BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013050272

CORRECTED DECISION[1]

The due process hearing in this case convened on August 13, 14 and 15, 2013, before Administrative Law Judge (ALJ) Paul H. Kamoroff, from the Office of Administrative Hearings (OAH), State of California, in Van Nuys, California.

Student's father (Father) represented Student. Student's mother (Mother or, collectively referred to with Father, Parents) attended the second and third day of the hearing. Student was not present during the hearing. Bernadette Buckley provided Spanish to English translation for Mother on the second and third day of the hearing.

Donald A. Erwin, Attorney at Law, represented the Los Angeles Unified School District (District). Francine Metcalf, specialist in Compliance Monitoring and Support for the District, attended each day of the hearing.

On May 6, 2013, Parents on behalf of Student filed a Request for Due Process Hearing and Mediation (complaint), naming the District. On June 13, 2013, the District requested to continue the due process hearing, which was granted on June 19, 2013.

At hearing, the ALJ received sworn testimony and documentary evidence. The following witnesses testified: Father, Carrie Schwartz, Christy Holcombe, Margaret Hall, David Sanchez, Meghan Griffin, Jacquelyn Olbrychowski, and Svetlana Guermacheva.

At the request of the parties, the record remained open for the submission of written closing briefs. The parties filed their closing briefs on August 29, 2013. The ALJ marked

[1] An inadvertent error was corrected in Factual Findings, paragraph 4.

Student's closing brief as Exhibit S-3 and the District's closing brief as Exhibit D-20. The matter was submitted on August 29, 2013.

ISSUES

1) Whether the District denied Student a free appropriate public education (FAPE) from August 2011 to the present by:

a) Failing to provide an appropriate transition plan and transition goals?

b) Failing to provide two hours per week of speech and language services?

c) Failing to provide intensive occupational therapy (OT) services?

d) Failing to provide appropriate assistive technology?

2) Whether the District procedurally denied Student a FAPE by failing to ensure meaningful parent participation at the April 10, 2013 Individualized Education Program (IEP) meeting, by predetermining the IEP offer?

3) Whether the District denied Student a FAPE by awarding him a high school diploma?

OVERVIEW

Student is a19-year old with autism who has been conserved by his Parents. Student has had great difficulty over the last several years academically, socially, and behaviorally, yet he received passing grades and was awarded a high school diploma. His parents assert that Student does not have the requisite academic, transitional, and self-help skills required of a high school graduate. They do not believe that he earned passing grades based upon unmodified work completed by Student. For these reasons, Parents complain that the District unlawfully graduated Student from high school. Parents also complain that the IEP's failed to remediate Student's deficits in speech and language, OT, assistive technology, and failed to provide adequate transition services. Parents also contend that Student's final IEP, which was held in April 2013, was predetermined.

In response, the District points to Student's grade point average (GPA) of 3.1 and a class ranking of 215 out of 648 students. The District argues that Student earned these scores while placed in an unmodified, general education curriculum. For these reasons, the District asserts that it lawfully graduated Student.

For the following reasons, this Decision finds that the District provided Student a modified curriculum which did not comport to his IEP's or state requirements necessary to

award a high school diploma. This Decision also finds that the District failed to provide Student appropriate related services and predetermined the April 2013 IEP.

FACTUAL FINDINGS

The Student

1. The Student in this matter is a 19-years-and-five-months old male who is a graduate of North Hollywood Senior High School (NHSHS), a public school located in the District. Student received a high school diploma from NHSHS at the end of the 2012-2013 school year, which was Student's senior year of high school. Prior to graduation, Student qualified for special education and related services as a pupil with autism. Student has lived with Parents, within the boundaries of the District, at all times relevant to this proceeding.

2. At present, Student still resides with Parents, and his twin brother who is also autistic, in a home that is within the boundaries of the District. Student's Father speaks English and his Mother is a Spanish language speaker. Student speaks only English. Student does not attend school or college, and he is unemployed.

3. Student began attending NHSHS at the beginning of the 2009-2010 school year, which was Student's freshman year of high school. Student was 15-years-and-five-months old when he began high school. Student attended the regular four years of high school and graduated at the age of 19-years-and-two-months old. The District provided Student an IEP each year he attended NHSHS, through his graduation in June 2013. Based upon his graduation from high school, Student is no longer qualified to receive special education and related services from the District.

4. Student exhibits severe autistic-like behaviors, social and emotional difficulty and behavioral problems. He has limited cognitive abilities and concomitant difficulty in paying attention and concentrating on school work. As a consequence, Student has delayed academic skills. His knowledge of receptive and expressive language is limited, and he has great difficulty with mathematical concepts. He has pre-emerging social skills and lacks the ability to understand interpersonal communication. Student also has difficulties in sensory processing, and he engages in self-stimulatory and sensory-seeking conduct.

5. Student is easily frustrated and responds to situations he dislikes by hitting, biting, and kicking those around him. It requires a team of adults to restrain Student when he demonstrates these behaviors. At school, it was not unusual for the District staff to physically restrain Student and remove him from the classroom to de-escalate his behaviors.

6. The District has provided Student varying levels of speech and language, OT, adapted physical education (APE), specialized academic instruction, and behavior support, throughout his high school years. The District has also provided Student one-to-one aide

support throughout every component of his school day. Student is unable to independently dress himself, ride a bus, or attend any class, and requires constant, individual aide support.

Student's Father

7. On June 14, 2012, just 45 days following Student's 18th birthday, Parents obtained a limited conservatorship over Student. The limited conservators' authority includes the power to make educational decisions for Student. Father testified at the due process hearing, and he was a credible and persuasive witness.

8. Father primarily complains that Student does not have the requisite skills required of a high school graduate. He asserts that the District unlawfully placed Student on a "diploma track," and unlawfully graduated Student from high school at the conclusion of his senior year. Instead, Student should have been placed on an "alternative track" whereby he could work towards a certificate of completion and be eligible for special education through 22-years-of-age.

9. Father argues that Student's grades are not reflective of Student's academic abilities and are the result of inflated scores and modified work. Student is not capable of understanding or completing any of the school work for the classes he has taken while in high school. Father has observed that Student is unable to read a short story, write a sentence, or answer a simple math question. He does not believe that Student has earned passing grades without significant help from his aide, or even with aide support. Father has not observed Student progress academically while at NHSHS.

10. Father also complains that Student's individual transition plans (ITP's) were not congruent with his unique needs and failed to provide adequate support to transition him to postsecondary life. Student, at19-years-old, has not developed any independent living skills. He is unable to dress himself, has no employment skills and is unable to attend college. He cannot functionally communicate or understand dangerous situations, and requires constant adult supervision and support. Additionally, Student has never been taken into the community or provided vocational training by District staff, as called for in the ITP's.

11. Since at least August 2011, Father has not observed any progress in Student's ability to communicate or to understand language. Student, after many years of speech and language services, still regularly provides echoic responses and has great difficulty communicating with others. He does not initiate conversations with peers and normally will not communicate with peers at all. He does not understand non-literal language, including analogies and axioms. Father asserts that the level of speech and language services that the District has offered Student is far below what is required to address his varied speech and language needs, and he recommended that Student receive two hours per week of individual speech and language therapy. Father has requested that the District increase Student's speech and language service, and provide assistive technology to assist him in the area of functional communication, but the District has failed to respond to these requests.

12. Student has also not benefited from the District provided OT services. After several years of District-provided OT, Student still has difficulty in handwriting and sensory processing. Student responds aggressively to loud noises, background noise, and other stimuli. Father described one incident where Student hit a baby because the baby's crying frustrated him. Parents are genuinely concerned for the welfare of Student and those around him.

13. Father contends that the District regularly failed to provide Student agreed upon services in the areas of speech and language, OT, and transition. He has requested service logs from the District which could detail the provision of these services, but the District has failed to provide him these documents.

14. Father has attended every IEP meeting for Student. However, Parents were not permitted to participate in IEP meetings held in April 2012 and April 2013, which were Student's triennial and annual IEP's, respectively. Because Student was over the age of 18 at the time of the 2012 and 2013 IEP meetings, the District invited Parents to attend, but not to participate, at these meetings. The District has never invited Student to attend an IEP meeting.

15. Since the beginning of the 2011-2012 school year, Father has verbally requested additional services and a change of school placement for Student, to a more restrictive, modified special day class program. Parents have also requested that Student be placed in an alternative track curriculum. Father directed these requests to NHSHS administrator Carrie Schwartz, who has not responded to Parents.

16. Overall, Parents believe they have been intentionally removed from the IEP decision making process. Although they consented to the April 7, 2011 IEP, and an addendum IEP held in May 2011, Parents have refused to consent to each subsequent IEP.

The April 7, 2011 IEP Meeting

17. On April 7, 2011, the District held an annual IEP meeting for Student. The purpose of the meeting was to establish his special education program for the 2011-2012 school year, which was the 11th grade for Student. The following people attended this IEP meeting: Parents; Carrie Schwartz, who facilitated the IEP meeting and served as an administrator designee; David Sanchez, who was Student's special education teacher for biology; a general education teacher; Svetlana Guermacheva, who was the District's occupational therapist; and the District's APE teacher. Student, who was 17-years-old at the time of this IEP meeting, was not in attendance.

18. The IEP team reviewed Student's progress regarding his previous annual goals and short term objectives. Student had 10 goals, one each in reading, writing, math, vocational education, fine/visual motor, speech and language, in the area of pragmatics, adaptive behavior, and three behavior goals. Each goal had two corresponding short term

objectives, or benchmarks, that Student was required to meet prior to being able to attain that particular goal. Of the 10 goals and 20 short term objectives, Student did not meet any goals and failed to attain a single objective.

19. The IEP team then reviewed Student's present levels of performance (PLOP's), including teacher and staff reports in reading, writing, math, OT, speech and language, vocational education, and behavior. It was universally reported that Student had difficulty staying on task and required redirection every few minutes. Student was provided an adult aide, referred to as a behavior intervention implementation aide (BII), during every component of the school day, including the bus, each class, all breaks, lunch, and during class transitions. Even with the BII, Student had difficulty following simple directions and was unable to follow multistep directions. He was unable to work in a group setting and became frustrated when peers talked to him. He could not share information, had difficulty communicating across all settings, and had social and emotional functioning delays. Even with the assistance of his BII, Student was unable to complete most of his classwork.

20. In regard to reading, per teacher report, the IEP states that Student did not understand essays; couldn't independently answer who, what, where, when, and how questions ("WH" questions); was unable to identify the elements of a plot; and had difficulty staying on task. In English class, Student had expressive and receptive language deficits which hindered his ability to access her class. In regard to writing, Student was unable to do any work, didn't understand how to use a graphic organizer, and did not stay on any particular topic. Student did not understand the rules of capitalization or the proper use of basic grammar and punctuation. Even with BII support, Student was unable to put two sentences together.

21. PLOP's in vocational education reported that Student would sit down in the classroom when prompted by his BII. He did not participate in classroom discussion and needed support from the BII to stay on task and complete assignments. Given the nature of Student's deficits, he required extended school year (ESY) services.

22. In OT, PLOP's showed that Student had difficulty with organization of behavior, had a variety of visual, vestibular, and proprioceptive seeking behaviors. He had difficulty with self-regulation, even when presented with sensory tools like a theraband. Student also had deficits in handwriting. He wrote in reduced size, inconsistent spacing and orientation to lines. The District's occupational therapist recommended that Student have access to an Alphasmart keyboarding device to assist him to communicate.

23. Student's PLOP's in speech and language reported the following:

> "[Student] has difficulty staying on task, and/or a conversation topic. He often stares into space and has a hard time making eye contact for more than 3-5 seconds. He is frequently echolaliac (repeats questions and phrases) during therapy. He often uses stimulation behaviors during therapy to comfort himself (i.e. rocking back and forth, plugging his ears, shaking his hands). When he is overly excited or stimulated, he

will laugh non-stop. He continues to be challenged with turn-taking and asking questions."

24. In regard to behavior, the team reported that Student was able to say good morning to teachers. The IEP also reported the following behaviors:

> "[Student] is unable to work in a group setting. He has difficulty with peers talking to him. He has trouble communicating what he wants from his peers. When faced with a frustrating situation, [Student] can become very aggressive, hitting, kicking, yelling, biting those that come into contact with him. He must be removed from the situation and provided a place to de-escalate. These episodes can last up to 30-45 minutes and require several people to help calm him down. When [Student] demonstrates these behaviors, he needs to be spoken to in a very soft, calm voice, and removed from any other stimuli."

25. Also in regard to behavior, the IEP team reported that Student had difficulty using appropriate tone of voice, using language to communicate his needs instead of yelling and screaming, identifying safe versus hazardous materials, transitioning between tasks, and following classroom and school rules. Student had difficulty engaging peers without the threat of physical and verbal outburst. Student required "maximum support to not hurt himself and others." Student also struggled with using the computer within the classroom. He became physically aggressive when directed away from a preferred task. The IEP stated that "[Student] will destroy classroom objects and throw scissors or rulers at staff and peers while frustrated. He even attempted to stab a teacher in the neck with a pencil while having an outburst."

26. The April 7, 2011 IEP, teacher and staff reports in reading, writing, vocational education, APE, speech and language, and behaviors, each concluded that Student's various deficits impeded his ability to access the general education curriculum. After reviewing Student's PLOP's, the IEP team formulated 12 new goals which were similar or identical to the prior annual goals.

27. The April 7, 2011 IEP, in a section of the IEP entitled "Participation in State and District-wide Assessments," stated that Student will take all regular state and district assessments, including the California State Tests (CST) and the CAHSEE. The IEP provided accommodations for the state and district testing, including extra time on a test within a testing day, and testing in a small group setting.

28. The IEP also provided Student various classroom accommodations, such as a small group setting, extended time, use of graphic organizers, and prompting to stay on task. The IEP did not include any modifications to Student's instruction or curriculum.

29. The District offered Student placement at NHSHS in a general education curriculum, with all academic classes provided in a specific learning disability (SLD), special day class (SDC), and electives provided in general education classes.

30. The IEP provided Student home-to-school transportation and adult assistance while on the bus because he posed a danger to himself and others. He demonstrated behaviors which included moving around the bus while it is in motion, starting altercations, yelling, and kicking others.

31. The April 7, 2011 IEP, offered the following special education related services: speech and language services, in the area of pragmatics, at 120 minutes per month, one to five times per month; OT, at 200 minutes per year, one to10 times per year; APE, at 260 minutes per week, one to five times per week; Behavior Implementation Development (BID), at 600 minutes per month, provided one to five times per month; and BII, at 450 minutes per day. The IEP offered ESY services for BID, BII, and APE.

32. The April 7, 2011 IEP, also included a behavior support plan (BSP). The BSP reported that Student's behaviors "impede his learning," along with impeding his work production and interaction with peers. Student refused to communicate at all with peers inside the classroom. The BSP did not list any specific targeted behaviors, but reported the duration and frequency of "problem behaviors" at two times, every hour, lasting 15 minutes per episode. Per the April 2011 BSP, Student's problem behaviors impeded his learning, and access to the classroom, 50% of the time. The BSP described various predictors for the problem behaviors, including Student's internal physical and emotional state, noise levels, interactions with peers and adults, and a lack of predictability. The report listed two replacement behaviors, which included Student either requesting a break or for Student to request an unspecified preferred activity. The BSP concluded that reinforcement of positive replacement behaviors were not sufficient to meet Student's behavior needs, rather, curriculum accommodations or modifications were necessary, along with environmental changes. The BSP failed to include a plan for restraining Student when his behaviors threatened the safety of himself or others. [2]

Individual Transition Plan

33. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the student's IEP team, and updated annually thereafter, a student's IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. It must also include transition services (including courses of study) needed to assist the child in reaching those goals. Among other

[2] In his complaint, Student failed to allege that the District denied him a FAPE by failing to provide him an appropriate behavior plan. Consequently, that issue will not be determined in this Decision.

things, this transition plan, normally referred to as an ITP, must include exposure to vocational and community experiences, and if appropriate, training in independent living skills.

34. The April 7, 2011 IEP, included an ITP for Student. The ITP reported that Student had not achieved any prior transition activities including education, training, employment, or community related activities. The ITP stated that Student is interested in music or arts and included a goal for him to develop a personal career/education plan. The employment transition activities stated that Student was to develop a work portfolio, including a resume and letters of recommendation. In regard to community experience, Student was to explore or visit available community resources, such as health care facilities, bank, library, restaurant, or a laundry mat. In regard to independent living, the ITP recommended that "[S]tudent will remain with parents."

35. Parents signed their consent to the April 7, 2011 IEP, and signed their consent to an addendum IEP, which was offered on May 13, 2011. The addendum IEP was held solely to review the BII and BID services, but did not alter these services. There are no differences between the April 7 and May 13 IEP's.

The District's Occupational Therapist

36. Svetlana Guermacheva provided occupational therapy services for Student at NHSHS during the 2011-2012 school year. Ms. Guermacheva has received a master's of arts in occupational therapy. She holds a state license as an occupational therapist. Ms. Guermacheva has extensive experience in the field of occupational therapy, including the assessment and treatment of numerous children with disabilities. She has worked as an occupational therapist for the District since 2008. Presently, she works as an occupational therapist at a District elementary school. Ms. Guermacheva testified at the due process hearing.

37. Ms. Guermacheva first met Student in September 2011, which was the beginning of his 11th grade at NHSHS. Ms. Guermacheva provided Student with one, 20 minute session of OT per month. She provided this service in a pull-out setting located in the school cafeteria, where she worked on helping Student attain his single OT goal, which was in the area of handwriting.

38. As an occupational therapist, Ms. Guermacheva is concerned with a child's ability to process and regulate sensory information. She testified that, from working directly with Student, Student has significant sensory processing issues. This frustrates Student, which impacts his ability to pay attention and causes him to react aggressively when he is over-stimulated. Regarding attention, Student needs a large amount of verbal cues and has pervasive difficulty in his ability to remain seated and focused at his desk.

39. On March 27 and 29, 2012, Ms. Guermacheva completed a triennial occupational therapy assessment for Student. The assessment included a teacher interview,

observations, and the Beery-Buktenica Developmental Test of Visual Motor Integration (VMI).

40. As part of her OT assessment, Ms. Guermacheva observed Student while he attended choir class. She observed Student frequently touching and twisting his hair, he covered his ears, and he was observed repeatedly rocking back and forth during this class. Ms. Guermacheva also interviewed Student's history teacher, who reported that Student regularly engages in negative and aggressive behaviors while in class.

41. The March 2012 OT assessment found that Student has difficulty with organization of behavior; has a variety of visual, vestibular, and proprioceptive seeking behaviors; and difficulty with self-regulation. Student also has serious deficits in fine motor skills. Ms. Guermacheva reported that he cannot make a knot, fold his shoelaces, or utilize buttons. Per a writing sample, Ms. Guermacheva found that Student has deficits in handwriting, including writing in a reduced size, inconsistent spacing and orientation to lines. In regards to handwriting, Ms. Guermacheva testified that Student had not met his sole OT goal, which addressed handwriting. She described that Student continues to write with decreased letter size and little or no spacing between words. Student was not always responsive to verbal cues from his BII, so it was particularly difficult for her to work with Student to attain this goal.

42. Ms. Guermacheva described Student's performance on the VMI. The VMI is a standardized test which assesses visual-perceptual, visual-motor, and motor coordination skills. Ms. Guermacheva reported that Student scored at the point second (.2nd) percentile on the VMI, which she described as a seriously low score even for a child with autism. This score showed that Student had severe deficits in the areas tested.

43. Ms. Guermacheva's assessment recommended that Student be provided an Alphasmart keyboarding device to assist with his communication, and she repeated this recommendation during the April 2011 and April 2012 IEP meetings. However, the District has never provided Student this assistive technology device.

44. The March 2012 OT assessment reported that Student received a variety of "adaptations and modifications as necessary to meet his individual needs" to the core curriculum. Ms. Guermacheva's assessment mistakenly reported that Student was placed in the alternative education curriculum, which, per her testimony, she supports as an appropriate curriculum for Student.

45. Ms. Guermacheva's assessment recommended that Student required OT services to assist him to benefit from his specially designed instruction. She testified that Student had previously received 45 minutes per week of OT services, which had been reduced to 200 minutes per year, at one to 10 sessions per year. She does not know why the OT services were decreased, and believes that Student still requires intensive OT services.

46. Student received OT during part of the 2012-2013 school year. The District occupational therapist that was assigned to Student at the beginning of that school year left for maternity leave in mid-October 2012. The District did not assign a new OT provider to Student until sometime in February 2013. Ms. Guermacheva testified that one to 10 sessions, at 200 minutes per year, could mean that Student receives 10, 20 minutes sessions per year, or one, 200 minute session per year, and therefore a five month gap in services was not necessarily a violation of the IEP. However, she does not recommend this model for providing related services, and Student required a more consistent delivery model prescribed for services.

47. Overall, Ms. Guermacheva's testimony supported Father's assertion that Student required greater levels of OT than what was provided by the District. Student's sole OT goal, in the area of handwriting, had not been met despite being repeated, and Student still struggles in this regard. Moreover, her testimony and assessment demonstrated that Student had various deficits which required OT and which went unaddressed in Student's IEP's, including serious deficits in sensory processing, visual, vestibular, and proprioceptive delays, and difficulty with self-regulation. The District's witness failed to support its contention that it provided an appropriate level of OT services to benefit Student in special education.

The April 11, 2012 IEP

48. The District held Student's triennial IEP meeting on April 11, 2012. Father attended the meeting. Although Student was 18-years-old at the time of this IEP, he was not invited to this meeting. In addition to other District staff, Christy Holcombe, who was the District's transition teacher, attended this meeting. Ms. Schwartz facilitated the meeting and acted as the District's administrator designee.

49. The IEP team reviewed Student's progress towards his goals and determined that Student met four of 12 goals from the April 11, 2011 IEP. The team also reviewed Student's PLOP's, which included the following: in math, the teacher reported that Student struggled with simple addition and subtraction. He was unable to perform equations at the class level, even with assistance. In reading, Student was unable to independently analyze or comprehend any questions. In English class, he struggled with words. He did not understand multistep directions, even with assistance. Student was easily frustrated in this class. In writing, with his aide, Student was able to write a simple sentence. He still did not understand punctuation and could not independently use a period. The teacher also reported that "[Student] struggles with question marks and how to use them." Student was unable to write an essay on par with his class, even with assistance.

50. PLOP'S in behavior are identical to the PLOP's contained in the April 7, 2011 IEP. Student still had serious behavioral challenges, which were ubiquitous throughout the day. Student was easily frustrated, and when frustrated, he would hit, kick, bite, swear, and throw objects. There was no indication that the length or severity of these episodes had changed since the prior IEP.

51. PLOP's in OT were also similar to what was reported in the April 7, 2011 IEP. Student still manifested a variety of visual, vestibular, and proprioceptive seeking behaviors; difficulty with self-regulation; and deficits in handwriting. The IEP did not indicate that Student progressed in any area of deficit. The IEP again recommended that Student be provided an Alphasmart keyboarding device.

52. In speech and language, PLOP's indicated that Student had not met the prior goal, which was for Student to engage in a four-part verbal exchange with a peer without prompting. Student was unable to independently engage in a single verbal exchange, and still required significant prompts for any interpersonal communication.

53. The teacher and staff reports in math, reading, writing, behavior, vocational education, and speech and language, each separately concluded that Student was unable to participate in class, which hindered his ability to access the core curriculum.

54. The April 11, 2012 IEP, included test results from the Kaufman Test of Educational Achievement, Second Edition (KTEA-II), which Student took, with accommodations, as part of his triennial assessments shortly before the April meeting. The KTEA-II is an individually administered battery that gives a thorough assessment of the key academic skills in reading, math, and written language. KTEA-II scores are based on a mean of 100 and a standard deviation of 15, so that scores between 85-115 are within the average range. Per the KTEA-II, Student received the following scores: a 40 in math concepts, a 46 in math computation, a 69 in reading comprehension, a 63 in written language, and a 40 in written expression. Pupils with low level abilities will receive scores between 70 and 85. Thus, Student's test results showed that he had below low level abilities in reading, writing, and math.

55. The April 11, 2012 team reported that Student still required a BII during every component of his day, including while on the bus. The team reported that Student has poor communication skills and "is unable to use appropriate forms of communication." He could not "ask for a break, ask or use sensory ball, and /or ask to take a walk." Student required that simple directions were repeated, and he was unable to appropriately transition 90% of the time.

56. The District developed new goals in the same areas as those included in the prior IEP, with similar services, at the same duration and frequency, as offered in the April 2011 IEP. [3] The District repeated its placement offer at NHSHS, in a general education curriculum, SLD SDC's for core classes, and general education for electives.

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[3] The 2012 IEP described the speech and language services at one time per week, 30 minutes per session, while the 2011 IEP described this service as one to five times per month, at 120 minutes per month. The 2012 IEP also terminated Student's APE service.

57. The April 11, 2012 IEP, also stated that Student will participate in all state and district assessments with accommodations, including the CAHSEE. This IEP provided identical accommodations to those found in the April 7, 2011 IEP. Similarly, the April 11, 2012 IEP, did not describe any modifications to Student's instruction or curriculum.

58. The IEP included a BSP which was unchanged from the prior year. The IEP and BSP did not include any data regarding the frequency and duration of behaviors, or a list of behaviors which were being targeted by the BSP. Based upon the information provided, it was not possible to determine whether Student's behaviors were better, worse, or unchanged, since the prior IEP.

59. The IEP reported that none of the activities or goals listed in the 2011 ITP had been worked on or completed. The 2012 ITP continued to describe that Student is interested in pursuing a career in music and technology. This ITP indicated that Student was still in school, had never worked, had no community experience, and required assistance in the area of independent living. The 2012 ITP contained a single goal, for Student to "communicate personal preference using an identified mode of communication." Under community experience, the ITP stated that District staff will assist Student in obtaining a driver's license or a state identification card.

60. Parents dissented to the April 11, 2012 IEP. Father disagreed with the overall program and protested that Student was not progressing academically or behaviorally. He complained that Student did not have the academic skills necessary to have acquired the grades and credits he was said to have earned. He requested that Student be placed in a different placement altogether, a SDC with a modified curriculum, and receive more intensive speech and language, OT, and transition services, and requested assistive technology. The District refused to document any of Father's requests on the IEP document, and failed to respond to these demands via a prior written notice letter.[4]

David Sanchez's Testimony

61. David Sanchez was Student's case carrier during his tenure at NHSHS. He was also Student's teacher for biology during the 2010-2011 school year, which was Student's 10th grade, and for chemistry during Student's 2011-2012 school year, which was Student's 11th grade of high school. Mr. Sanchez was also responsible for developing Student's BSP and ITP. Mr. Sanchez testified on behalf of the District.

62. Mr. Sanchez has a bachelor's degree in administration and business management. Since 2009, he has possessed a clear credential and a special education credential, as well as an autism certificate. He began teaching at the District in 2003 as a

[4] Student's complaint failed to allege he was denied a FAPE based upon the District's failure to provide him prior written notice. This issue will therefore not be addressed by this Decision.

resource specialist assisting students in English and math, and taught history and science to learning disabled students in middle school for seven years before being assigned to NHSHS to teach high school science, biology, marine biology and chemistry.

63. Mr. Sanchez described Student's science classrooms for both the 2010-2011 and 2011-2012 school years as SLD SDC's. Other than Student and his twin brother, all the pupils in his class had IEP's for students with a SLD. Several years earlier, Student had been placed exclusively in autism specific SDC's for each class. However, in response to a Parent request that Student be afforded more mainstreaming opportunities, the District moved Student to SLD specific SDC's for each class, other than some elective classes which Student received in general education classes. Mr. Sanchez's biology and chemistry classes included one full time aide and approximately 15 students, along with BII's for Student and his brother.

64. Mr. Sanchez described that Student had difficulty communicating, seldom interacted with his peers, and was unable to work independently from his BII. Mr. Sanchez, or his classroom aide, prepared Student's quizzes and tests separately from the other students, whereby they would write the page number of the text where each answer could be found, next to each problem. Mr. Sanchez, or the classroom aide, would then hand this modified assignment to Student's BII, who would look up the answer, point the answer out to Student, and then the BII would write, or assist Student in writing, the answer on the quiz or test paper. With this assistance, Student received a "C" in each of the chemistry and biology classes taught by Mr. Sanchez.

65. As Student's case carrier, Mr. Sanchez described that he was solely responsible for developing and implementing Student's BSP, which he did without the assistance of the school psychologist. He also led a team of District staff who would occasionally restrain Student when he posed a threat to himself or others while at school. Mr. Sanchez does not know the cause, or antecedents, for Students aggressive outbursts, and he has not implemented any consistent positive replacement behaviors. There was no evidence provided regarding his training or experience in the area of restraint methodologies.

66. In March 2012, Mr. Sanchez compiled data which he used to compose the April 11, 2012 BSP. This data shows that in his algebra two class, which was an SLD SDC, Student was unable to do most of the work, and could only understand simple math concepts with assistance. Student was unable to stay focused on any task for more than five to eight minutes, even with BII assistance. Mr. Sanchez also found that Student had trouble with bells and fire alarms and was easily overstimulated, which made him angry, and was physically aggressive with teachers and peers while in class. His report stated that "Maximum supervision is required to ensure smooth transitions throughout the day. The BII has not implemented a fade out plan, due to the risk of Student having a physical or verbal outburst." Student's aggressive behaviors included "yelling, screaming, hitting with his hands or feet, scratching or biting and may escalate to highly aggressive physical behaviors with adults."

67. On March 16 and 20, 2012, Mr. Sanchez observed Student during various parts of the school day. In his English composition class, also an SLD SDC, Student sat next to his twin brother and immediately began rocking back and forth in his seat. Student spent the class rocking in his seat and focused on flicking his pencil. He did not pay attention to the other students or to the teacher. When the teacher was talking, Student would not look in her direction or respond to her in any manner. During chemistry class, Mr. Sanchez observed Student rocking back and forth in his chair and he was inattentive during the entire class. During lunch in the school cafeteria, Student rocked back and forth whenever he sat. He was bothered by noise and would cover his ears. After eating, Student began walking back and forth in the back of the cafeteria, and was observed laughing to himself. Mr. Sanchez did not observe Student interact, or attempt to interact, with a single peer during his observations.

68. Mr. Sanchez also wrote the ITP's found in Student's April 2011, April 2012 and April 2013 IEP's. He testified that he wrote these ITP's based upon testing conducted in October 2009, by the District's Department of Transition Services (DOTS) teacher, Christy Holcombe. He described that the test utilized by Ms. Holcombe in 2009 is called the Janus, and is used for purposes of developing a plan for Student to transition to postsecondary life after high school. The results of the Janus indicated that Student enjoyed music and art, and planned to pursue a career in the area of music and technology. Additionally, Mr. Sanchez testified that it was Ms. Holcombe who had implemented Student's ITP's, and that he has never directly implemented any part of the ITP's. As discussed herein, Mr. Sanchez's testimony regarding the ITP's was contradicted by Ms. Holcombe.

69. In February 2012, Mr. Sanchez attempted to administer a transition inventory on career interests on Student. The questionnaire usually takes 15 minutes to complete, but Mr. Sanchez worked on it with Student for two to three hours per day over three days, with the assistance of Student's BII, and was unable to complete this inventory. The fact that Mr. Sanchez was unable to complete this inventory was not discussed during the April 11, 2012 IEP meeting, held just two months later, or the April 11, 2013 IEP meeting.

70. Mr. Sanchez's testimony supported Student's contention that he was not provided classwork in a manner which was unmodified from the general education curriculum, as prescribed by his IEP's. Rather, Mr. Sanchez's testimony demonstrated that Student's work bore little resemblance to the work provided other students. He modified Student's classwork to reduce the difficulty of each assignment presented, which was then reduced again in difficulty by the BII, who regularly completed the modified work for Student. His testimony also revealed that the IEP team failed to consider important information or share this information with Parents, such as Student's inability to complete a simple transition inventory, even with assistance. That alone should have alerted the District that Student faced serious academic and postsecondary hurdles that were not being addressed in his present educational program.

Christy Holcombe's Testimony

71. Ms. Holcombe was Student's transition teacher during the 2012-2013 school year. She has multiple degrees and credentials, including a special education credential and a certificate for teaching life skills, and has worked for the District in DOTS for the past 10 years. Ms. Holcombe also testified on behalf of the District.

72. Ms. Holcombe's testimony regarding Student's ITP's was vastly different from what was provided by Mr. Sanchez. For example, Ms. Holcombe testified that she had not performed the 2009 Janus test which was used to develop Student's ITP's, and which Mr. Sanchez attributed to Ms. Holcombe. When presented a copy of the 2009 Janus test, she stated that she was not responsible for this particular test and described that the handwriting on the test did not belong to her or to Student. Ms. Holcombe was unable to identify whose handwriting was on the test, but testified that she had not assessed, or even directly met, Student prior to April 2013. She also reported that the evidence described as the Janus test was an incomplete section of the Janus test.

73. Ms. Holcombe first assessed Student in April 2013, just prior to his exit IEP meeting, and just two months prior to his graduation from high school. She met with Student for the purpose of completing a Senior Transition Inventory (STI), which is completed by every senior at NHSHS. The STI prompts discussion on life after high school regarding academic and career plans. However, during the testing, Student was unable to understand simple directions, could not complete a sentence, and had difficulty writing single words, even with assistance. Student also had difficulty communicating and could not verbally respond to the questions. He was inattentive and required prompting every few minutes, and was unable to complete any portion of the transition inventory, even with the assistance of Ms. Holcombe and his BII. Ms. Holcombe found that Student was functioning far below that of a high school student, and she was unable to yield any qualitative information from her meeting with Student. Although she attended the April 11, 2013 IEP meeting, which was Student's exit IEP, Ms. Holcombe failed to discuss Student's inability to complete the STI with Parents or the IEP team. The fact that Student was still incapable of completing a simple inventory a year later, even with assistance, should have alerted the District that Student had pervasive and systemic academic difficulties which required more intensive intervention, and it was therefore inappropriate to consider him a candidate for a regular high school diploma at that time.

74. Ms. Holcombe testified that she has never implemented any part of Student's ITP's, or consulted with Mr. Sanchez regarding Student's ITP. She was generally unfamiliar with who was designated as Student's case carrier, or who was responsible for implementing Student's ITP. She described that District staff has never taken Student into the community, or ensured that Student explored a college or a community resource such as a bank, health care facility or postal service, or implemented any goal or activity called for in his ITP's.

75. Ms. Holcombe's testimony also established that Student's ITP's were not reflective of his unique deficits. Student's vocational and postsecondary education abilities were far below what was required to complete the goals and activities listed in his ITP's. He is cognitively limited and was unable to obtain a driver's license, complete a resume, develop

a work portfolio, obtain letters of recommendation, or pursue a career in music or technology, as called for in his ITP's.

76. Ms. Holcombe revealed that Student had not been provided an individualized ITP, his ITP's had not been implemented by the District, and the ITP's were not based upon any test attributable to Student. Her testimony also verified Father's complaint that Student was unable to functionally communicate, read or write, even with the assistance of his BII. This District witness wholly failed to support the District's argument that Student was able to earn passing grades in high school level classes without substantial modifications to the curriculum.

The California Standards Test

77. The CST is a standardized state test which is designed to assess a pupil's abilities in core academic subjects. Results on the CST are provided in the five rating categories, ranging from "Advanced" at the highest level, followed in descending order by "Proficient," "Basic," "Below Basic," and "Far Below Basic." Students who score at the "Below Basic" level demonstrate little or a flawed understanding of the knowledge and skills measured by this assessment in this content area. Results of "Far Below Basic" indicate a serious lack of understanding, even below that of a pupil with a below basic understanding of the material presented.

78. In spring 2012, Student took the CST with accommodations and scored "below basic" in science and history, and "far below basic" in English and math. Despite these low scores and PLOP's indicating that Student struggled with simple addition, basic punctuation, stringing two sentences together, comprehending plots, and answering "WH" questions, Student passed all of his 11th grade classes and earned excellent grades: "B" in contemporary composition, "B" in American literature, "A" and "A" in U.S. history, "C" and "C" in algebra two, and "C" and "C" in chemistry.

The 2012-2013 School Year

79. In fall of the 2012-2013 school year, Father informed Ms. Schwartz that Parents had been appointed conservators of Student, and requested that the April 2012 IEP team meeting be reconvened to discuss Student's placement. Father was dissatisfied with the present program and wanted to explore an alternative placement for Student. Ms. Schwartz did not respond to Father's request. According to Ms. Schwartz, she requested that Father provide her with a copy of the conservatorship, which he refused to provide. However, her testimony was less persuasive than that of Father, who testified that she had not made such a request. Father appeared sincere in his concern for his son, and had promptly obtained the conservatorship within 45 days of Student turning 18-years-of-age. It is illogical that he would have withheld these papers from the District had it been requested. There is also no documentation of Ms. Schwartz's request; if it was school policy to require that a physical copy of a court order be included in Student's educational record, such a requirement and request should have been documented in writing.

The California High School Exit Exam

80. In California, the state government developed the CAHSEE to determine proficiency as a requirement for a high school diploma. In 1999, the California state legislature passed the CAHSEE into law, and CAHSSE testing began, on a volunteer basis, in 2004. In 2006, the CAHSEE became a graduation requirement for public school students.[5] The CAHSEE is divided into two main sections: English-language arts (ELA) and mathematics. The ELA section tests students at a 10th-grade level, and requires a score of 60% to pass; the mathematics section tests students at an eighth-grade level, and requires a score of 55% to pass. Normally, students are given the CAHSEE at the beginning of their sophomore year. The number of students passing the test on their first attempt has risen slightly each year since 2004. As of the 2011-2012 school year, more than three-quarters of students pass the test more than two years before they finish high school, and more than nine out of 10 students pass the test by the end of high school.

81. In October 2012, which was the first semester of Student's senior year of high school, Student took the CAHSEE, with accommodations, and failed both the ELA and math components of this standardized test.

Jacquelyn Olbrychowski's Testimony

82. Jacquelyn Olbrychowski was a substitute teacher in Student's art class at times during the spring semester of Student's senior year at NHSHS. She testified as a witness on behalf of the District.

83. Ms. Olbrychowski described Student's art class as a general education classroom, with one teacher and 45 students. Other than Student's BII, who always accompanied Student and stood directly next to him during class, there were no other adults in this class. Ms. Olbrychowski testified that Student enjoyed this art class, and particularly enjoyed painting. Student received an "A" in this class.

84. Ms. Olbrychowski recounted that Student was emotionally attached to the person assigned as his BII, and that Student became upset if a substitute BII was provided. On one occasion, Ms. Olbrychowski observed Student seriously attack a substitute BII during the art class, which caused unspecified physical injuries to the adult aide. Ms. Olbrychowski was unable to stop the attack by herself, and left her classroom of 45 pupils during the assault to obtain help from staff outside of the classroom. She was able to solicit the help of a male teacher who was teaching a class across the hall, who, along with additional District staff, were eventually able to subdue and restrain Student. Other than the

[5] Beginning in 2010, 504 and IEP eligible disabled students may meet the CAHSEE requirement through an exemption.

BII being a substitute, Ms. Olbrychowski does not know why Student became physically aggressive towards this aide.

Meghan Griffin's Testimony

85. Meghan Griffin has provided speech and language services to Student on behalf of the District. Ms. Griffin has been a state licensed speech and language pathologist (SLP) since 2003. She has been employed as an SLP for the District since 2009, where she has provided assessments and direct services to pupils in general education and those with IEP's.

86. Ms. Griffin first met Student at the beginning of the 2012-2013 school year, which was Students 12th grade of high school. She was responsible for providing Student speech and language services during this school year. She has never assessed Student, and instead relied upon a District conducted speech and language assessment from the prior year. Ms. Griffin provided sworn testimony for the District in regard to its speech and language assessment and services.

87. The District's speech and language assessment was conducted by Lyn Dee Harrelson, and was completed on March 14 and April 10, 2012.[6] The assessment was completed as part of Student's triennial evaluation and included a teacher interview, classroom observation, review of Student's educational file, review of work samples and standardized testing. Ms. Harrelson included the following standardized testing: the Clinical Evaluation of Language Fundamentals – Fourth Edition (CELF-4); the Expressive One-Word Picture Vocabulary Test (EOWPVT); and the Receptive One-Word Picture Vocabulary Test (ROWPVT). Student was 18-years-old when he completed this assessment.

88. Ms. Griffin testified that she had carefully reviewed Ms. Harrelson's 2012 assessment, consulted directly with Ms. Harrelson, and reviewed Student's IEP's prior to providing him speech and language therapy.

89. Ms. Griffin attested that the District's 2012 speech and language assessment found that Student's sole speech and language disorder was a moderate pragmatic language deficit. She confirmed that she found no further deficits related to speech and language during her review of this assessment, her direct consultations with Ms. Harrelson, or based upon her personal experience as Student's service provider. Given this information, Ms. Griffin testified that the District's offer of one speech and language goal each year, in the area of pragmatics, and speech and language services at one to five times per month, 120 minutes monthly, was appropriate to meet Student's individual speech and language needs.

[6] Ms. Harrelson did not testify during the due process hearing. The assessment, which was unsigned, states that it was prepared by Lyn Dee Harrelson, M.A. CCC-SLP. No evidence was provided regarding Ms. Harrelson's training, experience, or credentials.

90. However, during the hearing, Ms. Griffin often provided contradictory or uninformed responses pertaining to Ms. Harrelson's assessment and Student's needs in this area of deficit. For example, Ms. Griffin was unaware that Student was unable to complete the CELF-4 test. The CELF-4 is an individually administered test for determining if a pupil has a language disorder, and is provided to students beginning at five-years-of-age. The CELF-4 assesses four aspects of language, including morphology and syntax, semantics, pragmatics, and phonological awareness. Regarding the CELF-4, Ms. Harrelson reported that "[Student] was unable to comply with instructions to complete comprehensive language assessment." Ms. Griffin did not discuss the reasons for Student's inability to complete the CELF-4 with Ms. Harrelson, and she was unable to explain this failure during her testimony. Ms. Griffin did not attempt to re-assess Student using the CELF-4, and she has never proposed that Student be assessed, or re-assessed, in any area of disability.

91. Ms. Griffin was also unaware that this assessment found that Student exhibited serious expressive and receptive language disorders, not just delays in pragmatic language. Ms. Griffin had not reviewed Student's scores on either the EOWPVT or the ROWPVT, nor had she discussed these scores with Ms. Harrelson. The EOWPVT tests an individual's ability to name objects, actions, and concepts pictured in illustrations. The test is normed for Student's between the ages of two to 18 years. Student obtained a standard score of 62, and placed in the first percentile on this test, which indicated a severe expressive language disorder. Of 100 students who were administered this test, 99 pupils performed at higher levels than Student. The ROWPVT tests an individual's ability to understand the meaning of single words. Similar to the EOWPVT, this test is administered individually and is normed for pupils between the ages of two to 18 years. Student obtained a standard score of less than 55 on this test, which placed him at less than the first percentile, which demonstrated a severe receptive language disorder.

92. During questioning regarding details of Ms. Harrelson's assessment, Ms. Griffin retracted her earlier testimony that she had reviewed this assessment and consulted with Ms. Harrelson. In fact, Ms. Griffin had not reviewed the District's 2012 speech and language assessment as she previously testified, and she had not consulted with Ms. Harrelson regarding Student.

93. The District's speech and language assessment found that Student was eligible to receive speech and language therapy services, and commented that Student had previously received 90 minutes per week of speech services until 2011, when it was reduced to 120 minutes per month. The assessment does not explain why the services had been decreased by two-thirds, given that Student had not met his speech and language goal and had exhibited serious expressive and receptive language delays. During the hearing, Ms. Griffin was not knowledgeable regarding Student's prior services, and she did not know that his speech and language services had been decreased. She did not know the basis for this decrease, and she appeared dismissive towards Father's assertion that Student required more, not less, speech and language therapy.

94. Ms. Griffin was also dismissive towards Father's complaint that Student was frequently echolaliac, or that he had not observed any progress in this area of interpersonal communication. She asserted that there was no observation or data which indicated that Student responded to questions in an echoic manner while at school. However, Ms. Griffin's testimony was contradicted by the April 7, 2011 IEP, wherein the District's IEP team reported that Student habitually exhibited echolalia, and the April 11, 2013 IEP, which stated "[Student] will often respond with an echolalic repetition of the question." Her testimony was also contradicted by the District's 2012 speech and language assessment, which stated that Student will "frequently respond to questions with an echoic imitation of the question or comment off topic."

95. Ms. Griffin described that Student could access a general education curriculum and had been properly placed in the general education, diploma track program. However, this testimony was contradicted by Ms. Harrelson's 2012 assessment, which concluded that Student's deficits adversely impacted his ability to access a general education curriculum.

96. Ms. Griffin provided details regarding her familiarity and experience providing pupils assistive technology assessments, services, and devices. She reported that Student should not be provided assistive technology because he is verbal. She testified that only students who were entirely non-verbal, or mute, could be provided assistive technology assessments, services and/or devices. Here, because Student had the ability to speak, he was not an appropriate candidate for an assessment or services in this area. However, her testimony was contradicted by the April 2011 and April 2012 IEP's, the District's OT, and the District's 2012 OT assessment, each of which recommended that Student be provided a particular assistive technology device, an Alphasmart keyboarding device, to assist him in the area of communication.

97. Normally, Ms. Griffin attends IEP meetings for her students. She feels it is important for a service provider, such as herself, to be an active participant during the team meeting. However, she has never attended an IEP meeting for Student and described that she had a scheduling conflict during Student's April 11, 2013 IEP meeting, and chose to attend another pupil's IEP meeting instead. Ms. Griffin has never attempted to contact Parents, and she has not met with them to discuss Student's speech and language needs, despite Father's requests to Ms. Schwartz that Student be provided more intensive speech and language services and assistive technology.

98. Ms. Griffin reported that Student had met his speech and language goals. However, Student only had one goal in this area, which had been repeated in Student's 2011 and 2012 IEP's. This particular goal related to turn-taking and required Student to complete four, unprompted verbal exchanges, during a conversation with a peer. Ms. Griffin contradicted this testimony by also stating that Student was able to engage in only one verbal exchange with a peer before prompting was required. This contradiction, along with other testimony, demonstrated that Ms. Griffin was not familiar with Student's IEP's, or, in particular, Student's sole speech and language goal.

99. Ms. Griffin spoke very quickly during her testimony, and had to be admonished several times to speak more slowly, which was especially peculiar given that she is an SLP. She appeared nervous and often contradicted, or retracted, her earlier testimony. When she did not retract or contradict herself, her testimony was contradicted by other District provided evidence. For these reasons, Ms. Griffin was not a credible witness. Because the District failed to provide any other witnesses in the area of speech and language, it failed to support its argument that Student received a level of speech and language therapy designed to benefit him in special education. To the contrary, the evidence substantially supports Father's contention that Student required more intensive instruction in this area of disability.

The CAHSEE, Part Two

100. On March 13, 2013, during the last semester of Student's senior year of high school, pursuant to his IEP's, Student again took the CAHSEE, with accommodations. Again, Student failed the ELA and math tests which make up the CAHSEE.

The April 11, 2013 IEP

101. The District convened Student's last IEP on April 11, 2013, which was an annual IEP team meeting. Although Student was 19-years-old at this time, he was not invited to this meeting. In addition to District staff, Parents attended this meeting. There was not an SLP at this meeting. Carrie Schwartz facilitated the meeting and again acted as the District's administrator designee.

102. In PLOP's, the IEP reported some areas of progress, but the team universally reported that Student was unable to do any work independently. In reading, Student was still unable to put two sentences together. In math, he was unable to process a multistep problem. In OT, Student continued to demonstrate a variety of visual, vestibular, and proprioceptive seeking behaviors; and difficulty with self-regulation. He still struggled with hand writing. In pragmatics, Student could not infer information and often responded to questions with an echolaliac repetition of the question. Student was still easily frustrated, and became very aggressive, including hitting, kicking, yelling and biting those who came into contact with him. Student still required a BII during every component of the day, even while on the bus. PLOP's again found that Student's disability hindered his ability to access the general education curriculum.

103. The April 11, 2013 IEP, provided placement at NHSHS through Student's graduation in June 2013, in a general education curriculum, with SLD SDC's for core classes and general education for his elective courses. The IEP provided identical accommodations to what was offered in the April 2011 and April 2012 IEP's. Similarly, this IEP provided no modifications to Student's classwork or curriculum.

104. The April 11, 2013 IEP, failed to provide any special education related services, and provided a BSP and an ITP which were unmodified from the prior year.

Ms. Schwartz's Testimony

105. Carrie Schwartz has a master's degree in education, and teaching credentials in multiple subjects, special education, and administration. Ms. Schwartz has worked for the District for 29 years, with over 11 years teaching disabled students, and five years as a special education program specialist. She presently serves as an assistant principal at NHSHS. Ms. Schwartz knew Student before coming to NHSHS, as she had attended IEP team meetings for Student as a program specialist. Ms. Schwartz testified as a witness on behalf of the District.

106. Ms. Schwartz testified that the April 11, 2013 IEP meeting was an "exit" IEP meeting. She described that an exit IEP meeting is limited to determining whether a disabled student has obtained the credits necessary to receive a high school diploma. Normally, an IEP meeting requires a team discussion regarding a student's overall progress and the modification or development of a pupil's educational program. According to Ms. Schwartz, an exit IEP meeting is different from a regular IEP meeting, in that an exit IEP meeting is a "roll over" from the prior annual IEP and therefore does not require a review of information outside of the pupil's credits. Here, because Student's April 2013 IEP was an exit IEP, other than to determine if Student had met the school credits necessary to graduate, she described that the remainder of the IEP was "rolled over" from the April 11, 2012 IEP.

107. Ms. Schwartz emphasized that the April 2013 IEP meeting was held solely to confirm that Student had met the credits required to graduate from high school. She had reviewed Student's credits prior to the IEP, and determined that Student had met, or was in the process of meeting, the number of credits necessary to graduate. Given this information, Ms. Schwartz described that she did not permit any changes to Student's IEP during the April 11, 2013 meeting.

108. Ms. Schwartz's description of this meeting was consistent with Father's complaint that the IEP had been predetermined. He testified that Ms. Schwartz began the meeting with a preconceived plan to exit Student from high school, and that she did not permit any changes to this plan. Parents were adamantly opposed to the District's decision to award Student a diploma and to graduate him from high school; however, their objections were not considered by the team or even recorded onto the IEP document. Ms. Schwartz's testimony is also consistent with Ms. Holcombe's description that Student's inability to complete the STI was not discussed with Parents, or documented on the IEP. It is also consistent with Ms. Griffin's conduct of skipping this meeting altogether, thereby denying Parent's the opportunity to discuss areas of concern related to speech and language and assistive technology.

109. Ms. Schwartz reported that she did not invite Student to the April 2012 and April 2013 IEP meetings, although he was 18 and 19-years-old, respectively, at the time of these meetings, because several years earlier Father had verbally requested that Student not attend IEP meetings. According to Ms. Schwartz, she still felt obligated to this request despite Student having turned 18-years-old, years following this request. Moreover, she did

not permit Parents to participate on Student's behalf because they had failed to provide the District a copy of the conservatorship. Regarding these IEP meetings, Ms. Schwartz testified that Parents "were invited to attend, not to sign." Neither the April 2012, nor the April 2013 IEP, has ever been consented to by anyone on Student's behalf.

110. Ms. Schwartz has facilitated most of Student's IEP meetings and has observed him on multiple occasions. She testified that she has also directly reviewed his state and district testing, including a 2012 triennial psycho-educational evaluation, which included standardized testing in the area of academics.[7] However, Ms. Schwartz was unable to recall any scores which Student received pursuant to the state or District testing. She could not recall Student's academic abilities, any standardized scores, or any grade equivalency levels, which Student received pursuant to any testing. Nonetheless, Ms. Schwartz speculated that because Student had received passing grades while attending an unmodified, general education curriculum, that he likely had academic abilities consistent with a 12th grade high school student.

111. Ms. Schwartz described that although it was not unusual for Student to be physically restrained by District staff, the BSP had been an effective tool in curbing his problem behaviors. Yet, she was unable to recall what the specific problem behaviors were, how frequently they occurred, or to describe any particular information regarding Student's behaviors, such as what she was basing her opinion on that the problem behaviors had been curbed.

112. Ms. Schwartz confirmed that Father has been a vocal critic of Student's IEP's, and had requested more intensive services, a different school placement, and an alternative curriculum, throughout the last several years. Due to Parent's objections, the District operated off of the April 7, 2011 IEP, during the 2011-2012 and 2012-2013 school years. She considers the April 2011 IEP, as Student's "stay put" because it was the last IEP that was agreed upon on Student's behalf. She reported that the District was permitted to graduate Student based solely upon the April 2011 IEP, because this IEP described that Student would receive unmodified schoolwork in the general education curriculum, and he had earned passing grades in each class based upon this IEP description.

113. Ms. Schwartz described that pupils who receive accommodations and not modifications to the general education curriculum were placed on a diploma track. Only students who receive modifications to the general education curriculum were eligible for an alternative graduation track, where they could work towards a certificate of completion and be eligible for special education through the age of 22. For Student, each IEP, including the operative IEP of April 7, 2011, provided various accommodations, but did not list any modifications. According to Ms. Schwartz, this meant Student's schoolwork was unmodified from what was provided to his typically developing peers in the general education curriculum. He was therefore ineligible for a certificate of completion or for

[7] The District's 2012 psycho-educational evaluation was not submitted as evidence by either party, and the District's school psychologist was not called to testify.

special education through the age of 22. Ms. Schwartz testified that because Student had received passing grades in classes where his work was unmodified, which was every class for Student; he was graduated after the regular four years of high school. She described that it did not matter that the 2012 and 2013 IEP's were not consented to by Parents or Student.

114. Similar to the prior IEP's, the April 11, 2013 IEP, does not document that Student will meet the CAHSEE requirement through an exemption. Ms. Schwartz testified that the District applies the CAHSEE exemption to all IEP eligible students, regardless what is documented in their IEP's.

115. Ms. Schwartz was not a persuasive witness. Her inability to recall any objective information pertaining to state or District testing, or to recall Student's academic levels and problem behaviors, was not objectively reasonable given her comprehensive and lengthy role in Student's educational career. Ultimately, her testimony substantiated Father's contention that the April 11, 2013 IEP had been predetermined. Moreover, her testimony failed to support the District's argument that Student had earned passing grades while participating in an unmodified curriculum.

Ms. Hall's Testimony

116. Ms. Hall also testified on behalf of the District. She has a master's degree in counseling, and credentials in adult teaching and school counseling. She has worked with the District since 1983, and has experience working with students with autism and learning disabilities. At the time of hearing, she had been an academic counselor[8] for 19 years, and had been assigned to NHSHS for the last four years. Her duties included making sure that students were on track for graduation, with a focus on working with students behind in credits. Ms. Hall was Student's counselor during his 12th grade year. No evidence was produced that Ms. Hall had reviewed Student's IEP's or was directly familiar with Student.

117. Ms. Hall described the difference between students placed on the diploma track, compared to students who are working towards a certificate of completion. Pupils who are placed on the diploma track are required to graduate within the regular four years of high school, subject only to that pupil receiving failing grades and being required to retake a course. In comparison, pupils who are working towards a certificate of completion are placed on an alternative track where they receive a modified curriculum. These pupils are not required to graduate within the regular four years of high school, and will continue to receive school services until the earn a certificate of completion or through their 22nd birthday, whichever comes first.

118. During the 2012-2013 school year, Ms. Hall was responsible for reviewing the graduation eligibility for between 550 to 600 pupils, which included Student. Of those students, exactly 15 were placed on the alternative track, where they received a modified

[8] Ms. Hall provided only academic, not therapeutic, counseling services.

curriculum and worked towards a certificate of completion. The remaining pupils, which included Student, were all placed on the diploma track and received an unmodified curriculum. Ms. Hall testified that all 15 pupils who were placed on the alternative track were eligible for an IEP under the handicapping category of "mental retardation."[9] In her 19 years as an academic counselor, Ms. Hall has never seen a student who was placed on the alternative track who was eligible for an IEP in any area of disability other than intellectual disability. It is the District's policy that intellectual disability is the only category of IEP eligibility which permits special education services through the age of 22 years. Ms. Hall pointed out that Student's handicapping condition was autism, not intellectual disability.

119. Prior to his graduation in June 2013, Ms. Hall reviewed Student's class credits, as recorded on the school computer, and observed that he had obtained the requisite 230 needed to graduate. Given this information, along with Student's IEP eligibility of autism, Ms. Hall literally stamped her approval on Student's transcripts that he met the requirements to be graduated from high school.

The CELDT

120. In May 2013, which was the last full month of Student's senior year of high school, he participated in the California English Language Development Test (CELDT). The CELDT is given to students whose primary language is not English and as an annual assessment to English learners enrolled in kindergarten through grade twelve in California public schools. The CELDT is used to determine the level of English language proficiency of pupils who are limited English proficient. The CELDT is divided into five levels, ranging in descending order of ability from advanced, early advanced, intermediate, early intermediate, and beginner. Only when a student achieves the advanced level may he/she be considered ready to be reclassified out of the English learner program. Pupils who score at the early intermediate level have only emerging skills in that area. Pupils who score a beginner level in speaking on the CELDT demonstrate no productive skills, or may begin to use only basic vocabulary and responses with simple words or phrases. Here, Student scored at the early intermediate level in reading, writing, and listening; and at the beginner level in speaking.

121. Despite these low scores and PLOP's indicating that Student still struggled with simple addition, understanding periods and question marks, answering "WH" questions, and could barely do any classwork, even with assistance, Student passed all of his 12th grade classes and again earned excellent grades: "B" in ceramics, "A" in art, "A" in principles of American democracy, "B" in theatre, "C" in modern literature, and an "A" in economics.

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[9] In 2010, Congress deleted references to "mental retardation" in the Individuals with Disabilities Education Act (IDEA), and replaced it with "intellectual disabilities." (Pub.L. 111-256, 124 Stat. 2643.) This Decision will conform to this change in the IDEA, and use "intellectual disabilities" and not "mental retardation." (Pub.L. 111-256, § 4; [requirement that states change terminology for individuals covered by provisions of this law].)

122. On June 7, 2013, Student graduated from NHSHS with a 3.1 GPA, the requisite 230 credits necessary for graduating, and was ranked 215 out of 648 students in his graduating class. Student's eligibility for special education and related services expired upon his graduation.

LEGAL CONCLUSIONS

Burden of Proof

1. In a special education administrative due process proceeding, the party seeking relief has the burden of proof. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].) Here, the Student is seeking relief and therefore has assumed the burden of proving the essential elements of his claims.

Purpose of the IDEA

2. The express purpose of the IDEA is to "ensure that 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." (20 U.S.C. § 1400(d)(1)(A).)

3. FAPE means special education and related services that are available at no cost to the disabled student, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

Framework for Decision

4. Under the IDEA and corresponding state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) FAPE means special education and related services that are available to the student at no cost to the parents, which meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

5. The congressional mandate to provide a FAPE to a child includes both a procedural and a substantive component. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the school district is required to comply with statutory procedures. Second, a court will examine the child's IEP to determine if it was reasonably calculated to enable the student to receive educational benefit. (*Id.* at pp. 206 - 207.)

6. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview*

School Dist. (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

7. There are two principal considerations in claims brought pursuant to the IDEA; substantive denial of FAPE and procedural denial of FAPE. Unlike substantive failures, procedural flaws do not automatically require a finding of a denial of a FAPE. A procedural violation is subject to a harmless error analysis and constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *T.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*); *M.L., et al., v. Federal Way School Dist.* (9th Cir. 2004) 394 F.3d 634, 653.)

Transfer of Educational Rights

8. When a student who has been receiving special education services reaches the age of 18, all educational rights are transferred to the student, and the district shall notify the student and the parent of the transfer of rights. (Ed. Code, § 56041.5.) If no guardian or conservator has been appointed for the student, the student becomes a "parent" for purposes of special education law. (Ed. Code, § 56028, subd. (a)(2).) The local education agency (LEA) shall provide any required notice of procedural safeguards to both the student and the student's parents. (Ed. Code, § 56041.5.) If the student has been determined to be incompetent, the student's conservator is a "parent" for the purposes of special education law. (Ed. Code, § 56028, subd. (b)(2).) A judicial decree may authorize a responsible adult to act as the parent and make educational decisions for a disabled student. (Ed. Code, § 56028, subd. (b)(2).)

Statute of Limitations

9. Due process complaints filed after October 9, 2006, are subject to a two-year statute of limitations. (20 U.S.C. §§ 1415(b)(6)(B), 1415(f)(3)(C); Ed. Code, § 56505, subds. (l) & (n).) Here, Student filed his complaint on May 6, 2013, and he has not alleged that an exception to the two-year statute of limitations exists for this matter. Therefore, the issues that will be determined in this Decision are limited to conduct which arose after May 6, 2011.

Issue One: Whether the District denied Student a FAPE by failing to provide a sufficient transition plan, adequate levels of services in speech and language and OT, and by failing to provide assistive technology?

The Transition Plan

10. Student contends the District denied him a FAPE by failing to provide him with an appropriate transition plan and transition goals for his post-high school needs. He asserts that from August 2011, through the date of filing, he has not been appropriately assessed regarding his transition needs, his ITP goals were not individualized, and the transition services identified in the transition plan were inadequate to meet his needs. Student also argues that the District failed to implement the ITP, which was last agreed upon in the April 7, 2011 IEP.

11. The April 7, 2011 IEP, falls outside of the statute of limitations. Therefore, the appropriateness of the ITP's will be limited to the ITP's offered in the April 11, 2012 and April 11, 2013 IEP's. Student's contention that the ITP was not provided will extend to the beginning of the 2011-2012 school year, which was August 2011, and falls within the operative statute of limitations. (Legal Conclusion 9.)

12. Beginning at age 16 or younger, the IEP must include a statement of needed transitions services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect when a student reaches 16 years of age must include appropriate measurable postsecondary 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 plan must also contain the transition services needed to assist the pupil in reaching those goals. (Ed. Code, § 56345, subd. (a)(8)(A).)

13. "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 postsecondary education, vocational education, 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, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services may be special education or related services. (Ed. Code, § 56345.1, subd. (a); 20 U.S.C. § 1401(34).)

14. A failure to implement a student's IEP will constitute a violation of a student's right to a FAPE if the failure was material. A material failure to implement an IEP occurs when the services a school district provides to a student with unique needs fall significantly short of the services required by the student's IEP. (*Van Duyn, et al. v. Baker School District 5J* (9th Cir. 2007) 502 F.3d 811.)

15. Here, the weight of the evidence established that, for the 2012 and 2013 ITP's, the District failed to rely on any transition assessment to address Student's postsecondary transition needs. The District's transition teacher, Ms. Holcombe testified that the 2009

Janus assessment relied upon by the District to formulate Student's subsequent ITP's was not attributable to her or Student. Moreover, in February 2012, Mr. Sanchez attempted, but did not complete, a transition assessment. Therefore, the April 11, 2012 IEP and ITP were not based on an assessment of Student's individual needs. Additionally, in April 2013, Ms. Holcombe attempted, but did not complete, a transition assessment for Student. Consequently, the April 11, 2013 IEP, also failed to offer an ITP designed to address Student's unique deficits. (Factual Findings 68-76.)

16. Mr. Sanchez's attempted transition inventory of Student in February 2012, demonstrated that Student was unable to complete a simple 15-minute assessment over a period of three days. This should have alerted the April 2012 IEP team that Student faced serious postsecondary academic, employment and independent living hurdles that required serious modifications to the following IEP and ITP of April 11, 2012. Yet, this IEP and related ITP lacked any genuine modifications as required at that time. The result was a transition plan that was inadequate and not individualized to Student's postsecondary needs. For example, the sole ITP goal offered in April 2012 was for Student to "communicate personal preference using an identified mode of communication." This goal is vague, un-measurable, and fails to assist Student's transition to postsecondary life. (Factual Findings 59 and 68-76.)

17. Similarly, Ms. Holcombe's failed attempt at the STI indicated that Student was unable to understand simple sentences, write, or even verbally respond to the inventory questions. Again, the District should have been alerted that Student faced serious postsecondary academic, employment, and independent living hurdles that required serious modifications to Student's IEP and ITP. Yet, the April 11, 2013 IEP and ITP, ignored these significant concerns. (Factual Findings 71-76 and 104.)

18. Evidence also demonstrated that the vocational and postsecondary education activities were not unique to Student, whose abilities were far below what was required to complete the goals and activities listed in his ITP's. Ms. Holcombe found that Student was cognitively limited and unable to create a resume or obtain letters of recommendation, to obtain a driver's license or other form of identity card, or to pursue a career in music or technology, as called for in the ITP. (Factual Findings 71-76.)

19. In its closing brief, the District reasserts its argument that Ms. Holcombe had provided Student the Janus test in 2009. The District's closing brief also cites to District Exhibits One and 10, as evidence that it routinely updated Student's ITP each year following the 2009 Janus testing up to Mr. Sanchez's inventory assessment in February 2012. (District's Closing Brief, pp. 5 and 6.) These arguments are not well taken for several reasons. First, Ms. Holcombe testified contrarily that she had not assessed, attempted to assess, or directly met with Student, until April 2013. (Factual Findings 71-76.) Second, testimony taken during the hearing did not illicit that the District had taken steps to update Student's ITP at any point prior to Mr. Sanchez's attempted testing in February 2012. (Factual Findings 68-76.) Finally, during the hearing, the District refused to submit its Exhibits One and 10.

20. Contrary to the District's argument, the evidence at hand substantially demonstrates that the District failed to administer comprehensive, age-appropriate assessments to determine Student's postsecondary transition needs in the areas of education, employment, community experiences, or independent living skills. The resulting transition plans were inadequate and not congruent with Student's unique needs. (Factual Findings 33, 34, 68, 69, 78-76, and 104; Legal Conclusions 15-19.)

21. The evidence also established that, since August 2011, the District did not provide the transition services called for in the April 7, 2011 ITP. The two individuals responsible for implementing the ITP goals and activities were Student's case carrier, Mr. Sanchez and the DOTS teacher Ms. Holcombe, and each testified that they had not personally implemented any component of Student's ITP. Mr. Sanchez testified that Ms. Holcombe had worked directly with Student to implement the ITP goals and community outreach activities described in the ITP. However, Ms. Holcombe more persuasively testified that she had never worked with Student regarding implementing any part of the ITP. She testified that she had not attempted any of the community based activities, or ensured that Student had explored a college or a community resource such as a bank, health care facility, or postal service, as called for in his IEP's. Ms. Holcombe also reported that the District failed to provide Student assistance in creating a resume or obtaining letters of recommendation, to obtain a driver's license or other form of identity card, or to pursue a career in music or technology, as called for in the ITP. (Factual Findings 71-76.) The District's failure to implement the ITP was not immaterial, but extended to every aspect of Student's transition plan.

22. In sum, a preponderance of the evidence shows that Student's April 2012 and April 2013 ITP's were not individualized to Student's needs, and failed to provide measurable goals to assist his transition to postsecondary life. (Factual Findings 33, 34, 68, 69, 78-76, and 104; Legal Conclusions 15-21.) The weight of the evidence also established that District failed to provide the ITP services from August 2011, forward. (Factual Findings 71-76.)

The Speech and Language Services

23. Student contends that the District's offer of speech and language services did not offer him a FAPE.

24. Similar to the prior issue, the offer of speech and language services as contained in the April 7, 2011 IEP, falls outside of the statute of limitations. Therefore, the appropriateness of the District's offer of speech and language services will be limited to the IEP's offered on April 11, 2012 and April 11, 2013. (Legal Conclusion 9.)

25. In California, related services are called designated instructional services (DIS). (Ed. Code, § 56363.) DIS includes speech and language services, OT, assistive technology and other services as may be required to assist the child in benefiting from

special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664].) DIS services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd.(a).)

26. In developing the IEP and DIS, the IEP team is mandated to 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 measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

27. Student contends that the District's offer of speech and language services at one time per week, 30 minutes per session, was insufficient to remediate Student's areas of speech and language deficit. Student argues that he is non-attentive, cannot communicate with peers, and has severe expressive and receptive language delays, which require individual services at two hours weekly to remediate. The evidence supports Student's contention.

28. The District asserts that Student's sole area of deficit, a moderate pragmatic language delay, was appropriately remediated by the District-provided services. This argument relies solely on the testimony provided by its SLP, Meghan Griffin. However, Ms. Griffin was not a credible witness. At times, she provided testimony which was unbelievable because it was thoroughly contradicted by other, District-provided evidence. (Factual Findings 19, 23, 24, 25, 31, 32, 49, 52, 55, 64, 67, 73, 88-99, and 102.) At other times, she retracted her own testimony, such as where she initially testified that she had reviewed the District's 2012 speech and language assessment and consulted with the assessor, and then retracted this specific testimony. (Factual Findings 88-99.) In fact, Ms. Griffin was not familiar with Student's IEP's or the District's speech and language assessment, and she intentionally misled the ALJ regarding her lack of knowledge regarding these reports. Nonetheless, the District argues that its offer of speech and language services was sufficient to remediate Student's pragmatic language delay. To address this area of deficit, the District offered a single speech and language goal, which was repeated each year. This goal required for Student to engage in a four part verbal exchange with peers without prompting. However, evidence at hearing indicated that Student never met this goal and still requires prompting to engage in a single verbal exchange with a peer. Evidence thus shows that the duration and frequency of the related service was not sufficient to benefit Student in this area of disability. (Factual Findings 23, 52, 88-89, 102 and 104.)

29. Evidence also demonstrated that Student had serious expressive and receptive language delays which exceeded a moderate pragmatic language delay, which went unaddressed by his IEP's. The District's April 2012 speech and language assessment, found

that Student placed at, or less than, the first percentile in his expressive and receptive language, that he was unable to complete a vocabulary test, and that he frequently responds in an echoic manner. Additionally, PLOP's from the April 2011 and the April 2012 IEP's state that Student cannot stay on any conversation topic, can only maintain eye contact for three to five seconds, does not communicate with his peers, cannot understand multistep directions, and is frequently echolaliac. Notably, the April 2011 and April 2012 IEP's each report that Student's expressive and receptive language deficits hindered his ability to access the general education curriculum. Yet, the District failed to offer DIS to remediate these identified areas of deficit. Consequently, the duration and frequency of the speech and language DIS was not sufficient for Student to benefit educationally from his instructional program. Finally, the April 11, 2013 IEP, failed to provide any speech and language services, which demonstrates that this IEP was not reasonably calculated to provide Student an educational benefit. (Factual Findings 19, 23, 24, 25, 31, 32, 49, 52, 55, 64, 67, 73, 88-99, 102 and 104.)

30. A preponderance of the evidence thus shows that the April 11, 2012 and April 11 2013 IEP's, were not reasonably calculated to provide Student an educational benefit. (Legal Conclusions 24-29.)

The Occupational Therapy Services

31. Similar to speech and language services, OT DIS shall be provided when necessary to assist the child in benefiting from special education, and the appropriateness of the District's provision of OT services will be limited to the April 11, 2012 and April 11, 2013 IEP's. (Legal Conclusions 9 and 25.)

32. The District argues that its offer of OT services at one to 10 times per year, for a total of 200 minutes annually, was sufficient to meet Student's OT needs. However, he failed to meet the IEP goal in this area, which was exclusive to improving his handwriting. As of the hearing, Student continued to write in reduced size with inconsistent spacing and orientation to lines. (Factual Findings 41 and 102.) This deficit impacted his ability to benefit in any class which required writing, which was every core class. The evidence shows that the duration and frequency of the OT service was not sufficient to benefit Student in this area of need.

33. Evidence also illustrates that OT was not provided to remediate any areas of deficit outside of Student's handwriting, which, for Student, was a variety of serious disorders. The District's 2012 OT assessment found that Student had significant deficits in the area of visual-perceptual, visual-motor, and motor coordination skills, where he scored at well below the first percentile; which the District's assessor described as severely low, even for a pupil with autism. The District's assessor, Ms. Guermacheva, also testified that Student had serious difficulty with sensory processing, self-stimulatory behavior, self-regulation, vestibular and proprioceptive deficits, along with deficits in fine motor skills. PLOP's reported in the 2011, 2012 and 2013 IEP's, corroborated Ms. Guermacheva findings. Ms. Guermacheva also testified that there was a causal link between Student's OT deficits and his

problematic behaviors, which hindered his ability to access the core curriculum. However, the District failed to offer any DIS related to these various areas of deficit. (Factual Findings 19, 22, 34, 37-47, 51, 66, 67, and 102.)

34. The District's failure to provide intensive OT services in the April 11, 2012 IEP, and to provide any OT services in the April 11, 2013 IEP, resulted in IEP's which were not reasonably calculated to provide Student an educational benefit. (Factual Findings 12, 19, 22, 34, 37-47, 51, 66, 67, and 102; Legal Conclusions 31-33.)

Assistive Technology

35. Student also contends that he requires assistive technology to benefit from special education. Since August 2011, Parents have made several requests for the District to provide Student assistive technology to help him overcome various delays in functional communication. The District has never responded to Parent's requests. Similar to Student's prior issues, the IEP's in dispute regarding assistive technology occurred on April 11, 2012 and April 11, 2013. (Legal Conclusion 9.)

36. When developing a pupil's IEP, the IEP team shall also "[c]onsider the communication needs of the pupil." (20 U.S.C. § 1410(1); Ed. Code, § 56341.1, subd. (b)(4).) In addition, the IEP team shall consider whether the pupil requires assistive technology services and devices. (20 U.S.C. § 1414(d)(3)(B)(v); Ed. Code, § 56020.5.)

37. An "assistive technology device" is defined as "any item, piece of equipment or product system [other than a surgically implanted device]…that is used to increase, maintain or improve functional capabilities of an individual with exceptional needs." (20 U.S.C. § 1410(1); Ed. Code, §56020.5.)

38. The District's argument against providing Student assistive technology relies exclusively on the testimony provided by Ms. Griffin. She testified that a pupil must be entirely non-verbal before an assistive technology services or device could be considered. She described that because Student has the ability to speak, he was not a candidate for assistive technology. However, Ms. Griffin was not a credible witness. (Factual Findings 99; Legal Conclusions 28.) It is also not objectively reasonable to believe that assistive technology is limited to the province of disabled pupils who are entirely non-verbal. Nor is it reasonable to believe that Ms. Griffin, given her many years as a SLP, is unaware that assistive technology is often utilized for disabled pupils, like Student, who have the ability to speak but who have communication deficits. (Legal Conclusions 36 and 37.) Consequently, the District's argument that assistive technology is limited only to pupils who are non-verbal is not well-founded or persuasive.

39. The District's argument also ignores Student's well documented deficits in functional communication across all mediums, including speaking, listening and writing, and his difficulty in attaining related goals in these areas. (Factual Findings 19, 23, 24, 25, 31, 32, 37-47, 49, 51, 55, 66, 67, 88-99, 102.) It is noteworthy that the April 2012 IEP team

reported that Student "is unable to use appropriate forms of communication… [he] cannot ask for a break, ask or use sensory ball, and /or ask to take a walk." (Factual Findings 55.) The District's position is also contradicted by its own witness, assessment, and IEPs. The District's OT, Ms. Guermacheva, the District's 2012 OT assessment, and the 2011 and 2012 annual IEP's, all separately recommended that Student receive an assistive technology device. (Factual Findings 22, 43 and 51.)

40. A preponderance of the evidence thus shows that Student required assistive technology to benefit from special education. The District's failure to offer assistive technology in the April 11, 2012 and the April 11, 2013 IEP's, resulted in IEP's which were not designed to address his unique needs.

41. Consequently, in regard to Student's first issue, the evidence substantially shows that the April 11, 2012 and April 11, 2013 IEP's, given their failure to provide a sufficient transition plan, the failure to provide a sufficient level of speech and language services and OT services, and the failure to provide assistive technology, were not reasonably calculated to enable Student to receive an educational benefit, thereby denying him a FAPE for the 2012-2013 and 2013-2014 school years. (Legal Conclusions 2-6 and 10-40.)

Issue Number Two: Whether the District procedurally denied Student a FAPE by failing to ensure meaningful parent participation at the April 10, 2013 IEP meeting, by predetermining the IEP offer?

42. Student contends that the District committed several procedural violations in connection with the April 11, 2013 IEP meeting. Student argues that the IEP was predetermined by the District prior to the meeting, and that Parents were not permitted to meaningfully participate at this meeting or in the development of Student's IEP.

43. A procedural violation occurs when a district violates one or more of the procedures set out in federal or state law for holding IEP meetings and developing IEPs. Parents are an integral part of the IEP team, and their opinions and concerns must be addressed and considered by the IEP team. If a district predetermines the offer of placement it prevents the student's parents from participating in the IEP process. Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances where placement is determined without parental involvement in developing the IEP. (*Bd. of Educ. of Township High School Dist. No. 211 v. Lindsey Ross* (7th Cir. 2007) 486 F.3d 267.)

44. Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP meeting with a "take it or leave it" offer. (*Target Range*, *supra*, 960 F.2d at p. 1084; *JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

45. The IDEA also imposes upon the school district the duty to conduct a meaningful IEP meeting with the appropriate parties. (*Target Range*, *supra*, 960 F.2d at p. 1485.) Those parties who have first-hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process. (*Shapiro v. Paradise Valley Unified School Dist. No. 69* (9th Cir. 2003) 317 F.3d. 1072, 1079.) Parents play a "significant role" in the development of the IEP and are required and vital members of the IEP team. (*Winkelman v. Parma City School Dist.* (2007) 549 U.S. 1190 [127 S.Ct. 1994, 2000-2001, 167 L.Ed. 2d 904].); 20 U.S.C. § 1414 (d)(1)(B)(i); Ed. Code, § 56341, subd. (b)(1).) In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but also a meaningful IEP meeting. (*Fuhrman v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.3d 1031, 1036.) A parent has meaningfully participated in the development of an IEP when he or she is informed of her child's problems, attends the IEP meeting, expresses her 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.)

46. In the instant case, the weight of the evidence demonstrates that the District predetermined its offer of placement and services for Student. The District's administrator, Ms. Schwartz, testified that it was school policy to convene an exit IEP in a manner different from a normal IEP meeting; she described that an exit IEP meeting was a "roll over" from the prior annual IEP and therefore did not require a review of information or a discussion outside of the pupil's credits. Therefore, she described that the April 11, 2013 IEP was "rolled-over" from the April 11, 2012 IEP, and per school policy, the April 2013 IEP meeting was held solely to confirm that Student had met the credits required to graduate from high school. Ms. Schwartz had reviewed Student's credits prior to this IEP meeting, and determined that he had met or was in the process of meeting the number of credits necessary to graduate. Given this information, before this meeting began, she determined that Student would graduate and be exited from special education. Ms. Schwartz was steadfast in this predetermination, and she did not permit any changes to Student's educational program during this meeting. (Factual Findings 14, 71-76, 106-115, 104 and 118.)

47. Evidence overwhelmingly shows that the April 11, 2013 IEP, was predetermined, and the meeting itself was held only as a formality to graduate Student from NHSHS. (Factual Findings 14, 71-76, 79, 106-115, 104, 109 and 118.)

48. Additionally, the weight of the evidence shows that the District prohibited Parents from meaningfully participating in the IEP process. Although Parents disapproved of material components of the IEP, including DIS and placement, and dissented to the District's decision to graduate Student, the District refused to discuss these issues, or to document any of their concerns in the IEP. (Factual Findings 14, 71-76, 106-115, 104 and 118.) Ms. Schwartz testified that she had told Parents they were "invited to attend, not to consent" to the April 11, 2013 IEP meeting, because Student was 19-years-old at the time. (Factual Findings 109.) However, Parents had informed Ms. Schwartz that they had

lawfully conserved Student as of June 14, 2012. Ms. Schwartz's testimony that she was enforcing an unwritten school policy which required that a copy of the legal order be included in Student's educational file was not as persuasive as Father's testimony that she had never requested such a copy. (Factual Findings 79.) Moreover, Ms. Schwartz should have invited Student to the IEP meeting if she doubted that Parents were not entitled to consent on his behalf. Instead, she attempted an end-run around the requirement that a disabled pupil is meaningfully represented at an IEP meeting. (Factual Findings 14, 71-76, 79, 106-115, 104, 109 and 118; Legal Conclusions 44-48.)

49. It is also notable that, although Ms. Holcombe attended Student's April 11, 2013 IEP meeting, the team did not consider Student's postsecondary transition needs when developing Student's exit IEP. Ms. Holcombe failed to disclose that Student was unable to complete the STI just days prior to the April 2013 IEP, even with the assistance of his BII. (Factual Findings 73, 102-104.) The District's failure to inform Parents of Student's inability to complete a simple transition inventory, and to include an IEP team discussion regarding this area of concern, seriously interfered with Parents' ability to participate at this meeting. Moreover, Student's inability to read, write, or communicate, as reported by Ms. Holcombe, should have elicited an IEP discussion regarding Parents' request that Student be placed on an alternative track, rather than be graduated two months later.

50. Finally, Ms. Hall's testimony that it was the District's policy to only permit disabled pupils with IEP eligibility under intellectual disabilities to be considered for an alternative track curriculum, thereby being permitted to work towards a certificate of completion rather than a diploma, evidences that Student's April 11, 2013 IEP, was predetermined to deny him education services past his senior year. (Factual Findings 118.)

51. The evidence thus substantially supports Student's position that the District predetermined the April 11, 2013 IEP meeting. The evidence supports a conclusion that the District invoked an unwritten policy regarding exit IEP's, which prevented Parents from discussing with the IEP team any concerns outside of Student's attainment of class credits. Evidence also shows that Parents were prevented from participating during this IEP meeting because Student was 19-years-old, despite having obtained a conservatorship for him the prior year. Student has therefore met his burden of proof that the District procedurally violated his rights or Parents' rights under the IDEA. These violations seriously interfered with Parents right to participate in the IEP process and therefore denied Student a FAPE. (Legal Conclusions 1-7 and 43-50.)

Issue Number Three: Whether the District denied Student a FAPE by awarding him a high school diploma?

52. Student contends that he was improperly graduated with a regular high school diploma because he was unable to do the work required to pass the courses for which credit was given. The District disagrees, arguing that Student did the required class work in an unmodified manner and met the requirements for graduation from high school with a regular diploma.

53. A pupil who is identified by an IEP as a child with a disability who requires special education and related services to receive a FAPE remains eligible after the age of 18, provided the pupil was enrolled in or eligible for the services prior to his 19th birthday, and has not yet completed her prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subd. (c)(4).) Under California law, a disabled pupil who becomes 22-years-of-age during the months of January to June, inclusive, while participating in a special education program may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program. (Ed. Code, § 56026, subd. (c)(4)(A).)

54. A regular high school diploma must be fully aligned with the state's academic standards. (34 C.F.R. § 300.102(a)(3)(iv)(2006).) A pupil with exceptional needs who has met all state and school district requirements and graduates from high school with a regular diploma is no longer eligible for special education and related services. (Ed. Code, § 56026.1, subd. (a).)

55. The state requires that a student complete the curriculum, and have sufficient passing credits in each required area of study. In California, when an individual with exceptional needs meets public education agency requirements for completion of a prescribed course of study designated in the student's IEP, the public education agency which developed the IEP shall award the diploma. (Cal. Code Regs., tit. 5, § 3070.) It stands to reason that a procedural violation occurs if the public agency awards the Student a diploma where the pupil has not completed a prescribed course of study as designated in the student's IEP. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. (Legal Conclusions 7.)

56. The question at hand is whether Student has met the prescribed course of study designated in his IEP's, thereby meeting the state and school district requirements necessary to be awarded a regular diploma and to graduate from high school. Specifically, the issue presented includes whether Student earned the requisite high school credits while participating in an unmodified general education curriculum. (Legal Conclusions 53-55.)

Student's Grades

57. The District asserts that Student received at least the requisite 230 credits required for receiving a diploma and graduating from high school Credits are umbilical to grades, and the District relies almost exclusively on Student's passing grades as evidence that Student met the primary requirement of class credits as a condition to graduate.

58. However, this evidence, by itself, is superficial. It is the role of the ALJ to delve below the prima facial evidence, which consisted solely of a computer generated list of Student's grades, and to examine the context of those grades and resulting class credits.

59. A preponderance of the evidence shows that the District did not provide Student an unmodified general education curriculum, as called for in his IEP's and required to receive a regular high school diploma. (Factual Findings 8-15, 19-34, 40, 41, 44, 49-60, 64, 66, 67, 69, 70, 72-76, 81, 95, 102-104 and 118; Legal Conclusions 53-56.)

60. Student's curriculum was so thoroughly modified for him that it bore almost no resemblance to the curriculum of his class. Student's teacher for biology and chemistry, David Sanchez, testified that he routinely simplified Student's curriculum but he still frequently did not understand it. The classroom aide and Student's BII also altered his curriculum, and the BII routinely completed Student's classwork. Other classroom teachers altered the curriculum as well. Thus, the material Student studied was simplified for him at least once, by the teacher, and frequently two to three times, by the classroom aides and then by Student's BII. As a result, if the class were studying English literature at a 12th grade level, Student might be asked a simple "WH" question regarding the text, and be assisted in answering the question by the BII. If his classmates were required to write a five paragraph essay, Student's teacher only required for him to write one simple sentence, and Student was frequently unable to accomplish this even with BII assistance. When his classmates were being asked to answer questions pertaining to algebra two, Student was asked a simple addition question, and struggled to complete this classwork. Even with substantial modifications of curriculum, Student could not participate meaningfully in his school placement. (Factual Findings 8-15, 19-34, 40, 41, 44, 49-60, 64, 66, 67, 69, 70, 72-76, 80, 81, 95, 102-104, 120, 121.)

61. Standardized testing and PLOP's also showed that Student's academic performance was not consistent with the passing grades that he received throughout high school. Per the CST, the CELDT, CAHSEE, and the KTEA, Student's academic abilities were far below what he required to earn passing grades for high school level curriculum. These test results are not consistent with Student's average-to-above average grades in each class. It is not objectively reasonable to conclude that a student who received a math score of 40, a reading comprehension score of 53, and a written expression score of 40, on the KTEA, and whose PLOP's state he struggles with simple addition, does not understand what a question mark is, and cannot write a sentence, is able to receive a "C" in algebra two, "B's" in contemporary composition and American literature, and "A's" in U.S. history and economics. The standardized tests and PLOP's overwhelmingly show that Student's grades were inflated and the result of a substantially modified curriculum. (Factual Findings 54, 77, 78, 80, 81, 100, 120 and 121.)

62. Evidence also shows that teachers and staff supported placing Student in a modified curriculum. The District's 2012 speech and language assessment reported that Student's deficits adversely impact his ability to access a general education curriculum, and recommended that Student be placed in a special day class program. During the April 7, 2011 IEP, teacher and staff reports in reading, writing, vocational education, APE, speech and language, and behavior, each concluded that Student's various deficits impeded his ability to access the general education curriculum. Per the April 2012 IEP, the teachers and

staff uniformly reported that Student's deficits continued to hinder his access to the general education curriculum. (Factual Findings 26, 44, 53, 95 and 102.)

63. It is noteworthy that the District relied almost exclusively on a print-out of Student's grades and credits as evidence that he earned passing marks in each high school class, without providing a single work sample, test, or assessment which corroborated that his grades were earned in an unmodified manner. Additionally, not a single District witness could confirm that Student was able to complete unmodified, grade level work. To the contrary, Ms. Schwartz could not recall any of Student's tests, work product or assessment results. Mr. Sanchez testified that he provided Student a heavily modified curriculum. Ms. Holcombe, who assessed Student during the conclusion of his senior year, observed that Student's academic abilities were far below what was required of a high school student. Just two months shy of the District awarding him a regular high school diploma, Student was unable to read, write, or to functionally communicate, even with the assistance of his BII. (Factual Findings 8-15, 19-34, 40, 41, 44, 49-60, 64, 66, 67, 69, 70, 72-76, 80, 81, 95, 102-104, 120, 121.)

64. A preponderance of the evidence shows that the District did not provide Student an educational program which comported with his April 7, 2011, April 11, 2012, or April 11, 2013 IEP's, or one which aligned with the state's academic standards. Rather, Student was provided a highly modified curriculum in contravention to the unmodified curriculum which was described in each IEP and required to receive a regular high school diploma.

65. The evidence thus supports Student's position that the District unlawfully awarded him a diploma. Upon being awarded the diploma, Student's access to all special education and related services was terminated, which denied him a special education program for at least the 2013-2014 school year. Student has therefore met his burden of proof that the District violated his rights under the IDEA and denied him a FAPE. (Factual Findings Factual Findings 8-15, 19-34, 40, 41, 44, 49-60, 64, 66, 67, 69, 70, 72-76, 80, 81, 95, 102-104, 120, 121; Legal Conclusions 53-64.)

Remedy

66. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168] .)

67. An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up

the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.)

68. In an appropriate case an ALJ may grant relief that extends past graduation, age 22, or other loss of eligibility for special education and related services as long as the order remedies injuries the student suffered while he was eligible. (*Maine School Admin. Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *San Dieguito Union High School Dist. v. Guray-Jacobs* (S.D.Cal. 2005, No. 04cvl330) 44 IDELR 189, 105 LRP 56315 [same]; see also *Barnett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.App. 124, p. 2 [nonpub. opn][relief appropriate beyond age 22].)

69. Based on Legal Conclusions 2-6 and 10-41, the District denied Student a FAPE during the 2012-2013 and 2013-2014 school years by providing IEP's which failed to provide a sufficient transition plan, sufficient level of speech and language and OT services, and failed to provide assistive technology.

70. As compensation for the transition plan, Student is entitled to receive a compensatory transition plan. To ensure that the transition plan is individualized to his needs, the District shall provide an assessment of Student's current transition needs by an independent assessor with experience in developing transition plans for adults with autism and behavior difficulties. The District shall have 60 days to complete this transition plan and to hold an IEP meeting to review the plan, but may complete the assessment and plan within 30 days to accord with the IEP meeting required under Legal Conclusions 74.

71. Student is also entitled to compensatory speech and language services. In his complaint, Student requests two hours per week of compensatory speech and language services. This level of services is congruent with the related disabilities identified in Factual Findings 19, 23, 24, 25, 31, 32, 49, 52, 55, 64, 67, 73, 88-99 and 102. Student's request is therefore granted. As compensation, the District shall provide 78 hours of compensatory speech and language services, which represents two hours per week, during the 2012-2013 and 2013-2014 school years, up to October 26, 2013, the date the District must reconvene an IEP meeting based upon Legal Conclusions 74.

72. Based on Legal Conclusions 2-6, 31-33 and 41, Student is entitled to compensatory OT services. In his complaint, Student requests compensatory OT services but failed to delineate a specific amount. Student's request is granted and shall be based upon the OT services Student received prior to the dispute, which was 45 minutes weekly. This level of services is congruent with the related disabilities identified in Factual Findings 12, 19, 22, 34, 37-47, 51, 66, 67, and 102. Accordingly, as compensation, the District shall provide 39, 45-minute sessions of compensatory OT services, which represents 45 minutes per week, during the 2012-2013 and 2013-2014 school years, up to October 26, 2013. (Legal Conclusions 74.)

73. Based on Legal Conclusions 2-6 and 35-41, Student is entitled to receive compensatory assistive technology services. It is equitable to ensure that Student's needs in

this area are individualized. Therefore, the District shall provide Student an assessment of his current assistive technology needs by an assessor with experience in implementing and monitoring assistive technology for adults with autism and severe communication delays. The District shall have 60 days to complete this assessment and to hold an IEP meeting, but may complete the assessment within 30 days to accord with the IEP meeting required under Legal Conclusions 74.

74. Based on Legal Conclusions 2-7 and 43-51, the District denied Student a FAPE for the 2013-2014 school year by predetermining his April 11, 2013 IEP. The District shall convene an IEP meeting within 30 days to discuss with Parents any educationally based concerns which they may have pertaining to Student, and to develop a FAPE offer which is designed to meet Student's unique needs for the remainder of the 2013-2014 school year, and extended school year.

75. Based on Legal Conclusions 2-7 and 53-65, the District denied Student a FAPE for the 2013-2014 school year by unlawfully graduating him and terminating his special education following June 7, 2013. Student's regular high school diploma is therefore invalid and he is entitled to receive a special education program until the end of the school year in which he turns 22-years-old. The District shall convene an IEP meeting within 30 days to develop a FAPE offer which is designed to meet Student's unique needs.

ORDER

1. The District shall fund an independent consultant to develop an individualized transition plan for Student, and to attend an IEP meeting following the development of the individualized transition plan. The individualized transition plan shall be completed, and the IEP meeting convened, no later than 60 days after service of this Decision on the District.

2. The District shall provide Student 78 hours of compensatory, individual speech and language services, beginning no later than 30 days after service of this Decision on the District. All services shall be provided, and utilized, by no later than September 26, 2015.

3. The District shall provide Student 39, 45-minute sessions of compensatory, individual occupational therapy services, beginning no later than 30 days after service of this Decision on the District. All services shall be provided, and utilized, by no later than September 26, 2015.

4. The District shall provide Student an assessment in the area of assistive technology. The assessment shall be completed, and an IEP meeting convened to review the assessment, no later than 60 days after service of this Decision on the District.

5. The District shall convene an IEP meeting within 30 days of this Decision to provide Student a FAPE at an adult educational placement. The District shall ensure that Parents are provided the opportunity to meaningfully participate at this IEP meeting.

6. Student shall be deemed eligible for special education and related services until the end of the school year in which he reaches 22-years-of-age.

7. Parents and the District may modify any part of this Order by signing a mutually agreed upon IEP.

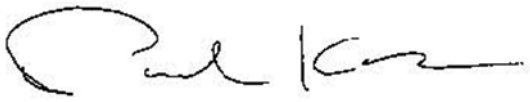
PREVAILING PARTY

Pursuant to 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. Here, Student prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, §56505, subd.(k).)

Dated: September 26, 2013



PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings