepared a written assessment report dated May 24, 2023. On May 24, 2023, Grossmont Union convened an IEP team meeting pursuant to the April 20, 2022 written agreement between the parties, which required Grossmont Union to develop a new IEP for Student after conducting its limited assessments. At the May 24, 2023 IEP team meeting, the IEP team discussed the 2023 assessments Grossmont Union and Dr. Weckerly conducted and the adult transition program located at Valhalla, but Grossmont Union did not make an offer of special education and related services at that time. There was no written document proffered at hearing called the May 24, 2023 IEP. The May 24, 2023 IEP team meeting is discussed in more detail below.

ISSUES 1.a.3, 1.a.4, 1.a.6, 1.a.7, 1.a.8, 1.a.9, 1.c, AND 1.d: DID GROSSMONT UNION DENY STUDENT A FAPE DURING THE 2023 EXTENDED SCHOOL YEAR BY FAILING TO OFFER STUDENT APPROPRIATE SERVICES AND SUPPORTS IN THE MAY 2023 IEP IN THE AREA OF BEHAVIOR, A TRANSITION PLAN TO A COMPREHENSIVE CAMPUS, SPECIALIZED ACADEMIC INSTRUCTION, COUNSELING AND GUIDANCE, OCCUPATIONAL THERAPY, OR EXTENDED SCHOOL YEAR SERVICES?

Student contends Grossmont Union denied Student a FAPE in the May 24, 2023 IEP because it failed to offer behavior supports necessary for Student to transition from Sierra School to the Valhalla adult transition program, or within the Valhalla adult transition program itself. Student argues that given his history of behaviors and current needs as described at the May 24, 2023 IEP team meeting by Student's assessor Dr. Weckerly and

Parent's lay advocate Major, there were insufficient positive behavior supports considered or offered at the May 2023 IEP team meeting. Student also argues Grossmont Union was required to offer a comprehensive transition plan at the May 24, 2023 IEP team meeting to assist him in any move from Sierra School to public school at Valhalla because of his rigid thinking and cognitive inflexibility, and the failure to do so denied him a FAPE. Student asserts the amount of academic instruction at Valhalla's moderate-severe adult transition program was less rigorous and less frequent than in the adult transition program Student was attending at Sierra School, and that continued academic instruction was important for Student. Student contends that the failure to offer Student any counseling and guidance services denied him a FAPE when Grossmont Union knew Sierra School had been providing him with counseling services, and Grossmont Union was aware of Student's social-emotional needs.

Student also maintains that Grossmont Union's failure to offer occupational therapy services at the May 24, 2023 IEP team meeting denied him a FAPE, because Student was receiving occupational therapy services at Sierra School to address his difficulties with self-regulation. Student contends the failure to offer 2023 extended school year services at the May 24, 2023 IEP meeting was a denial of FAPE, given Student's well-documented need for those services. Student argues that although program specialist Grogan prepared a draft of an IEP dated May 12, 2023, which included extended school year services, Grossmont Union never provided that draft IEP to Parent before the hearing. Student also claims it was unclear from the December 2, 2021 IEP that Student could have received 2023 extended school year services.

Regarding Issue 1.c, Student argues Grossmont Union made a verbal offer at the May 24, 2023 IEP team meeting, but it denied Student a FAPE because the offer was

unclear and lacked specificity. Student argues Parent understood that Grossmont Union was offering the adult transition program at Valhalla because the IEP team did not discuss any other potential placement options, but it was unclear what classroom was being offered. Student asserts Grossmont Union never gave Parent a formal written offer following the May 24, 2023 IEP team meeting and the only documents Parent received were the special factors page and the two-page transition plan documents, neither of which described the type or amount of special education and related services offered. Finally, regarding Issue 1.d, Student claims that the adult transition program at Valhalla was not reasonably calculated to enable Student to make progress or tailored to meet his needs in the areas of behavior, transition, academics, counseling, or domains addressed by occupational therapy, and the offer was not made by a group of people familiar with Student.

Grossmont Union contends Parent never asked for an offer of FAPE for the 2023 extended school year. Grossmont Union also argues that because Student was a parentally placed private school student, he was not entitled to a FAPE despite the fact it was updating Student's IEP. It maintains it was always willing to implement Student's last consented-to IEP dated December 2, 2021, had Student re-enrolled Student in the school district, by providing comparable services as it would to a student transferring over the summer.

Grossmont Union argues that the May 24, 2023 IEP team meeting constituted only "part one" of Student's IEP, and that due to time constraints, the IEP team did not have the opportunity to do a comprehensive review. Grossmont Union asserts that Parent limited her participation to one hour and Parent would not consent to starting the meeting without lay advocate Major, who arrived late. Grossmont Union argues the bulk of the meeting was spent reviewing its assessments and the independent

evaluation conducted by Dr. Weckerly, and it was unreasonable for Student to expect it to conduct a comprehensive IEP team meeting and make an offer of FAPE in less than one hour. Grossmont Union contends it advised Parent that a “part two” might be necessary, and that it made an offer of FAPE in part two of the meeting, which occurred on July 13, 2023. Grossmont Union further argues that it was not obligated to make a FAPE offer at the May 24, 2023 IEP team meeting, and that convening a second IEP team meeting to foster Parent’s meaningful participation was not impermissible.

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; see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a).)

In general, a child eligible for special education must be provided access to specialized instruction and related services that 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 [102 S.Ct. 3034]; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 403 [137 S.Ct. 988, 1000].)

An IEP is a written document for each child with a disability that includes a statement of the child’s present levels of academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345 subd. (a)(1).) An IEP must contain a statement of the special education



and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual goals. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

In developing the IEP, the IEP team shall consider

- the strengths of the child,
- the concerns of the parents for enhancing the education of their child,
- the results of the initial evaluation or most recent evaluation of the child and
- the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).)

For each area in which a special education student has an identified need, the IEP team must develop annual goals that are based upon the child's present levels of academic achievement and functional performance. (Ed. Code, § 56345, subd. (a)(2); *Letter to Butler*, Office of Special Education and Rehabilitative Services (March 25, 1988).)

Procedurally, the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b) & (c); Ed. Code, §§ 56304, 56341.) Each public agency must take steps to ensure the parents of a child with a disability are present at each IEP team meeting or

afforded the opportunity to participate, including (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting a mutually agreed on time and place. (34 C.F.R. § 300.322(a).)

A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693 (*N.L.*); *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*) [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].)

"[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994] (*Winkelman*)). Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882 (*Amanda J.*)). Parents not only represent the best interests of their child in the IEP development process, but also "provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know." (*Ibid.*) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 892; see also, *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*), *superseded in part by statute on other grounds* ["... procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].)

The fact that it may be difficult to schedule meetings or to work with a parent does not excuse a failure to include the parent in the IEP team meeting. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F.3d 1038, 1045 (*Doug C.*)). When confronted with competing IDEA procedural requirements, the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of FAPE. (*Id.* at p. 1046.) In reviewing an agency's actions in such a scenario, the agency will have reasonable latitude in making that determination. (*Ibid.*) A school district denies Student a FAPE where it holds an IEP team meeting to consider placement and services without parents even when parents had already decided the student would not be attending a district school. (*D.B. ex rel. Roberts v. Santa Monica-Malibu Unified School Dist.* (9th Cir. 2015) 606 Fed.Appx. 359, 360 [nonpub. opn.]; see also, *Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055 ["[T]he IDEA, its implementing regulations, and our case law all emphasize the importance of parental involvement and advocacy, even when the parents' preferences do not align with those of the educational agency."].)

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485; see *N.L., supra*, 315 F.3d at p. 693; *Fuhrmann, supra*, 993 F.2d at p. 1036.) "Participation must be more than mere form; it must be *meaningful*." (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted; emphasis in original] (*Deal*); see also, *Winkelman, supra*, 550 U.S. at p. 524 [127 S.Ct. 1994]; *Amanda J., supra*, 267 F.3d at p. 882.)

The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to, or by, the parent. (20 U.S.C. § 1414(d)(3)A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C);

Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A school cannot independently develop an IEP, without meaningful participation by the parent, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.) A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. Substantive harm occurs when parents are denied meaningful participation in a student's IEP development. (*Deal, supra*, 392 F.3d at p. 859.)

A school district that predetermines the child's program and does not consider parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal, supra*, 392 F.3d at p. 858; *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, *superseded on other grounds by statute*.) For IEP team meetings, predetermination occurs when an educational agency has decided on its offer prior to the meeting and is unwilling to consider other alternatives. (*Deal, supra*, 392 F.3d at p. 857-858; *H.B. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. opn.].) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn.10.)

Although school district personnel may bring a draft of the IEP to the meeting, the parents are entitled to bring to an IEP team meeting their questions, concerns, and recommendations as part of a full discussion of a child's needs and the services to be provided to meet those needs before the IEP is finalized. (*Assistance to States for the Education of Children Disabilities*, 64 Fed. Reg. 12478-12479 (March 12, 1999).) School officials may permissibly form opinions prior to IEP meetings. However, if the district

goes beyond forming opinions and becomes “impermissibly and deeply wedded to a single course of action,” this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D.Ohio, January 17, 2013, No. 1:11-CV-398) 2013 WL 209478, \*7.)

## THE MAY 24, 2023 IEP TEAM MEETING

The May 24, 2023 IEP team meeting was held by videoconference. The people who attended the May 24, 2023 IEP team meeting included

- Parent,
- Student’s lay advocate Major,
- Student’s independent assessor clinical psychologist Dr. Weckerly,
- school psychologist Armendariz,
- program specialist Grogan,
- a transition program specialist,
- two Valhalla adult transition program teachers including Erica Cibulka, who was a credentialed special education teacher and department chair of the transition program at Valhalla in 2023,
- Student’s Sierra School special education teacher Nichole Phillips, and a
- counselor, speech-language pathologist and occupational therapist from Sierra School.

During the May 24, 2023 IEP team meeting, Armendariz reviewed the social-emotional assessment with the IEP team. Dr. Weckerly then presented the private assessment Parent hired her to conduct in March 2023, the written report of which Parent sent to Grogan on the evening of May 23, 2023. After Dr. Weckerly reviewed her assessment with the IEP team, Grogan discussed his assessment, which

included his observation of Student while at Sierra School, reporting his discussions with and the input received from Sierra School, explaining the importance of transition skills, and discussing an individual transition plan and an IEP special factors page Grogan had started to write for Student. During the May 24, 2023 IEP team meeting, Grossmont Union transition personnel gave a very brief overview of the adult transition program located on the Valhalla campus. In response to an inquiry from Student's lay advocate, Grossmont Union staff stated the adult transition program was different than the Valhalla special day class program it offered Student in 11th grade, which was a high school classroom.

While Grogan reviewed the items on an IEP special factors page, lay advocate Major interrupted Grogan mid-sentence. Major claimed there were only three minutes left before Parent's doctor ordered Parent to rest. Major told the IEP team they could send the IEP to Parent, and Parent and Major would look at it. Major said it sounded like Grossmont Union was offering a program at the school district again, that Parent would want to tour it before agreeing to it, and Major would get back to them. Major then demanded to know from Dr. Weckerly and someone from Grossmont Union if Sierra School had been appropriate and if Student had been receiving benefit. After both Dr. Weckerly and Grogan acknowledged Student seemed to be making progress on his goals based on the reports they had received, Major launched into a speech. Major asserted Student had significant challenges with behavior and school-related anxiety prior to attending Sierra School and had not been very social but turned into a different child at Sierra School. Major claimed it was difficult to imagine pulling Student from Sierra School, and Student wanted to go to Sierra School. Major then stated, "we have" probed with Student the idea of doing something different for schooling, which

already led to “behavior and anxiety.” Major asserted Student had made educational gains at Sierra School and would continue to do so within its adult transition program.

Major stated that if Grossmont Union was offering something different, Parent would have to look at it and get back to Grossmont Union. Major then said, “And with that, I know [Parent] you have to log off.” Parent immediately said she would log off, and Major thanked everyone. Major asserted she did not know that any follow-up IEP team meeting was necessary, that Grossmont Union could just send the IEP, and “we will consider it.” Major again stated Parent would look at the Valhalla adult transition program. Before Parent signed off, Grogan asked Parent when she could look at the program, however, Parent was unsure because of her schedule, so Grogan said he would touch base with her.

On May 24, 2023, Grogan sent an email to Parent forwarding the pages reviewed at the IEP team meeting, specifically the individualized transition plan and the special factors pages. Grogan also stated he would propose dates for a tour of the adult transition program on the Valhalla campus.

## THE JUNE 2023 TOUR OF THE VALHALLA ADULT TRANSITION PROGRAM CLASSROOM AND PARENT’S DISAGREEMENT

On May 25, 2023, Grogan confirmed the tour of the adult transition program at Valhalla was scheduled for May 30, 2023. On May 25, 2023, Parent notified Dr. Weckerly by email that Grogan had set up the tour of the adult transition program at Valhalla for May 30, 2023, and asked if Dr. Weckerly could attend with Parent.

On May 26, 2023, Parent notified Grogan that she might have to reschedule the tour because “I was just informed I need to have Dr. Jill Weckerly attend with me,” and

Parent did not know if Dr. Weckerly was available on May 30, 2023. Dr. Weckerly never responded to Parent's email, so on May 28, 2023, Parent sent Grogan an email requesting that he propose other dates in June 2023.

On May 30, 2023, Dr. Weckerly notified Parent she could do the tour in early June 2023. Parent responded, "Since I didn't hear from you I told [Grogan] no!!! hahaha :)." On May 30, 2023, Parent sent an email to Grogan proposing three dates in early June 2023.

The first day proposed by Parent was not available because the students were scheduled for a field trip. On June 1, 2023, Grogan wrote an email to Parent explaining that the other two days proposed were the last two days of school and therefore would not be a typical school day because of end-of-the-year activities. Grogan asked if it would be preferable to observe the extended school year program but noted that it also would be slightly different than a typical regular school year day. The Grossmont Union 2023 extended year school year was two weeks, from June 12 to 30, 2023.

On June 5, 2023, Grogan confirmed the tour of the adult transition program at Valhalla was scheduled for June 7, 2023. The tour took place on June 7, 2023, the last day of school, led by special education teacher Cibulka, with Grogan, Parent, and Dr. Weckerly. Because it was the last day of school, it was not a typical school day. The tour took approximately one hour and 15 minutes. During the tour, Cibulka provided the participants with an overview of the program.

On June 14, 2023, Parent emailed Grogan, notifying him that she disagreed with Grossmont Union's offer of FAPE and that Dr. Weckerly was preparing a letter that detailed her concerns. Parent stated she would be placing Student at Sierra School and requesting reimbursement. On June 21, 2023, Dr. Weckerly prepared a draft of the



letter to Parent for Parent's input. After obtaining Parent's input, Dr. Weckerly finalized the letter and dated it June 26, 2023. Sometime before July 13, 2023, Parent provided Grossmont Union a copy of the June 26, 2023 letter from Dr. Weckerly regarding the Valhalla adult transition program.

On June 29, 2023, Grossmont Union sent Parent an invitation to an IEP team meeting scheduled for July 13, 2023. On July 6, 2023, Parent agreed to attend the IEP team meeting and signed written consent to excuse a general education teacher from attending. On July 13, 2023, Parent attended the IEP team meeting, and Grossmont Union made an offer of special education and related services, as further discussed below in Issue 2.

**STUDENT FAILED TO PROVE AN OFFER OF FAPE WAS MADE AT THE  
MAY 24, 2023 IEP TEAM MEETING OR THAT GROSSMONT UNION WAS  
REQUIRED TO MAKE AN OFFER OF FAPE AT THAT IEP TEAM MEETING**

Contrary to Student's arguments, Grossmont Union made no offer of FAPE at the May 24, 2023 IEP team meeting. The weight of evidence established that although Grossmont Union contemplated proposing the adult transition program on the Valhalla campus, it never had the opportunity to make an offer of special education and related services because of the actions of Parent and lay advocate Major.

At the outset, Parent and her advocate limited the length of the May 24, 2024 IEP team meeting to one hour. Parent and her advocate imposed this time limitation even though the IEP team had three assessments to review, in addition to discussing and obtaining input from the IEP team on all the other IEP components before Grossmont Union would have been in the position to make an informed offer of special education

and related services. Student offered no convincing evidence Parent had to limit her participation at the May 24, 2023 IEP team meeting to one hour. Parent claimed she had had hip surgery on April 11, 2023; however, the May 24, 2023 IEP team meeting was held by videoconference. Thus, attendance at the meeting did not require any traveling or walking by Parent.

Parent was also unpersuasive on this point because throughout her testimony, Parent demonstrated she was not a credible witness. She was not an accurate historian; she could not provide dates or names regarding key events that a reliable witness would have recalled. At various times, Parent's tone of voice, attitude, and the manner she answered the questions indicated a lack of sincerity. She was inconsistent or evasive in parts of her testimony, and she was impeached on material matters, including that she had never agreed to placing Student on a certificate of completion track, rather than a diploma track. Student's lawyer asked Parent questions suggesting the answers to some questions, which negatively impacted the weight given to Parent's testimony. Parent unconvincingly feigned ignorance about words or statements she wrote, or attempted to attribute meaning to them which was clearly contrary to her actual intent. (See, e. g., *Nelson v. Black* (1954) 43 Cal. 2d 612, 613 [A witness, who is willfully false in one material part of their testimony, may be distrusted in others.].) All these issues adversely impacted the overall trustworthiness of Parent's testimony.

Parent admitted she placed the time limits on the IEP team meetings, including the one held on May 24, 2023. When asked why she put time limits on the IEP team meetings, Parent testified her doctor did not want her to sit for too long. Conspicuously absent from Parent's explanation was any prohibition on sitting for more than one hour, or from standing or being in another posture. In short, Student presented no persuasive evidence Parent was not permitted to sit more than an hour, or that she could not have

stood or reclined so that the May 24, 2023 IEP team meeting could be properly completed. In fact, at some point during the meeting, Parent claimed she was standing and offered that her physical therapist told her she could not “sit” full time. Moreover, it was not Parent who stated that she could not remain at the May 24, 2023 IEP team meeting, but Parent’s advocate, who interrupted Grogan and unilaterally prompted Parent to log off before the IEP team could review any of the other necessary components of an IEP, a prerequisite to any FAPE offer.

Parent excessively brought up her hip surgery during her testimony to justify or explain her actions, but she also gratuitously interjected it while testifying, which came across as overacting and defensive, adversely affecting her credibility. Parent’s veracity regarding the one-hour sitting prohibition for the May 24, 2023 IEP team meeting was also doubtful because, as discussed in Issue 2 below, Parent unilaterally put the same one-hour time limit on the July 13, 2023 IEP team meeting, also held by videoconference, even though she admitted at hearing her medical leave had expired by mid-June 2023. The preponderance of evidence established that the artificial time limit Parent and Major imposed on the May 24, 2023 IEP team meeting interfered with Grossmont Union’s ability to complete the IEP.

Student’s arguments pertaining to the draft IEP dated May 12, 2023 IEP were also unpersuasive. Although Grogan prepared a draft IEP dated May 12, 2023 in anticipation of an IEP team meeting on May 12, 2023, he never gave a copy of the draft IEP to Parent because the May 12, 2023 IEP team meeting never took place due to Grossmont Union’s unavailability. Instead, the IEP team meeting took place on May 24, 2023. At the IEP team meeting on May 24, 2023, the IEP team never got much beyond reviewing the assessments Grossmont Union conducted and Dr. Weckerly’s independent evaluation. There was discussion about the individual transition plan, a

brief discussion of Grossmont Union's adult transition program, and the IEP team quickly reviewed the special factors page before Parent's advocate abruptly caused the meeting to be adjourned. The IEP team never got to a full discussion or review of the other components of the IEP, including but not limited to goal development, much less the special education, related services, and accommodations Student required, and Grossmont Union was offering. Grogan never provided Parent with a draft of the entire IEP because the May 24, 2023 IEP team meeting ended before it was fully reviewed and an offer of FAPE was made. Thus, there was no May 2023 IEP offer of FAPE for Student to challenge.

Student makes much of the fact this draft IEP dated May 12, 2023, contained an offer for 2023 extended school year services, which was never offered to Student at the May 24, 2023 IEP team meeting. However, any failure by Grossmont Union to offer 2023 extended school year services at the May 24, 2023 IEP team meeting was due to the actions of Parent and Major, who prevented the IEP team meeting from being completed, such that an offer could have been made. (Cf. *Amaya v. Chaffey Joint Union High School District* (C.D.Cal., April 28, 2022, ED-CV 5:20-1903-JFW(SHKx)) 2022 WL 3013181, at \*14, citing *Guevara, et al., v. Chaffey Joint Union High School District* (C.D.Cal., Sept. 29, 2022, No. ED CV 20-1929 FMO (SPx)) 2022 WL 16947936, at \*8, aff'd (9th Cir., Oct. 30, 2023, No. 22-56023) 2023 WL 7121409 [lay advocate's conduct interfered with the IEP process].)

The preponderance of the evidence established that Grossmont Union did its best to try to quickly move through the May 24, 2023 IEP team meeting. At the hearing, both Grogan and Valhalla adult transition special education teacher Cibulka described the May 24, 2023 IEP team meeting as "rushed." During the IEP team meeting itself, Dr. Weckerly referred to the discussion of her assessment as a "whirlwind tour." Because

Major adjourned, and Parent left, the May 24, 2023 videoconference IEP team meeting before the IEP team meeting could be completed, Grossmont Union was not required to make an offer of special education and related services at that time.

Indeed, at that point, Grossmont Union was left with nothing short of a “Hobson’s choice.” In other words, Grossmont Union was in the position of having to choose one of two objectionable alternatives. It could either do as Major requested by completing the IEP without Parent’s input and sending it to her to review, or instead, delay an offer to Student by arranging for Parent’s tour of the Valhalla adult transition program and schedule another IEP team meeting to complete the necessary discussions that were not had on May 24, 2023, to enable it to make an offer of special education and related services that took Parent’s input into account.

As discussed above, the Ninth Circuit has emphasized the parental participation safeguards are among the most important 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*, 267 F.3d at p. 892.) The Ninth Circuit has supplied some guidance to school districts faced with balancing competing commands of federal law. In *Doug C.*, *supra*, 720 F.3d 1038, a district scheduled an annual IEP team meeting just in time to meet the IDEA’s requirement that a meeting be held at least annually to consider the student’s progress on his goals and make revisions if appropriate. (See 20 U.S.C. § 1414 (d)(4)(A)(i); 34 C.F.R. § 300.324(b)(1).) The parent could not attend because of illness and sought postponement to a later date and the district refused, citing its obligation to hold the meeting within a year of the previous meeting. The court held the district to a reasonableness standard of taking the course of action that promoted the purpose of the IDEA and was least likely to result in

the denial of FAPE, determining that the school district denied the student a FAPE because it deprived the parents of adequate participation in the IEP process. (*Doug C.*, *supra*, 720 F.3d at p. 1046.)

Applying the *Doug C.* standard, the only reasonable course of action Grossmont Union could take on May 24, 2023, was to schedule the tour for Parent and defer development of the IEP to a later date, which is exactly what it did. Grossmont Union took immediate steps to schedule the tour in May 2023, but Parent requested to postpone the tour until June 2023. On June 29, 2023, Grossmont Union also rescheduled the IEP team meeting for July 13, 2023, and there was no evidence Parent either requested, or would have attended, an IEP team meeting scheduled on an earlier date. Rescheduling the IEP team meeting to a later date so Parent could attend, and after Parent toured the adult transition program at Valhalla, afforded Parent the opportunity to provide input and allowed for a full discussion of Parent's questions and concerns regarding Grossmont Union's recommendations in the development of Student's IEP.

Had Grossmont Union instead finalized the IEP on May 24, 2023, after Parent left the IEP team meeting, it would have denied Parent the opportunity to discuss the proposed IEP and prevented Parent from asking questions or otherwise participating in the development of an appropriate program for Student. At the time of the May 24, 2023 IEP team meeting, there was an IEP in place to which Parent had previously agreed. The December 2, 2021 IEP was the last consented-to IEP and the April 2022 agreement clearly acknowledged the December 2021 IEP would be Student's "stay-put" program. Continuing the IEP team meeting to the summer of 2023 did not leave Student without a program upon re-enrollment in Grossmont Union. Student failed to prove that proceeding on May 24, 2023, without Parent's participation in the development

of Student's IEP was less likely to result in the denial of FAPE than rescheduling the meeting for July 13, 2023. Postponing the IEP team meeting to July 2023, after Parent toured the adult transition program at Valhalla, to make an offer of special education and related services, promoted the purposes of the IDEA, including Parent's fundamental right to participate in the IEP formulation process, and was less likely to result in a denial of FAPE.

Student failed to prove Grossmont Union denied Student a FAPE during the 2023 extended school year by failing to offer appropriate services and supports in the May 2023 IEP in the areas of

- behavior,
- a transition plan to a comprehensive campus,
- specialized academic instruction,
- counseling and guidance,
- occupational therapy, or
- extended school year services.

Student also failed to establish that Grossmont Union denied Student a FAPE during the 2023 extended school year by failing to make a clear and specific offer of FAPE in the May 2023 IEP, or by failing to offer Student an appropriate educational placement in the May 2023 IEP.

((This space is intentionally blank. Text continues on following page.))

ISSUE 2.b.3: DID GROSSMONT UNION DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER APPROPRIATE SUPPORTS AND SERVICES IN THE JULY 13, 2023 IEP IN THE AREA OF BEHAVIOR?

Student contends the July 13, 2023 IEP did not include sufficient behavioral services and supports because besides one positive behavioral support on the special factors page, there were no behavior supports to facilitate transitioning Student from Sierra School to Valhalla's adult transition program. Student asserts that the one positive behavior support offered, to provide Student with coping strategies like taking a break, was the same support contained in the special factors page sent to Parent on May 24, 2023, and identical to the December 2, 2021 IEP. Student argues Grossmont Union knew he needed support beyond the ability to take a break given the behavioral concerns discussed during the May 24, 2023 IEP team meeting and the information contained in the July 13, 2023 IEP. Student asserts he had difficulty regulating his emotions when there were changes in his schedule or unexpected events, and a history of inappropriate conduct.

Student also contends that at the time of the July 13, 2023 IEP team meeting, Grossmont Union had Dr. Weckerly's June 26, 2023 letter, in which she explained that Student's prior experiences at Valhalla were traumatic to him, that he was especially averse to attending school at the Valhalla campus, and that he needed a lot of behavioral support from well-trained personnel during the transition period. Student argues Dr. Weckerly's testimony supported Student's need for behavior support given the number of students in the Valhalla adult transition program and the variety of



transitions necessary throughout the day. Student also argues that although Cibulka claimed at hearing Grossmont Union could support Student's transition to the Valhalla adult transition program with the supports and behavioral goal he had on the July 13, 2023 IEP, her testimony lacked foundational support. Student maintains that although Grossmont Union had behavioral options such as wrap-around services which had a variety of ways to provide support for students who had school aversion, those services were not offered in the July 13, 2023 IEP.

As it did with Issue 1, Grossmont Union contends Student has confused a school district's obligations to students enrolled in public schools with a school district's obligations to students enrolled in private schools. Grossmont Union maintains Parent never asked for an updated offer of FAPE or attempted to re-enroll Student into Grossmont Union. Grossmont Union argues that on May 24, 2023, it convened an IEP team meeting to review and update Student's IEP, but it was not required by law to do so. Grossmont Union argues that because Student was a parentally placed private school student and the private school was located outside its boundaries, it was not required to offer or provide an IEP to Student. It maintains that its only obligation was to implement comparable services to Student's last consented-to IEP and to convene a 30-day IEP review, if Student re-enrolled in Grossmont Union.

Specifically, regarding the behavior support in the July 13, 2023 IEP, Grossmont Union argues that Student did not prove he required behavior services. Grossmont Union argues Student presented two behaviors of concern to support the claim that behavioral interventions were necessary: aggressive behavior and protestation/rigid thinking. Grossmont Union contends the only testimonial evidence of aggressive

behavior came from Parent, and that involved an incident in ninth grade, and one incident at home before the May 24, 2023 IEP team meeting when Parent purportedly discussed with Student the possibility of him returning to Valhalla, a discussion which Parent admittedly never reported to school personnel. Grossmont Union argues that Sierra School witnesses denied Student ever engaged in violent behaviors, which was corroborated by Grossmont Union staff during their testimony regarding their observations of Student during their assessments in 2021 and 2023, and by the absence of aggressive behavior in other documentary evidence.

Regarding Student's protestation and rigid thinking, Grossmont Union argues that while Student had autism and a well-documented history of protestation and rigid thinking, this behavior was addressed through the IEP goals offered to help Student increase his flexibility, as well as the special education and related services in the July 2023 IEP. Grossmont Union contends that the type of verbal protestation Student demonstrated at the time of the July 2023 IEP did not impede his learning, as he was easily redirected.

## THE JULY 13, 2023 IEP TEAM MEETING

On July 13, 2023, Grossmont Union convened an IEP team meeting by videoconference. Those who attended the July 13, 2023 IEP team meeting included

- Parent,
- Student's lay advocate Major,
- Student's independent assessor Dr. Weckerly,
- program specialist Grogan,
- school psychologist Armendariz,

- adult transition special education teacher Cibulka,
- assistant director of special education Peling, and a
- Grossmont Union speech-language pathologist.

At the outset of the meeting, Major expressed confusion about the purpose of the meeting and balked at having to attend the meeting because Major and Parent believed Sierra School held Student's IEP team meeting on May 12, 2023. Peling explained that the meeting convened by Sierra School on May 12, 2023, was not an IEP team meeting and that the IEP was not completed on May 24, 2023, because of the time limitation Parent imposed. Grossmont Union personnel stated that the purpose of the July 13, 2023 IEP team meeting was to review the IEP in light of new information from the reviewed assessments and IEP team discussions and make an offer of FAPE.

The July 13, 2023 IEP team meeting was scheduled for one and a half hours, but after Major objected to the meeting being held, Parent unilaterally imposed a one hour time limit on the length of the meeting, suddenly claiming her doctor said she could not sit for longer than an hour. Student presented no convincing evidence at hearing that Parent was unable to attend the July 13, 2023 videoconference IEP team meeting for more than one hour. Grossmont Union offered to schedule an in-person meeting if that would help, but Parent declined and requested the meeting be limited to one hour. Major asked that Grossmont Union pay for Dr. Weckerly's attendance if the meeting was reconvened, but Grossmont Union declined and agreed to try to review the IEP in full during the unilaterally imposed one-hour limitation. Student failed to demonstrate that the limitations Parent placed on the length of the IEP team meetings were anything more than Parent's attempt to prevent Grossmont Union from having the time necessary to adequately discuss and update Student's IEP.

Grossmont Union displayed pages of the draft IEP on screen for all IEP team members to reference. The IEP team reviewed the individual transition plan, the summary of Parent input form Grossmont Union received on July 13, 2023, and the present-levels-of-performance pages, highlighting the information provided by Sierra School and from Grossmont Union's assessments in each area. The IEP team also reviewed the goals and the special factors page. Major reported that historically, Student had extreme rigidity that had resulted in aggressive behavior, and that aggressive behavior was a concern when Student was not in a preferred environment. Parent reported that aggressive behavior had also included kicking, historically. The IEP team then discussed that currently, Student's behavior was related to rigidity and aggressive behavior had not been observed at Sierra School. Parent indicated that behavior changes observed were related to environmental factors. The IEP team re-reviewed the social/emotional and behavioral input from Sierra School included in the present levels of performance, including Sierra School's report that Student was a good worker and safe at school, with some verbal protests at times.

The IEP team reviewed the services pages, the educational settings considered and the potential harmful effects of more restrictive placements, including that the time Student would be in the community for community-based instruction was considered a general education environment for students in an adult transition program. The IEP team also reviewed the accommodations, discussed proposed edits due to Student's matriculation to an adult transition program, and the visual aids listed on the page.

Major said Student would refuse to go to school if his environment was changed, and that he liked his school and his current routine. The IEP team meeting notes documented that the family was concerned Student may have had traumatic

experiences at Valhalla, which may have been impacting his perception of the school. Dr. Weckerly expressed a similar concern, and indicated Student was still struggling with rigidity and change, even at Sierra School. Members of the IEP team discussed that difficulties with change was a characteristic of autism and was something addressed in Student's goals, and that change happens throughout one's life, and that it was the responsibility of the IEP team to help Student learn to cope with change while he was still in school. Grossmont Union IEP team members asked what strategies were currently being used to support Student in coping with changes. Parent offered no input. Dr. Weckerly explained Student had a good relationship with his teacher and felt comfortable in his current environment; however, Peling pointed out that Student would be transitioning out of his current 12th grade class into an adult transition program, whether he remained at Sierra School or attended a Grossmont Union adult transition program.

The IEP team discussed the least restrictive environment for Student and Student's access to typically developing peers in Valhalla's adult transition program. Cibulka explained that students were out in the community four days a week interacting with non-disabled peers and adults. The IEP team reviewed the December 2021 IEP offer of services, and that Grossmont Union would continue to offer specialized academic instruction, speech, and post-secondary transition services to support the individual transition plan. Grossmont Union personnel shared that based on Student's present levels of performance, and the services and the accommodations Student required, Grossmont Union could meet Student's needs in an adult transition program at a comprehensive public school site.

Major stated that Student's difficulties involved more than just autism and the rigidity issues discussed, but she did not offer any specifics. She asserted Student had

made a lot of progress at Sierra School and Parent believed it was the best placement for Student. Major informed the IEP team that Parent would be placing Student in a non-public school placement and seeking reimbursement. Peling offered another meeting to discuss additional concerns. Major stated Parent would consider another meeting if Grossmont Union wanted to schedule one, but that Parent was seeking reimbursement for a private placement at Sierra School for the 2023-2024 school year.

Peling explained Grossmont Union offered placement at Valhalla's adult transition program because it believed a public program could meet Student's needs and Student had been enrolled at Valhalla by Parent through Grossmont Union's choice-of-school process. Peling further explained that Parent could also consider the adult transition program at Student's neighborhood school, El Cajon Valley High School, if the concern was Student's prior experiences at Valhalla. Neither Parent nor Major was interested in that option, and the IEP team meeting concluded.

On July 13, 2023, Grossmont Union sent a prior written notice to Parent addressing Parent's request for reimbursement and expressing its willingness to engage in the IEP process, including convening another IEP team meeting. It included a copy of the proposed IEP, provided an explanation for the reasons it was denying Parent's request for reimbursement, and informed Parent that it continued to consider Student to be a parentally placed private school student until such time as he re-enrolled in Grossmont Union.

Parent filed for due process four days later, on July 17, 2023.

## THE JULY 13, 2023 IEP OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

In the July 13, 2023 IEP, Grossmont Union offered Student eight goals, in the areas of English language arts, math, communication, and social-emotional functioning, and an individual transition plan with three post-secondary goals in the areas of education, employment, and independent living. Grossmont Union's July 13, 2023 IEP offer of special education and related services consisted of the adult transition program at Valhalla, including the following:

- Specialized academic instruction for 745 minutes weekly in a separate classroom in a group setting in a public integrated facility;
- Speech and language services in a group setting for 1,920 minutes per year in a separate classroom in a public integrated facility;
- College awareness group services of 60 minutes yearly in a separate classroom in a public integrated facility;
- Career awareness group services of 60 minutes monthly in a separate classroom in a public integrated facility;
- Mentoring group services of 50 minutes yearly in a separate classroom in a public integrated facility;
- Other transition group services for 780 minutes per week, consisting of community-based instruction out in the community; and

- Extended school year services, consisting of specialized academic instruction in a group for 180 minutes daily and 25 minutes of weekly speech services, both in a separate classroom in a public integrated facility.

The IEP also listed 366 minutes of additional group specialized academic instruction per day during the regular school year in a public integrated facility, but based on the totality of the evidence, that appeared to be a typographical error. This provision appeared to be a carry-over from the draft IEP Grogan prepared, dated May 12, 2023, because it was not mentioned in Grossmont Union's July 13, 2023 prior written notice and appeared at odds with special education teacher Cibulka's testimony about the adult transition program.

The July 2023 IEP offer also included a modified curriculum and a course of study leading to a certificate of completion, with an anticipated completion date of June 30, 2027. Grossmont Union offered Student 49 percent of his school day outside the regular classroom/nonacademic activities and 51 percent of his time in regular classroom/nonacademic activities. Grossmont Union also offered Student numerous accommodations, including:

- Calculation devices;
- Visual organizers;
- Flexible seating to ensure auditory and visual access;
- Access to break area/space and frequent movement breaks;
- Checking for understanding intermittently during class and having him repeat steps to directions and checking that he was working on the correct assignment;
- Access to a daily schedule;



- Supports for instruction, including digital texts;
- Directions given in a variety of ways;
- Highlighted texts;
- Language scaffolds;
- Large print;
- Modified tests;
- Recorded texts;
- Reduced pencil/paper tasks;
- Repeated review/drill;
- Shortened answers;
- Visual/picture supports;
- Oral tests;
- Increased physical response time;
- Increased verbal response time;
- Extended time for completing assignments;
- Extended time for completing tasks;
- Practice time;
- Social stories;
- Movement breaks;
- De-escalation routines;
- Reinforcement systems; and
- Vision aids.

The special factors page of the IEP also listed positive behavior interventions, strategies, and supports as "Providing [Student] with coping strategies (such as

requesting a break) and maintenance on non-preferred tasks goal.” Both social/emotional goals offered embedded staff modeling and frontloading to support Student behaviorally.

## GROSSMONT UNION WAS REQUIRED TO OFFER STUDENT A FAPE IN THE JULY 13, 2023 IEP

“Parentally-placed private school children with disabilities” is a defined term that means children with disabilities enrolled by their parents in private schools or facilities. (34 C.F.R. § 300.130; see also Ed. Code, § 56170.) No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (34 C.F.R. § 300.137(a); see also Ed. Code, § 56174.5.) Instead, parents of a child in private school have two options: (1) accept the offer of a FAPE and enroll their student in the public school, or (2) keep their child in private school and receive “proportional share” services, if any, provided to the student pursuant to title 20 United States Code section 1412(a)(10) and title 34 Code of Federal Regulations parts 300.130–300.144. (*District of Columbia v. Wolfire* (D.D.C. 2014) 10 F.Supp.3d 89, 92 (*Wolfire*))

However, developing an IEP to inform a child’s parents about the services that a local educational agency could offer in an effort to provide that student with a FAPE is not the same thing as requiring the local educational agency to provide the services described in the IEP. If parents of a child attending private school request an IEP for their child, even when their child is enrolled in private school, the local educational agency is required to honor that request. (*Capistrano Unified School District v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1138-1139 (*Capistrano*); *Wolfire, supra*, 10 F.Supp.3d at

pp. 93-94; *District of Columbia v. Vinyard* (D.D.C. 2013) 971 F.Supp.2d 103, 111; *Letter to Eig* (Office of Special Education Programs, January 28, 2009) [a local educational agency where student resides cannot refuse to conduct the evaluation and determine the child's eligibility for FAPE because the child attends a private school in another district].) Parents are entitled to place a student in private school even though the school district of residence had not previously denied student a FAPE, and also seek a FAPE from the district in which parents continue to reside. (See *J.S. v. Scarsdale Union Free School Dist.* (S.D.N.Y. 2011) 826 F.Supp.2d 635, 665-668 ["a district-of residence's obligations do not simply end because a child has been privately placed elsewhere, as the District argues—rather, the IDEA's obligations may be shared [citations omitted]"]; *Assistance to States for the Education of Children Disabilities*, 71 Fed. Reg. 46593 (August 14, 2006); *Board of Education of Evanston-Skokie Community Consol. School Dist. 65 v. Risen* (N.D.Ill., June 25, 2013, No. 12 C 5073) 2013 WL 3224439, at \*12-15; *District of Columbia v. Oliver* (D.D.C., Feb. 21, 2014, No. CV 13-00215 BAH/DAR) 2014 WL 686860, at \*4 [school districts have no obligation to provide FAPE to parentally placed private school students with disabilities; but they do have an obligation to make FAPE available and cannot fulfill this duty without developing an IEP].)

Grossmont Union ignores the evidence and demonstrates a fundamental misunderstanding of the holding in *Capistrano* in arguing Parent never asked for an updated offer of FAPE, and it was not required to make one. By the terms of the April 2022 settlement agreement, which both parties signed, Parent asked for and therefore became entitled to an updated offer of FAPE, which Grossmont Union agreed to provide after the spring 2023 assessments were completed. Indeed, Grossmont Union's July 13, 2023 prior written notice acknowledged that "[t]he last two IEP team meetings were convened in response to [Parent's] request for an IEP for Student prior to

the upcoming 2023-2024 school year.” The fact that Parent’s request was embedded in a settlement agreement, or that Student never re-enrolled in public school, did not negate that a request was made by Parent for an IEP, or eliminate Grossmont Union’s obligation to develop an IEP because of that request.

The Ninth Circuit has made clear there is no freestanding requirement that IEPs be conducted for students placed in private schools by their parents. However, where parents have withdrawn a student from public school and placed them in private school, parents need only ask for an IEP to trigger the school district of residence’s obligation to provide one. (*Capistrano, supra*, 21 F.4th at pp. 1138-1139 [“But, regardless of reimbursement, when a child has been enrolled in private school by her parents, the district only needs to prepare an IEP if the parents ask for one.”].) Nor was Student’s re-enrollment required to receive an updated IEP. (See *Woods v. Northport Public School* (6th Cir. 2012) 487 Fed.Appx. 968, 979 [nonpub. opn.] [“It was inappropriate to require [student] to re-enroll in public school in order to receive an amended IEP. ... It is residency, rather than enrollment, that triggers a district’s IDEA obligations.”].)

The April 2022 settlement agreement operated as Parent’s request for an IEP pursuant to the holding in *Capistrano*, requiring Grossmont Union to make an updated offer of special education and related services on July 13, 2023. This finding also applies to Issues 2.b.4, 2.b.6, 2.b.7, 2.b.8, and 2.e.

(This space is intentionally blank. Text continues on the following page.)

## STUDENT DID NOT PROVE HE WAS DENIED A FAPE IN THE JULY 2023 IEP BY A FAILURE TO OFFER ADEQUATE BEHAVIOR SERVICES AND SUPPORTS

The IDEA requires IEP teams to consider the use of positive behavioral interventions and supports, and other strategies, to address behaviors that impede a student's learning or that of others. (20 U.S.C. § 1414 (d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).) A district's failure to develop positive behavior interventions can amount to a denial of FAPE. (See e.g., *Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *C.F. ex rel. R.F. v. New York City Dept. of Education* (2d Cir. 2014) 746 F.3d 68, 81.)

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

An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).) An IEP is "a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann, supra*, 993 F.2d at p. 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal-achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p. 1149.)

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 Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child’s unique needs are to be broadly construed to include the child’s

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and
- vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

Issue 2.b.3 overlaps with and is duplicative of Issue 2.b.4 regarding the failure to offer behavior services and supports to support transition to a comprehensive campus. Therefore, Issue 2.b.3 only addresses Grossmont Union’s alleged failure to offer appropriate services and supports in the July 2023 IEP beyond and separate from transition from private school to a comprehensive public school campus. Grossmont Union’s failure to offer behavior services and supports to assist Student in moving from private school to a comprehensive public school campus is fully addressed in Issue 2.b.4 and will not be discussed here.

(This space is intentionally blank. Text continues on the following page.)

## THE BEHAVIOR SERVICES AND SUPPORTS IN THE JULY 2023 IEP

Student is incorrect that the July 13, 2023 IEP only contained one positive behavior support. Nor did Student establish by a preponderance of the evidence that the behavior supports offered in the July 2023 IEP were insufficient to enable Student to make progress appropriate in light of his circumstances. (*Endrew F., supra*, 580 U.S. at p. 399.)

Besides the behavior support Student points to listed on the special factors page, the July 2023 IEP contained two annual behavior goals, which were to be implemented by a special education teacher and could have been implemented through the services offered. The first goal targeted Student's difficulty with change and taking on new tasks or activities, by embedding preloading and modeling by staff and requiring Student to choose a new task or activity, when given three options, within five minutes. The second goal addressed Student's ability to self-regulate. It aimed for Student to use a self-regulation strategy to regulate and self-advocate for his needs independently, after preloading and modeling by staff, when Student felt uncomfortable or did not like something. The July 2023 IEP also offered Student accommodations including

- access to break areas and frequent movement breaks,
- access to a daily schedule,
- social stories,
- de-escalation routines,
- repeated review, and
- reinforcement systems, among other things.

At hearing, a Sierra School witness explained that the Sierra School team used social stories and repetition of familiar tasks to help Student conquer new tasks that caused him anxiety. Student's argument ignores these other items listed in the July 2023 IEP to support him behaviorally. Further, contrary to Student's mischaracterization, the behavior support listed on the special factors page was not limited to providing Student with one coping strategy of requesting a break. That coping strategy was listed merely as an example, not an exhaustive list. Finally, Student ignores the proactive strategies embedded in the program to support Student behaviorally, further discussed in Issue 2.b.4 below.

### STUDENT'S BEHAVIOR AT THE TIME OF THE JULY 2023 IEP

In his closing brief, Student selectively cites to language in the special factors page of the July 2023 IEP to support his position, specifically, that Student had difficulty regulating his emotions when unexpected events and/or changes occurred that differed from his daily routine, which historically manifested itself as crying, repeatedly saying "I'm sorry" and inappropriate physical contact such as grabbing and kicking staff. However, in his closing brief, Student conveniently omits the next sentence of the July 2023 IEP, "Team at this time is not reporting these behaviors."

Sierra School staff, presumably those most familiar with Student's behavior at school, made no mention of Student crying or engaging in inappropriate physical contact in its May 12, 2023 individual education plan, developed at its May 12, 2023 meeting attended by Parent, lay advocate Major, and Sierra School staff including Student's special education teacher Nicole Philips, and counselor Cory Gove, among



others. The May 12, 2023 Sierra School individual education plan described Student as a hardworking, creative, and charismatic young man with a wonderful sense of humor. He thrived on "structures, schedule, and expectations in the classroom and small speech therapy groups."

In the area of social-emotional/behavioral functioning, counselor Cove reported Student was a very hard worker who modeled safe behavior throughout the day, was compliant, and followed directions. He had been observed to protest changes in his schedule or unexpected events to or around him, by saying "no" or "oh, man," but then followed the direction or request given by staff. In the area of flexibility, Student was very schedule-oriented, liked to be in class and do what his peers did. He demonstrated increased flexibility during the 2022-2023 school year regarding schedule changes and leaving class for designated services. He exhibited rigid thinking and did not like new things or things out of the norm such as schedule changes or a staff absence and new staff. The individual education plan noted that Parent wanted Student to work on trying new things and becoming more accepting of novel ideas and tasks and staff thought it would be beneficial for Student to work on this skill, which was incorporated into Student's goal addressing flexibility further discussed in Issue 2.b.7 below. When presented with a new task or activity, as of May 2023 Student was averaging 50 percent accuracy with three verbal protests.

Sierra School reported Student was wonderful, kind, and friendly. He was motivated to do well in school and make his teacher/staff happy. Because he wanted to please the adults, he did not advocate for his needs and participated in activities he did not want to do or that made him uncomfortable, which often led to his dysregulation. At those times, he required staff support and cueing to use coping strategies and

take a break, and he benefitted from preloading and staff modeling. Student also demonstrated the ability to advocate for himself when he needed help or assistance, but often stated he did not want to do the task or said, "I don't know," instead of attempting the task, especially during non-preferred tasks or unexpected activities. Sierra School staff viewed these responses as being due to a change in routine, frustrations over not knowing the answer, and/or getting the answer wrong. When probed with a follow-up question such as "do you need me to explain" or "do you want to do something different," Student was able to clarify his message and appropriately advocate for his needs. In adaptive skills, Student followed his daily schedule and worked on his assignments with minimal prompts from staff. He independently organized his school materials and assignments. He independently navigated the school campus and participated in a variety of assignments to practice money skills, such as lunch-planning activities.

#### STUDENT'S ASSERTIONS REGARDING HIS AGGRESSIVE BEHAVIOR WERE UNPERSUASIVE

In support of his claim of requiring additional behavioral support, Student argued he exhibited aggressive behavior when he was presented with changes in his routine or unpreferred tasks. Student's argument was unpersuasive. At hearing, Parent testified about three incidents involving Student having aggressive behavior. Parent testified that when Student was in sixth grade, he allegedly kicked a teacher after his pediatrician placed a temporary restriction on Student's ability to participate in physical education after Student sustained an injury. Parent also claimed at the beginning of Student's ninth grade year, when Student was told he had to go to another room for speech therapy, Student twice threw himself to the ground and began kicking staff. However,

both events appeared to be isolated incidents, and more important, occurred approximately three or more school years before the July 2023 IEP at issue. Parent's testimony was also vague and lacked proper foundation, and Student points to no contemporaneous corroborating evidence establishing these events occurred as testified to by Parent. While there was a reference to tantrums when Student was expected to engage in group conversations in an old goal from ninth grade referred to in the December 2, 2021 IEP, there was no mention of either of the specific incidents Parent testified about or any history of kicking in Grossmont Union's November 2021 triennial psychoeducational assessment or in the December 2, 2021 IEP. Parent's testimony was also inconsistent with the December 2021 IEP special factors page that referenced Student had grabbed "the wrist/arm/clothes of staff members." In any event, this reference on the special factors page was to past conduct, prior to the 2020-2021 school year.

In fact, in Grossmont Union's November 2021 psychoeducational evaluation, Parent reported Student tended to act passively and was seldom provoked on the behavior rating scale for aggression. His teacher reported Student tended not to act aggressively any more often than others his age. At the December 17, 2021 IEP team meeting, Parent told the IEP team she did not believe social/emotional/behavior was an area of concern at that time. Based on the documents admitted at hearing, the first time Parent mentioned kicking to anyone was at the July 13, 2023 IEP team meeting, and this was described as being "historical," as opposed to describing Student's current behavior.

The only other incident of recent aggressive behavior Parent testified about allegedly occurred at home, sometime before the May 24, 2023 IEP team meeting.

Parent testified when she broached the subject of Student leaving Sierra School and attending another school, Student hollered at her, punched her in the arm, and grabbed her to the point leaving fingerprints on her arm. Parent later added that Student shoved her up the stairs, threw her on the bed, and held her down until she pretended to pass out. Parent also admitted that she never told Grossmont Union about this incident prior to testifying at hearing, and there was no evidence that Grossmont Union otherwise was aware of this incident, even assuming it occurred.

Student unsuccessfully attempts to defend against Parent's glaring omission. Student argues Major mentioned to the May 24, 2023 IEP team that "we have" probed with Student the idea of him doing something different, and it had already led to "behavior and anxiety," but no one asked Major or Parent to elaborate. First, Major made this vague statement at the end of the May 24, 2023 IEP team meeting, and then essentially instructed Parent to log off, without giving anyone else the opportunity to ask any further questions. Second, there was no convincing evidence Parent ever told Major about this incident. Major did not testify, and Parent never said she told Major. Moreover, Major's statement at the May 2023 IEP team meeting did not demonstrate she was referring to the incident Parent testified about; Major said nothing about Student recently being violent or aggressive. Third, there was no evidence Parent would have disclosed this information at the May 24, 2023 IEP team meeting had she had been asked about it, in that Parent basically admitted at hearing she had intentionally withheld this information from Grossmont Union because she did not want anything to happen to Student.

At the July 13, 2023 IEP team meeting, Major reported only that historically Student had extreme rigidity, which had resulted in aggressive behavior, and that aggressive behavior was a concern when Student was not in a preferred environment.

At that point Parent mentioned for the first time the alleged historical “kicking,” but said nothing about the incident where Student supposedly grabbed her and punched her in the arm.

Dr. Weckerly also made no mention of this incident in her May 2023 independent assessment report or in the June 26, 2023 letter she wrote regarding her impressions of the Valhalla adult transition program after the tour on June 7, 2023. Dr. Weckerly stated in her May 2023 report, “In the past, sensory processing issues, emotional regulation challenges, and issues with flexibility led to tantrums (screaming, crying, grabbing items, leaving the classroom, [and] laying (sic) on the floor).” At hearing, Dr. Weckerly claimed Parent told her about Student being physically aggressive with Parent, however, she could not recall when Parent told her, and there were no specifics as to what Parent allegedly told her. Notably, on the behavior rating scale Dr. Weckerly administered as part of her 2023 assessment of Student, both Parent’s and his teacher’s scores in fell well below the clinically significant range in the area of aggressive behavior. Moreover, Dr. Weckerly showed a draft of her June 26, 2023 letter to Parent before she finalized it; yet, there in nothing in the letter about the 2023 punching incident or Student’s alleged aggression. When confronted with the fact that this incident was not in her May 2023 independent evaluation report or in her June 26, 2023 letter, Dr. Weckerly “guessed” that it was due to the timing as to when she found out the information. Dr. Weckerly’s tepid explanation was unconvincing.

(This space is intentionally blank. Text continues on the following page.)

The 2023 punching incident Parent belatedly reported at hearing is irrelevant to the evaluation of the appropriateness of the July 2023 IEP because Grossmont Union was unaware of it at the time the IEP was developed. (*Adams, supra*, 195 F.3d at p. 1149.) The discrepancies in the record regarding the alleged “kicking” and “punching” incidents, negatively impacted Parent’s credibility.

Student failed to establish he was engaged in aggressive conduct at the time of the development of the July 13, 2023 IEP team meeting such that the behavior support in the July 2023 IEP for the placement offered was inadequate. In addition to the evidence discussed above, Sierra School’s May 12, 2023 individual education plan mentioned nothing about Student currently having aggressive or violent behaviors. Particularly, Student was described by Sierra School as being “very compliant.” When confronted with a non-preferred activity or when his schedule changed, Student sometimes initially protested by saying “no,” but he then followed directions or did as he was instructed.

Two Sierra School witnesses testified at hearing, specifically associate director and workability coordinator Nicole Luster and Student’s adult transition program special education teacher Melissa Rivera. Both witnesses denied any awareness of Student having violent or physically aggressive behaviors. Dr. Weckerly also denied that she had ever seen Student become physically aggressive. She also could not recall Philips, Student’s Sierra School special education teacher for his 10th, 11th, and 12th grade school years, ever saying Student had been physically aggressive at school. School psychologist Armendariz also testified. Armendariz, who conducted Grossmont Union’s May 2023 social-emotional assessment, also denied that Philips ever reported Student had engaged in violent behavior. Parent apparently reported to Armendariz that

Student could sometimes “present in behaviors” that could be aggressive or get upset and violent, but on the behavior rating scale Armendariz administered as part of her 2023 assessment of Student, both Parent’s and his teacher’s scores fell in the average range in the areas of aggression and conduct problems. Grossmont Union assistant director of special education Peling also denied she had ever seen Student engage in aggressive behavior during her 2021 academic assessment or any time she was on the Sierra School campus, which was frequently up until about August 2022.

STUDENT DID NOT PROVE THE BEHAVIOR SUPPORTS OFFERED  
IN THE JULY 2023 IEP WERE INSUFFICIENT TO ENABLE  
STUDENT TO MAKE PROGRESS

Student failed to prove the combination of supports offered in the July 13, 2023 IEP were insufficient to meet Student’s needs in the area of behavior or that without additional behavior supports, Student would not be able to make progress appropriate in light his circumstances.

As discussed in more detail in Issues 2.b.7 and 2.b.8 below, Student offers no convincing argument explaining why the two social-emotional goals offered in the July 2023 IEP in combination with the services, accommodations, and other strategies used in the Valhalla adult transition program as described at hearing by Valhalla adult transition teacher Cibulka, were inadequate to meet Student’s behavior needs. The two goals offered in the July 2023 IEP specifically targeted Student’s issues with rigidity in doing new activities and self-regulation when confronted with something he did not like or was uncomfortable trying. Notably, these two goals were not unlike the behavior goals offered by Sierra School in the May 12, 2023 individual education plan, which Parent liked and approved on May 13, 2023. Both Grossmont Union goals embedded

staff modeling and frontloading to further support Student behaviorally. Again, Student's assertion that the July 13, 2023 IEP contained only one behavior support is untrue.

Student unconvincingly claims Student needed additional behavior support because Student's prior experiences at Valhalla were traumatic to him, and that he had an aversion to attending school at Valhalla. As more fully discussed in Issue 2.b.7 below, there was no evidence at hearing of any traumatic event at Valhalla, or any persuasive evidence that, as of July 13, 2023, Student perceived any of the alleged events upon which Student relies, as "traumatic."

Student also failed to present any evidence demonstrating that the Valhalla adult education program staff were not sufficiently trained to meet Student's needs such that Grossmont Union was required to offer additional behavior support. Cibulka, the only Valhalla adult transition teacher who testified, held both mild/moderate and moderate/severe credentials, and an autism authorization. She also had extensive teaching experience and specifically in teaching students with autism and the rigidity that came with that diagnosis. Moreover, there were only 25 students in the Valhalla adult transition program the during the 2023-2024 school year, spread across three classrooms, each with their own special education teacher and trained aides, establishing a ratio of four students to one adult. Grossmont Union grouped students in two of the classrooms by academic level, and the third classroom was comprised of students with more extensive needs. Students were always supervised, and even when students were out in the community, Grossmont Union maintained that same four-to-one ratio. Dr. Weckerly's testimony that this ratio was insufficient to support Student behaviorally was not convincing because Dr. Weckerly was not sufficiently familiar with the program to render this opinion. And her testimony it was "essential" that Student have a behavior



support plan was equally unimpressive. Dr. Weckerly's testimony was derived by a leading question from Student's attorney. Moreover, Dr. Weckerly failed to explain her answer, and neglected to specifically describe or adequately substantiate the details of the plan she claimed Student required.

Student criticizes Cibulka's opinion at hearing that the July 2023 IEP's supports and behavior goal would enable him to work on his behaviors related to transitions in the Valhalla program. Student inaccurately claims there were no supports and points out that Cibulka admitted she never read any evaluations of Student and was unaware of a letter Student's independent assessor, Dr. Weckerly, wrote. This criticism is misplaced. Student ignores the other supports in the IEP, including both behavior goals and the services offered to implement them, the accommodations listed, the referenced coping strategies, and the other strategies embedded in the program Cibulka described at hearing. As further discussed in Issue 2.e below, Student's criticism also ignores that Cibulka attended both the May 24 and July 13, 2023 IEP team meetings, and was present when the evaluations were reviewed. She also read the July 2023 IEP. In addition, at hearing, Student's attorney asked Cibulka about Dr. Weckerly's evaluation without showing it to her, even after Cibulka testified she did not know what the attorney was referring to.

Student is unsuccessful in challenging the July 2023 IEP based on Grossmont Union never offering him the additional behavior support options that were available. Student cites no authority that required Grossmont Union to offer behavior support options to Student merely because they existed. As discussed below, the evidence did not establish that Student had school aversion at the time of the July 2023 IEP, or

that he required wrap-around services. Significantly, Dr. Weckerly never specifically recommended such services in either her May 2023 report, her June 26, 2023 letter, or at either of the May 24 and July 13, 2023 IEP team meetings she attended.

Student failed to prove Grossmont Union denied Student a FAPE during the 2023-2024 school year, including extended school year, by failing to offer appropriate services and supports in the July 13, 2023 IEP in the area of behavior.

ISSUE 2.b.4: DID GROSSMONT UNION DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER APPROPRIATE SUPPORTS AND SERVICES IN THE JULY 13, 2023 IEP IN THE AREA OF A TRANSITION PLAN TO A COMPREHENSIVE CAMPUS?

Student contends that Grossmont Union knew a transition from Sierra School to Valhalla's adult transition program would be extremely difficult for Student, but it failed to offer him any plan to help him transition back to Valhalla. Student relies on Dr. Weckerly's June 26, 2023 letter, which explained that it would be hard to get Student to "step foot" on the Valhalla campus, and opined that Student would lose considerable instructional time coping with the transition, assuming he would eventually adjust. Student argues that even at Sierra School, where Student was comfortable and happy, he struggled when there were minor changes to his schedule. Student contends that he could not have accessed his education at Valhalla without a transition plan, and the failure to offer this support denied him a FAPE.

Grossmont Union contends the IEP team discussed transition from Sierra School to Valhalla and attempted to develop a plan for Student prior to Parent disengaging from the IEP process. Grossmont Union argues it was not required to develop a transition plan pursuant to Education Code section 56345, subdivision (b)(4), because Grossmont Union was not proposing that Student move from a special class or nonpublic school into a regular class in a public school, but to Valhalla's adult transition program. Grossmont Union contends it nevertheless offered 50 minutes per year of mentoring for Student, which he could have used to support him transition schools. Grossmont Union also argues not only did it discuss transition support for Student during Parent's June 7, 2023 tour of the adult transition program, such as meeting with the adult transition program teacher or attending trial days, but also attempted to discuss this topic during the July 13, 2023 IEP team meeting. Grossmont Union claims its personnel asked Parent what strategies were being used to support Student in coping with changes, but Parent did not provide any input. In contrast, it argues Parent testified at hearing about the numerous strategies she used to assist Student in transitioning to Sierra School in November 2020 and to the adult transition program at Sierra School in 2023. Grossmont Union argues it offered Parent a continuation IEP team meeting to address any additional transition concerns at the end of the July 13, 2023 IEP team meeting, but Parent declined and announced she would be unilaterally placing Student at Sierra School and seeking reimbursement.

If appropriate, an IEP is required to include, among other things, provision for the transition into the regular class program if the pupil is to be transferred from a special class or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day, including both of the following: (a) a description of the activities provided to integrate the pupil into the regular education program; and (b) a description

of activities provided to support the transition of pupils from the special education program into the regular education program. (Ed. Code, § 56345, subd. (b)(4)(A) &(B).)

The adequacy of transition services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30.) When a transition plan fails to comply with the procedural requirements, but the individual transition plan or IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Education* (D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, \*10.) A transition plan that is procedurally deficient but does not result in a loss of educational opportunity, does not result in a denial of FAPE. (*Ibid.*)

## STUDENT FAILED TO DEMONSTRATE A TRANSITION PLAN WAS REQUIRED

Student failed to prove that Grossmont Union was required to offer a transition plan to move him back to public school as part of the July 13, 2023 IEP. Student's closing brief does not cite persuasive authority that required Grossmont Union to offer a transition plan to move Student from Sierra School to the Valhalla adult transition program. The only case cited by Student, *R.E.B. v. State of Hawaii Dept. of Education* (9th Cir. 2017) 870 F.3d 1025, was withdrawn by the Ninth Circuit Court of Appeals in *R.E.B. v. Hawaii Dept. of Education* (9th Cir. 2018) 886 F.3d 1288, and essentially reversed

on rehearing on the transition issue in *R.E.B. v. Department of Education* (9th Cir. 2019) 770 Fed. Appx. 796, 798 [nonpub. opn.]. That case also pre-dates subsequent Ninth Circuit authority discussed below.

Grossmont Union cites to Education Code 56345, subdivision (b), and explains why it does not apply. Student does not address this statute. Education Code section 56345, subdivision (b), requires the type of transition plan Student sought only when the student is transferring from a special class or nonpublic, nonsectarian school into a regular class in a public school.

This issue was recently addressed by the Ninth Circuit in *N.G. by and through R.G. v. Placentia Yorba Linda Unified School Dist.* (9th Cir. 2020) 807 Fed.Appx. 648 (*N.G.*). In that case, the parents requested the student be placed in a full-time residential treatment program because of her behavior. The school district denied their request and parents filed for due process. The parties entered a settlement agreement, with the school district agreeing to fund the parent's unilateral placement of the student at Heartspring, a private residential treatment center. The agreement also provided that the parties would proceed with an annual meeting to develop an IEP for the school year following the expiration of the settlement agreement in June 2016. At the next IEP team meeting, the school district did not offer the student a residential placement, so parents enrolled her at Heartspring. The agreement was ultimately extended through December 31, 2016. The student remained at Heartspring, and at the next IEP team meeting in April 2017, the school district again declined to offer a residential placement. (*Id.* at pp. 649-650.) Instead, it offered a nonpublic school placement. The parents filed another request for due process alleging, among other things, that the school district failed to create an adequate transition plan to assist the student in moving back to a

nonpublic school from Heartspring, relying on Education Code section 56345, subdivision (b)(4). (See *N.G. v. Placentia-Yorba Linda Unified School Dist.* (C.D.Cal., Oct. 5, 2018, No. SACV17-02121AG (DFMx)) 2018 WL 6137196, at \*5, *aff'd sub nom. N.G., supra*, 807 Fed.Appx. at p. 651[nonpub. opn].)

In its opinion, the district court explained, "This argument is a nonstarter, because N.G. transitioned from a residential facility to a nonpublic school, not to a 'regular class program' or 'a regular class in a public school' under section 56345(b)(4). Consequently, the transition plan requirement of that section wasn't triggered." (*N.G. v. Placentia-Yorba Linda Unified School District, supra*, 2018 WL 6137196, at \*5.). The Ninth Circuit affirmed the district court's determination the student did not require a residential placement and that Education Code section 56345, subdivision (b)(4), did not apply to a transition from Heartland, a private residential treatment center, to the offered non-residential placement. (*N.G., supra*, 807 Fed.Appx. at pp. 650-651.)

Here, Student was not offered a transition into a regular class in a public school for any part of the school day. Rather, he was offered placement in an adult transition program, considered a moderate/severe special education program, which consisted of specialized academic instruction in a separate special education classroom, community-based instruction, and opportunities for paid internships. Although Student would have had the opportunity to interact with non-disabled people out in the community during community-based instruction or during time he spent working in paid internships, none of that time was in a regular class in a public school for purposes of the provisions of Education Code section 56345, subdivision (b)(4). Student did not argue and otherwise failed to demonstrate that the designation on Student's July 2023 IEP that 51 percent of his day would be spent in the regular class and extracurricular and non-academic activities satisfied the narrow provisions of

Education Code section 56354, subdivision (b)(4), given that time was spent in the community and not in a regular class on a public school campus. The credible evidence established that none of the July 2023 IEP offered program was in a regular general education classroom for any part of the school day, therefore Education Code section 56345, subdivision (b)(4), did not apply. Thus, Grossmont Union was not required to offer Student a transition plan to a comprehensive campus.

## STUDENT DID NOT PROVE THE JULY 13, 2023 IEP WAS INSUFFICIENT TO MEET STUDENT'S TRANSITION NEEDS

Even if a transition plan to move to Valhalla was required, Student failed to establish by a preponderance of the evidence that the July 2023 IEP, taken in its entirety, was not reasonably calculated to provide educational benefit to Student or would not enable him to make progress appropriate in light of his circumstances. As more fully discussed in Issues 2.b.6 and 2.b.7, the July 2023 IEP included two goals, designed specifically to address Student's challenges with transitions, namely, flexibility in taking on new tasks or activities, and self-regulating and self-advocating when he felt uncomfortable or did not like something. Both goals embedded frontloading and staff modeling within them.

The July 2023 IEP also included 50 minutes of yearly mentoring in addition to numerous accommodations that would have been useful in meeting Student's difficulties with transition including, but not limited to, access to break areas and movement breaks, access to a daily schedule, extended time to complete tasks, de-escalation routines, and reinforcement systems, among others.

There were also a number of proactive strategies that were used in the adult transition program at Valhalla to handle a student's rigidity issues. At hearing, Valhalla adult transition teacher Cibulka, who was experienced working with students with extreme rigidity, explained that rigidity was typical for a student with autism. Cibulka had over 10 years of teaching experience, with multiple special education credentials and an autism authorization. She explained some of the proactive strategies used in the offered program in working with students rigidity challenges, including

- task analysis,
- visuals/behavioral charts,
- outlining expectations,
- building in positive reinforcements like access to videos,
- asking follow-up questions,
- offering choices, and
- practicing making changes.

Student's reliance on Dr. Weckerly's June 26, 2023 letter opining "that it would be no small matter to get [Student] to step foot on the Valhalla campus" was not persuasive. The weight of the evidence established Student underwent multiple transitions of different types, involving new teachers, new schedules, new classrooms, new lessons, new procedures, and other similar changes, since leaving public school in the 10th grade. Student successfully transitioned from Valhalla in the 10th grade to Sierra School, during the time both schools were engaged in distance learning. Student transitioned again when Sierra School began its hybrid learning program, and then again, when it went to full-time, in-person learning. He transitioned again when he completed 12th grade in June 2023, and transitioned into Sierra School's extended school year, with a new teacher and new schedule. As discussed in Issue 2.b.3 regarding



behavior, although Student was very schedule-oriented, in May 2023 Sierra School reported Student's ability to be flexible had increased and even after an initial verbal protest, he followed directions. Corroborating his ability to transition, he successfully transitioned yet again at the beginning of the 2023-2024 regular school year into Sierra School's adult transition program, in what his Sierra School teacher described as very different than the 2023 extended school year program he had attended.

As discussed in more detail in Issue 2.b.7 below, Dr. Weckerly's opinion that it would be hard to get Student to "set foot" on the Valhalla campus because he had a strong negative association with Valhalla was not supported by credible evidence. Dr. Weckerly's opinion was primarily based on what Parent reported to her, and as discussed above, Parent was not a credible witness. Significantly, Dr. Weckerly never mentioned Student's strong negative association with Valhalla in either her 2021 or 2023 evaluations of Student. In her June 26, 2023 letter, Dr. Weckerly asserted she observed Student was vigilant and "quite reactive" to any mention of the school district or Valhalla, but Student had merely requested reassurance during Dr. Weckerly's evaluation that the testing had nothing to do with the school district. In fact, Grossmont Union assessed Student in both 2021 and 2023, and there was no convincing evidence Student had a negative reaction to any mention of Valhalla or Grossmont Union during these assessments. During Grossmont Union's 2023 evaluation, Student was willing and friendly even after the school psychologist told him she was from Grossmont Union. At hearing, Dr. Weckerly seemed unaware of Student's nonreactive nature during Grossmont Union's 2023 evaluation, despite the documentation in Grossmont Union's 2023 evaluation report. This undermined the reliability of Dr. Weckerly's opinions.

Dr. Weckerly was not convincing in her assertion that Student needed a comprehensive transition plan that included Valhalla staff going to the Sierra School to consult with his teacher to find out what Student's triggers were, and what challenges he had so Valhalla staff knew what to expect. Grossmont Union conducted its triennial assessment of Student in 2021 and did an updated evaluation of Student in spring 2023, which included observations of Student and input from Parent, and Student's teacher at that time. Notably, school psychologist Armendariz initially tried to interview Parent over the phone as part of her 2023 evaluation, and asked Parent to fill out a questionnaire. Parent declined to participate in the phone interview and admitted at hearing she never returned the questionnaire.

Parent's excuse that it "slipped through the cracks" because she was too busy with other things, including "prepping to have hip surgery," was not believable. At the July 13, 2023 IEP team meeting, Grossmont Union staff specifically asked what strategies were currently being used to support Student in coping with changes. Parent offered no input. This was in sharp contrast to Parent's testimony, where she detailed the numerous strategies employed to assist Student in dealing with the transition from Valhalla to Sierra School and transitioning from Sierra School distance learning to in-person learning, including working collectively and having regular communication by phone and email with Student's Sierra School teacher. Parent also testified that Student's teacher employed a slower pace and allowed Student to take breaks or play online games in between doing work. At hearing, when Parent was asked if she ever shared these strategies with Grossmont Union, Parent unconvincingly claimed she did not recall, but she admitted no one brought them up at the May 24, 2023 IEP team meeting. At the July 2023 IEP team meeting, after Parent unilaterally imposed a one-hour time limit on the meeting, Grossmont Union offered to conduct another IEP team

meeting. While lay advocate Major said Parent would “consider” another meeting, at the same time, Major announced Parent’s intention to maintain Student at Sierra School and seek reimbursement, and only four days later, Parent filed for due process.

The weight of the evidence established Parent had multiple opportunities to share with Grossmont Union information about the types of strategies used to assist Student in transitioning, which Student now attempts to portray as critical, but chose not to do so. Parent’s failure to share this information negatively impacted the authenticity of Student’s argument he required a transition plan at the time of the July 13, 2023 IEP to support him leaving Sierra School and attending Valhalla.

Grossmont Union’s witnesses and even Dr. Weckerly testified to the importance of Student learning to make transitions as part of his growth as an adult. The Sierra School May 2023 individual education plan also documented that it would be beneficial for Student to work on trying new things and becoming more accepting of novel ideas and tasks. While the evidence established Student liked attending Sierra School and told people he did not want to go to school at Valhalla, Student failed to prove that the July 13, 2023 IEP, taken in its entirety, was insufficient to meet Student’s needs in the area of school transition at the time it was developed. Student did not meet his burden of proof on Issue 2.b.4.

(This space is intentionally blank. Text continues on the following page.)

ISSUE 2.b.6: DID GROSSMONT UNION DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER APPROPRIATE SUPPORTS AND SERVICES IN THE JULY 13, 2023 IEP IN THE AREA OF SPECIALIZED ACADEMIC INSTRUCTION?

Student's written closing brief does not specifically address Issue 2.b.6. This Decision assumes the arguments Student made regarding specialized academic instruction in connection with the May 24, 2023 IEP apply to the July 13, 2023 IEP. Student contends that the adult transition program at Sierra School was superior to the adult transition program at Valhalla because the latter was much less focused on academics, only taught functional academics, and provided a smaller amount of and less rigorous academic instruction. Student contends the Valhalla adult transition program was a moderate/severe program, and Student did not require a moderate/severe program. Student also argues he would not make progress in the Valhalla program, but could and would make progress in Sierra School's adult transition program. Student maintains Grossmont Union's offer was not based on Student's present levels of performance as set forth in the May 12, 2023 Sierra School individual education plan, indicating Student had areas of higher strength and continued to work toward higher levels of academic achievement. Student asserts the offered placement at Valhalla limited Student's access to academic instruction and his ability to continue to make academic progress.

Grossmont Union contends Student failed to prove that its offer of specialized academic instruction was inappropriate just because it did not offer the same amount as Parent's preferred program at Sierra School. Grossmont Union also argues Student's

contention that Valhalla's adult transition program did not provide academics was premised on Parent's misunderstanding of the program, and it was only Student's conjecture that Sierra School provided a more academic program. It contends that even while students were engaged in workability, students received daily specialized academic instruction. Grossmont Union asserts the evidence established the Valhalla adult transition program consisted of applying the same foundational academic standards taught in high school and using them functionally through a variety of modalities depending on a student's unique needs, such as direct and small group instruction, digital content, pen and paper worksheets, and one-on-one instruction. It contends that the offered specialized academic instruction supported Student's four academic goals, and there was no evidence the specialized academic instruction offered by Grossmont Union was inappropriate.

Specialized academic instruction is an instructional service, individualized based on a student's needs, and provided by a credentialed special education teacher. (California Department of Education, Special Education Guidance for COVID-19 (September 30, 2020); Cal. Code Regs., tit. 5, § 3053, subd. (c); see also Ed. Code, § 56001, subds. (n) & (o).) Title 34 Code of Federal Regulations part 300.39(b)(3) defines specially designed instruction, used interchangeably with the term specialized academic instruction, as adapting, as appropriate to the needs of a child eligible for special education, the content, methodology, or delivery of instruction to address the unique needs of the child, and ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the proposed program, not the program preferred by the parent. Even if the program preferred by the parent would result in greater educational

benefit to the student, that does not mean the school district's program was inappropriate. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*) The question is whether the program offered was reasonable, not whether it was ideal. (*Endrew F., supra*, 580 U.S. at p. 399.) The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. (*Id.* at p. 404.) For a child who is not fully integrated in the regular classroom and not able to achieve on grade level, the child's educational program must be appropriately ambitious in light of his circumstances. (*Id.* at p. 402.)

An IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040(c).) The IEP in effect when a student reaches 16 years of age must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The IEP must also offer transition services, including courses of study, needed to assist the student in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).)

Transition services are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including post-secondary education, vocational education, and integrated employment, including

- supported employment,
- continuing and adult education,
- adult services,

- independent living, or
- community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include

- instruction,
- related services,
- community experiences,
- development of employment and
- other post-school adult living objectives.

Transition services also include, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services may be special education, if provided as specially designed instruction, or related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.)

Simply put, the IDEA requires IEPs for older students to include a plan for a coordinated set of services designed to move special education students successfully from school to post-school settings. Transition plans help students gain skills they will need when they graduate from high school or age out of special education at age 22. Transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students to enter the workforce or continue their education or training to do so. Such services also allow students to live as autonomously as possible, given the extent of their disabilities.

Student's argument that Grossmont Union's offer of specialized academic instruction in the Valhalla adult transition program was inappropriate because it was much less focused on academics than the adult transition program at Sierra School is

without merit. As an initial matter, the law required Grossmont Union to propose a program that was reasonable, not a program that was superior to Parent's preferred program at Sierra School. Even assuming the Sierra School program was better, Student failed to prove Grossmont Union's offer of specialized academic instruction was inadequate or inappropriate.

## THE VALHALLA ADULT TRANSITION PROGRAM

The Valhalla adult transition program for the 2023-2024 school year consisted of 25 students, split into three different classrooms, housed together in a designated area on the comprehensive Valhalla campus. It was geared toward students with IEPs, ages 18 through 22, who had not received a regular high school diploma. The students in the adult transition program had a separate schedule that did not align with the high school students' schedule, and because they were adults, they did not interact with the high school students. The program allowed students to continue their education on a more functional curriculum, comprised of specialized academic instruction on campus, community-based instruction consisting of community outings, and paid internships at businesses in the community or more sheltered community jobs on campus or at a Grossmont Union office, to support students in becoming as independent as possible to be active members of the community. For example, the students in the adult transition program had opportunities for working in the travel-training group where they went out and learned what was in the community, a shopping group that picked up supplies for the cooking class, and for those students who were ready, using public transportation.

Generally, the specialized academic instruction minutes in students' IEPs were implemented on Mondays and in the afternoons on the other four days of the week when the students returned to campus from their community-based activities. It



consisted of direct instruction, which could be group lessons, including whole group, small group or individual instruction, working on IEP goals, working on functional skills, reviewing work done on Mondays or a skills game related to the Monday curriculum, and generalizing what students learned in the community or the job site, among other things.

The Valhalla program included academic instruction geared to functional skills needed as an adult for independence. The academics were focused on reading, writing, and math tasks used in daily life, such as

- reading and filling out job applications,
- using the internet,
- personal reading,
- reading community signs and menus,
- working on vocabulary words,
- math tasks involving percentages such as
  - tipping,
  - comparison shopping,
  - using, making and calculating change,
- understanding credit scores, and
- opening a checking account.

Students worked on functional academics, which was basically taking the same foundational standards taught in high school but applying them to practical, adult-life situations.

The program used a variety of modalities, including an online platform to house curriculum and post assignments, whole group lessons, or individual assignments. Besides using websites with curriculum for functional skills, the Valhalla adult transition program also used direct instruction, paper-and-pen curriculum, task boxes, manipulatives, and a host of supplemental materials including social stories, social skills games, and workbooks. Task boxes were supplemental material that could involve hands-on flash cards on vocabulary, sight words, or math questions. It could involve work on resume questions, reading nutritional labels, cleaning product labels, or puzzles to support work on IEP goals. The availability of a variety of modalities used in the program allowed teachers to individualize the modalities to the students' needs and preferences, based on a student's IEP.

## STUDENT DID NOT PROVE THE SPECIALIZED ACADEMIC INSTRUCTION OFFERED WAS INAPPROPRIATE

There was no persuasive evidence that to receive a FAPE, Student required a program that offered different or more rigorous academic instruction, rather than the more functional academic program offered in the July 13, 2023 IEP. Student, who turned 18 years old in 2023, had been on a certificate of completion track, as opposed to a diploma track, since approximately 2021. Despite Parent's testimony to the contrary, Parent agreed to this course of study for Student several times since November 2021, including as part of the December 2, 2021 IEP, and as part of Sierra School's May 12, 2023 individual education plan.

Grossmont Union's 2021 three-year-psychoeducational evaluation concluded that Student's overall memory and learning abilities, his attention and concentration

skills and on tasks requiring visual and auditory memory, were within the lower extreme range for his age. His visual motor-integration was below average. He was able to copy but it took longer, and his accuracy declined over extended time. Student's auditory memory for numbers was in the average range, but his memory for words was below average. His memory for sentences was the most difficult for Student, in the lower extreme range. His academic profile was variable. The assessment also concluded Student had deficits in adaptive behavior, ranging from average to well below average.

Dr. Weckerly also diagnosed Student as having an intellectual disability. Student obtained a composite score falling in the third percentile on tests Dr. Weckerly used to assess Student's cognitive ability in fall 2021.

In March 2023, Student scored at a third-grade level in overall reading and in comprehension of literature on a diagnostic assessment administered by Sierra School. On another measure, he scored at the first-grade level in comprehension of informational text and at a third-grade level for vocabulary. In writing, he scored at a fifth-grade level on a spelling inventory in January 2023. In overall math, he scored at a third-grade level on a diagnostic assessment administered by Sierra School in March 2023, at the second-grade level in algebra and algebraic thinking, and at a fourth-grade level on numbers and operations.

In the May 2023 independent assessment of Student's academic skills, Dr. Weckerly reported Student's score in letter and word recognition ability fell at the eighth percentile in the mild impairment range, that he demonstrated a relative strength in decoding words, with performance falling at the 32nd percentile in the bottom of the average range, and his ability to understand what he read at the first percentile in the moderate to severe impairment range. In writing skills, Dr. Weckerly

reported Student's spelling skills were in the 19th percentile in the low average range, and his scores in both math computation and math concepts were in the first percentile. Dr. Weckerly determined Student's math computation performance was in the moderate impairment range and his math concepts performance was in the moderate to severe impairment range.

None of Student's witnesses offered any specific or valid explanation why Valhalla's focus on functional academics was not reasonably calculated to enable 18-year-old Student to make progress appropriate for him on the offered goals and to support his transition out of school and to live independently, given his course of study, low level of cognitive functioning and low academic skill levels. When Parent was asked at hearing why it was important to her that Student's program consist of regular academics as opposed to functional academics, her answer had nothing to do with academics, and therefore was unpersuasive.

Dr. Weckerly's testimony was also unconvincing on this point. Dr. Weckerly did not testify Student needed a more academically rigorous program than the one offered in the Valhalla adult transition program. She merely stated it was important for Student to continue to develop and internalize his academic skills to help him get into a job program or be the most functional as an adult. The weight of evidence, including the testimony of adult transition program special education teacher Cibulka, established Student would continue to work on academics, albeit academics geared more to functional skills to help students to become independent, in the program offered by Grossmont Union in the July 2023 IEP. The specialized academic instruction minutes supported the goals offered to Student in the July 13, 2023 IEP, including the two goals in English language arts and the two math goals.

Nor did Dr. Weckerly's May 2023 independent evaluation prove Student's position on this point. Dr. Weckerly opined Student needed an individualized program that focused on basic academic concepts and applied-skills training and programming. These were things that the Valhalla adult transition program offered. Among other things, special education teacher Cibulka persuasively testified the functional academic curriculum in the adult transition program included work on the core concepts.

Dr. Weckerly's June 26, 2023 letter, written after Parent's tour of the Valhalla program, mentioned Parent "wanted" Student's program to continue to work on academic skills because his opportunities for this type of work may be limited outside the window in which Student was eligible for special education. It also acknowledged Valhalla staff told Parent that the program featured opportunities for work on academic goals, but Dr. Weckerly claimed she had concerns with the independent study online modality for academics because of Parent's reports about Student's prior challenges with online instruction during the pandemic, and his attentional capacity or self-advocacy issues. Dr. Weckerly questioned whether Student's program at Valhalla could be individualized so that he could receive the interaction and small group instruction she believed crucial for him to make meaningful progress.

Dr. Weckerly's June 26, 2023 statements appeared to be based on a misunderstanding of the program, and at odds with Cibulka's testimony, which was more persuasive on this issue because of Cibulka's familiarity with the program. At hearing, Parent also admitted she did not fully understand the program and was confused during the tour. While Cibulka may have talked about the online modality during the June 7, 2023 tour, Cibulka's testimony at hearing established this was simply one of a variety of modalities used to deliver specialized academic instruction in the program. In addition to the provisions of the IEP, the program offered a choice of

different modalities that might be trialed to determine what worked with a particular student. Unlike the COVID-19 pandemic era when Student was engaged in distance learning at home, the Valhalla adult transition program's specialized academic instruction was delivered in-person on campus, through a variety of modalities, including online, depending on the needs of the students. The students were supervised. The program had a four-to-one ratio of students to adults, and Student failed to prove that any additional adult support was necessary to access the specialized academic instruction offered. Given Cibulka's description of the Valhalla program, Student also failed to prove how the specialized academic instruction offered was insufficient to satisfy Dr. Weckerly's concerns regarding the interaction and small group instruction Dr. Weckerly believed was crucial for Student to make meaningful progress.

Philips, Student's Sierra School special education teacher for his 10th through 12th grade years, did not testify. Neither of the Sierra School witnesses Student called to testify offered any opinions on the Valhalla program, Student's alleged need for a more traditional as opposed to a functional academic curriculum, or otherwise established the specialized academic instruction offered by Grossmont Union in the July 13, 2023 IEP was inappropriate for Student. Indeed, Luster testified she was aw]

are Grossmont Union had an adult transition program, but never toured it and was unfamiliar with what it offered. Luster believed Student required specialized academic instruction because his academic skills were below grade level, and Student had not "dove into" getting the skills necessary to become an independent adult. When asked at hearing to describe the specialized academic instruction Student was receiving at Sierra School during the 2023-2024 school year, Luster explained it in terms of the functional academic skills provided in the program. Luster stated the program "ran" English and math up to 90 minutes a day regarding resume writing, career research,

essays and syllabus reading, budgeting, and different skills to get into the workforce or live independently or semi-independently, using different modalities, including an online curriculum.

Student's 2023-2024 Sierra School special education teacher's testimony was also unpersuasive on this issue. Again, Rivera offered no views about the Valhalla program. While Rivera stated that it was her opinion Student required specialized academic instruction, she did not explain her answer. At hearing, Rivera described the Sierra School adult transition program Student was attending as teaching life skills to help students learn as many independence skills as possible so they could live as independently as they choose when they were no longer eligible for special education at age 22. She explained the program involved a combination of academic instruction, community-based activities, and job opportunities through a workability program. Although Rivera initially testified the Sierra School program provided 1.5 hours each of math and English, she later claimed she would have to look at Student's specific schedule before she could state whether Student was receiving three hours of academics per day. Significantly, she explained that the academics Sierra School provided looked different in the adult transition program because they were incorporated with transitional skills.

The preponderance of evidence established Student needed a functional academic program for a FAPE at the time of the July 2023 IEP. While Student takes issue with the amount and frequency of specialized academic instruction offered, no specific testimony or other evidence established that the amount offered or the frequency with which it would have been implemented was insufficient.

Student's argument that Grossmont Union's offer was not based on Student's present levels of performance is unconvincing. Student fails to specifically or adequately explain how the specialized academic instruction offered was inconsistent with Student's present levels of performance. It is not an ALJ's responsibility to construct or develop a party's argument. (See *Loewen v. Berryhill* (9th Cir. 2017) 707 Fed.Appx. 907, 908 [nonpub. opn.], citing *Carmickle v. Commissioner* (9th Cir. 2008) 533 F.3d 1155, 1161, fn. 2) [the court is not required to address arguments made without specificity]; *Independent Towers of Washington v. Washington* (9th Cir. 2003) 350 F.3d 925, 929 [the court cannot construct arguments for a party, and will only examine issues specifically and distinctly argued in a party's brief]; see also, *Agarwal v. Oregon Mutual Insurance Company* (D.Nev. January 18, 2013, No. 2:11-cv-01384-LDG) 2013 WL 211093, at \*3 ["[I]t is not the responsibility of the judiciary 'to sift through scattered papers in order to manufacture arguments for the parties.'"].)

Student's argument that the specialized academic instruction was inappropriate because it was less rigorous than the program at Sierra School was not supported by the evidence. While the program at Sierra School may have offered more dedicated minutes per day labeled as specialized academic instruction, there was no clear or specific evidence that the Valhalla program did not offer the appropriate amount of rigor for Student to make progress. Like the adult transition program at Sierra School, students in two of the three Valhalla adult transition program classrooms were generally grouped based on academic ability levels. The third Valhalla classroom was for students with more extensive needs, such as medical issues, or the need for access to a nurse or facilities for diaper changes. In her June 26, 2023 letter, Dr. Weckerly acknowledged the students in the transition program classroom she observed during the June 7, 2023 tour seemed to be at a similar cognitive level as Student.



Student's argument that the specialized academic instruction offered was inappropriate because the program fell within the moderate/severe category is addressed in Issue 2.e, below. For the reasons stated there, Student's argument is not convincing.

Student did not establish the specialized academic instruction offered would have limited Student's access to academic instruction and his ability to continue to make progress on his academic goals and build his academic skills. Student failed to prove he was denied a FAPE because Grossmont Union did not offer appropriate supports and services in the July 13, 2023 IEP in the area of specialized academic instruction.

**ISSUE 2.b.7: DID GROSSMONT UNION DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER APPROPRIATE SUPPORTS AND SERVICES IN THE JULY 13, 2023 IEP IN THE AREA OF COUNSELING AND GUIDANCE?**

Student contends that by the time of the July 13, 2023 IEP team meeting, Grossmont Union had read Sierra School's May 12, 2023 individual education plan, Dr. Weckerly's May 2023 independent evaluation and her June 26, 2023 letter regarding the Valhalla adult transition program and Parent's concerns about it. Student argues that Grossmont Union failed to explain why it "unilaterally removed" the counseling services Student was receiving at Sierra School. Student argues Dr. Weckerly's June 26, 2023 letter stated that although Student's previous experiences at Valhalla might not appear objectively traumatic, they traumatized Student and his reactivity and inflexibility were part of how his autism spectrum disorder manifested.

Based on Dr. Weckerly's input, Student argues that if Student were asked to attend Valhalla, Student would have become anxious and he needed development in core skills crucial in navigating social scenarios, including self-awareness, cognitive flexibility, and meta cogitation. Student asserts that at Sierra School, Student worked through social stories and repetition of familiar tasks to help him conquer new tasks that might cause some anxiety; yet the July 2023 IEP did not include any services to help Student navigate his heightened anxieties or process the emotions he experienced if forced to return to Valhalla. Student asserts the IEP team meeting notes document Parent was concerned with Student's school aversion and there may have been traumatic experiences when he attended Valhalla that might have been impacting his perception of the school; yet Grossmont Union failed to give any rationale why Student did not require counseling and guidance services to succeed in the new program.

Grossmont Union contends Student failed to meet his burden of proof that counseling and guidance was necessary for Student to receive a FAPE. Grossmont Union argues that the only evidence Student presented on this issue was Sierra School's May 12, 2023 individual education plan, which offered counseling services. Grossmont Union asserts that as a unilateral, private school placement, Sierra School could provide Student with any services Parent requested because it did not have the same legal obligations as a public school district. Grossmont Union contends there was no evidence establishing the basis for the counseling and guidance support Sierra School offered and that Grossmont Union was not required to offer comparable services to Student's private school placement. Grossmont Union maintains that based on its spring 2023 social-emotional functioning assessment, Student appeared to be doing well and there was no evidence that the 50 minutes of yearly mentoring services Grossmont Union offered was inadequate to meet Student's needs.

Related services required to assist a student with exceptional needs to benefit from special education may include counseling and guidance services. (Ed. Code, § 56363, subd. (b)(9).)

The fact that Student's private school was providing him with 960 minutes a year of counseling services did not obligate Grossmont Union to also offer those services. The May 12, 2023 individual education plan developed by Sierra School, which offered counseling services, was not an IEP, and no one from Sierra School testified establishing the basis for offering those services. Student did not call Student's Sierra School counselor to testify at hearing. The only other witnesses from Sierra School, administrator Luster and special education teacher Rivera, provided no persuasive testimony on this issue. Luster offered some vague testimony that she thought the counseling was important and that it was related to Student's new/novel-task-initiation goal, but she was not a counselor and provided no other details. Rivera was not asked any specific questions on this topic.

Sierra School's May 12, 2023 individual education plan offered a goal to address flexibility/new tasks/transitions, which was to be implemented by a counselor, occupational therapist, and the special education teacher. The proposed goal required Student to complete a new task or activity with no verbal protests. The baseline for the goal stated that Student was very schedule-oriented, and he liked to be in class and do what his peers were doing. He had increased his flexibility during the 2022-2023 school year regarding schedule changes or leaving class for designated services. The goal stated Student exhibited rigid thinking and did not like new things or things that were out of his norm, and that it would benefit him to try to work on new things or become accepting of novel tasks or ideas.

The July 13, 2023 IEP proposed by Grossmont Union also offered a goal to address Student's flexibility and rigidity in confronting new tasks/transitions, to be implemented by the special education teacher. Significantly, Student failed to address why this July 2023 IEP goal targeting flexibility/new task/transitions, implemented by the special education teacher through the services offered, was insufficient to meet Student's needs. Moreover, there was no testimony or other evidence establishing that Student required, specifically, counseling services.

Grogan testified he did not know why counseling services were not offered, but stated Parent never asked for or brought up counseling services during the July 13, 2023 IEP team meeting. Neither school psychologist Armendariz nor the other district witnesses were specifically questioned on Student's need for counseling services. Parent and Dr. Weckerly were never specifically asked about this issue, and neither of them testified Student required counseling services at the time of the July 13, 2023 IEP, or explained why the offered goals, related services, and accommodations were inadequate such that counseling services, specifically, were necessary.

Grossmont Union's May 24, 2023 updated social-emotional functioning assessment did not document any significant concerns requiring counseling services. On the 18 behavior rating scales, none of Parent's scores fell in the clinically significant range apart from adaptability, and four were in the at-risk range. Parent reported Student had extreme difficulty adapting to changing situations and he took much longer to recover from difficult situations than most others of the same age. Parent also reported Student had difficulty maintaining necessary levels of attention at school,

had difficulty seeking out and finding information on his own, and almost always lost control when angry. However, Parent's ratings of Student in the following areas all were outside the at-risk or clinically significant range:

- hyperactivity,
- aggression,
- conduct problems,
- externalizing problems,
- anxiety,
- depression,
- somatization,
- internalizing problems,
- atypicality,
- withdrawal,
- behavior systems index,
- social skills, and
- activities of daily living.

In comparison, based on the 2023 rating scale completed by special education teacher Philips, who had been Student's teacher at Sierra School since 10th grade, none of Student's scores on 20 behavior rating scales were in either the clinically significant or at-risk range, and Student appeared to be doing well in school. School psychologist Armendariz was aware Student was receiving counseling services from Sierra School, but did not recommend counseling services, concluding Student might benefit from independent living skills training where he could begin to navigate his community and possibly job opportunities.

Student relies on one measure of Dr. Weckerly's May 2023 independent evaluation, specifically the child behavior checklist/teacher report form, which was described in Dr. Weckerly's report as a rating scale used as a diagnostic tool for a variety of behavioral, emotional, and other issues. In one area out of eight areas, specifically, in thought problems, Parent's score was in the clinically significant range. Teacher Philips's score was barely in the clinically significant range in one area out of eight areas and on the borderline in one area out of five marked "DSM-scales." None of Parent's five "DSM-scales" scores were clinically significant. Dr. Weckerly did not adequately explain during her testimony the meaning of the scores as they related to her opinion, or what "DSM-scales" meant, negatively affecting the evidentiary weight given to these scores. Even so, nowhere in her service recommendations did Dr. Weckerly state Student needed counseling services. Her June 26, 2023 letter also did not mention counseling services. Student's closing brief points to other language in Dr. Weckerly's recommendations about Student needing to develop core skills crucial in navigating social scenarios, but again, neither in Dr. Weckerly's report nor in her testimony at hearing did she specifically opine that counseling services was the required intervention or demonstrate that the program, services, and supports offered in the July 2023 IEP would not meet any need Student had in this area.

Student points out that Luster testified Sierra School worked through social stories and repetition of familiar tasks to help Student conquer new tasks that might cause anxiety, claiming Student's July 2023 IEP did not include any services to help Student navigate his heightened anxieties or process the emotions he would experience if he returned to Valhalla. However, Student's July 2023 IEP included the two social-emotional goals discussed above to address Student's inflexibility and issues with new tasks, in addition to 50 minutes per year of mentoring. The July 2023 IEP also

included accommodations including social stories, de-escalation routines, reinforcement systems, breaks, and access to a daily schedule, among other things. Valhalla special education teacher Cibulka testified about many proactive strategies in the Valhalla adult transition program that could be used to address Student's rigidity, which she described as typical for a child diagnosed with autism.

Notably, although Parent, lay advocate Major, and Dr. Weckerly all attended both the May 24 and July 13, 2023 IEP team meetings, there was no evidence that any of them brought up or mentioned Student's alleged need for counseling services. This failure further undercuts Student's position that counseling services were necessary at the time of the July 13, 2023 IEP. Certainly, if counseling services were something Student required to access the curriculum, someone would have brought it up. Yet, no one did.

Student's assertions that counseling services were required because Student might refuse to attend school or because Student had "traumatic experiences" while attending Valhalla were not convincing. First, at the time of the July 13, 2023 IEP team meeting, there was no persuasive evidence Student had failed to attend school when forced to transition in the past. As discussed in Issue 2.b.4, the weight of the evidence established Student underwent multiple transitions of different types, involving new teachers, new schedules, new classrooms, new lessons, and new procedures since leaving public school in the 10th grade, including transitioning into Sierra School's adult transition program at the end of the 2022-2023 school year.

Second, there was no persuasive evidence that Student suffered any traumatic incidents while attending Valhalla, or that as of July 13, 2023, he perceived any events he had experienced at Valhalla as "traumatic." Student did not testify at the hearing. None

of the events as described by Parent that occurred at Valhalla could objectively be described as “traumatic,” including the sixth grade incident when he could not attend physical education class, the ninth grade incident when he threw himself on the ground because he did not want to go the speech room, the ninth grade incident where he was unable to attend band because of a miscommunication, or the 10th grade incident when during online instruction he was asked by the teacher and his aide if he had done his homework. All these incidents occurred at least two or more school years before the IEP at issue, and Student failed to establish that Student was suffering any trauma requiring counseling services as result of any of them at the time of the July 2023 IEP.

Dr. Weckerly’s June 26, 2023 letter characterized Student’s experiences at Valhalla as traumatic to him, and asserted Student had a strong negative association with Valhalla because of his previous experiences. However, Dr. Weckerly’s characterizations were primarily based on what Parent reported to her, and as discussed earlier, Parent did not demonstrate at hearing to be a credible witness. As such, Parent’s recounting of these events was not reliable. For example, at hearing, when Parent initially described the ninth-grade incident that prevented Student from participating in band, she called it a “miscommunication.” However, when she was further questioned about it, her explanation morphed, and otherwise lacked foundation, consistency, or clarity. In addition, there was no evidence Dr. Weckerly herself spoke to Student about any of these events, such that she could have opined that he was suffering trauma or had any negative association with Valhalla because of those prior events. None of these incidents were specifically discussed in Dr. Weckerly’s 2021 or 2023 evaluations, nor was there any mention of the alleged negative association Student had with Valhalla or Grossmont Union in either of these documents.



Dr. Weckerly's June 26, 2023 letter asserted she observed Student was vigilant and quite reactive to any mention of the school district or Valhalla. But, when asked about this at hearing, she admitted that paragraph in her letter was based on Parent' report and Student's request during her testing for reassurance the testing had nothing to do with the school district. This testimony failed to demonstrate Student was, as Dr. Weckerly characterized him, "quite reactive" to any mention of Valhalla or Grossmont Union, or that Student had a negative association with Valhalla requiring counseling services. Moreover, the absence of this observational information from Dr. Weckerly's May 2023 independent evaluation report, negatively affected Dr. Weckerly's credibility, including the weight given to her testimony and opinions.

In both 2021 and 2023, Grossmont Union assessed Student. There was no persuasive evidence Student had any negative association with Valhalla or was reactive to any mention of Valhalla or Grossmont Union during these assessments. As part of her 2021 academic assessment, Peling met with Student and interacted with him. He was able to express himself and his likes and dislikes. During the assessment, Student stood up about three times and said he did not want to do the assessment, but each time came back and finished the task, after a minute or so. There was no evidence Student had any adverse reaction to Peling's assessment because it was related to Valhalla or Grossmont Union.

Grossmont Union's 2021 three-year-psychoeducational assessment mentioned nothing about Student's alleged aversion to Valhalla or Grossmont Union. It described Student's behavior during testing. The examiner spent several minutes chatting with Student developing a rapport to put him at ease because Student was anxious about missing class. After the assessor assured Student that he would not miss out on any opportunity, Student was fine and proceeded with the assessment, putting forth good

effort and attempted all tasks asked of him. His concentration and attention were variable through the assessment. His behavior was appropriate throughout the assessment. He asked several times how many items were left. When Student heard his teacher's voice outside the room, he opened the door to engage her, but the few times this occurred he was easily redirected back to task. At hearing, Peling admitted she had a conversation with Parent about Student protesting during the school psychologist's November 2021 testing, but there was no evidence it or any other issue Student may have had with the assessment was based on an aversion to Valhalla or Grossmont Union, and the evidence otherwise established the evaluation was completed.

As part of her 2023 social-emotional functioning evaluation, school psychologist Armendariz chatted with Student and documented her interactions with him in the 2023 evaluation report and further described it at the hearing. Student told Armendariz what he liked to do, talked about school and how much he liked his class, told her about a favorite music artist he liked, even sharing a music video on his tablet with her. He met with Armendariz willingly and was friendly even after she told him she was from Grossmont Union. At hearing, Armendariz could recall nothing notable about his reaction. There was no evidence that Student had any adverse reaction to Armendariz or her assessment because it was related Valhalla or Grossmont Union.

On this point, Dr. Weckerly's credibility was further undermined by her admission at hearing that she would have been surprised if a Grossmont Union assessor had introduced herself to Student and he did not get reactive. Grossmont Union assessor interactions with Student were described in its 2023 evaluation, which lacked any report of Student's "reactiveness" to Valhalla or Grossmont Union. Dr. Weckerly appeared to have no familiarity with this document despite the fact that it was reviewed at the

May 24, 2023 IEP team meeting, and she was rendering opinions about Student's supposed "reactiveness" to Valhalla or Grossmont Union. The evidence failed to prove Dr. Weckerly had ever read Grossmont Union's 2023 assessment or specifically disagreed with any of its findings.

Grogan also observed Student as part of Grossmont Union's 2023 evaluation. After Grogan entered Student's Sierra School classroom, Student asked the teacher why Grogan was there. The teacher told Student that Grogan was from Grossmont Union and was observing her for an evaluation. Student had no reaction, positive or negative. Student simply shrugged his shoulders and continued working with a teacher and two other students at the table.

Although Student told Sierra School administrator Luster that he did not want to go back to Valhalla, and was nervous about it, this was insufficient to prove that Student had an aversion to Valhalla requiring counseling services. In short, Student did not present persuasive evidence establishing Student's functioning at the time of the July 13, 2023 IEP required Grossmont Union to offer counseling and guidance services. Student did not meet his burden of proof on Issue 2.b.7.

**ISSUE 2.b.8: DID GROSSMONT UNION DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER APPROPRIATE SUPPORTS AND SERVICES IN THE JULY 13, 2023 IEP IN THE AREA OF OCCUPATIONAL THERAPY?**

Student contends Grossmont Union denied Student a FAPE by failing to offer occupational therapy services. Student argues that Sierra School witnesses testified occupational therapy services were necessary to address his anxiety and dysregulation,

and that Student's sensory issues resulted in potentially harmful behaviors, including "chinning" and hand pinching. Student asserts Grogan knew Sierra School was providing Student with occupational therapy services. Student argues Grogan admitted at hearing that occupational therapy services should have been added to Student's IEP, but offered no thorough reason for leaving it out, except that it was possibly an oversight.

Grossmont Union contends Student failed to demonstrate occupational therapy was necessary for Student to receive a FAPE. Grossmont Union argues Student was receiving occupational therapy services from Sierra School, but at hearing, Parent was unable to articulate what goal was addressed by those services. Grossmont Union contends although Parent claimed Sierra School had conducted an evaluation of Student's need for occupational therapy, Dr. Weckerly's May 2023 independent evaluation did not mention any such occupational therapy evaluation. Grossmont Union asserts that Dr. Weckerly's evaluation notes that the last time Student was assessed for occupational therapy was in 2018, and occupational therapy services were not recommended.

Grossmont Union argues the evidence established Student had no gross or fine motor issues, and Student did not elicit any testimony from Sierra School witnesses regarding the need for occupational therapy services. Grossmont Union concedes although Grogan suggested the omission of occupational therapy services from the July 13, 2023 IEP might have been a mistake, he did not confirm this, and in fact, his suggestion was contrary to the documentary evidence. Grossmont Union argues it was only required to offer FAPE, not services comparable to what Sierra School offered.

Grossmont Union contends Student failed to call an occupational therapist to testify at hearing, and there was no persuasive evidence presented that at the time the July 13, 2023 IEP was developed Student's functioning required Grossmont Union to offer occupational therapy services.

Occupational therapy services are a related service that is "required to assist a child with a disability to benefit from special education." (34 C.F.R. § 300.34(a).)

While it is true Sierra School provided Student 960 minutes per year of occupational therapy according to its May 12, 2023 individual education plan, Student did not establish the basis for Sierra School offering occupational therapy to Student, much less that they were necessary for Student to receive a FAPE at the time of the July 13, 2023 IEP team meeting. Parent claimed at hearing that Sierra School conducted an occupational therapy assessment of Student in 2021. However, Student did not proffer any written occupational therapy evaluation as evidence, no one testified as to its findings, and at hearing Parent could not recall who had conducted the assessment.

Moreover, Sierra School's May 12, 2023 individual education plan documented Student had no gross or fine motor issues in the present levels of performance. Sierra School noted Student's rigid thinking, but also stated he was very compliant and followed directions well. While Student sometimes initially verbally protested changes to his schedule or unexpected events, or when given a non-preferred activity or asked to stop a preferred activity, he then followed the direction or the request made by staff. In fact, Sierra School documented Student had demonstrated increased flexibility during the 2022-2023 school year.

On May 12, 2023, Sierra School offered what they termed a self-advocacy/self-regulation goal, which was to be addressed by an occupational therapist, speech-language pathologist, counselor, and special education teacher. The baseline for the goal stated Student did not advocate for his needs and participated in activities he did not want to do or made him uncomfortable, which often led to his dysregulation, and he required staff support and “cueing to utilize a strategy and take a break,” and benefitted from “preloading and staff modeling.”

Similarly, the July 13, 2023 IEP proposed by Grossmont Union also offered a social-emotional goal targeting self-regulation and self-advocacy, implemented by the special education teacher. It required Student to use self-regulation strategies to regulate and self-advocate for his needs when he was uncomfortable or did not like something. Significantly, Student failed to address why this July 2023 IEP goal was insufficient to meet Student’s needs.

None of Student’s witnesses testified that services by an occupational therapist were necessary to address Student’s dysregulation. Significantly, Student did not call an occupational therapist to testify at hearing and he did not offer a report of an occupational therapist as part of the evidence at hearing. Sierra School associate director Luster, on whose testimony Student instead relies, did not state, as Student falsely asserts, that Student required occupational therapy services to address his anxiety and dysregulation. Luster merely said it was her “understanding” that occupational therapy services helped Student with regulation when his body felt dysregulated and the sense of anxiety that crept up. In fact, Luster immediately discounted her “understanding” as an endorsement of Student’s need for occupational therapy services. She volunteered that she was not an occupational therapist and could not speak to the specific nature of occupational therapy.

Luster's testimony was also unpersuasive because Student failed to prove Luster was adequately familiar with Student as of July 2023 to render any opinions about Student's need for occupational therapy. Although Luster attended Sierra School's May 12, 2023 meeting, she did not attend the May 24 and July 13, 2023 IEP team meetings. Also, the evidence was insufficient to establish the frequency with which she saw Student or the extent of her involvement in his program during the 2022-2023 school year. She admitted at hearing she did not know if Student was meeting his benchmarks and was unfamiliar with how Student's occupational therapy services at Sierra School were being delivered.

At hearing, Parent claimed she "believed" Student required occupational therapy. However, Parent provided no adequate foundation for her belief. She only offered the conclusory statement that the services had helped Student with "all the things" occupational therapy "helps with in transition to adulthood." Sierra School's May 12, 2023 individual education plan did not mention either the "chinning" or hand-pinching behavior Parent testified Student engaged in and on which Student relies to prove he needed occupational therapy. Parent did not mention "chinning" or hand pinching at either the May 24 or July 13, 2023 IEP team meetings, and neither of the Sierra School witnesses who testified at hearing were ever asked, or testified, about these alleged behaviors. This behavior is not mentioned in Dr. Weckerly's May 2023 evaluation or in her June 26, 2023 letter that Parent vetted before sending it to Grossmont Union. Further, Dr. Weckerly did not recommend Student receive occupational therapy services in her May 2023 independent evaluation. Accordingly, Student's argument that he needed occupational therapy to address dysregulation and anxiety was not convincing.

Student gives more emphasis to Grogan's testimony that it deserves. Grogan did testify at one point Student should have been offered occupational therapy services if Student was getting it at Sierra School, commenting it was possibly a clerical error not to have included it. However, he made that statement in response to a question from Student's attorney asking him why these services were on Sierra School's May 12, 2023 independent education plan, but not on the July 13, 2023 IEP. It was clear from Grogan's demeanor, statements, and tone, his testimony was not factual, and that he was just speculating. Grogan was not an occupational therapist, and his testimony was not persuasive in establishing Student required occupational therapy for a FAPE. The evidence did not establish Student needed, and the law did not require Grossmont Union to offer, occupational therapy services in the July 13, 2023 IEP, merely because Sierra School offered those services to Student on May 12, 2023.

Regarding Student's occupational therapy claim, he did not establish his functioning required more than the related services, goals, and accommodations offered. Student failed to prove that he was denied a FAPE because Grossmont Union did not offer occupational therapy services to Student in the July 13, 2023 IEP.

**ISSUE 2.e: DID GROSSMONT UNION DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER AN APPROPRIATE EDUCATIONAL PLACEMENT IN THE JULY 13, 2023 IEP?**

Student contends Grossmont Union's placement offer in the adult transition program at Valhalla was not tailored to address Student's needs and was not based on the input of those knowledgeable about Student. Student argues that although Valhalla



adult transition teacher Cibulka testified the program could confer educational benefit on Student, she had never met Student and was unaware that he had negative associations with Valhalla, and the July 2023 IEP did not include information from Dr. Weckerly's evaluation. Student contends that the July 13, 2023 offer of placement was not reasonably calculated to enable Student to make progress in light of his circumstances or tailored to meet his unique needs because it did not include behavior supports, counseling, occupational therapy, or a transition plan from Sierra School to Valhalla, and was a moderate/severe program, which was not appropriate for Student, who had a mild intellectual disability, and because it failed to offer the academic rigor Student required to meet his academic goals.

Grossmont Union contends the Valhalla adult transition program was the least restrictive environment based on Student's needs for a functional skills program, was reasonably calculated to prepare him to obtain employment and live independently, and was sufficient to confer appropriate educational benefit upon him. Grossmont Union argues that the Sierra School personnel who attended the May 24, 2023 IEP team meeting did not indicate they believed the Valhalla program was inappropriate for Student. Grossmont Union asserts the adult transition program at Valhalla, as opposed to some other campus, was offered because Parent had previously selected that campus through its school-of-choice process, and it also offered Parent the option of placing Student at his neighborhood school, El Cajon Valley High.

Grossmont Union contends although Parent believed the Sierra School program was more appropriate, Grossmont Union was not required to provide Parent's preferred program or a program to maximize educational benefit. Grossmont Union asserts that the Valhalla adult transition program was appropriate given Student's cognitive ability, ranging between borderline to mildly intellectually disabled, and his present levels of

performance. It contends Valhalla was in Student's community and the offered program provided mainstreaming with non-disabled peers in his community, along with functional academic instruction every day, taught using many modalities to meet individual student's needs. Grossmont Union argues that Cibulka, department chair of the transition program and who worked with students with learning profiles like Student, confidently testified Student could receive appropriate educational benefit from the program which offered Student a small, highly structured group setting with a four-to-one student-to-adult ratio. It argues that Dr. Weckerly's main concern was getting Student to attend class on the campus, not that the program was inappropriate.

Grossmont Union maintains although it tried to obtain information from Parent during the July 13, 2023 IEP team meeting regarding the strategies used at Sierra School to support Student in coping with changes, Parent did not share any within the time limitation Parent placed on the length of the meeting. It contends it offered to hold another IEP team meeting to address Parent's concerns, but lay advocate Major informed Grossmont Union that Sierra School was the best placement and Parent would unilaterally place Student there and seek reimbursement, disengaging from the IEP process. Grossmont Union contends that concerns could have been overcome if Parent had engaged in the IEP process and shared about the strategies she and Sierra School applied when Student transitioned to Sierra School in 2020 and then to its adult transition program in 2023. Grossmont Union asserts that it made every effort to engage Parent in the IEP process, and that it considered Dr. Weckerly's recommendations, which could be implemented in the adult transition program at Valhalla. It argues it detailed the basis of its refusal to place Student at Sierra School and offered another IEP team meeting in a prior written notice dated July 13, 2023, but Parent filed for due process on July 17, 2023.

Specific educational placement means that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042.)

If a 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, and comported with the student's IEP, then the school district provided a FAPE, even if the parents' preferred program would have resulted in greater educational benefit. (*Gregory K.*, *supra*, 811 F.2d at p. 1314.)

A school district must deliver each child's FAPE in the least restrictive educational environment appropriate to the needs of the child. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when education of the child 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).)

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

1. the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;

2. placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
3. unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
4. in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
5. a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

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

1. "the educational benefits of placement full-time in a regular class";
2. "the nonacademic benefits of such placement";
3. "the effect [the student] had on the teacher and children in the regular class"; and
4. "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 ("Rachel H.") [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050].)

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.*, *supra*, 874 F.2d at p. 1050.) The continuum of program options includes but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction; and instruction using telecommunication and instruction in the home, hospitals or institutions. (Ed. Code, § 56361.)

Here, the preponderance of the evidence established that Grossmont Union's placement offer in the July 13, 2023 IEP, the adult transition program at Valhalla, was designed to meet Student's unique needs and reasonably calculated to enable Student to make progress appropriate in light of his circumstances in the least restrictive environment. Although Valhalla was not Student's neighborhood school, it was the school Student would have attended had he not been disabled. Grossmont Union allowed parents to choose a school other than a student's neighborhood school, which the school district continued to honor throughout the child's education as the parent's public school of choice, until a parent informed Grossmont Union it was choosing another public school or wanted the student to attend their neighborhood school. When Student began ninth grade, Parent opted to have Student attend Valhalla instead of Student's neighborhood school. Parent never informed Grossmont Union she wanted Student to return to his neighborhood school or chose another public school.

At the time of the July 2023 IEP team meeting, Student had already completed 12th grade and had begun the transition to an adult transition program during the extended school year at Sierra School. There was no dispute between the parties and no evidence that Student required placement in anything other than an adult transition

program. Student was already attending Sierra School's adult transition program, having begun an abbreviated version of the regular school year program during the summer, and Parent wanted Student to remain at Sierra School, so Parent rejected the program Grossmont Union offered by filing for due process.

Student argues the placement at Valhalla was improper because it failed to meet his needs, including failing to provide appropriate behavior supports, a transition plan to a comprehensive public school campus, adequate specialized academic instruction, counseling and guidance services, and occupational therapy. However, these claims overlap with and are duplicative of Student's other issues regarding behavior supports in Issue 2.b.3, a transition plan to a comprehensive campus in Issue 2.b.4, specialized academic instruction in Issue 2.b.6, counseling and guidance services in Issue 2.b.7, and occupational therapy in Issue 2.b.8. Therefore, Issue 2.e addresses only Grossmont Union's alleged failure to offer an appropriate placement in the July 2023 IEP beyond and separate from those issues which are addressed separately in Issues 2.b.3, 2.b.4, 2.b.6, 2.b.7, and 2.b.8., and will not be discussed or repeated here.

Student makes two additional arguments, both unpersuasive, which are addressed below.

(This space is intentionally blank. Text continues on following page.)

## THE PLACEMENT WAS NOT INAPPROPRIATE BECAUSE IT SERVED STUDENTS DESCRIBED AS HAVING MODERATE/SEVERE DISABILITIES

Student argues the specialized academic instruction offered was inappropriate because the program offered was in the moderate/severe category. The evidence failed to support Student's assertion.

As discussed in more detail in Issue 2.b.6, at the time of the July 13, 2023 IEP team meeting, Student was 18 years old and had been on a certificate of completion course of study since at least 2021. When Grossmont Union assessed Student in November 2021 for his three-year review, Student's overall memory and learning abilities were in the lower extreme range for his age. His visual motor integration was in the below average range. Student scored below average on a subtest designed to show how well a student could retain and manipulate simple sentences of auditory information. Student scored in the lower extreme range on a subtest designed to show how well a student could retain details in sentences of increasing length and grammatical complexity. Three of his academic achievement scores were in the lower extreme range, two were below average, and only one was average. Grossmont Union's school psychologist concluded Student had deficits in adaptive behavior, which overall were below average for his age. In 2021, Dr. Weckerly diagnosed Student with what she called a "mild intellectual disability." In 2023, Student's academic scores were all well below grade level as documented by Sierra School's May 12, 2023 individual education plan, and in May 2023, Dr. Weckerly reported academic scores in the first, eighth, 19th, and 32nd percentiles.

Grossmont Union did not label its adult transition programs as being “mild/moderate” or “moderate/severe.” They were just called adult transition programs. All of its five-day-a-week, site-based adult transition programs served students with moderate/severe category disabilities. In the last couple of years, Grossmont Union created what would be considered as more of a mild/moderate program, which consisted only of services for a couple of hours a week at a job site or at school district office. That program was for students who needed just a little support, such as coaching on the job site or applying for college.

In contrast, for students who needed support five days a week, five hours a day, the full-week program for them was considered a moderate/severe program. While Student contends he did not require a moderate/severe program, there was no evidence offered at hearing that Student required anything less than a full-time, five-day-a-week program, like the one Grossmont Union offered in the July 13, 2023 IEP. In fact, as discussed in Issue 2.b.6, Student asserts his program should have included more time doing academics, not less. Given Student’s course of study, and levels of cognitive functioning and academic skill, Student required a five-day-a-week program to make progress to support his goals and support his transition out of school and to live independently.

At hearing, Dr. Weckerly was asked if a moderate/severe program could meet Student’s needs. Her response was equivocal. She testified that in general, a moderate/severe program would be overly restrictive because Student was capable of learning academic skills that were typically more advanced than what one would see in a moderate/severe classroom. However, Dr. Weckerly not only failed to persuasively explain how a moderate/severe classroom was “more restrictive,” her opinions failed to establish that the Valhalla classroom, specifically, was inappropriate. In fact, Dr. Weckerly



admitted in her June 26, 2023 letter that the students in the classroom she observed during the June 7, 2023 tour seemed to be at a similar cognitive level as Student. Later, at hearing, she also admitted the program “looked good” in terms of the peers in the program because they were more or less at the same cognitive level as Student.

Dr. Weckerly claimed autism was a more impactful issue for Student; however, her opinions appeared to undercut Student’s argument that a moderate/severe classroom was inappropriate. Dr. Weckerly volunteered that none of the students she observed at Valhalla during the June 7, 2023 tour demonstrated behaviors like Student’s, and she was concerned the classroom have staff skilled in dealing with students with autism, because inflexibility was Student’s biggest issue. Thus, Dr. Weckerly’s testimony demonstrated her concern was not that the offered program was considered a moderate/severe category program, but that it had staff skilled at dealing with students with autism, particularly students with inflexibility issues. Her testimony demonstrated she did not know if the staff at Valhalla had the necessary skills or not, and she offered no convincing opinions they did not. Student failed to proffer any evidence that the Valhalla adult transition program staff was not sufficiently skilled.

STUDENT DID NOT ESTABLISH THE PLACEMENT OFFERED WAS  
INAPPROPRIATE BECAUSE IT WAS NOT BASED ON THE INPUT OF  
THOSE KNOWLEDGEABLE ABOUT HIM

Student attempts to attack the July 13, 2023 offer of placement by arguing that it was not based on the input of those sufficiently knowledgeable about Student. However, attacking the development of the offer of placement in this manner is a procedural claim, which was not raised in Student’s complaint or listed as one of the issues for hearing.

The development of the offer of placement by IEP team members unfamiliar with Student does not by itself establish that the offer of placement was inappropriate. Student had been attending Sierra School since November 2021 as a parentally placed private school student. Thus, it necessarily follows that Grossmont Union personnel were not as familiar with Student as they otherwise would have been had he been attending one of its public schools. However, as discussed above, Student had been assessed by Grossmont Union in both 2021 and 2023, through a variety of measures, including observations, record review, interviews, and rating scales, among other things, and written reports were prepared. Grossmont Union personnel also attended Student's IEP team meetings on December 2 and 17, 2021, and January 11, 2022, for Student's three-year review. Grossmont Union personnel also attended both the May 24 and July 13, 2023 IEP team meetings, where both Grossmont Union and Dr. Weckerly's assessments were discussed and Parent had the opportunity to provide input. Sierra School personnel attended the May 24, 2023 IEP team meeting and the IEP team received input from Sierra School staff through the assessments Grossmont Union conducted and other documents, including the May 12, 2023 individual education plan.

Student argues Grogan and Armendariz only spent short amounts of time with Student, and Peling's evaluation of Student was conducted two years earlier and she was unfamiliar with Student's "chinning" or hand pinching. Student also argues Cibulka never met Student or read any evaluations of him and did not know Student had any negative associations with Valhalla. Student also complains that the information in Dr. Weckerly's evaluation was not in the July 13, 2023 IEP. None of these are assertions are compelling on Issue 2.e.

The length of time Grogan and Armendariz spent interacting with Student was not determinative of the appropriateness of the placement offer in the July 2023 IEP. Both assessed Student in 2023 and attended the May 24 and July 13, 2023 IEP team meetings; thus, they had access to information about Student through other means. Similarly, Peling may have last assessed Student in 2021, but she attended the July 13, 2023 IEP team meeting and had access to information about Student through other means. It is not surprising Peling was unaware of Student's "chinning" or hand pinching because, as discussed in more detail in Issue 2.b.8, this alleged behavior testified to by Parent was never mentioned in any of Student's records proffered at hearing or in Dr. Weckerly's reports.

Cibulka never met Student because she was an adult transition teacher and Student left public school in 10th grade. Cibulka may have never read Student's evaluations, but she was at the May 24, 2023 IEP team meeting where the most recent evaluations of Student were discussed. She also attended the July 13, 2023 IEP team meeting, and thus gained knowledge about Student by other means. The fact that Cibulka did not know about Student's alleged negative associations with Valhalla did not establish that the placement Grossmont Union offered was inappropriate. As discussed in Issue 2.b.7, these were assertions made by Student, not established facts. Cibulka, the witness most familiar with the Valhalla adult transition program and what it provided, was persuasive in her testimony describing the program and how it could benefit Student. She was persuasive not only because of her education, experience with students with autism, and knowledge of the program, but because of the candid nature in which she testified.

The absence of Dr. Weckerly's opinions in the July 13, 2023 IEP did not prove the Valhalla adult transition program was an incorrect placement. Grossmont Union had Dr. Weckerly's report and it was reviewed at the May 24, 2023 IEP team meeting. It also received Dr. Weckerly's June 26, 2023 letter, and Dr. Weckerly was present at both the May 24 and July 13, 2023 IEP team meetings to offer any input necessary for the IEP team to consider.

Student failed to prove that the offered placement at the Valhalla adult transition program was inappropriate. Student failed to meet his burden of proof on Issue 2.e.

## 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.a.3:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to offer Student appropriate services and supports in the May 2023 IEP in the area of behavior.

Grossmont Union is the prevailing party on Issue 1.a.3.

(This space is intentionally blank. Text continues on following page.)

#### ISSUE 1.a.4:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to offer Student appropriate services and supports in the May 2023 IEP in the area of a transition plan to a comprehensive campus.

Grossmont Union is the prevailing party on Issue 1.a.4.

#### ISSUE 1.a.6:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to offer Student appropriate services and supports in the May 2023 IEP in the area of specialized academic instruction.

Grossmont Union is the prevailing party on Issue 1.a.6.

#### ISSUE 1.a.7:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to offer Student appropriate services and supports in the May 2023 IEP in the area of counseling and guidance.

Grossmont Union is the prevailing party on Issue 1.a.7.

#### ISSUE 1.a.8:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to offer Student appropriate services and supports in the May 2023 IEP in the area of occupational therapy.

Grossmont Union is the prevailing party on Issue 1.a.8.

ISSUE 1.a.9:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to offer Student appropriate services and supports in the May 2023 IEP in the area of extended school year.

Grossmont Union is the prevailing party on Issue 1.a.9.

ISSUE 1.c:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to make a clear and specific offer of FAPE at the May 2023 IEP.

Grossmont Union is the prevailing party on Issue 1.c.

ISSUE 1.d:

Grossmont Union did not deny Student a FAPE during the 2023 extended school year by failing to offer Student an appropriate educational placement in the May 2023 IEP.

Grossmont Union is the prevailing party on Issue 1.d.

ISSUE 2.b.3:

Grossmont Union did not deny Student a FAPE during the 2023-2024 school year, including 2024 extended school year, by failing to offer Student appropriate services and supports in the July 13, 2023 IEP in the area of behavior.

Grossmont Union is the prevailing party on Issue 2.b.3.

#### ISSUE 2.b.4:

Grossmont Union did not deny Student a FAPE during the 2023-2024 school year, including 2024 extended school year, by failing to offer Student appropriate services and supports in the July 13, 2023 IEP in the area of a transition plan to a comprehensive campus.

Grossmont Union is the prevailing party on Issue 2.b.4.

#### ISSUE 2.b.6:

Grossmont Union did not deny Student a FAPE during the 2023-2024 school year, including 2024 extended school year, by failing to offer Student appropriate services and supports in the July 13, 2023 IEP in the area of specialized academic instruction.

Grossmont Union is the prevailing party on Issue 2.b.6.

#### ISSUE 2.b.7:

Grossmont Union did not deny Student a FAPE during the 2023-2024 school year, including 2024 extended school year, by failing to offer Student appropriate services and supports in the July 13, 2023 IEP in the area of counseling and guidance.

Grossmont Union is the prevailing party on Issue 2.b.7.

#### ISSUE 2.b.8:

Grossmont Union did not deny Student a FAPE during the 2023-2024 school year, including 2024 extended school year, by failing to offer Student appropriate services and supports in the July 13, 2023 IEP in the area of occupational therapy.

Grossmont Union is the prevailing party on Issue 2.b.8.

#### ISSUE 2.e:

Grossmont Union did not deny Student a FAPE during the 2023-2024 school year, including 2024 extended school year, by failing to offer Student an appropriate educational placement in the July 13, 2023 IEP.

Grossmont Union is the prevailing party on Issue 2.b.3.

#### ORDER

All relief sought by Student is 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.

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings