

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2013120207

v.

YUBA CITY UNIFIED SCHOOL DISTRICT AND  
SUTTER COUNTY SUPERINTENDENT OF  
SCHOOLS,

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YUBA CITY UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2013110182

v.

PARENT ON BEHALF OF STUDENT.

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DECISION

Parent on behalf of Student (Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), State of California, on December 2, 2013, naming the Yuba City Unified School District (District) and the Sutter County Superintendent of Schools (County). The matter was continued for good cause on December 20, 2013. On December 19, 2013, OAH consolidated this matter with OAH Case No. 2013110182.<sup>1</sup>

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<sup>1</sup> OAH based the timeline for the consolidated cases on the date of the filing of the complaint in OAH Case Number 2013120207.

Administrative Law Judge (ALJ) Paul H. Kamoroff heard this matter in Yuba City, California, on February 3, 4, 5, 6, and 7, 2014.

Martha A. Millar, attorney at law, appeared on behalf of Student. Student's mother (Mother) attended each day of the hearing. Student attended part of one day of the hearing.

Paul R. Gant, attorney at law, appeared on behalf of District. Elizabeth Engelken, director of student support services for District, was present during each day of the hearing.

Heather M. Edwards, attorney at law, appeared on behalf of the County. Barbara Hickman, assistant superintendent for special education for the County, was also present.

At hearing, the ALJ received sworn testimony and documentary evidence. The following witnesses testified: Mother, Annette Armstrong, Andrea O'Donnell, Coralie Van Alstyne, Stephanie Keenan, Michael Greer, Allison Anderson, Barbara Hickman, and Marilyn Bertolucci.

The ALJ granted a continuance for the parties to file written closing briefs and the record remained open until February 24, 2014. Upon timely receipt of the written closing briefs, the ALJ closed the record and the matter was submitted for decision.

## ISSUES<sup>2</sup>

### STUDENT'S ISSUES FOR HEARING

1. Whether District's and the County's November 8, 2012 and August 19, 2013 individualized education programs (IEP's) denied Student a free appropriate public education (FAPE) by:

- a. Failing to provide Student with adequate one-to-one services by a licensed vocational nurse (LVN) to meet his unique needs regarding diabetes and communication; and
- b. Failing to offer Student a placement that met his unique needs, especially sensitivity to sound, and by offering a classroom which contained too many students.

2. Whether District and the County denied Student a FAPE by failing to provide him with special education and related services from February 21, 2013, through the present; and failing to permit Parent to choose the LVN, or family member, to provide Student with diabetic care services at school.

### DISTRICT'S ISSUES FOR HEARING

1. Whether District's August 19, 2013 IEP denied Student a FAPE by failing to offer an appropriate nurse.<sup>3</sup>

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<sup>2</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

<sup>3</sup> During the hearing, the ALJ granted District's motion to limit District's Issue One to whether the school nurse was qualified to deliver Student's IEP related services.

2. Whether Parent needs to permit District to have meaningful access to Student's physicians and physician orders regarding his diabetic care so that District may develop and/or implement a diabetes medical management plan.

## SUMMARY OF DECISION

This matter involves a 21-year-old student who has profound medical needs related to type-one diabetes, which require the care of a qualified nurse while at school. At the heart of this case is whether Student can choose the nurse who provides him IEP-based services. Student asserts that only one nurse, Annette Armstrong, who previously delivered his IEP-based nursing service as an employee of the County, but whose employment was terminated, is the sole person who can safely implement his nursing services. Student contends that he has communication, behavioral, and medical needs that prevent him from safely accessing school unless he is provided IEP-based nursing services by Ms. Armstrong. Due to District and County's refusal to permit Ms. Armstrong to provide Student nursing services at school, Student asserts that the County and District have denied him a FAPE.

District and the County dispute Student's contentions that they have denied him a FAPE. Each agency avers that Student's unique medical needs can be met by a District and County selected nurse and that District has the authority to select its IEP service providers. District and the County also assert that the IEP's they provided Student constituted a FAPE.

For the following reasons, this Decision finds that District and the County did not commit any procedural or substantive violations by failing to provide Student appropriate nursing services. District has the authority to select its IEP-based service providers, and the evidence substantiated that the nurse selected by the County and District was qualified to implement the IEP-based nursing services. The Decision also finds that the IEP's District and the County offered to Student constituted a FAPE.

## FACTUAL FINDINGS

1. Student is a likable 21-year-old young man who, at all relevant times, resided with his Mother within the boundaries of District. District has contracted with the County to provide Student's educational program, and each agency has jointly assumed liability as the local educational agency for this matter. Student is eligible for special education and related services under the primary eligibility category of autism. Student has a secondary area of eligibility under other health impairment (OHI) due to type-one diabetes.

2. Student has a history of medical difficulty as a result of type-one diabetes. Type-one diabetes is a disease in which blood glucose (sugar) levels are above or below normal. The pancreas makes insulin, a hormone that helps glucose enter the cells of the body. A diabetic's body either does not make enough insulin, or cannot use it adequately. Diabetes can cause serious health complications including heart disease, blindness, kidney failure, and lower-extremity amputations.

3. Some diabetics can have too much glucose in the blood (hyperglycemia) or too little (hypoglycemia). Student is susceptible to both conditions. Hyperglycemia is usually treated with insulin; hypoglycemia is usually treated by the ingestion of food such as carbohydrates or with the hormone glucagon. Hypoglycemia is the more dangerous of the two conditions. As a consequence, Student has rapidly changing blood glucose levels, has been hospitalized for hypoglycemia, and he requires the supervision of an individual nurse.

4. Student also has very low cognitive abilities and communication delays. His knowledge of receptive and expressive language is limited, and he has a history of verbal comprehension delays. Student is non-verbal and communicates by using a combination of gestures, grunts, and limited sign language. As a result, Student has seriously delayed academic, self-help, and social skills.

5. Student first began receiving special education at the age of three as a child with autism. In 1998, a psychological report completed by the Alta California Regional Center determined that Student had global developmental delays and intellectual disability. Since 1998, he has attended various District and County special day class programs for the severely handicapped and for pupils with communication handicaps. Student was diagnosed with type-one diabetes in 2005, and District began providing him a full-time nurse as an IEP related service at that time.

6. At present, Student is kind, compliant, and eager to please. He has difficulty making his feelings known, his health status changes frequently and quickly, and he has difficulty explaining his needs. He understands verbal communication, yet is unable to verbally respond. Student uses some gestures, some sign language, some picture exchange communication system, and he has a limited ability to utilize an educational iPad, including the "Tap to Talk" augmentative communication program, to communicate.<sup>4</sup>

#### THE 2012-2013 SCHOOL YEAR

7. On October 23, 2012, Student entered into a settlement agreement with District and the County whereby the parties resolved past disputes and agreed upon an educational program for Student's 2012-2013 school year (the Agreement). As part of the Agreement, District and the County also agreed to provide Student independent educational evaluations (IEE's) in the areas of psycho-educational, academics, intellectual development, assistive technology, occupational therapy, physical therapy, health, speech pathology, social/emotional, and behavior.<sup>5</sup>

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<sup>4</sup> An iPad is a handheld, tablet computer.

<sup>5</sup> In California, the term "assessment" is used interchangeably with "evaluation."

## The November 8, 2012 IEP

8. On November 8, 2012, District and County convened an IEP for Student for the purpose of incorporating the terms of the Agreement into Student's educational program. Student was 20 years old. In addition to District and County staff, Allison Anderson, who was a supervising registered nurse for the County, attended this meeting. Mother attended the meeting. Student did not attend.

9. The IEP team reviewed progress on past goals, which were from an IEP held on November 1, 2011. The team was unable to determine progress on his past goals because Student had not been in school for approximately six months. The IEP team then reviewed Student's present levels of performance; Student was functioning at a pre-academic level and was unable to read, write, or perform any math. Student was able to match and sort items when prompted by staff, and could sort by colors without prompting. He was able to trace letters and numbers with hand-over-hand assistance. Student could follow a simple visual schedule with prompting, and required prompting to transition to any task or location. In the area of communication, Student was nonverbal and communicated his wants and needs through behaviors, gestures, and facial expressions. He listened to others and attended to verbal communication for a period of time, but he was unable to reciprocate using verbal communication. District had recently introduced the educational iPad to Student, and he had just begun learning to use the Tap to Talk program, an augmentative communication application, on the iPad. In the area of health, Student was an insulin dependent diabetic and required a one-to-one nurse. Overall, Student was functioning at a severely delayed level in all areas of academics, presented serious medical concerns related to diabetes, and he required prompting and aide support throughout each component of the day.

10. The IEP team adopted four new goals. The first goal addressed communication and behavior which set as a baseline that Student could then

communicate through behavioral means. The goal intended that Student, when offered an item, could use his iPad to communicate “yes” or “no” in four-of-five consecutive trials. Student’s second goal was in self-help. The baseline stated that Student required reminders regarding hygiene and toileting. This goal was for Student to follow a three-step visual schedule to complete a toileting routine, when prompted, in four-of-five trials. Goal three was in the area of safety. The goal was for Student to show his medical identification card when prompted, in four-of-five consecutive trials. The fourth goal was in the area of independent living. Student’s goal was that he would follow prompts to walk up the stairs on a public transportation bus, show his bus pass, and sit in an empty seat, for four-of-five consecutive trials.

11. The November 2012 IEP included an Individual Transition Plan (ITP), which contained three separate goals. Beginning at 16 years of age, a student’s IEP must include appropriate measurable postsecondary goals. It must also include transition services needed to assist the child in reaching those goals. This transition plan is normally referred to as an ITP. Each of Student’s ITP goals addressed his ability to transition into the community upon his completion of school. The first goal intended that Student would be able to use his iPad to communicate his needs. The second goal was for Student to be able to use public transportation to access necessary community resources. Goal three was for Student to be able to perform basic self-care activities.

12. The IEP provided specialized academic instruction in a special day class for 310 minutes daily, five days per week; assistive technology services for 30 minutes, twice weekly; transition services for 120 minutes, twice weekly; adapted physical education for 50 minutes, twice weekly; consultation services from a speech therapist, a behaviorist, a program specialist, an assistive technology specialist, and a school psychologist, 15 minutes each week; transportation to and from school; vocational and community based instruction (CBI), and transportation to CBI activities; an individual aide for 390 minutes



per day, five days per week; and an individual nurse 440 minutes daily, five days per week. The IEP offered similar extended school year services.

13. Pursuant to the Agreement, the IEP offered a split placement whereby Student was placed in a severely handicapped, transition-based special day class in the Park Place classroom at the Feather River Academy (Park Place), from the beginning of each school day until 11:30 a.m. He was then accompanied by his individual nurse and aide to a severely handicapped classroom at the Yuba City High School campus (Yuba City), where he ate lunch, received assistive technology instruction, and adapted physical education. He was then accompanied by his individual nurse and aide to a community pool (Butchie's pool), where he received physical therapy. Following Butchie's pool, Student returned with his nurse and aide to Park Place, where they accompanied him on his bus ride home. Student's bus ride to-and-from school took approximately ten minutes each way. Student's individual nurse would arrive at his home approximately 30 minutes prior to the school bus arriving each morning, during which time she assisted in getting him ready for school and attended to his health needs. The nurse and aide then accompanied Student on the school bus to school, and during the entire school day at Park Place, Yuba City, Butchie's pool, back to Park Place, and then again on the bus ride home. The nurse would stay an additional 30 minutes daily at Student's home, where she assisted with his diabetic care after school.

14. Although Mother did not consent to the IEP until December 20, 2012, per the Agreement, District and the County began implementing the November 8, 2012 IEP on November 26, 2012, following the Thanksgiving break.

#### Conduct Following the November 8, 2012 IEP

15. On November 15, 2012, Student's physician completed a diabetes medical management plan. A diabetes medical management plan is a written statement from the physician detailing the name of the medication, method, amount, and time

schedules by which the medication is to be implemented while at school. Student provided the plan to District and the County, which adopted the plan and used it as a basis for Student's at-school diabetic care during the 2012-2013 school year.

16. In a letter dated December 20, 2012, Mother provided qualified consent to the November 2012 IEP. Mother consented to the offer of services and placement, but complained that the IEP failed to specifically name the service providers. In particular, Mother stated that Annette Armstrong was the sole person who could deliver the IEP nursing services. At that time, Ms. Armstrong was a County provided LVN who delivered the IEP-based, individual nursing services to Student. Ms. Armstrong worked under the direct supervision of a County employed registered nurse, Ms. Anderson. Mother also attached a contingency to her consent that was dependent on Ms. Armstrong. Her letter stated "Without Annette Armstrong's IEP participation signature on the IEP form, my consent to all portions of the IEP will not be in effect." Ms. Armstrong had not been in attendance at the November 8, 2012 IEP; rather, her supervisor, Ms. Anderson, had attended the IEP meeting.

17. Also on December 20, 2012, Mother signed an authorization for release of information form which permitted only Ms. Anderson and Ms. Armstrong to communicate and share information with Student's physician and endocrinologist.

18. On February 19, 2013, the County placed Ms. Armstrong on administrative leave, and District and the County no longer permitted her to deliver Student's IEP-based nursing services.<sup>6</sup>

19. Also on February 19, 2013, Mother sent an email to the County's Superintendent, Bill Cornelius. Mother declared that "Under no circumstances will RN

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<sup>6</sup> Ms. Armstrong's employment with the County was eventually terminated for cause.

[registered nurse] Allison Anderson, or any untrained staff be accompanying, interpreting, or medically caring for [Student] at school.” Mother demanded that Ms. Armstrong be immediately reinstated to deliver Student’s nursing services.

20. Mr. Cornelius replied to Mother via email on the same day, wherein he conveyed that Ms. Anderson was a highly trained and qualified registered nurse who was familiar with Student and his medical needs. He emphasized that the County was looking forward to continuing its delivery of services for Student.

21. Later that same day, Mother replied to Mr. Cornelius, whereby she complained that Ms. Anderson was not trained in the area of type-one diabetes and was unqualified to deliver Student’s nursing services. She asserted that Ms. Armstrong’s forced administrative leave was retaliatory, unlawful, violated state and federal law, and the Agreement. Mother again demanded that the County reinstate Ms. Armstrong as Student’s nurse, alleging that she was solely qualified to care for his diabetic needs.

22. On February 20, 2013, Mother sent an email to District and County staff revoking any authorizations given to Ms. Anderson, or any County or District employee, other than Ms. Armstrong. She stated “I hereby revoke any authorization given to Allison Anderson, Registered Nurse [sic], and employee of Sutter County Superintendent of Schools, in any form, Dated [sic] on any day, in any year, previous to February 19, 2013 [sic] going forward indefinitely. The only full, and authorized release in effect and is held by Annette Armstrong; licensed LVN [sic], employee of Sutter County Superintendent of Schools recently removed without prior written notice and on forced administrative leave for doing her job, mandated reporting, and following the Law, [sic] protecting her own rights and those of her disabled and medically fragile patient.” Overall, Mother protested that Ms. Armstrong had been treated unfairly and in a discriminatory manner by the County, and that her placement on administrative leave

was unlawful. Mother stated that no person, other than Ms. Armstrong, was permitted to provide nursing care for Student while at school.

23. Also on February 20, 2013, Mother followed up her email with a hand written letter to District and the County, wherein she acknowledged that Ms. Anderson had arrived at Student's home prior to the start of school that day, to provide the IEP-based nursing services. Mother stated that only Ms. Armstrong was permitted to care for Student, and she had refused to allow Ms. Anderson access to him.

24. On February 21, 2013, Mother, Student, and Ms. Armstrong went to Park Place, where they were met by the school principal, Marilyn Bertolucci, and Ms. Anderson. Ms. Bertolucci explained that Ms. Anderson was a qualified nurse who was able to immediately provide Student's nursing services. She explained to Mother that the school would not permit Ms. Armstrong to care for Student at school due to her being an employee placed on administrative leave. Mother refused nursing services from Ms. Anderson, or anyone other than Ms. Armstrong, and she returned home with Student. Student has not attended school since February 19, 2013.

25. Later that day, Ms. Bertolucci sent Mother a letter describing that nursing services were a critical component of Student's IEP necessary to carry out the diabetes care outlined in his diabetes medical management plan, communicate with Student's physician, and to maintain his health and safety. Ms. Bertolucci explained that authorization for the County or District health care staff to implement such services was necessary to ensure Student's safety while at school, that qualified staff stood ready to immediately implement Student's IEP, and that such authorization was required for Student to return to school. The letter included an authorization for release of information for Student's physician, which specified that information would be released to Ms. Anderson. Mother refused to accept nursing services from any person other than

Ms. Armstrong, refused to take Student back to school, and she refused to sign the authorization permitting Ms. Anderson to communicate with Student's physician.

26. On February 22, 2013, Mother sent an email to the County and District staff wherein she reiterated that "the only qualified and licensed health care professional employed by [the County or District] with my consent and authorization has been, Annette Armstrong." She explained that her prior authorization, which had also permitted Ms. Anderson to receive medical information, was an oversight on her part and, again, was revoked. Mother described that per state law she was permitted to choose Student's school nurse, that she had chosen solely Ms. Armstrong, and that the County's removal of Ms. Armstrong as Student's IEP-based health care provider was therefore a serious legal violation.

27. On October 14, 2013, Mother sent an email to District and County staff wherein she reiterated her conviction that only Ms. Armstrong be permitted to care for Student. She stated "You [District and the County] do not have nor will ever receive my consent for any of your staff to administer medical diabetic care to my son or obtain medical information from anyone other than me."

28. On the same day, Mr. Cornelius replied to Mother's email, where he described that in order for the County to provide Student's IEP a school nurse must be able to perform and carry out the diabetes care tasks outlined in his diabetic medical management plan, provide information to school staff, and to contact Student's physician. He reported that qualified school staff stood ready to implement Student's special education and related services, upon Student's return to school.

#### THE AUGUST 19, 2013 IEP

29. District and the County convened a three-part IEP meeting for Student on April 12, May 3, and August 19, 2013. At the time the IEP was completed on August 19, 2013, Student was 21 years old. In addition to District staff, Mother, Student,

Student's brothers, Ms. Armstrong, and attorneys for Student, District, and the County attended this IEP meeting. Additionally, Stephanie Keenan, a nurse and independent assessor for nonpublic agency School Steps; Coralie Van Alstyne, a psychologist from School Steps; and Andrea O'Donnell, a speech and language pathologist from School Steps, attended the IEP meeting. The purpose of the IEP meeting was to review the various IEE's which had been provided by District and County staff per the terms of the Agreement, and to develop Student's educational program for the pending 2013-2014 school year.

30. The team first reviewed Student's present levels of performance. Student was still functioning at a pre-academic level and required physical and verbal prompts from his one-to-one aide to complete any task. Academically, Student was functioning far below the level for a student his age. He could hold a pencil and write his name and some letters, but was not yet printing numbers. He understood how to use a debit card to buy things, but did not understand the value of money. In the area of communication, Student could utilize the iPad with the Tap to Talk program to request items. He attended to staff when they spoke, and responded to his name, greetings, and could affirm or accept some objects, and reject non-preferred objects. In addition to the iPad, Student still used noises, sounds, and gestures to communicate.

31. The August 2013 IEP team next reviewed Student's progress on his November 2012 IEP goals. In the area of communication, Student had shown progress in his ability to utilize the iPad to communicate. He was now able to use some icons on the device to communicate; however, he still had some difficulty consistently utilizing the "yes" and "no" icons. In the area of self-help, Student had met his goal to follow a three step embedded visual schedule to complete toileting routines. In safety, Student was able to respond to verbal prompts to utilize his iPad to answer questions regarding his medical condition; however, he was not able to tolerate wearing a medic alert

bracelet as indicated in the goal. The staff had not begun working on the fourth goal, which required that Student follow prompts to walk up the stairs on a public transportation bus, show his bus pass, and sit in an empty seat, due to limited time constraints during his school day.

32. The team reviewed several IEE's, each of which had been conducted by the nonpublic agency School Steps.<sup>7</sup> Coralie Van Alstyne shared the results of a Psychoeducational evaluation she had performed on January 15, 18, 23, and 28, 2013. Ms. Van Alstyne received a master's degree in psychology and has been a licensed educational psychologist for over 26 years. She worked as a school psychologist for 20 years and as a private psychologist for School Steps for the past six years. Ms. Van Alstyne has vast experience assessing students with special needs, including those with autism and diabetes. Ms. Van Alstyne reviewed Student's records, interviewed his Mother, nurse, teacher, and school staff, observed Student on multiple occasions at Park Place and at Yuba City, and she performed various standardized tests and inventories. Her report found that Student had a full scale intelligence quotient (IQ) score of 30. An average IQ score is 100, with a 15 point deviation (i.e. 85-115 falls within the average range). Student therefore fell within the significantly delayed range. Ms. Van Alstyne also found that Student was significantly delayed in the areas of communication skills, adaptive behaviors, academic achievement, and social interaction. She determined that Student met the eligibility criteria for autism, intellectual disability, and OHI due to diabetes.

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<sup>7</sup> School Steps was agreed upon by all parties as the agency selected to provide the IEE's pursuant to the terms of the Agreement. There is no dispute pertaining to the IEE's, therefore this Decision will not examine in detail the appropriateness of the IEE's.

33. The IEP team reviewed a speech and language evaluation conducted by Andrea O'Donnell of School Steps. Ms. O'Donnell received her master's degree in speech pathology and audiology in 2001, and she has been a licensed speech pathologist for over 13 years. She worked as a school speech pathologist for nine years, and she has been a private speech pathologist for School Steps for four years. Ms. O'Donnell performed the speech and language evaluation on February 1, 4, and 13, 2013. Her assessment included observations, a records review, inventories, and standardized testing. Ms. O'Donnell observed Student at Yuba City and at Park Place. She found that Student was non-verbal and communicated using gestures, sign language, and some vocalizations. Student oriented to the speaker and responded to his name, but was easily distracted. He was able to follow instructions, including verbal and nonverbal directions and cues. Ms. O'Donnell assessed Student using the Peabody Picture Vocabulary Test, Third Edition, which measures an examinee's receptive vocabulary. Student demonstrated difficulty on this test and scored at less than the point one percentile. She next assessed Student using the Test of Aided-Communication Symbol Performance. This assessment is used to evaluate an individual's symbolic skills level. It provides a starting point for designing or selecting an appropriate augmentative communication device. Student demonstrated limited functional verbal output and required the use of an augmentative communication device. Ms. O'Donnell observed that Student was using the Tap to Talk application on his iPad. The Tap to Talk program is a picture-based voice output system that is organized through albums. It is ideal for early communicators, and she found it was an appropriate augmentative communication device application for Student, at that time. She recommended that Student be transitioned to the "Go Talk Now" program, which was a higher level application for the iPad. Unlike the Tap to Talk application, the Go Talk Now application was designed for the beginning communicator to a more advanced user.



34. The IEP team next reviewed an independent health assessment conducted by Stephanie Keenan of School Steps. Ms. Keenan is a registered nurse and credentialed school nurse with over 13 years' experience in both the school setting and the private sector. She works concurrently as a school nurse for the Roseville City School District and as a registered nurse for School Steps. She reviewed Student's school and health records and observed him on February 15, 2013. She observed him at home, Park Place, Yuba City, and during school transportation. Ms. Keenan found that due to the complexity of Student's health care, he required a diabetes medical management plan which utilized standardized, consistent, and clear orders, which were consistently applied. She observed that the school nurse, Ms. Armstrong, had incorrectly interpreted Student's self-stimming and pinching himself as symptoms of hypoglycemia. Rather, Ms. Keenan recommended an objective and standardized analysis of Student's high and low blood glucose levels. She also recommended that Student be provided nursing services 15-30 minutes prior to the bus ride, given that Student's blood glucose levels changed rapidly and that resultant treatment might be required during this transitional period.

35. The August 2013 IEP adopted 12 new goals. The first goal addressed adapted physical education and intended that Student be able to catch a ball using only his hands with 80 percent accuracy. Student's second goal was in communication and was for Student to use his communication device to label 25 items in the classroom setting with 80 percent accuracy. Goal three was also in the area of communication and was for Student to use his communication device to answer 10 "what" and "who" questions during class with 50 percent accuracy. The fourth goal was also in the area of communication and intended Student to participate in a four turn, reciprocal exchange with a peer, in class with 50 percent accuracy. The fifth goal was in the area of sensory, and was for Student to imitate independent sensory activities from a video with 50 percent accuracy. Goal six was in the area of self-help and intended for Student to

use his communication device to say his name, when prompted, with 50 percent accuracy. Student's seventh goal was also in the area of self-help and intended for Student to show his identification card when prompted with 50 percent accuracy. Goal eight was in sensory and intended Student to wear diabetic equipment, an omnipod, for 10 minutes, in four-of-five trials. Goal nine was in communication, and was for Student to identify three environmental states (wet, dry, hot, etc.) in five-of-ten trials. Student's 10th goal was in the area of communication and behavior and was for Student to use his iPad to communicate "yes" or "no" when offered an item by staff for four-of-five trials. Goal 11 was in the area of safety, and intended Student to show his medical identification when prompted in four-of-five trials. Student's final goal was in the area of independent living and intended for Student to utilize public transportation in four-of-five trials.

36. The August 2013 IEP included an ITP, which included three transition goals in the areas of communication, self-care, and independent living.

37. The IEP provided specialized academic instruction in a special day class for 360 minutes daily, five days per week; an individual aide for 360 minutes per day, five days per week; an individual nurse 420 minutes daily, five days per week, including before, during, and after transportation; language and speech services for thirty minutes, three times weekly; occupational therapy for thirty minutes, three times weekly; adapted physical education for thirty minutes, twice weekly; behavior intervention services for 60 minutes weekly; other transition services, which included access to CBI, for 60 minutes, four times weekly; and, assistive technology services for 60 minutes per week. The IEP offered placement solely at Park Place.

38. Mother refused to consent to the IEP unless the County and District permitted Ms. Armstrong to provide the IEP-based nursing services. District and the

County refused Mother's request, and, as of the hearing, the IEP had not yet been implemented.

39. On August 20, 2013, District and the County sent Mother a prior written notice letter which detailed that Mother's request had been refused, and an explanation for the basis of its refusal. The letter states, "The District is refusing to offer nursing services to be provided by either the parent or parent's private duty nurse and or other designee." The District explained that it had "fully qualified licensed vocational nursing and fully credentialed school nursing staff to ensure [Student's] health and safety needs are met."

#### THE TESTIMONY OF THE INDEPENDENT ASSESSORS

40. Ms. Van Alstyne, Ms. O'Donnell, and Ms. Keenan, each presented sworn testimony during the due process hearing. These independent assessors testified uniformly that each had presented their findings to the August 2013 IEP team, discussed their results with the IEP team members, including Mother, who was an active participant at the IEP meetings; and, each believed that the offer of services and placement contained in the August 19, 2013 IEP was appropriate to meet Student's unique needs.

41. Ms. Van Alstyne found that Park Place, per her direct observations and testing, given its low staff-to-student ratio and emphasis on transitional and functional development, was uniquely postured to provide Student an educational benefit. She supported the IEP team's decision to change the educational setting from a split setting between the adult transition program at Park Place, and the high school at Yuba City. The transitions to Yuba City and Butchie's pool had been disruptive to Student's school day, and a singular placement was better suited to Student's abilities. For Student, who was a 21-year-old pupil, an adult transition program was appropriate.

42. Ms. O'Donnell testified that the duration and frequency of speech and language services was appropriate to meet Student's unique needs. She also reported that the augmentative communication device and software offered in the August 19, 2013 IEP, the iPad with the Tap to Talk program followed by the Go Talk Now application, was precisely what she had recommended in her speech and language evaluation.

43. Ms. Keenan also testified in support of the services and placement offered in the August IEP. As a nurse, Ms. Keenan was concerned that Student's rapidly changing glucose levels posed a serious threat to his health and safety. To address this concern, Student required a diabetic medical management plan that was routinely updated by his treating physician, a nurse to monitor his glucose levels and care for his diabetic needs, and open and fluid communication between his school nurse and physician. Specifically, Ms. Keenan described Student as a nurse-dependent pupil who required constant and comprehensive services from a one-to-one nurse while at school. Absent the direct supervision of a nurse, it was unsafe for Student to attend school. Ms. Keenan described that the duration, frequency, and modality of nursing services contained in the IEP, particularly the services provided prior-to and-after each school day, were wholly appropriate to meet Student's unique needs, and accorded with the recommendations outlined in her independent nursing report. In particular, she asserted that the transitional nursing service provided prior to the bus ride was appropriate to address Student's quickly changing blood glucose levels.

44. Each independent assessor, Ms. Van Alstyne, Ms. O'Donnell, and Ms. Keenan, testified that they had observed Student interact and communicate, using gestures, nonverbal communication and, to a limited extent, his iPad, with his teachers, peers, and his individual aide.

## THE SCHOOL PLACEMENTS

45. During the 2012-2013 school year, District and the County jointly provided Student an education placement split between Park Place and Yuba City. Yuba City was both a District and County operated special day class program, structured and designed for students with severe handicaps, including those with autism. This classroom included high school age peers between 14 and 18 years of age, and was located at a comprehensive high school where the special day class pupils could interact with their typically developing peers during lunch and breaks.

46. The majority of Student's school day was provided at Park Place, which was a special day class operated by the County and the District. Park Place is an adult transition program with peers between the ages of 18 to 22. Park Place was a structured classroom with one teacher and two classroom aides, in addition to Student's individual aide and nurse. The pupils at Park Place are substantially handicapped, including those with autism, intellectual disabilities, and severe communication delays. Michael Greer has taught the County's transition special day class for 12 years, and was Student's teacher at Park Place during the 2008-2009 school year and during the 2012-2013 school year, through February 19, 2013. He is credentialed to teach pupils with disabilities and has vast experience teaching those with autism, intellectual disability, communication delays, and diabetes. Mr. Greer is a type-one diabetic and intimately understands the significant health and safety issues associated with this disability. He provided sworn testimony on behalf of the County and was a persuasive witness.

47. Park Place was a classroom where pupils could work on functional academics while developing independent living skills. The classroom was divided into a small kitchen, a large classroom for group instruction, and a smaller room for individual instruction and computer training. Students were taught food preparation, work skills, self-care and advocacy, along with basic reading, writing, and math. The class began

each day in full-group instruction, and then was divided into smaller group and individual instruction based upon each pupil's IEP and ITP goals.

48. There were eleven students in the Park Place class, which had a maximum capacity of 18 students. Student enjoyed interacting with his peers and he would use gestures and vocalizations to try to communicate with certain peers that he considered friends. Other than a single incident where a classmate briefly operated a sanding device just outside of the classroom to learn a vocational skill, Mr. Greer does not recall any remarkable noise or environmental factors associated with this classroom. He did not observe Student tantrum ever, or act out in a disruptive manner, or in a manner which identified that he had a sensitivity to noise.

49. Mr. Greer was familiar with Student's IEP goals during the 2012-2013 school year, and described that Student had met or progressed towards each goal that he had an opportunity to work on while Student attended Park Place. Student did not meet his goal to access a public bus due to his split schedule between Park Place and Yuba City. However, Mr. Greer observed Student's progress in his ability to utilize the iPad as an augmentative communication tool, and described Student as a compliant and eager-to-please pupil who was easily directed in both his health care and classroom participation. Student was not observed to experience any difficulty in the administration of his insulin shots or food by any nurse, including those who predated Ms. Armstrong and those who had substituted for her at various times. Student enjoyed participating in the large group academic lessons taught at Park Place, and he was easily directed during small group and individual instruction.

50. Mr. Greer was able to comprehend Student's means of communication. He directed Student during class and instructed him in areas of self-help, independent living, and functional academics, including some reading and writing. Mr. Greer did not work with Student as much as he would have liked, and he was frustrated that Student

had been frequently removed from classroom instruction by Ms. Armstrong; based upon her concerns that the classroom was impacting Student's blood glucose levels.

51. Mr. Greer was also familiar with the 12 goals included in the August 2013 IEP, along with the three ITP goals, and he reported that each goal could be addressed at Park Place. Given the change from a split-day to single school placement, the goal for Student to access a public bus could be worked on during the 2013-2014 school year. Mr. Greer was hopeful that he would have a greater opportunity to work with Student due to the change in school nurses. Overall, Mr. Greer presented as a thoughtful and credible witness to Student's educational program and needs.

#### ALLISON ANDERSON'S TESTIMONY

52. Allison Anderson received a bachelor of science in nursing, her registered nurse license, and a Public Health Nurse Certification, in 1990. She has worked as a registered nurse at Cedars Sinai Hospital, University of California Los Angeles, Neuropsychiatric Institute, and for school districts. She has been a registered nurse for over 23 years, and has worked as a school nurse for over 13 years, where she has primarily served pupils with special needs. She has been a special education school nurse for the County since June 2012. Ms. Anderson began serving Student as his nursing case manager in November 2012. Ms. Anderson has extensive experience assessing and providing direct treatment for students' with diabetes, including those who are non-verbal, with autism, and with serious degrees of type-one diabetes. She provided persuasive testimony on behalf of District and the County.

53. Ms. Anderson observed Student while in class several times per week, each week, from November 26, 2012, through February 19, 2013. When she was not directly observing Student, she provided direct consultation and management to Students one-to-one nurse, Ms. Armstrong, each day. She consulted with Ms. Armstrong several times daily regarding Student's diabetic needs. Ms. Anderson was directly familiar with

Student, his means of communication, his complex diabetic requirements, and how to care for his rapidly changing diabetic needs.

54. As a school nurse, Ms. Anderson was concerned that she had been unable to contact Student's physician. She believed that, given Student's rapidly changing blood glucose levels, it was necessary to have the ability to quickly and directly communicate with Student's physician and endocrinologist. However, even when she had authorization to contact Student's physicians, none would return her phone calls and each would only provide instructions to her via Mother or Ms. Armstrong. As Student's managing nurse, Ms. Anderson was frustrated by this lack of direct communication and her reliance on second-hand information. Following Ms. Armstrong's departure from the County, Ms. Anderson had been prevented by Mother from contacting Student's physician directly or indirectly. She described that due to Student's complex medical needs, it was necessary to update his diabetic medical management plan at least annually, and perhaps several times during the school year. To do so, she required direct instruction from Student's physician, whom she had been prohibited from contacting. The last diabetic medical management plan was provided to the County on November 15, 2012, and Student's needs, and insulin dosages, had increased since then. Ms. Anderson persuasively testified that it would be unsafe for Student to attend school without an updated diabetes medical management plan, and authorization for the school nurse to directly contact Student's treating physicians.

#### MOTHER'S TESTIMONY

55. Mother is an impassioned and outspoken advocate for Student, and for Ms. Armstrong. She has conflated her son's education with Ms. Armstrong's struggles with the County. Mother was unable to directly provide nursing services for Student while at school, due to other family obligations, and she placed her trust solely in Ms.



Armstrong to care for Student's health needs. Beginning in July 2013, Mother hired Ms. Armstrong as a private care nurse for Student while at home.

56. Mother did not dispute that the November 8, 2012 IEP was offered in accordance with the Agreement and that, prior to the complaint, she had never suggested to District or to the County that the November 2012 IEP was inappropriate in any regard. She also did not dispute that the goals and services contained in the August 19, 2013 IEP were appropriate to meet Student's unique educational needs; other than her desire that Ms. Armstrong be named as the nurse provider.

57. Mother also did not dispute that Student had significant medical needs which required the care of an individual nurse at school and that it would have been unsafe for Student to attend school absent the direct care and supervision of a qualified health care professional. She also did not dispute the District and County's assertion that the complexity of Student's diabetes required an updated diabetic medical management plan, or that Student's diabetic needs had increased since the last plan was developed in November 2012. She asserted that, if necessary, she could deliver to District and the County an updated diabetic medical management plan from Student's physician within 24 hours.

58. During her testimony, Mother failed to assert any specific complaint regarding the County selected nurse, Ms. Anderson. Mother had not requested any information, including a resume, regarding Ms. Anderson's qualifications or experience prior to the hearing, and she appeared unmoved by the knowledge that Ms. Anderson was a licensed and experienced nurse. Mother has had very little direct contact with Ms. Anderson, yet she has developed an unshakable conviction that it would be unsafe to place Student under her care, or the care of any nurse other than Ms. Armstrong.

59. Overall, Mother believed that she had the lawful right to select the nurse whom would be responsible for caring for Student while at school, and testified

adamantly that she would only permit Ms. Armstrong to provide those services. It was not possible for Student to attend school without an individual nurse, due to safety concerns associated with his diabetes. Mother described that Student had been diagnosed with “brittle diabetes,” which she reported as the most serious form of diabetes. Mother was concerned that only Ms. Armstrong was able to decipher Student’s non-verbal communication, including his gestures and behaviors, and that this communication was inextricably related to his need for diabetic care. Therefore, she believed that Student would be subjected to a dire and life-threatening predicament if he attended school without Ms. Armstrong. For these reasons, she would not permit Student to attend any school without Ms. Armstrong.

60. Mother was familiar with the Park Place classroom, having volunteered in the classroom twice weekly, at 20 minute intervals, from November 26, 2012 through February 19, 2013. Prior to Student’s Complaint, Mother had never complained that the Park Place classroom was inappropriate, and she had directly selected this classroom as part of the Agreement. At hearing, she complained that Park Place had too many students, was too noisy, and included food preparation, which was distracting to Student. She asserted that Student should instead be placed in an autism specific classroom. Mother initially complained that the Park Place teacher Mike Greer was unqualified to teach pupils who, like Student, have autism. However, she testified that, just prior to the commencement of the hearing, she had researched Mr. Greer’s credentialing and teaching history and determined that he was, in fact, qualified to teach pupils with autism.

61. Mother also complained that Student had been prevented from attending school following Ms. Armstrong’s termination. She testified that on February 20, 2013, the day following Ms. Armstrong’s termination, District and the County failed to provide a nurse to accompany Student to school. Mother had video-taped the inside of the

school bus upon its arrival at her home that morning to document the lack of nurse inside the bus. Mother testified that the District and the County's failure to provide a school nurse that morning directly impeded Student's ability to ride the school bus and therefore prevented him from accessing his school placement. Mother described that she had posted this videotape on the world-wide web, at youtube.com, to publicize that District and County had failed to provide Student a school nurse following Ms. Armstrong's placement on administrative leave, thereby denying him access to school. However, Mother's testimony was directly contradicted by her hand-written letter of February 20, 2013, as described in Factual Findings 23, where she acknowledged that Ms. Anderson had arrived at her home, prior to the school bus arriving, to provide the IEP-based nursing services. Mother was aware that the school nurse never arrived via the school bus in the morning, but arrived separately and prior to the school bus; as Ms. Armstrong had done each day from November 26, 2012, through February 19, 2013, and as Ms. Anderson had done on February 20, 2013. Therefore, she knew that a school nurse would not, and should not have been, on the school bus upon its arrival to take Student to school. Consequently, this area of testimony was intentionally misleading and diminished the persuasiveness of Mother's testimony. Overall, Mother's testimony failed to substantiate that Ms. Anderson was unqualified to deliver Student's nursing services, or that Park Place was an inappropriate placement.

#### ANNETTE ARMSTRONG'S TESTIMONY

62. Ms. Armstrong first began providing Student IEP-based nursing services in 2009. The County generally provided individual nursing services through LVN's, who were supervised by County provided registered nurses. During the 2012-2013 school year, Ms. Armstrong's supervising nurse was Ms. Anderson. Outside of the training provided to all County employed LVN's, Ms. Armstrong had received no specialized training in autism or diabetes of any sort. As a County employee, she had always been in

direct contact with her supervising registered nurse, and communicated with her supervisor at least at the beginning, middle, and end of each shift. She had not met Student prior to taking over from his prior LVN, and had not shadowed or received special instructions from the prior LVN.

63. Ms. Armstrong testified that Student communicated through the use of gestures, behaviors and, to a limited extent, some American sign language (ASL), along with some hand signs which Student created. Ms. Armstrong is not certified, trained, or fluent in ASL, but, like Student, she has learned some ASL signs. Ms. Armstrong understands Student some of the time, but not on a consistent basis. She testified that the teachers at Park Place and Yuba City, along with Student's aides, understood Student's communication about as well as she did. She did not believe that she was the only person who was able to understand Student's gestures, behaviors, and signs. Rather, she described several incidents where Student's individual aide had been able to understand Student and to successfully communicate with him. In addition, Student had become more proficient using his iPad as an augmentative communication device and he was able to communicate, on a limited basis, using this device.

64. Ms. Armstrong believed that Student's behaviors, including self-stimming, hand gestures, and facial expressions, indicated that he had an increase or decrease in his blood glucose level, which indicated a need for insulin or food. Self-stimming behavior, also referred to as stereotypy or self-stimulatory behavior, refers to repetitive body movements, such as hand-flapping, or repetitive movement of objects. These movements are used to stimulate one's own senses and are a common behavior in many individuals with autism. However, Ms. Armstrong was unable to consistently understand Student's communication attempts, or rely upon Student's behaviors, and she therefore relied on a glucometer to identify his glucose levels to determine the need for intervention. A glucometer (also called a glucose meter) is a small, hand-held

medical device for determining the approximate concentration of glucose in the blood. A small drop of blood, obtained by pricking the skin with a lancet, is placed on a disposable test strip that the meter reads and uses to calculate the blood glucose level.

65. Ms. Armstrong recorded almost every aspect of Student's school day, including each gesture and behavior, in daily logs, because she believed that each behavior was related to his blood sugar level and need for diabetic care. Student was sensory seeking and as a consequence often engaged in self-stimming behavior such as hand-flapping. Each stim, facial expression, and vocalization, was recorded by Ms. Armstrong as an area of concern related to his diabetic care. Ms. Armstrong micromanaged Student's school day and frequently removed him from classroom instruction or educational tasks, including pulling him away from his teacher or aide, because she believed that educational stressors including instruction and the classroom environment impacted his glucose levels. Ms. Armstrong's conduct interfered with the teacher's and aides' ability to provide instruction to Student. However, Ms. Armstrong's copious logs failed to identify any actual link between the classroom or Student's observed behaviors, and a rise or decrease in Student's blood glucose levels.

66. Ms. Armstrong complained that the Park Place classroom was inappropriate for Student because it had too many students and was too noisy. As found in Factual Findings 46-48, Park Place was a transition based classroom which focused on teaching students self-help and vocational skills so they could be independent, or as independent as possible, upon leaving school education at the age of 22. Each student was between 18-22 years of age, and was scheduled to transition from high school to the community, at the end of the school year in which they reached 22 years of age. At the time Student attended Park Place, it had 11 students, including Student, one teacher, two instructional assistants, plus Student's individual aide and individual nurse.

67. In an effort to show that Park Place was an inappropriate placement, Ms. Armstrong described one incident where a peer had used a sanding device, which was the same incident described by Mr. Greer. She believed that the noise from the sanding device agitated Student, which was an environmental factor that could have impacted his blood glucose levels. However, this was an isolated incident and she was unable to confirm that the noise actually impacted Student in any manner.

68. Ms. Armstrong reported three additional incidents to support her claim that Park Place was inappropriate. She reported that the first incident occurred when Student first began attending Park Place, and described it as a loud vocalization accompanied by a red face, lasting less than a minute. She described that this outburst was attributable to Student transitioning to a new placement. Ms. Armstrong next described a single outburst he experienced when he was being driven from Park Place to Yuba City, which she attributed to Student being excited for lunch, which he received when he arrived at Yuba City. The third incident she described occurred while Student was at Butchie's pool, and was related to Student becoming frustrated because he had to wait for a changing room which was occupied. Given that Student had a history of difficulty transitioning to any new environment, Ms. Armstrong's testimony failed to elicit how any one of these three incidents was attributable to the Park Place classroom, or how these incidents substantiated that Park Place was inappropriate.

69. Ms. Armstrong presented as an assiduous nurse who deeply cared for Student. However, her testimony failed to demonstrate that she was uniquely qualified to deliver his nursing services. She had no special ability to communicate with Student, and she was not unique in her ability to understand some of his non-verbal communication. Ms. Armstrong did not rely on Student's means of communication to determine his blood glucose levels and his need for food or insulin, and instead utilized the glucometer, a device which is commonly used by school nurses, to make these

determinations. She had not received any specialized training in either autism or diabetes which set her apart from other nurses, and she had no experience with Student prior to being assigned as his IEP-based nurse. Ms. Armstrong's description explaining why Park Place was inappropriate was disjointed and incoherent, and generally failed to focus on Park Place at all. She failed to substantiate that Park Place had too many pupils or was too noisy, and she failed to describe what she believed was an appropriate pupil-to-staff ratio for Student. Overall, her testimony failed to substantiate that the IEP-based nursing services, or the Park Place classroom, were inappropriate to meet Student's unique educational needs.

## LEGAL CONCLUSIONS<sup>8</sup>

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>9</sup>

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children

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<sup>8</sup> All Factual Findings are incorporated into the Legal Conclusions.

<sup>9</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)<sup>10</sup>

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an

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<sup>10</sup> References to the Code of Federal Regulations are to the 2006 version.



interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of

review for IDEA administrative hearing decision is a preponderance of the evidence[.]) In this case, Student had the burden of proof as to his issues, and the District had the burden of proof as to its issues.

#### REQUIREMENTS FOR DIABETES MANAGEMENT IN SCHOOLS

5. Education Code section 49423.5 regulates the delivery of “specialized physical health care services” (SPHCS) by school personnel. SPHCS means those health services prescribed by the child’s licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the child to attend school. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(A).) Medically related training must be done by “a qualified school nurse, qualified public health nurse, qualified licensed physician and surgeon, or other approved programs ....” (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(E)(2).)

6. The implementation of a prescription must be assisted and coordinated by a school physician or nurse, who must consult with appropriate personnel and maintain communication with health agencies providing care to the student. (Ed. Code, §§ 49423, subd. (a), 49423.5, subd. (a)(2); Cal. Code Regs., tit. 5, § 3051.12, subds. (b)(3)(D)(1)-(3).) It must be done pursuant to “protocols and procedures developed through collaboration among school or hospital administrators and health professionals, including licensed physicians and surgeons and nurses .” (Ed. Code, § 49423, subds. (a), (b); Cal. Code Regs., tit. 5, 3051.12, § subd. (b)(1)(B).) A school district is required to maintain “specific standardized procedures” for each student with exceptional needs who receives SPHCS. (Cal. Code Regs., tit. 5, 3051.12, subd. (b)(3)(E).) The implementation of a prescription also must be routine for the pupil, pose little potential harm to him, be performed with predictable outcomes, and must not require a nursing assessment or interpretation, or decision-making by the school personnel delivering the service. These arrangements

must be made by the school's physician or nurse "in consultation with the physician treating the pupil..." (Ed. Code, § 49423.5, subd. (a)(2).)

7. The administration of insulin or glucagon for diabetes management is the administration of medicine and requires medically related training, and therefore is a SPHCS. (Ed. Code, § 49423.5, subd. (d); *American Nurses Assn. v. O'Connell* (2010) 185 Cal.App.4th 393, 406, 411) (hereafter *American Nurses*.) It may be provided in school only in compliance with Education Code section 49423. (Ed. Code, § 49423.5, subd. (b); Cal. Code Regs., tit. 5, § 3051.12, subd. (b).) A school district must obtain "a written statement from the physician detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken" and "a written statement from the parent . . . of the pupil indicating the desire that the school district assist the pupil in the matters set forth in the statement of the physician." (Ed. Code, § 49423, subd. (b)(1).) The statements must be provided at least annually. (*Id.*, subd. (b)(3).) Here, the statement is referred to as a diabetes medical management plan.

8. School personnel who provide treatment pursuant to Education Code section 49414.5, subdivision (a), must be trained in the recognition and treatment of hypoglycemia, the administration of glucagon, and basic emergency follow-up procedures such as calling 911 and contacting the pupil's parent and licensed health care provider. (Ed. Code, § 49414.5, subd. (b)(2).) When that training is conducted by a credentialed school nurse or registered nurse, it "shall be deemed adequate training for the purposes of this section." (Ed. Code, § 49414.5, subd. (b)(3).)

9. If SPHCS are made part of an IEP and parents elect to provide the required medical care during the school day themselves, they must sign a waiver relieving the school of responsibility. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(A).) This represents a legislative decision that a school district is not responsible for the consequences of a decision by parents to undertake the medical care of their children

during the school-day themselves. Here, parents have never signed a waiver and therefore the review of the issues will generally be limited to the appropriateness of the IEP offers.

STUDENT'S ISSUE ONE: WHETHER DISTRICT'S AND THE COUNTY'S NOVEMBER 8, 2012 AND AUGUST 19, 2013 IEP'S DENIED STUDENT A FAPE BY:

- a. Failing to provide Student with adequate one-to-one services by a LVN to meet his unique needs regarding diabetes and communication?

10. Student complains that the IEP's offered by District and County failed to include sufficient individualized services by a qualified nurse. It is undisputed that Student required IEP based services implemented by a qualified nurse. District, the County, and the Student each provided substantial evidence that the nature, severity, and complexity of Student's diabetes required the care and management of a qualified nurse while attending school. It was also undisputed that Student required this care directly before and during his transportation to-and-from school. The question at hand is therefore limited to whether the duration and frequency of the nursing services offered were adequate, and whether the nurse selected by the District and the County to implement the services was lawfully qualified to deliver these services.

11. As previously noted in Legal Conclusions two, an IEP must include related services that are required to assist a child in benefiting from special education. Related services are:

transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work

services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) ...

(20 U.S.C. § 1401(26)(A).) State law adopts this definition of related services, which are called "designated instruction and services" (DIS). (Ed. Code, § 56363, subd. (a).)

12. Health and nursing services are specifically included as DIS services in California. (Ed. Code, § 56363, subd. (b)(12).) Health and nursing DIS services may include providing services by qualified personnel and managing the individual's health problems on the school site. (Cal. Code Regs., tit. 5, § 3051.12, subds. (a)(1), (2).)

13. The November 8, 2012 IEP provided a written statement detailing the duration, frequency, and modality of nursing services. In addition to other designated and related services, the IEP offered a one-to-one nurse for 440 minutes daily, five days per week. Given that the length of instruction during the school day was 310 minutes, this provided for approximately 30 minutes of individual nursing services at Student's home prior to school, during a ten minute bus ride to school, during transitions between Park Place and Yuba City, Student's bus ride from school to home, and for another 30 minutes at home after school, each day, five days per week.

14. The August 19, 2013 IEP also provided a written statement detailing with specificity the nursing services as a designated instruction and service. In addition to other designated and related services, the IEP offered a one-to-one nurse for 420 minutes daily, five days per week. The small reduction in nursing services reflected the single school placement offered in this IEP, and still provided individual nursing services

at Student's home prior to school, during the bus ride to school, during the entirety of the school day, during Student's bus ride from school to home, and after school at Student's home, each day, five days per week.

15. The nursing services were provided pursuant to the requirements set forth in a diabetes medical management plan, which was provided by Student's physicians; and overseen and managed by a registered nurse, Ms. Anderson, who had substantial experience caring for children with diabetes. The diabetes medical management plan was updated by Student's physician for the 2012-2013 school year, and was provided to the County on November 15, 2012. District and the County took reasonable steps to secure the plan's update for the 2013-2014 school year, although such efforts were thwarted by Mother. Ms. Anderson directly oversaw the daily diabetic care provided by a County LVN, Ms. Armstrong, from the November 2012 IEP through February 19, 2013, at which time Ms. Anderson was assigned to directly care for Student. Ms. Anderson is a registered nurse and therefore qualified to supervise Student's diabetic care. (Legal Conclusions 8.)

16. Each nurse who testified, which included Student's private nurse Ms. Armstrong, the County's nurse Ms. Anderson, and an independent nurse chosen by Student and retained by the County, Ms. Keenan, testified that the nature of the nursing services were appropriate to meet Students unique medical needs. Each nurse was concerned that Student's rapidly changing glucose levels posed a serious threat to his health and safety, and described Student as a nurse-dependent pupil who required constant and comprehensive services from a one-to-one nurse while at school. Ms. Keenan persuasively described that the duration, frequency, and modality of nursing services contained in the IEP, particularly the services provided prior-to and-after each school day, were wholly appropriate to meet Student's unique needs, and accorded with the recommendations outlined in her independent nursing report. In particular, she

asserted that the transitional nursing service provided prior to the bus ride were appropriate to address Students quickly changing blood glucose levels.

17. In response, Student failed to provide any evidence, or to elicit any testimony, which substantiated that Student required additional, or different, nursing services than what was offered in the November 2012 and August 2013 IEP's.

18. Rather, Student asserts that Ms. Armstrong was the only school employee who was able to communicate with Student and therefore she was solely qualified to deliver his nursing services at school. Student avers that District and the County denied Student a FAPE, since February 20, 2013, because Ms. Armstrong was no longer permitted to provide Student's IEP-based nursing services. However, Student's complaint is unsupported by a legal requirement that, if otherwise qualified, a school nurse must also be able to communicate directly with a pupil who may be non-verbal. Moreover, this allegation was contradicted by substantial evidence. Mr. Greer, Ms. Keenan, Ms. O'Donnell, Ms. Van Alstyne, and Ms. Armstrong, each observed Student use gestures and signs to communicate with his teacher, aide, and, at times, other pupils. Mr. Greer observed Student use gestures, signs, and his educational iPad to communicate with himself and the classroom aides. Ms. O'Donnell, who was called as Student's expert witness in the area of communication, asserted that the communication device and applications, including the Tap to Talk and Go Talk Now programs, provided in the November 2012 and August 2013 IEP's, were precisely what Student required to assist him in the area of communication. She made no further recommendations regarding the IEP services or placement. Finally, Ms. Armstrong admitted that she did not possess any unique ability or training to communicate with Student. Moreover, she had observed Student use gestures and signs to functionally communicate diabetic related concerns with his individual aide. Consequently, Student failed to substantiate that District and the County were obligated to retain the nursing services of Ms.

Armstrong because she was singularly capable of understanding Student's non-verbal means of communication.

19. Student also complains that the service provider selected by District and the County to implement the nursing services was unqualified to do so. From November 8, 2012 through February 19, 2013, the nurse selected by the County and District was Ms. Armstrong, whom the Student asserts was the only nurse who was qualified to care for Student. Consequently, Student's complaint pertains to Ms. Anderson, who was selected by District and the County to take over as Student's one-to-one nurse when Ms. Armstrong was placed on administrative leave. Nevertheless, Student's claim is baseless. Student failed to provide any documentary evidence or to elicit any testimony which demonstrated that Ms. Anderson was unqualified to provide Student's diabetic care at school. To the contrary, the evidence supported that Ms. Anderson had extensive experience assessing and providing direct treatment for students' with diabetes, including those who were non-verbal, with autism, and with serious degrees of type-one diabetes. She observed Student while in class several times per week, each week, and when she was not directly observing Student, she provided direct consultation and management to Students one-to-one nurse each day. Ms. Anderson was directly familiar with Student, his means of communication, his complex diabetic requirements, and how to care for his rapidly changing diabetic needs. Ms. Anderson, who had over 23 years of experience as a registered nurse and 13 years of experience as a school nurse, had the requisite experience, training, and credentialing required of her role.

20. For the foregoing reasons, the evidence substantially established that District and the County did not deny Student a FAPE by failing to provide adequate nursing services or by failing to offer a properly trained individual to deliver the nursing services.



b. Failing to offer Student a placement that met his unique needs, especially sensitivity to sound, and by offering a classroom which contained too many students?

21. Student complains that the Park Place classroom was inappropriate to meet his unique need. In particular, Student asserts that environmental factors, including noise and the number of peers, which existed in the Park Place classroom impacted Student's blood glucose levels, thereby making it an unsafe and inappropriate placement.

22. As evidence, Student relied solely on the testimony of Ms. Armstrong, who recorded Student's behaviors in daily nursing logs from November 26, 2012, through February 19, 2013. Ms. Armstrong pedantically recorded each gesture, stim, and expression experienced by Student; yet, when compared against contemporaneously recorded glucometer readings, her logs failed to establish a connection between Student's behaviors and his diabetic needs. Her testimony similarly failed to demonstrate that Park Place was inappropriate. She provided detailed testimony regarding three incidents which she believed highlighted the inappropriateness of the Park Place classroom. Yet, only one of the three instances reported actually transpired at Park Place. One occurred while Student was being transported to Yuba City, and one occurred while Student was at Butchie's pool. The only incident which occurred while at Park Place, which she described as a quick and mild tantrum he experienced when he first transitioned into this classroom, was not attributable to the placement itself, but rather to Student adjusting to a new placement. In light of Student's history of difficulty transitioning to new placements, this single and mild outburst may instead evidence the appropriateness of the Park Place classroom. Finally, Student failed to explain why a classroom which consisted of 11 students with a maximum capacity of 18 students, with approximately a four-to-one ratio between pupils and staff, in addition to an individual

aide and an individual nurse assigned to Student, was too high a ratio of peers; or what an appropriate number of students would have been to meet Student's needs.

23. On the other hand, District and the County provided significant evidence in support of its IEP offers, including Park Place. Each of the independent assessors, Ms. Van Alstyne, Ms. O'Donnell, and Ms. Keenan, observed that Park Place was appropriate to meet Student's unique needs. The independent psychologist, Ms. Van Alstyne, found that Park Place, per her direct observations and testing, provided a sufficiently low staff-to-student ratio. Park Place emphasized transitional and functional development, including developing vocational, independent living, and self-help care skills. Given Student's age and pending transition out of school, an adult transition program which focused on functional skill development was appropriate at that time of Student's school career. On this basis, the independent assessors each found that Park Place was designed to provide Student an educational benefit.

24. Student's teacher at Park Place, Mr. Greer, testified persuasively that Student had received an educational benefit during the 2012-2013 school year while at Park Place. Student enjoyed learning and eagerly participated in large group, small group, and individual instruction in areas of functional academics, independent living, and self-help. During Student's limited time at Park Place, he was introduced the educational iPad, where he learned how to utilize this device to augment and increase his communication abilities, and he progressed to the point where a higher level program, the Go Talk Now application, had been recommended. He had met or made progress on three of his four goals during the 2012-2013 school year. Finally, each of the 12 goals adopted by the August 2013 IEP team, along with Student's ITP goals, could be successfully worked on at Park Place.

25. For the foregoing reasons, Student failed to substantiate his claim that District and the County denied him a FAPE by failing to offer an appropriate classroom.

STUDENT'S ISSUE TWO: WHETHER DISTRICT AND THE COUNTY DENIED STUDENT A FAPE BY FAILING TO PROVIDE HIM WITH SPECIAL EDUCATION AND RELATED SERVICES FROM FEBRUARY 21, 2013, THROUGH THE PRESENT, AND FAILING TO PERMIT PARENT TO CHOOSE THE LVN OR FAMILY MEMBER TO PROVIDE STUDENT WITH DIABETIC CARE SERVICES AT SCHOOL?

26. Student complains that District and the County's conduct of refusing to permit Ms. Armstrong to provide the IEP-based nursing services was tantamount to District and the County physically denying him access to school, thereby denying Student access to special education and related services.

27. District and the County assert that they were willing and able to provide Student's special education and related services during the time frame in dispute. District and the County contend that they had qualified staff on hand to deliver Student's special education and related services, and the school district had the authority to select a school nurse other than Ms. Armstrong. District and the County are correct in their assertion.

28. The evidence provided demonstrated that District and the County were willing and able to provide Student special education related services pursuant to his November 2012, and August 2013 IEP's. The day following Ms. Armstrong's removal as Student's IEP-based nurse, District and the County ensured that a qualified replacement nurse, Ms. Anderson, was present to provide the same duration, frequency and modality of the individual nursing service. On February 20, 2013, the school principal, Ms. Bertolucci, informed Mother that Student's IEP would be provided, uninterrupted, and by qualified staff, following Ms. Armstrong's removal. On February 21, 2013, Ms. Bertolucci and Ms. Anderson met with Mother at school, where they informed her that Student's IEP would be provided in an uninterrupted manner by qualified staff. In response, Mother demanded that the County reinstate Ms. Armstrong, and she refused

special education and related services for Student until such time that the County complied with this demand.

29. On August 14, 2013, the County's Superintendent, Mr. Cornelius, directly informed Mother that the District and the County desired to implement Student's special education and related services, and had qualified staff available to immediately do so. Mother again refused the District and the County's offer of special education and related services.

30. On August 19, 2013, through the IEP team, District and the County again informed Mother that they were capable and willing to provide Student special education and services via qualified staff. Mother dissented to the IEP solely on the basis that Ms. Armstrong was not delineated as the IEP-based nurse.

31. It was the conduct of Mother, not District or the County, which impeded the provision of special education and services to Student following February 19, 2013. Mother plainly refused to permit Student to attend school following Ms. Armstrong's removal on February 19, 2013; and, she clearly communicated her refusal to avail Student of any special education or related services unless Ms. Armstrong was reinstituted as Student's school nurse.

32. In his closing brief, Student does not dispute that District and the County were willing to provide special education and related services following February 19, 2013. Rather, Student argues that, as of February 21, 2013, Mother had sought a waiver of all school district provided medical services, including the IEP-based nursing services. Student asserts that Mother, or Ms. Armstrong as a designee of Mother, would have provided the nursing services, had a waiver been permitted. However, Student's argument is not consistent with Mother's testimony or conduct.

33. Mother testified that she was unable to directly provide Student's at-school nursing services due to conflicting family obligations. Given that Ms. Armstrong

was not hired as Student's private nurse until July 2013, it is unclear who Mother would have designated to deliver Student's at-school medical care had a waiver been requested and accepted during the months of February, March, April, May, and June 2013. Per her February and August 2013 letters and emails to District and the County, Mother alleged that Ms. Armstrong's placement on administrative leave was unlawful, and she repeatedly demanded that Ms. Armstrong be reinstated as Student's school nurse. Mother's various requests for the County to reinstate Ms. Armstrong failed to include a request for a waiver of District and the County's responsibility to provide Student medical services. Even if this had been requested, there was no evidence provided which showed that this waiver had been accepted. Finally, it would not be unreasonable for District and the County to refuse Mother's designation of Ms. Armstrong to privately provide nursing services at school due to her status as an employee placed on administrative leave and/or terminated for cause.

34. Given the seriousness of such a waiver, it is also noteworthy that Student's counsel, who had participated at Student's IEP meetings and who had also corresponded with the school district and its counsel, also failed to request a waiver. District and the County's prior written notice letter of August 20, 2013, delineated the IEP team's refusal to offer nursing services delivered by either Mother or Student's private nurse. Had Student been requesting a waiver of school district provided medical services, rather than an IEP service delivered by Mother or her designee, Student's counsel should have responded to this letter in a manner which indicated that District and the County's reflection of events was incorrect; and, which requested a waiver of all school district provided medical services notwithstanding the IEP offer. At any rate, District and the County were obligated to offer Student a FAPE, and no waiver of this duty existed at the time the August 2013 IEP meeting occurred.

35. Overall, the facts of this matter substantially show that the basis of Student's complaint, and the heart of this case, is Mother's misguided belief that she can make unilateral decisions about who District and the County employ to provide agreed upon IEP services. Contrary to Student's argument, a school district has the right to select a program and qualified service providers for a special education student, as long as the program and the service providers meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs or employees funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. 2007) 2007 U.S. Dist. Lexis 9135; *Slama ex rel. Slama v. Indep. Sch. Dist.* No. 2580 (D. Minn. 2003) 259 F. Supp.2d 880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 47 IDELR 216.) As found in Legal Conclusions 10-20, the school nurse selected by District and the County, Ms. Anderson, had the experience and credentialing required of her role to deliver the IEP-based nursing services.

36. For the foregoing reasons, Student failed to substantiate his claim that District and the County denied him a FAPE by failing to provide him special education and related services from February 21, 2013, through the present. Student also failed to substantiate his claim that he was denied a FAPE because the District and the County failed to adhere to Parent's choice of an IEP service provider.

**DISTRICT'S ISSUE ONE: WHETHER DISTRICT'S AUGUST 19, 2013 IEP, DENIED STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE NURSE?**

37. Per Legal Conclusions five through nine, the Education Code regulates the delivery of SPHCS by school personnel, including the delivery of diabetic care and prescriptions related to diabetes. The individual who performs the SPHCS which are necessary during the school day to enable the child to attend school must have received medically related training and must be done by "a qualified school nurse, qualified

public health nurse, qualified licensed physician and surgeon, or other approved programs ....” (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(E)(2).)

38. For the same reasons cited in Legal Conclusions 10-20, the nurse selected by the County and District during the time frame in question was lawfully qualified to deliver Students SPHCS at school. Ms. Anderson had extensive experience assessing and providing direct treatment for students’ with diabetes, including those who are non-verbal, with autism, and with serious degrees of type-one diabetes. She was familiar with Student and how to care for his rapidly changing diabetic needs. Ms. Anderson, who had over 23 years of experience as a registered nurse and 13 years of experience as a school nurse, had the requisite experience, training, and credentialing required of her role. Consequently, the August 19, 2013 IEP, did not deny Student a FAPE by failing to offer an appropriate nurse.

DISTRICT’S ISSUE TWO: WHETHER PARENT NEEDS TO PERMIT DISTRICT TO HAVE MEANINGFUL ACCESS TO STUDENT’S PHYSICIANS AND PHYSICIAN ORDERS REGARDING HIS DIABETIC CARE SO THAT DISTRICT MAY DEVELOP AND/OR IMPLEMENT A DIABETES MEDICAL MANAGEMENT PLAN?

39. District complains that it is required to update Student’s diabetes medical management plan, and to consult with Student’s physician, in order to safely deliver nursing services. District maintains that it is unable to do so due to Mother’s refusal to authorize District and the County to communicate with Student’s physician, and to provide the school district with an updated diabetes medical management plan.

40. Student does not dispute that Mother has prevented District and the County from communicating with Student’s physicians. Mother has plainly revoked any authorization outside of what had been provided to Ms. Armstrong, and she has refused District and the County’s requests for authorization to communicate directly with Student’s physicians. Nor does Student dispute that Mother has refused District and the

County's requests for an updated diabetes medical management plan. Finally, it is undisputed that Student has a complex medical condition, with rapidly changing blood glucose levels, and therefore he requires a routinely updated diabetes medical management plan, and the care of a nurse who is kept abreast of Student's changing medical needs by his physician.

41. As noted in Legal Conclusions five through 10, the implementation of a prescription must be assisted and coordinated by a school physician or nurse, who must consult with appropriate personnel and maintain communication with health agencies providing care to the student. It must be done pursuant to protocols and procedures developed through collaboration among school or hospital administrators and health professionals, including licensed physicians and surgeons and nurses. District and the County are required to maintain specific standardized procedures for each student with exceptional needs who receives SPHCS. The implementation of a prescription must be routine for Student, pose little potential harm to him, be performed with predictable outcomes, and must not require a nursing assessment or interpretation, or decision-making by the school personnel delivering the service. These arrangements must be made by the school's physician or nurse in consultation with the pupil's treating physician treating the pupil. Here, District and the County complied with these legal obligations through the implementation of a diabetes medical management plan, which included the delivery of prescription medication, including insulin, and which was developed by Student's treating physician. District and the County are obligated to update this diabetes medical management plan at least annually. District and the County are also required to communicate with Student's physician to ensure that the plan is maintained and that the medication is properly delivered. Here, Mother has prevented District and the County from obtaining an updated diabetes medical management plan and from communicating with Student's physician.



42. Consequently, District's request that it be provided an updated diabetes medical management plan, and the authority to communicate directly with Student's physician, is well founded and legally supported. Accordingly, Mother must first provide District an updated diabetes medical management plan, and authorization for District to communicate with Student's physician, prior to Student returning to a District or County school.

## REMEDIES

43. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) Appropriate equitable relief can be awarded in a decision following a due process hearing. (*Burlington, supra*, 471 U.S. at p.374; *Puyallup, supra*, 31 F.3d at p. 1496).)

44. Based upon the foregoing Legal Conclusions, Student has not substantiated that he was denied a FAPE based upon the issues alleged in this case, and therefore his request for remedies is denied.

45. Based upon Legal Conclusions five through 10, and 39-42, District has proven that it is legally obligated to update Student's diabetes medical management plan and to communicate with his treating physician in order to safely deliver special education and related services to Student, who is a medically fragile pupil. District's request that Student provide it the authorization to exchange information directly with his treating physician, and to be provided a routinely updated diabetes medical management plan, accords with the facts and circumstances of this case, and is therefore granted.

## ORDER

1. Student shall provide District authorization to exchange information directly with his treating physician, and an updated diabetes medical management plan, prior to attending a District or County school.
2. Student's requests for relief are denied.

## PREVAILING PARTY

The decision in a special education administrative due process proceeding must indicate the extent to which each party prevailed on the issues heard and decided. (Ed. Code, § 56507, subd. (d).) Here, District and the County prevailed on each issue presented.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Dated: April 7, 2014

\_\_\_\_\_/s/\_\_\_\_

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings