

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2013051091

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on May 24, 2013, naming Santa Monica-Malibu Unified School District. On November 5, 2013, Student filed an amended complaint. The matter was continued for good cause on December 5, 2013.

Administrative Law Judge Elsa H. Jones heard this matter in Santa Monica, California, on April 2 through April 3, 2014, and on April 7, 2014.

Alexis Casillas and Eric Menyuk, Attorneys at Law, represented Student. Student attended all days of hearing. Student's mother attended the hearing on April 2 and April 7, 2014. Student's father attended the hearing on April 3, 2014.

Sundee M. Johnson, Attorney at Law, represented District. Sara Woolverton, Ph.D., Special Education Director, and Francis Costanzo, Special Education Coordinator, attended the hearing on all days on behalf of District.

Sworn testimony and documentary evidence were received at the hearing. A continuance was granted for the parties to file written closing arguments, and the record remained open until April 22, 2014. Upon timely receipt of the written closing

arguments on April 22, 2014, the record was closed and the matter was submitted for decision.

## ISSUES<sup>1</sup>

1. Did the individualized education program of May 25, 2011 deprive Student of a free appropriate public education by reason of the following:
  - A. The District members of the IEP team predetermined Student's placement by offering only the placement the District had available and not what the Student's unique needs required;
  - B. The District members of the IEP team predetermined Student's placement by failing to offer a program that included a sufficient number of courses that

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<sup>1</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.)

Additionally, pursuant to Student's statement of the issues as set forth in her prehearing conference statement, and discussion with the parties at the prehearing conference, the issues in this matter refer to the May 25, 2011, April 24, 2012, and June 12, 2013 IEP's, each of which included offers of extended school year placement and services, instead of referring to the particular school year and extended school year. In presenting her case, Student did not single out any particular fact or argument, or present any evidence, that was specifically directed to the District's offers of extended school year placement and services. Therefore, this Decision discusses the issues presented by Student as they relate to the May 25, 2011, April 24, 2012, and June 12, 2013 IEP's.

met the requirements for admission into the University of California and California State Universities<sup>2</sup>;

- C. The District members of the IEP team failed to inform Parents that the IEP did not offer a program that included a sufficient number of A-G courses and the implications for Student's post-secondary education if the Student's program did not include such courses;
- D. The IEP did not provide Student a sufficient number of A-G courses;
- E. The IEP offered placement in a self-contained class with a one-to-one aide and poor acoustics; and
- F. The transition plan in the IEP was inadequate and inappropriate because its goal could not be implemented unless Student's curriculum included A-G courses?

2. Did the IEP of April 24, 2012<sup>3</sup> deprive Student of a FAPE by reason of the following:

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<sup>2</sup> These courses will be referred to as "A-G courses." A-G courses consist of courses in the areas of English, science, math, foreign language, history/social science, arts, and electives, which must meet certain requirements with respect to matters such as course content, texts, testing, and types of assignments. All such courses must be submitted to the University of California Regents for approval to ascertain that the courses meet the requirements. No evidence was presented as to what the specific requirements are. A student's satisfactory completion of a specified number of these courses in a specified subject area confers eligibility for admission into a college in the University of California and California State University systems. A-G courses are not required for a high school diploma. The mandated classes for a public high school diploma are governed by Education Code section 51225.3.

- A. The District members of the IEP team predetermined Student's placement by offering only the placement the District had available and not what the Student's unique needs required;
- B. The District members of the IEP team predetermined Student's placement by failing to offer a program that included a sufficient number of A-G courses;
- C. The IEP did not provide a sufficient number of A-G courses;
- D. The IEP offered placement in a self-contained class;
- E. The IEP discontinued Student's one-to-one aide, but did not provide Student any replacement support in the classroom; such as real-time captioning (CART) services or an acoustically appropriate classroom; and
- F. The transition plan in the IEP was inadequate and inappropriate because its goal could not be implemented unless Student's curriculum included A-G courses?

3. Did the IEP of June 12, 2013, deprive Student of a FAPE by reason of the following:

- A. The District members of the IEP team predetermined Student's placement by offering only the placement the District had available and not what the Student's unique needs required;
- B. The District members of the IEP team predetermined Student's placement by failing to offer a program that included a sufficient number of A-G courses;
- C. The IEP did not include a sufficient number of A-G courses;

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<sup>3</sup>This IEP was developed at a meeting commenced on March 21, 2012 and completed on April 24, 2012. Throughout the hearing the parties referred to this IEP as "the April 24, 2012 IEP" and, to avoid confusion, that is how it will be referred to in this Decision.

- D. The IEP offered Student placement in a self-contained class;
- E. The IEP offered insufficient supports in the classroom to replace Student's one-to-one aide, such as real-time captioning services or an acoustically appropriate classroom; and
- F. The transition plan in the IEP was inadequate and inappropriate because its goal could not be implemented unless Student's curriculum included A-G courses?

## SUMMARY OF DECISION

Student is a young woman who is hearing impaired and has a specific learning disability. Parents placed her in a nonpublic high school, from which she will graduate in June 2014. This case involves Student's IEP's for Student's sophomore through senior years in high school. District offered her placement in a specialized academic program with a modified curriculum in a District public high school, which would have permitted Student to obtain a high school diploma. Parents objected to the IEP's, for a variety of reasons, including that they wanted their daughter to continue to attend the nonpublic school, where she had made progress. In particular, the nonpublic school offered Student the opportunity to take A-G courses, which made her eligible for admission to colleges in the University of California and California State University systems. Student was successful in A-G courses at the nonpublic school, and, as a result, was admitted to Cal State Northridge. Parents also objected to the IEP's on several procedural grounds. This Decision finds that Parents' objections are not meritorious, and that through the subject IEP's, District offered Student a FAPE in the least restrictive environment.

## FACTUAL FINDINGS

### BACKGROUND AND JURISDICTIONAL MATTERS

1. Student is an 18-year-old young woman, who has resided in the District with her Mother and Father at all relevant times. At all relevant times, Mother has been a high school teacher in another school district, and Father has been a professor at a California State University campus. Student has a congenital bilateral profound sensorineural hearing loss, and has bilateral cochlear implants. At all relevant times, Student has been eligible for special education and related services under the categories of deafness and specific learning disability.

2. Prior to entering ninth grade, Student attended a District middle school, where Student was in a resource program with some general education classes. While she was in middle school, District provided Student with real-time captioning and an FM transmitter to address Student's hearing needs, but Student did not successfully use either of these devices. Instead of technology, Student relied on an aide District provided to take notes for Student.

3. In summer of 2010, when Student graduated from middle school, she attended an extended school year program at Santa Monica High School. Santa Monica High, a public high school in the District, was Student's high school of residence.

4. The extended school year summer program Student attended at Santa Monica High was approximately five weeks long, and consisted, in part, of an English class of approximately 10 students. Student also received language and speech therapy services during the summer program. There were many typical students on campus at Santa Monica High during the summer session. Student did well in her class, and in her speech therapy. Her interactions with her peers and teachers were appropriate, and she appeared to be a happy and pleasant student. During the regular school year, the high school had a population of approximately 3,000 students, with approximately 200

special education students. Santa Monica High offered nearly 100 A-G courses in a wide variety of subject areas. For example, its foreign language course offerings included French, Japanese, Chinese, Spanish, and Latin.

5. The District's offer of a FAPE for Student's ninth grade year, which was embodied in an IEP dated June 8, 2010, included placement at Santa Monica High.<sup>4</sup> Parents did not agree with this offer of a FAPE. Parents advised District that they would enroll Student at Westview School, a small California certified non-public school, and they would seek reimbursement from the District for Westview's tuition and expenses. At all relevant times, Student has attended high school at Westview, where she completed A-G courses. Westview, offered approximately three dozen A-G courses.

6. At the time of the hearing, Student was in the twelfth grade at Westview. Cal State Northridge had admitted her to college based upon her grades in A-G courses. Student did not rely on her SAT scores in applying to Cal State Northridge because she was relying on her grades in her A-G courses for admission. Therefore, she did not put much effort into the SAT's, and her SAT scores were low. Cal State Northridge has a student population of approximately 38,000. Student was scheduled to graduate from Westview with a high school diploma at the end of the 2013-2014 school year, and she planned to attend college at Cal State Northridge during the 2014-2015 school year.

#### IEP OF MAY 25, 2011

7. On May 25, 2011, when Student was 15 years old and in the ninth grade, District convened Student's annual IEP meeting, to discuss Student's education for tenth

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<sup>4</sup> This IEP was the subject of a previous due process complaint filed by Parents against District, and is the subject of a pending appeal. The May 25, 2011 IEP which is the subject of this Decision was also the subject of the previous due process complaint insofar as the IEP may have applied to the end of the 2010-2011 school year.

grade. Parents and Student were invited to the meeting. All required persons attended the meeting, including Parents, their advocate, Wendi Cherry (a counselor from Westview), Jackie Strumwasser (Westview's director), Diane Gonsalves, (a Santa Monica High special education teacher), a general education teacher, a speech-language pathologist, Darci Keleher (the District's special education coordinator), and Dr. Woolverton (District's special education director). The meeting lasted for approximately 2 hours and 45 minutes.

8. At the time of the IEP meeting, District had not had access to information about Student since summer 2010, when Student attended District's extended school year summer program. As a result, in developing the IEP, District relied heavily on Westview staff for information about Student's present levels of performance and educational progress. The most recent academic assessment to which the District had access was Student's triennial academic assessment, which the District performed in May 2010, when Student was in eighth grade. The academic assessment consisted of the Woodcock Johnson-III Tests of Achievement, Form B. The report reflected that Student's academic skills were within the low-average range, and her ability to apply those skills was in the low range. Her fluency with academic tasks was low-average. Student scored in the average range in Written Expression, with a standard score of 93; in the low range in Mathematical Calculation Skills, with a standard score of 77, in the low range in Broad Math, with a standard score of 74, in the average range in Broad Written Language, with a standard score of 94, and in the low average range in Broad Reading, with a standard score of 84.

9. Parents declined a copy of the procedural safeguards. The team noted Student's primary eligibility of deafness and secondary eligibility of specific learning disability. Student's specific learning disability was reflected in the significant discrepancy between Student's nonverbal ability in the average range, and academic



achievement in the very low range in oral language and in the low range in both broad math and math calculation skills. The team attributed this discrepancy to a processing deficit in auditory memory. The team noted that both Student's hearing impairment and processing deficit adversely affected Student's academic performance.

10. The team noted Student's strengths, preferences, and interests. She enjoyed reading and reading aloud, although she had difficulty pronouncing words at the seventh-grade level. She could write a five paragraph essay with proper formatting using the most basic written language conventions. She absorbed, retained, and recalled information that she learned very well. She was interested in school and in the arts. Father stated that Parents wanted District to fund Student's placement at Westview because she was performing well there.

11. The team discussed Student's present levels of performance. In the areas of Preacademic/Academic/Functional Skills, Westview personnel reported that Student's test scores were usually in the upper "B"/lower "A" range. She participated in class discussions, and had shown progress in her ability to function more independently. She struggled to read fluently, but this appeared to be more attributable to her hearing impairment than to a lack of knowledge of English letter-sound correlations. Student had a very limited expressive vocabulary, and she struggled to answer comprehension questions that involved critical thinking, making inferences, and supporting an argument with examples from the text. Her sentences were very simple and lacked grade-appropriate vocabulary words. Her written sentences were often grammatically incorrect, in that they lacked subject-verb agreement or critical words, and they sometimes lacked a subject or verb. She required frequent comprehension checks, due to her limited vocabulary, and much teacher assistance to follow along in a novel. Based on her progress on her reading comprehension goal, her comprehension was 80 percent correct at the seventh grade level. She was easily distracted and tended to give

up when she was frustrated in class, rather than seek help. In math, Student could order integers and decimals, simplify multi-term mathematical expressions, and solve multi-step linear equations involving more than one operation. She could also solve multi-variable equations for a specific variable. Using information that was available to the District as of June 2010 because it had no more recent information, the team determined that Student had made great progress in her receptive and expressive language skills. She could determine an approximate meaning of a word she did not know with at least 75 percent accuracy. Her vocabulary was in the significantly below average range, corresponding to a grade equivalent of 3.4. She could answer inferential questions with approximately 70 percent accuracy in response to seventh/eighth grade level text.

12. Student had no gross or fine motor development issues and adaptive/daily living skills were adequate for accessing the curriculum. The team noted Student's profound deafness, but that there were no current medical concerns. In the area of social emotional/behaviors, Student had a tendency to get easily frustrated. She was polite to staff but not always polite to peers. She would stay focused during class activity, but needed to be redirected about every 10 minutes with respect to independent work.

13. In the vocational area, Student was well-organized and prepared for class, but she often rushed her work or was too unmotivated to go an extra step on her work to get a higher grade. The majority of her disruptive behaviors occurred when Student did not want to work on an assignment.

14. Under the heading "Special Factors," the team noted that Student required deaf/ hard of hearing services to help her access the core curriculum. The team noted that Student needed to sit in the front of the classroom on the left side, with her right ear facing the sound source. The teacher needed to repeat and rephrase peer questions

and comments during class discussions. The teacher was to use visual cues and written directions or assignments, and was to test for clarification by not asking “yes” or “no” questions. Student needed adult support to be immediately available to process and mitigate social situations. The team decided that Student’s behaviors did not impede her learning or that of others.

15. Goals were developed at the meeting in all areas of need, including reading, writing, and math, with input from Parents and Westview, based on the present levels of performance and baselines reported by Westview. At the time of the IEP meeting and hearing, there was no dispute as to the appropriateness of the goals. At hearing, the evidence was uncontradicted that District could implement the goals in this IEP at Santa Monica High.

16. The notes contain the team’s discussion as to whether there should be an individual transition plan, and the team agreed to add one. Parents advised that Student wanted to go to college, and she was very interested in art, graphic design, and similar endeavors. She was very artistic and wanted to go into some creative design field. The team developed a transition goal by which Student would identify coursework and activities Student should pursue to meet her post-school goals of going to college and possibly working in art or creative design. This goal had two short-term objectives. The first objective was for Student to become familiar with the entrance requirements for community colleges, universities, and art schools, and the second objective was to identify which post-secondary path, such as a community college, university, or art school, she felt was best for her. The goal specified that the special education staff and Student were responsible for the goal. Due to an error, the IEP did not include a separate transition plan.

17. The team decided that Student would take the California Modified Assessment Test in English and Algebra. The team agreed upon a variety of state testing

accommodations, including extra time, smaller setting, and revised test directions in all areas of the test; reading portions of test aloud for Algebra, science, and history/social science; and use of a calculator for the Algebra portion of the test. The team determined that Student's classroom accommodations would include preferential seating, providing lecture notes, providing class outline in advance, a peer tutor, allowing Student to work with a partner and share/copy notes, no penalty for spelling errors, modifying assignment length and giving extra time to complete assignments in the general education setting, and extra time and a smaller setting for classroom tests.

18. At the meeting, there were several discussions involving Parents' inquiries and input, or their advocate's inquiries and input, on a variety of topics. Parent and the speech therapist discussed the therapist's experience working with deaf students, with students who had cochlear implants, and with deaf students at Santa Monica High. District requested current information about Student's progress in speech therapy. Parents had been providing private speech therapy services, but did not have a report. District offered to conduct a speech and language assessment to determine Student's speech therapy needs, but Parents deferred, and ultimately declined the District's assessment offer. The team discussed Parents' concern that Student needed one-to-one auditory-verbal therapy with a person knowledgeable regarding students with cochlear implants. The team discussed that Student's progress with her more recent cochlear implant lagged behind the progress she made with her older cochlear implant. Student's advocate mentioned that Student had no access to an interpreter or to a real-time captioning system at Westview, but that she had not needed it. The advocate also advised that Student did not want an FM system. Student's advocate asked questions about the nature of the deaf/hard of hearing services the District was offering. The advocate was advised that the deaf/hard of hearing services would include the deaf/hard of hearing specialist consulting with school staff and Student regarding how

to address Student's needs, such as how to implement accommodations, how Student could advocate for herself, and checking that Student's equipment worked.

19. Westview members of the team discussed Student's improvement in social skills and that she was developing independent work habits, but Student still needed much adult support to access group instruction, and to handle social issues, and she needed to learn to request help. The team discussed the number of minutes District would provide specialized academic instruction, and Westview personnel reported that Student's full school day at Westview was considered special education, with no general education, since Westview was a special education school. Westview personnel asserted that approximately 20 to 25 percent of Westview students did not have an IEP, but this was not necessarily because their parents chose not to have one, rather they were "quirky" kids. The entire team agreed to provide specialized academic instruction for all academic classes, and that Student would have access to general education elective classes.

20. The team had a lengthy discussion regarding placement options, including placement at Santa Monica High versus placement at Westview. Parents, their advocate, and Westview staff participated in the discussion. Dr. Woolverton, the District's special education director, explained that the District only offered placement at a nonpublic school when the District believed it could not offer a program that would meet Student's needs in a District public school. She also explained that, in general, public schools offered greater access to typical peers and typical curriculum, so that they were the least restrictive environment, if otherwise appropriate. .

21. The team discussed many topics relating to Student's placement. Ms. Strumwasser, Westview's director, expressed that Westview was unique because it offered a variety of curricular needs, and if Student stayed at Westview she would have access to the more typical curriculum. Ms. Strumwasser stated her belief that Student

needed a small class size with students who were functioning fairly similarly to Student's level and that much of Student's learning was occurring during group activity. Westview's administrator also believed that Student needed quick access to therapeutic intervention regarding social issues, as she was emerging socially. Parent noted how much progress Student made at Westview and how she now liked school, when she had not liked school the previous year. Westview's counselor noted Student's progress in independence. In response to Student's advocate's and Parent's concerns, District personnel explained that there was a difference between high school and middle school. The specialized academic instruction class size was six to 12 students per class, with a teacher and an instructional assistant. The classes were offered in all academic areas, and the general education curriculum was appropriately modified. Pupils on the diploma track took classes at their instructional level, and were grouped with peers who had similar levels. There was much interaction and discussion in class, and the teachers used a variety of instructional strategies. In general, there were three levels of classes for most academics. Santa Monica High's special education English teacher explained that the goal in special education English was to move the children to the next level, and that students could be moved into general education academic classes if they were able to access that curriculum. Student would be placed in a small class of students at her instructional level. In response to a question from Westview personnel, a District teacher explained the teaching strategies and techniques that Santa Monica High teachers used. The advocate conveyed Parents' belief that District could not meet Student's academic needs at Santa Monica High.

22. The team discussed the counseling and social skills groups available at Santa Monica High, which included two counselors who offered special education designated instruction and services, as well as two counselors from an outside institution, two levels of social counseling groups, and a group called Circle of Friends

which paired special education students with typical peers. Santa Monica High was organized into five smaller schools of about 500 students each, known as "houses." Each house had a house principal and two advisors, and the house staff, special education staff, and counselors knew and monitored their students well. Counselors kept an eye on the special education students in all of the houses. District personnel did not believe that the size of Santa Monica High would negatively impact Student. The family did not feel that the size of the school was appropriate, and that the school could not address Student's social needs. Parents' advocate stated that the family believed that the large population of general education students made Santa Monica High more restrictive for Student. Parent stated that Student now liked school, and had friends, and was making progress at Westview. At hearing, Mother expanded on her concerns about Student's opportunities for socialization at Santa Monica High. She explained that Student's sibling, who graduated from Santa Monica High, told her that special education students did not mingle with general education students. Ms. Strumwasser expressed that she felt that Student could be socially compromised on a large campus because of the types of students she might encounter, and that would not happen at Westview, since there was so much supervision and the school was so small.

23. District's special education coordinator stated that Student had done very well during the extended school year summer program on the Santa Monica High campus the previous summer, and Student had seemed to like being on campus. The team discussed Student's previous experience at middle school, and Parent disputed the level of her success there.

24. Throughout the discussion, Dr. Woolverton asked the District members of the team whether they could meet Student's academic and social/emotional needs as a deaf/hard of hearing student at Santa Monica High, and the response was in the affirmative.

25. The IEP offered placement at Santa Monica High, on a track to obtain a regular diploma by June 2014. The IEP team considered several options, including placement in a general education program, specialized academic instruction on a public school campus; and specialized academic instruction at a nonpublic school. The IEP offered specialized academic instruction for 269 minutes per day in English, history, math, science, and reading, in a separate classroom. At hearing, the evidence demonstrated that District's specialized academic instruction program was designed for students who were on an academic track but who had significant academic delays and needed a significantly modified curriculum or a significant level of support. Curriculum modifications consisted of such variations as the teacher spending more time on the material, or not teaching the material with as much depth as it would be taught in a general education class.

26. The IEP also offered deaf/hard of hearing related services through the Los Angeles County Office of Education on an individual basis one time per month for 30 minutes each time; and 30 minutes per month of consultation services. The IEP also offered language and speech services three times per week, for 25 minutes each time. One weekly speech therapy session would be provided on an individual basis; the other two sessions would be provided in a group. The IEP offered psychological services on an individual basis, one time per week, for 60 minutes each time, and auditory-verbal therapy provided by a nonpublic agency one time per week for 60 minutes each time. District had no current information regarding Student's need for deaf/hard of hearing and auditory-verbal services. District based its offer of these two services upon the information the District had from the 2009-2010 school year, the last time the Student attended school in the District. The IEP also offered extended school year summer school, to include specialized academic instruction, and deaf/hard of hearing services, language and speech services, and psychological services.



27. The IEP specified that Student would participate in general physical education, and she would spend 65 percent of the time outside of the general education environment. In particular, Student would not participate in the regular class and extracurricular and non-academic activities five periods daily because of the need for individualized attention resulting from the areas of deficit. Parents would be advised of progress each trimester by means of a progress report.

28. On June 8, 2011, Ms. Keleher sent a letter to Parents, advising them that Westview had provided further information to District so that the District could complete the IEP paperwork, and enclosed the IEP document. The letter also advised Parents that District would consider whether it could offer auditory-verbal therapy, as Parents had requested, in an Individual Services Plan since she was unilaterally placed at Westview.<sup>5</sup> The letter requested Parents to contact the District if they were interested in an Individual Services Plan, and District would convene an IEP meeting to discuss it. The letter also referred Parents to the federal regulations pertaining to Individual Services Plans.

29. Parents never consented to any portion of the IEP, except insofar as they agreed with the goals at the IEP meeting. Parents did not contact the District to pursue the option of an Individual Services Plan. Parents advised District that Student would continue to attend Westview, and Parents would seek reimbursement from the District.

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<sup>5</sup> An Individual Services Plan is a plan by which a District offers limited services to a student with a disability whose parents have enrolled them in private school, based upon a complex financial calculation that takes into account the number and location of disabled children in the state and the amount of federal funding available. (20 U.S.C. § 1412(a)(10).)

30. Dr. Brandon D. Martinez testified as an expert witness for Student regarding the contents of this IEP and all of the IEP's at issue in this matter. Since 2013, Dr. Martinez has served as the Assistant Principal of Curriculum, Instruction, and Assessment at Nogales High School in the Rowland Unified School District in La Puente, California. He received his B.A. in English literature from the University of Southern California, his M.A. in English literature and his M.S. in educational leadership from California State University, Fullerton, and his Ed.D. in educational psychology from the University of Southern California. He holds a single subject teaching credential in English Language Arts, and a Tier 1 administrative credential. He has been an Assistant Professor of Clinical Education at the University of Southern California since 2009. He has been a general education teacher at the high school level. He has also served as Dean of Attendance and as an Assistant Principal of Student Affairs at La Habra High School, in the Fullerton Joint Union High School District in California. He has attended a number of IEP meetings during his career. Dr. Martinez does not have a special education teaching credential, and he had no training regarding teaching children who were deaf/hard of hearing. There was no evidence that he had any familiarity with classes at Westview. He had never been to Santa Monica High, and he had minimal knowledge of classes there.

31. Dr. Martinez expressed several opinions regarding the contents of the May 25, 2011 IEP. He was concerned that the impact statement in the IEP regarding how Student's disability affected her involvement and progress in the general curriculum did not indicate that Student required a modified curriculum, and he did not believe that the present levels of performance reflected that Student was incapable of accessing a general education and college preparatory curriculum. He believed that the IEP was not appropriate because it did not offer A-G courses to Student, who could have succeeded in them, based upon her entire transcript from Westview. He asserted that there was no

indication on that transcript that Student's Westview curriculum was modified. He also criticized the IEP because it did not indicate that the specialized academic instruction courses offered were not A-G courses. He criticized the IEP for not including a separate transition plan. He also believed that it would not have been possible for Student to attend a four-year college or university, as stated in the transition goal, based upon the program offered in the IEP. On cross-examination, he acknowledged that students at his high school obtain a high school diploma and go to a four-year college even if they do not take A-G courses. He also acknowledged that one can enter a community college or four-year colleges besides the California State University and University of California institutions if the student has not taken A-G courses, and that a Student could transfer to such California public institutions from a community college.

32. Dr. Martinez's opinion as to Student's capacity for undertaking A-G courses was contradicted by Diane M. Gonsalves, a special education teacher at Santa Monica High who taught ninth and tenth grade specialized academic instruction English courses. Ms. Gonsalves attended the May 25, 2011 IEP meeting. Ms. Gonsalves received her B.S. in elementary/special education from Kutztown University, and her M.A. in Special Education from Grand Canyon University. She has been a District employee since 1997, when she served as a middle school Resource Specialist in a District middle school, before obtaining her current position in 2009. She holds a multiple subject teaching credential, a clear instruction specialist special education credential, and an autism credential. She holds a California Language Acquisition Development certificate.

33. As a teacher of specialized academic instruction classes, she used grade level curriculum and collaborated with general education teachers to modify the curriculum for the individual student's needs. She also taught a tutorial class, in which she assisted students in the general education curriculum with homework completion and study skills. She did not believe that an A-G English class would be appropriate for a

child such as Student, who had a vocabulary of no higher than the eighth grade level by the end of ninth grade and who could not independently answer questions from a ninth grade level text with 50 percent accuracy, as stated in the baseline for Student's comprehension goal. She considered the reading comprehension and task initiation/completion goals to be typical goals for students in her classes, and she could appropriately implement them. Based on Student's present levels of performance, baselines, and the fact that Student had goals in all academic areas, she agreed with the IEP team determination that specialized academic instruction academic classes were appropriate for Student. She also noted that Student could take general education electives such as a foreign language, art, and drama.

34. Cam-An Vo-Navarro, a guidance counselor at Santa Monica High, also disputed parts of Dr. Martinez's testimony. Ms. Vo-Navarro received her B.A. in psychology from the University of California, Los Angeles, and her M.A. in school counseling from Loyola Marymount University. She holds a pupil personnel services credential. Ms. Vo-Navarro noted that students can catch up on their college preparatory courses after ninth grade. She stated that students need not necessarily have A-G courses to be admitted to the California State University system. The system also provided for admission by exception, or through SAT scores. Additionally, a student could be admitted to a California State University institution from a community college. She also confirmed that a student did not need A-G courses to be admitted into a community college, or to be admitted into four-year colleges that were outside of the California State University and University of California systems directly after high school graduation.

35. Dr. Woolverton, District's special education director, disagreed with Dr. Martinez's opinion as to Student's academic abilities. Dr. Woolverton has been employed by the District as its special education director since 2009. She holds a B.A. in

special education with training in general and special education, and a teaching certificate as well as a B.A. in anthropology from Western Washington University. She holds an M.Ed. in special education from the University of Washington, and a Ph.D. in educational leadership and policy studies, also from the University of Washington. She holds an educational administrator certificate from the University of Washington, and a California administrative credential, and by shortly after the conclusion of the hearing she expected to have completed the requirements for a Superintendent credential. She has been a special education administrator since 2001.

36. Dr. Woolverton noted that Student's triennial assessment of 2010, which was the most current academic assessment District had at the time of the IEP meeting, reflected that Student's standard scores were one to two standard deviations below the mean. These scores suggested that Student was not on the same level as typical peers in general education classes, and that it would be very difficult for Student to keep up independently in general education classes. Rather, the scores demonstrated that Student would require significant supports and curriculum modifications and specially designed instruction, and therefore specialized academic instruction was appropriate for her. Westview representatives at each IEP meeting at issue in this case agreed that Student required small, structured classes with a modified curriculum. The specialized academic instruction program offered by District was designed for children such as Student, who were on a diploma track but required a modified general education curriculum. The academic classes offered in the May 25, 2011 IEP would have consisted of a small class, with an average of 10 students. Dr. Woolverton commented that, at the time of the IEP meetings, she considered the program District offered in this and the other IEP's at issue in this case to be substantially similar to the program that Westview had advised her it was providing Student, in that both programs consisted of placement in small, structured classes with similar numbers of students and similar levels of

staffing, and an appropriately modified general education curriculum. However, unlike Westview's program, District's program offered access to typical peers, a wider range of elective courses, and related services Student needed. Dr. Woolverton also asserted that all of the IEP's at issue offered a FAPE in the least restrictive environment, and that the District's offered program was superior to Westview's. The specialized academic instruction classes with a modified curriculum, access to typical peers, and the related services such as speech therapy, deaf/hard of hearing services, and auditory-verbal therapy all would have met Student's unique needs. Under the District's program, Student would be able to receive a high school diploma and attend college, and the related services would be needed for her to be successful in college.

#### IEP MEETINGS OF MARCH 21, 2012 AND APRIL 24, 2012

37. On March 21, 2012, when Student was 16 years old and in the tenth grade, District convened another IEP meeting. The purpose of this meeting was to develop Student's program for the extended school year 2012 and the regular school year 2012-2013, when Student would be in eleventh grade. The March 21, 2012, meeting was the first of a two-session IEP meeting. All necessary participants attended the first session of the meeting, including Student and Parents, as well as counsel for Parents, Westview's Ms. Strumwasser, Ms. Gonsalves, and Dr. Woolverton. This first session of the meeting lasted approximately one and one-half hours.

38. Parents declined a copy of the procedural safeguards. The IEP team meeting notes reflect that the team discussed Student's desires and transition activities and services, with input from Parents and Student. The team discussed that Student was on track to graduate with a diploma. The team determined how many credits Student needed and what type of courses Student needed to obtain a high school diploma. The team developed a formal transition plan based upon information provided by Westview and Student. Westview's transition assessment stated that Student was artistically

talented, and she would like to attend college and major in art after high school. She was most interested in staying in Los Angeles for college, but would be satisfied going to school in some of the nicer coastal California cities further north. She had thought about starting at Santa Monica Community College if an attractive option did not work out. She had started preparing her portfolio, and was a student at a local art center, where she had presented her work at one of their shows. Her career goal was to be a graphic designer, a photographer, or an art teacher. The transition plan's post-secondary educational goal stated that upon completion of school Student would attend a four-year college or possibly a community college to study art. Some colleges of specific interest to her were the Art Center College of Design, Otis College, and Cal State Northridge. Activities to support her goal included researching requirements for entering a college of her choosing, developing an understanding of the academic requirements, reviewing the websites for colleges of interest, and identifying likes and dislikes related to the colleges she investigated. She would visit colleges of interest. The transition plan's postsecondary employment goal provided that upon completion of school, she would obtain a job in the field of graphic design, or as an art teacher, or as a photographer. The activities and experience to support the goal included participation in the regional occupational program (a Santa Monica High career internship program), completing job applications and a resume, practicing interviewing skills, investigating other jobs in Student's field of interest, participating in career fairs, and volunteering to teach art to younger children. In developing the transition plan, the team discussed the various transition services available at Santa Monica High and Westview. The team attached Student's Westview transcript/"Grad Check" chart to the IEP, and discussed graduation and college course requirements, as well as whether Student's courses at Westview fulfilled University of California requirements for particular subjects and

subject areas. The team noted that Student had taken a summer school course in digital design at Santa Monica High and received 10 credits.

39. As of the time of the IEP meeting, Student had completed 100 units, and had 120 units pending. The transition plan anticipated that Student would receive a high school diploma by June 20, 2014, and stated that Student had been advised of the educational rights she would have when she reached age 18.

40. The analysis of the impact of Student's disability on her ability to access the curriculum, and the special factors, testing accommodations, and classroom accommodations were the same or similar to those included in the May 25, 2011 IEP. The present levels of performance provided by Westview were also the same or similar to those described in the May 25, 2011 IEP in the areas of gross and fine motor development, adaptive/daily living skills, and health. In the vocational area, Westview also reported the same information as was in the May 25, 2011 IEP, with the addition of an observation that Student responded to frequent support and modeling on how to become an effective independent learner. The IEP reiterated that Student would participate in the high school curriculum leading to a diploma, and would graduate in June 2014.

41. In the area of strengths/preferences/interests, Student had made progress on peer-relations, and her behaviors were mostly age-appropriate. She had greater success both academically and socially. She took feedback and criticism from staff members seriously and was not oppositional to such information. She continued to be prepared and organized for class. She always did her homework. The team noted Mother's desire that Student go to college and be on a college track program. Mother did not believe that District could provide that. Mother was also concerned that the District would not address Student's social-emotional concerns.



42. In the area of Preacademic/Academic/Functional Skills, much of the information provided by Westview was the same as the information provided by Westview at the May 25, 2011 IEP. However, she had made progress, and she was able to function more independently. She was seeking help in math class. Vocabulary and writing skills continued to present challenges for Student. Student's vocabulary was improving, but remained limited. With proper supports and instructions, Student could read and comprehend slightly below grade level material in a classroom setting. She benefitted from participation in class discussion regarding the content of materials that were being read by the class. With prompting, Student could write a five paragraph essay with proper formatting while adhering to basic writing conventions. She used prewriting techniques such as outlines and brainstorming. She required intervention and support throughout the writing process. She was currently working on Algebra. She could solve linear equations for "y," create a table with values for "x," substitute the values, and solve and graph the resulting equation. She made great strides in developing her independent learning skills. She was more proactive about asking questions, seeking help, and getting to work immediately when she entered the classroom. She struggled to retain important concepts and required re-teaching of previous material.

43. Some of the information in the communication/development area was based on information District had as of June 2010; and was duplicated from the May 25, 2011, IEP. Prior to the completion of the IEP document, District obtained information from Student's private speech therapist, and included additional information regarding Student's present levels of performance in conformity with that report, which is further described below.

44. In the social/emotional area, Student used counseling for support when working through issues that were novel to her. She willingly took in information and

used it daily to resolve issues. There was a 70 percent improvement in her social functioning over the last two years. She still needed support to manage frustration. She was able to engage in social interaction and would benefit from continued exposure to same. She needed adult support to assist her with understanding social cues.

45. Westview had collected no data regarding Student's progress on the goals in Student's May 25, 2011 IEP. However, Ms. Strumwasser brought proposed goals, and the team discussed them over the course of the two sessions of the IEP meeting. The team ultimately adopted 10 goals during the course of both sessions of the IEP meeting. The team adopted two transition goals, one of which involved Student reviewing college websites, identifying five colleges, and sharing likes and dislikes about those colleges. The other transition goal involved Student completing three job applications and participating in a mock job interview. These goals were consistent with Student's interests as expressed in the transition plan.

46. Based on present levels of performance and with input from Westview, the team developed goals in all areas of need. A vocabulary and format goal required Student to write an essay using ninth grade level vocabulary and appropriate format and mechanics. Westview reported that Student had an eighth grade level of written vocabulary, and without direct teacher support was only 60 percent accurate in format and mechanics. Student was pulled out from her Westview classes one day per week to work on vocabulary, and Student was working on seventh and eighth grade vocabulary in her classes. The team adopted a comprehension goal which required Student to demonstrate the ability to answer questions and make and confirm predictions and answer inferential questions with respect to tenth grade level text with 90 percent accuracy. Student's baseline level for this goal was an ability to use tenth grade level text to answer inferential questions with 65 to 70 percent accuracy. Goals were also developed in other areas of need, such as math, task production, seeking clarification,

and increasing the ability to stay on task from 10 to 30 minutes. Student's attorney actively participated in the development of the goals.

47. The team discussed whether Student would take the California High School Exit Examination and the requirements for the test, and addressed Parents' concerns regarding the types of accommodations Student would receive during the test. The team decided to reconvene on April 24, 2012, to complete the IEP.

48. The IEP team reconvened on April 24, 2012. All necessary personnel attended the meeting, including Parents, Student, counsel for the family, and Ms. Strumwasser, the Westview administrator. Ms. Strumwasser did not stay for the entire meeting, which lasted approximately one and one-half hours.

49. Parents had been provided a copy of the draft IEP developed from the first meeting session prior to this meeting session. Ms. Strumwasser discussed the individual attention Student needed and received with respect to vocabulary, writing, and need for redirection. The team, including Parents, agreed on all of the goals.

50. Parents discussed their primary concerns, which related to academics, social, and college. Mother wanted Student to be on a college track program and attend college, and was concerned as to whether District could provide such a program. Her attorney prompted her to mention her concern that District did not address Student's social-emotional issues.

51. The team discussed accommodations. Parents expressed their desire that the accommodations be in place for the California High School Exit Examination.

52. The team re-visited the subjects Student was taking at Westview. The team discussed what courses she would require to graduate, and the types of courses that she would need for University of California admission, such as two more years of non-algebra math. The team discussed Student's need to take two years of a foreign language to meet the University of California system's foreign language requirement,

and Ms. Strumwasser noted that Spanish was the only foreign language taught at Westview. Parents contributed to this discussion.

53. The team renewed its discussion of goals, and discussed various discrepancies in the Westview data. Parents also contributed to this discussion. The District speech therapist at the meeting was unable to formulate language and speech present levels of performance and goals because she did not have current information. The team decided to defer formulating present levels of performance and goals in speech until the family could provide more information. District offered a speech and language assessment and a release form so that District could discuss Student's progress with her private speech therapist to develop goals. Parents deferred these requests, and never agreed to an assessment. The team, including Parents, discussed deaf/hard of hearing services and possible related goals, such as peer interactions and self-advocacy. Parents' attorney asked for, and received, clarification regarding deaf/hard of hearing services. Dr. Woolverton asked Parents if there were anything more that the team should consider to address Student's needs as a hearing impaired student. Parents responded in the negative. All members of the IEP team agreed to the goals at the meeting. At hearing, the evidence was uncontradicted that District could implement the goals in the IEP at Santa Monica High.

54. The team decided to offer the same amount of specialized academic support as in the last annual IEP, which was 1,345 minutes per week, or five classes. If Student were successful, the team might consider offering her some general education classes, such as social studies.

55. Parents advised that Student was not receiving auditory-verbal therapy, but their attorney asserted that Student still needed it. District would consider Student's auditory-verbal therapy needs when considering her speech and language needs,

because the District did not have current data regarding Student's auditory-verbal therapy progress and needs.

56. The team discussed placement. District personnel expressed that Student's needs could be met in the specialized academic instruction program at Santa Monica High. Parents explained they wanted Student to go to Westview because it was the appropriate place to meet all of her needs, with social and academic needs being the main ones. Mother stated that Student needed college preparatory classes in a small classroom setting and did not believe that Santa Monica High could offer that. The District's special education coordinator explained that some of the specialized academic instruction classes were not considered college prep courses in terms of A-G courses for University of California entry, because they offer a modified curriculum, but that Santa Monica High had small, structured classes. Student could meet all state standard graduation requirements for a diploma at Santa Monica High and could attend a community college or other four-year colleges. She explained that universities determine admission with transcripts and test results, and that many Santa Monica High special education students attended college after graduating. Parents asked what services District would provide, and District's special education director responded that District would provide all services at a placement that District offered. However, if parent unilaterally placed the Student in a non-District school, the District would not provide the services as designated in the IEP.

57. District's offer of placement and services was: placement at Santa Monica High, with 1345 minutes per week of specialized academic instruction; 60 minutes per month of direct deaf/hard of hearing services and 30 minutes per month of consultation services, all provided by the Los Angeles County Office of Education; and 60 minutes per

week of counseling.<sup>6</sup> Student would receive physical education in general education. After receiving information from Student's private speech therapist, as described below, District added 25 minutes per week of individual speech therapy and 50 minutes per week of group speech therapy. The IEP also offered an extended school year summer program, which included specialized academic instruction, and deaf/hard of hearing, speech and language, and counseling services.

58. District advised Parents that if Parents wished to return Student to the District, District would request permission to talk with Student's Westview teachers and to observe her at Westview to assure a smooth transition. The District also advised that if, upon receipt of the additional information from the private speech therapist it appeared as though placement at Santa Monica High would not be appropriate, the IEP team would discuss placement further. The team discussed the possibility of Parents observing Santa Monica High.

59. After the meeting, Parents provided District a copy of the speech therapy report from Student's private provider, Can Do Kids. Student had been receiving services from Can Do Kids one time per week since February 2011. The report was prepared by

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<sup>6</sup> The service grid on the IEP only provided for 269 minutes of specialized academic instruction four times per week, totaling 1076 minutes, and listed only four such classes: English, history, math and tutorial. Additionally, the "Educational Setting" page of the IEP stated that Student would not participate in the regular class and extracurricular activities for four periods daily, because of the need for individualized attention resulting from the areas of deficit. No party offered evidence as to the reason for this discrepancy. Based on discussion at the next IEP meeting on June 12, 2013, the offer was indeed for 269 minutes per day, to include four specialized academic instruction classes.

Ali Steers, M.A., Speech Language Pathologist, and was dated April 25, 2012. Ms. Steers reported Student's results on the Clinical Evaluation of Language Fundamentals-4th Edition, a standardized assessment which was administered to Student in April 2012. Ms. Steers used this test instrument to assess Student's language comprehension and language expression. Ms. Steers reported that Student had made excellent progress during her therapy, and has met her current speech goals. However, Student continued to present with severe receptive/expressive language impairments, and severe speech production challenges secondary to her medical diagnosis of sensorineural hearing loss. Ms. Steers recommended that Student continue to receive speech therapy services at a minimum frequency of one hour per week.

60. Ms. Steers noted that Student continued to demonstrate significant impairment in her auditory processing abilities, particularly with respect to working memory. In the area of semantics, Student often required multiple repetitions of unfamiliar vocabulary words and would benefit from repeated intervention in the area of prefixes.

61. Student had improved with respect to speech production, but she consistently erred on the production of certain sounds. Treatment also addressed Student's use of symmetrical facial movements when producing rounded and retracted phonemes, and she needed to regulate her speech rate. Student's syntax had improved, but she still had difficulty, and she was challenged by the use of more complex sentence structures.

62. As agreed to at the meeting, the District included a summary of Ms. Steers' report in the IEP, and also developed two proposed speech goals which it included in the IEP.

63. District sent the completed IEP to Parents. Ms. Keleher, District's Special Education Coordinator, sent a letter to Parents dated June 22, 2012, to follow up on the

IEP. The letter advised that District was open to considering auditory-verbal therapy services, and requested further information about Student's auditory-verbal therapy needs. The letter also requested that Parents consent to the IEP, and advised that District had added the speech, present levels, goals, and services based on the Can Do Kids report. Ms. Keleher requested that Parents let her know if they had questions or concerns regarding these IEP additions. Finally, the letter requested that Parents let the District know if they were planning to enroll Student at Santa Monica High.

64. Parents did not respond to this letter. Parents never consented to any portion of the IEP, except insofar as they agreed with the goals at the IEP meeting.

65. Dr. Martinez expressed several opinions regarding the contents of the April 24, 2012, IEP. He criticized the language under the section of the IEP that described how Student's disability affected involvement and progress in the general curriculum, on the grounds that it indicated that Student should be in a general education curriculum. He criticized the lack of A-G courses when Student was capable of accessing them. He criticized the District for not taking Student's preference for attending Cal State Northridge into account, over attending a community college, by not offering A-G courses. He believed that the District was obligated to make the family aware that the District was not offering A-G courses, since the IEP would not allow Student to meet the transition goal to attend a four-year university.

66. Ms. Gonsalves, the ninth and tenth grade specialized academic instruction English teacher at Santa Monica High, again expressed her opinion that placement in specialized academic instruction classes was appropriate, based on the Student's present levels of performance, and on the fact that Student had goals in all academic areas. She commented that the comprehension, task production, and task attention goals in the IEP were appropriate goals for students in her class, and she could implement those goals in her class. She also noted that she would expect a higher



accuracy level than the 65-70 percent baseline accuracy level for Student's comprehension goal if a student were to be placed in a general education eleventh grade English class.

### IEP OF JUNE 12, 2013

67. On May 29, 2013, District notified Parents that District wished to conduct a triennial and transition re-evaluation of Student, so that it would have current information for the annual/transition IEP. At this point, Student had not attended school in the District for three years, except for the extended school year program in summer 2010, and an elective summer school class in 2011. Parents refused to consent to a triennial assessment.

68. On June 12, 2013, District convened the annual IEP meeting, to plan Student's educational program for the extended school year of 2013 and the regular school year of 2013-2014, when Student would be in twelfth grade. All required members of the IEP team were present, including Parents. Student had been invited, but did not attend. In addition, Ms. Strumwasser, Westview's Director, attended by telephone. District had requested, but had not received, permission to speak with Westview personnel prior to the meeting, or to observe Student at Westview. Therefore, the team relied on Ms. Strumwasser for current information about Student. The meeting lasted approximately two hours.

69. Parents declined a copy of the procedural safeguards. Much of the information the team included in the IEP was the same or similar to that contained in the April 24, 2012, IEP. The information regarding how Student's disability affected Student's ability to access the general education curriculum and Student's strengths, preferences, and interests were the same as set forth in the April 24, 2012 IEP. Parents stated they wanted Student to attend a four-year college and believed she had years of missing curriculum. They wanted to make sure that Student was prepared to do well

when she was at college. Student's present levels of performance in reading, writing, gross and fine motor development, adaptive daily living skills, and health were also substantially the same as Westview reported in the April 24, 2012 IEP, except as described below. The "Special Factors" page of the IEP was nearly identical to the "Special Factors" page in Student's previous IEP's, stating that Student required deaf /hard of hearing services and accommodations to access the core curriculum.

70. In math, Westview reported that Student had demonstrated very good number sense and the ability to grasp abstract mathematical concepts. Student was able to understand the purpose of problem-solving techniques. She could use two-column proofs with proper structure and logical flow. She could apply proofs to solve problems involving similarity and congruence of triangles and quadrilaterals. She had an understanding of basic trigonometry. She could calculate area and volume for two-dimensional and three-dimensional shapes. Her test scores were inconsistent.

71. Student's present levels of performance in the area of Communication Development were largely the same as reported in the April 24, 2012 IEP, because they were based on the last assessment conducted in June 2010. The team also summarized the speech therapist's report dated April 25, 2012.

72. Westview presented updated information regarding Student's social emotional/behavioral status. Her social interactions were mostly positive, but Student continued to be frustrated as she became more involved with her peers, and her frustration negatively impacted her academics. Student could stay on task for 10 to 15 minutes during classroom activities and independent work without prompts. She required one to two prompts to stay on task for 15-20 minutes.

73. Westview also provided information regarding Student's status in the vocational area. Student continued to improve her work habits, and the quality of her work had improved in most of her classes. In some of her classes, the absorption and

retention of the lessons was poor, as demonstrated by fluctuating quiz scores, but she was improving. Due to some test anxiety, her test and quiz scores could vary, averaging 70 to 85 percent in some of her classes. Student needed to use better study skills and strategies when preparing for tests.

74. Dr. Woolverton asked if Parents would sign the triennial assessment plan. Parents deferred the request.

75. The team discussed and developed Student's transition plan. Westview had provided the same information regarding the transition plan as was contained in the previous transition plan, but Parents provided additional information at the meeting. Parents said Student wanted to attend Cal State Northridge, and that the family would be looking at a variety of options over the summer. Parents stated they had been in touch with Cal State Northridge, and Student knew the requirements for admission. The team discussed Student's career goals and how Student has realized that her hearing loss did not prevent her from a variety of careers. Post-college, she planned to possibly obtain jobs as a graphic designer, an art teacher, or a photographer.

76. Westview advised that Student met her previous transition goal of reviewing college websites. Student had not identified colleges with strong art programs, because she intended to apply to Cal State University Northridge, and to attend Santa Monica College as a back-up. Additionally, Student met her transition goal of completing job applications and participating in job interviews. She was planning to obtain a summer job, and she did volunteer work. The team determined that Student was on track to graduate in June 2014, and the transition plan included a tally of the course credits that were pending, and the number of credits that Student had completed. The plan also included a list of courses and credits Student required to meet the District graduation requirements. The team discussed items Student should be considering regarding the college application process.

77. The team included a transition goal pertaining to employment, noting that Student was reluctant to explore careers of interest outside of the art field. The goal required Student to research the educational/training requirements, salary possibilities, and basic job duties for three career of interest outside of the art field. One of the goal's objectives was to complete an assessment exploring her skills and interests outside of the arts field. The team also discussed Student's attempts to find summer employment, and how Student's issues with conflict resolution could impact her vocational success.

78. The team noted that Student was on track to graduate in June 2014. The team discussed the California High School Exit Examination, and District responded to Parents' inquiries about it.

79. The team discussed Student's progress on her goals, based on information provided by Westview. Parents participated in the discussion. Westview did not have information regarding some of the baselines for goals at the meeting, but provided it later. Student had made progress, but had not met, the conflict resolution, peer interaction, attention to task, and vocabulary and format goals. Student had not met the comprehension goal, or the task production goal. She had met the geometry goal, and Ms. Strumwasser believed that Student had met the clarification goal. The team had insufficient information to determine whether Student had made progress on her expressive language and auditory processing goals, and District had received no consent to assess. Therefore, those goals were continued from the IEP of April 24, 2012. Besides the transition goal described above, the team also included goals in self-advocacy, vocabulary and formatting using a ninth grade level vocabulary, comprehension of tenth grade level texts, task production, task attention, coping with frustration, and conflict/feedback. No member of the team, including Parents, expressed any disagreement with the goals.

80. Ms. Strumwasser said that Westview was pleased with Student's progress overall, and the Student was more focused. Westview believed that the small classroom with individualized attention was a good environment for Student. The team discussed possible reasons why Student was now demonstrating some anxiety about testing.

81. The team had no current information regarding Student's progress in speech therapy. Parents said that Student received private speech therapy services until a few weeks before the IEP meeting, but Student did not want such services any longer. Parents did not want to provide a report from the private speech therapist because the speech therapist would charge to prepare such a report. District suggested assessing Student in this area, but Parents deferred providing consent to an assessment. The team also had no baseline for a vocabulary goal and the task completion goal. Parents agreed to maintain the same goals in areas in which there was no current data, until District could obtain current data to determine how to update the goals.

82. The team discussed whether Student was receiving auditory-verbal therapy. Parent stated that Student refused such therapy. District requested Parent provide a release so that District personnel could speak to Student's auditory-verbal therapist, but Parent deferred this request. District stated that it might offer such services, but District could not consider doing so without information about Student's present levels and needs.

83. The team discussed Parents' concerns. Parents stated their biggest concern was preparing Student for college and having her do well there. Parents were concerned that Student wanted to attend a four-year college, but that Student may have missed years of education that would have been geared toward being admitted into college. They were generally concerned about her progress. Parents were working with Westview's advisor, and Student was aware of the art program and program for deaf students at Cal State Northridge.

84. The team agreed upon the same classroom accommodations and testing accommodations as in the previous IEP of April 24, 2012.

85. Parents had excused Ms. Soroko, the Los Angeles County Office of Education deaf/hard of hearing specialist from attending the meeting. The team considered a written statement Ms. Soroko wrote suggesting specific accommodations and support for Student, including deaf/hard of hearing consultation of 30 minutes per month. The team, including Mother, agreed to include deaf/hard of hearing services in the IEP at the level of two 30 minute individual sessions per month. The team again discussed the possibility of an Individual Services Plan, and whether District would provide deaf/hard of hearing services as part of an Individual Services Plan.

86. The team, including the Westview representative, agreed that Student still required specialized academic instruction in English, history, math, and a support period, as in the previous IEP. The team, including the Westview representative, agreed that 60 minutes per week of individual counseling services was appropriate. The team discussed the criteria for an extended school year summer program, and agreed that Student qualified for such a program in the area of vocabulary. The team agreed to offer an extended school year summer program in English, and also in the areas of speech therapy and counseling at Santa Monica High. District advised Parents that this summer program was available even if Parents chose to continue to unilaterally place Student at Westview.

87. The team, including Parents, discussed Student's placement. The team discussed a range of placement options. The team agreed that general education without special education supports would not be appropriate. Dr. Woolverton explained that general education with special education supports would consist of the specialized academic instruction classes and the services in the IEP, and participation in general education for electives and other general education courses. This would provide Student

with access to typical peers. District explained that the other option was a nonpublic school, but that did not provide her with the access to typical peers she would receive at Santa Monica High. Dr. Woolverton asked the team members to consider whether the District could meet Student's needs at Santa Monica High. Parent asked whether Student's Santa Monica High classes were A-G courses. District advised that some classes met the A-G requirements and some did not, depending on the extent to which the curriculum was modified. Mother stated that the family wanted Student to attend a four-year college and she wanted to make sure that Student was being prepared for that.

88. District members of the team agreed that Student's needs could be met at Santa Monica High. Father expressed that it would be disruptive for Student to change schools for her senior year.

89. District offered placement at Santa Monica High with specialized academic instruction in English, history, and math, plus a support period, for a total of 1,076 minutes per week; individual deaf/hard of hearing services consisting of 30 minutes, two times monthly, and consultation services of 30 minutes per month, all to be provided by the Los Angeles County Office of Education; counseling for 60 minutes per week on an individual basis, and speech therapy services three times per week at 25 minutes per session. One of the weekly speech therapy sessions would be individual, and the remaining two sessions would be group. The team also offered the extended school year summer program to include specialized academic instruction, speech therapy, and counseling. Student would receive general education physical education.

90. Dr. Woolverton explained that District would send the family a copy of the IEP after Westview sent the necessary information to complete the IEP.

91. Parents did not consent to any portion of the June 12, 2013, IEP, except insofar as they agreed with the goals at the IEP meeting.

92. Dr. Martinez expressed several opinions regarding the contents of the IEP. He again criticized the language in the section of the IEP that described how Student's disability affected her progress and involvement in the general curriculum, on the grounds that it indicated that Student should be in a general education curriculum, as did the present levels of performance. He believed that the IEP team should have known that Student was capable of accessing the A-G curriculum, based on Student's application to Cal State Northridge, and that it was not appropriate to offer a placement that did not offer A-G classes when the Student was capable of accessing such courses. He also believed that since Student's transition goal required A-G credits, the IEP team should have offered a program that included such courses, so that the transition plan goal could be achieved. In his opinion, the District had an obligation to ensure that Student met the post-secondary goal, because "it was the right thing to do." The offer of services in the IEP did not specify any courses, and did not state whether any of the courses offered by the District would provide A-G credits, and he believed this information should have been included. He believed that more specific information should have been given to Mother regarding A-G credits in response to her question regarding the specialized academic instruction courses. Based on his assumption that the specialized academic instruction classes were not A-G classes, he believed they would not prepare her for a four-year college. He noted that Westview's transcript did not indicate that any of the courses had a modified curriculum, and therefore he assumed that they did not have a modified curriculum.

93. Dr. Martinez did not have any specific knowledge about Santa Monica High's classes except for what he had read on the school website, and he did not have any knowledge regarding the curriculum in any of Santa Monica High's specialized academic instruction classes. He incorrectly defined the legal requirement of least



restrictive environment as the “environment that would least impede a student’s ability to learn.”

94. Dr. Woolverton asserted that none of the information provided by Westview contradicted District’s belief that the program and services offered by District constituted a FAPE. District was increasingly concerned that Student was not receiving related services, such as deaf/hard of hearing services and auditory/verbal therapy services. Dr. Woolverton disagreed with Dr. Martinez’s interpretation of the District’s obligations regarding transition plan post-secondary goals.

95. On July 20, 2013, Parents responded to District’s request to assess Student by requesting that the assessment be performed by an independent evaluator. By prior written notice dated July 30, 2013, the District rejected Parents’ request, on the grounds that the District had not had the opportunity to conduct its own assessment. Along with the prior written notice, District again sent the Parents its request to reassess Student using District’s own assessors, along with release of information forms, implicitly requesting that Parents consent to the assessment. Parents never consented to District’s request to assess Student.

96. Parents paid \$32, 310 for Student’s tuition at Westview for the 2011-2012 school year; \$32, 310 for Student’s tuition at Westview for the 2012-2013 school year, and \$31,620 for Student’s tuition at Westview for the 2013-2014 school year. Parents paid a total of \$1,515 for speech therapy services from Can Do Kids. Parents offered no evidence regarding the amounts paid for any other expenses.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement the IDEA

and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.;<sup>7</sup> 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 with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed Code, § 56000, subd. (a).)

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 sometimes called designated instruction and services ("DIS 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. The IEP 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

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<sup>7</sup>Unless otherwise stated, all references are to the 2006 edition of the Code of Federal Regulations.

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 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, the *Rowley* court decided that the FAPE requirement of the IDEA was met when a child received access to an education that was 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 preponderance of the evidence].)

#### ISSUE 1(A): PREDETERMINATION OF PLACEMENT REGARDING MAY 25, 2011 IEP

5. Student contends that District predetermined that it would not offer Student a placement at a nonpublic school. District contends that District did not predetermine Student's placement, but rather received information and input from Parents and Westview at the IEP meeting, and the IEP team discussed the continuum of placement options before the District members of the team determined that Student's goals and objectives could be implemented at Santa Monica High with the program offered in the IEP.

6. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) (*Target Range.*) Citing *Rowley, supra*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but determined that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.) This principle was subsequently codified in the IDEA and Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly

impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

7. Legal Conclusions 1-4 are incorporated by this reference.

Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances in which placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F. 2d 840, 857-859.) To fulfill the goal of parental participation in the IEP process, the school district is required to conduct a meaningful IEP meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusion, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 [parent who had an opportunity to discuss a proposed IEP and whose concerns were considered by the IEP team has participated in the IEP process in a meaningful way].) "A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." (*Ms. S. ex rel G. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1131.) However, an IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an "education . . . designed according to the parent's desires."].)

8. Student did not demonstrate that there was any predetermination of placement. There was no evidence that the May 25, 2011 IEP was presented to Parents already developed, on a "take it or leave it" basis, as was criticized in the cases cited above. Rather, the evidence was uncontradicted that the IEP was developed at the time

of the meeting, with input from Westview and Parents, because District had had no contact with Student for the entire school year. Westview provided the data for the present levels of performance and proposed the goals. The meeting lasted almost three hours, and the discussion was wide-ranging, including not only the present levels of performance, goals, accommodations, and services, but also a discussion between Parents and the speech therapist regarding the speech therapist's experience, Westview's status as a special education school, the nature of the deaf/hard of hearing services that District was offering, Student's previous experiences attending school in the District, Santa Monica High's size and organization and the services and offerings available to students, a description of the specialized academic instruction class, and why District personnel believed that Santa Monica High could offer Student a FAPE. Parents, their advocate, and Westview personnel all asked questions and participated in these discussions, and the District addressed Parents' concerns.

9. Furthermore, the IEP reflects that the team discussed the continuum of placements, including a general education program, specialized academic instruction on a public school campus, and specialized academic instruction at a nonpublic school.

10. Parents had an opportunity to participate in the development of the IEP and their concerns were considered by the IEP team. The District offered a program tailored to Student's individual needs, as were determined at the IEP meeting during a discussion that included all participants. Student did not demonstrate that District predetermined Student's placement. District did not commit any procedural violation of the IDEA or of the Education Code on this ground, and did not deny Student a FAPE.

#### ISSUE 1(B): PREDETERMINATION OF STUDENT'S PROGRAM OPTIONS BY NOT OFFERING A-G COURSES IN THE MAY 25, 2011 IEP

11. Student contends that District predetermined Student's program because the May 25, 2011 IEP did not offer a curriculum that included academic A-G courses.

Rather, Student contends, District offered only the program it had available, and refused to consider alternatives, such as Westview's program. Student contends that Student's needs required A-G courses, and therefore District's failure to consider such courses meant that District did not consider the full continuum of placement options. District contends that there was no predetermination, and that the District appropriately determined that to appropriately implement Student's goals and objectives, Student required specialized academic instruction for her core academic classes.

12. Legal Conclusions 1-10 are incorporated by this reference.

13. Student's position is unmeritorious. District had no current information about Student at the time of the IEP meeting so as to develop any part of the IEP. Rather, at the IEP meeting, the IEP team discussed Student's needs and present levels or performance and developed goals based on those needs, based on information provided by Westview, with input from Parents and their advocate. The entire team agreed with the goals. The team discussed the continuum of placement options. As both Dr. Woolverton and Ms. Gonsalves asserted, based on the information that District had at the March 25 2011, IEP meeting, Student was performing well below grade level in core academic classes. Due to her hearing impairment and her learning disability in auditory processing, District believed that Student would have been unable to access the general education curriculum unless it was modified. Westview personnel did not disagree with this conclusion, and, indeed, District understood that Westview, a special education school, was providing Student with a modified curriculum in her core academic classes. District reasonably believed that the curriculum modifications that Student required precluded her from taking A-G courses at Santa Monica High. Indeed, in this meeting, there was no discussion as to A-G courses at all. Under these circumstances, there was no evidence that District predetermined Student's program.

14. District did not commit any procedural violation of the IDEA or of the Education Code on this ground, and did not deny Student a FAPE.

ISSUE 1(C): FAILURE TO FULLY INFORM PARENTS THAT THE MAY 25, 2011 IEP DID NOT PROVIDE A-G COURSES AND THE IMPLICATIONS OF THE LACK OF SUCH COURSES

15. Student contends that, by failing to inform Parents that the specialized academic instruction courses were not A-G courses, Parents were not fully informed of the offer in the May 25, 2011 IEP and that Student was being denied access to the general curriculum.<sup>8</sup> District contends that there was no discussion at this IEP meeting that would put District on notice that Parents were unclear about the District's offer, or had questions regarding whether the District's offer included A-G courses.

16. Legal Conclusions 1-4 and Legal Conclusions 6-7 are incorporated herein by this reference.

17. The May 25, 2011 IEP contained a discussion of the program District was offering at Santa Monica High, including that specialized academic instruction courses consisted of a modified general education curriculum, how Santa Monica High was organized, how classes were taught, and the educational supports and social opportunities to which Student would have access at Santa Monica High. In particular, the IEP specified the number of minutes Student would receive specialized academic

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<sup>8</sup>In her closing brief, Student attempts to add the issue that District had an obligation to give prior written notice to Parents advising that specialized academic instruction courses were not A-G courses. This issue was not raised in the amended complaint, and was not included in the issues for hearing which were developed at the prehearing conference and discussed at the outset of the hearing. Therefore this issue will not be discussed in this Decision. (Ed. Code, § 56502, subd. (i).)



instruction, the number and subjects of the specialized academic instruction courses Student would take, that specialized academic instruction would occur in a separate classroom, and that Student would not participate in the general classroom environment for five periods per day due to her need to receive specialized academic instruction. Parents attended the meeting. Mother is a public high school teacher in another local school district, and Father is a professor at a California State University campus. Both of them therefore had information, or had plenty of access to information, regarding the significance of A-G courses. Additionally, Parents were represented at this meeting by an advocate, and the meeting was attended by two representatives from Westview. Parents, their advocate, and the Westview representatives had the opportunity to, and did, provide input and ask questions of the District regarding a variety of matters during the IEP meeting. The IEP reflected their input and their occasional disagreement with the District's position, and District personnel responded to their questions. The District's offer was clear, and yet none of these individuals asked any questions about whether Student's specialized academic instruction courses outside of general education were A-G courses, and the topic did not arise.

18. Under these circumstances, District fulfilled its obligations to provide notice to Student and Parents of the type of educational program that District was offering, and provided Parents the opportunity to meaningfully participate in the development of the IEP. Student cites no legal authority that District had any obligation to provide any additional information regarding whether Student's program would provide A-G requirements and the implications of a program that did not provide A-G courses. Student did not demonstrate that District committed any procedural violation of the IDEA or of the Education Code on this ground.

ISSUE 1(D): FAILURE OF MAY 25, 2011 IEP TO PROVIDE A SUFFICIENT NUMBER OF A-G COURSES

19. Student contends that District's failure to offer Student a sufficient number of A-G academic courses deprived Student of a FAPE because Student was able to succeed in such courses, and she had a unique need to be educated in such courses. District contends that it offered a program that constituted a FAPE, based upon the information it had at the time of the May 25, 2011, IEP meeting.

20. Legal Conclusions 1-4 are incorporated by this reference. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Ed.*, *supra*, 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) Additionally, to determine whether a school district offered a student a FAPE, the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.)(*Gregory K.*) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

21. Student's contentions on this issue are based upon several misconceptions of both the law and the facts. First, according to the "snapshot" rule, an IEP is evaluated prospectively, not in retrospect. There was no evidence that, at the time of the May 25, 2011, IEP, District had any information that Student was capable of succeeding in any A-G courses. In fact, the May 25, 2011 IEP did not mention A-G courses. It did not

mention that Student was taking any A-G courses at Westview. Rather, at the IEP, the Westview representative described Westview as a “special education” school, which did not offer general education, and specifically stated that Student was receiving 315 minutes of special education per day, compared to the 250 minutes per day of specialized academic instruction that the District was considering offering. Based on that discussion, the team agreed that Student required specialized academic instruction in all academic areas, and, therefore, District increased its offer to 269 minutes per day of specialized academic instruction, with related services.

22. Second, Student’s contention is based upon at least two assumptions: (a) that Westview’s A-G academic courses were more challenging than the specialized academic instruction classes offered by the District at Santa Monica High; and (b) that District should have offered Student academic courses that met A-G requirements because she was able to succeed in such classes at Westview. However, Student offered no evidence that assumption (a) was correct. Student offered no evidence as to the specific requirements a course must meet to qualify as an A-G course, or what requirements Westview’s courses met that had influenced the University of California Regents to classify them as A-G courses. In this regard, evidence was presented regarding guidelines for the content of an application by a school to have a course reviewed by the University of California Regents to ascertain whether the course met A-G requirements, but no evidence was presented as to what the standards were for a particular course. No representative of Westview testified at the hearing, and Student did not offer any evidence as to the course content and curriculum of any A-G academic course that Student took at Westview. Nor did Student offer any evidence as to the course content and curriculum of the specialized academic instruction courses at Santa Monica High, or of any A-G course at Santa Monica High.

23. Even assuming that Student's wholly unproven assumption (a) is correct, and Westview's A-G courses offered a more challenging or higher quality of education than Santa Monica High's specialized academic instruction courses, Student's assumption (b) is legally incorrect. As stated in *Rowley, supra*, an IEP need only be reasonably calculated to provide some educational benefit. It need not provide the best or most challenging education. In this regard, Student did not demonstrate that she would not receive some educational benefit from the academic courses at Santa Monica High. To the contrary, District's offer in Student's May 25, 2011 IEP, including the specialized academic instruction courses, would have permitted Student to progress toward receiving a high school diploma by June 2014. With such a diploma, with the exception of the University of California and California State University systems, Student could have been admitted to four-year colleges and art schools, directly from high school, even without A-G courses. She also could have been admitted to University of California and California State University institutions directly from high school without A-G courses, had she met certain other requirements, such as high SAT scores, or she could have been admitted to those schools after attending a community college.

24. Third, Student couches her argument in terms of Student's "unique need" to be educated in A-G classes, but Student presented absolutely no evidence that Student's unique needs required A-G courses, and no such need was discussed at the May 25, 2011, IEP meeting. Fundamentally, the substance of Student's contention is that District did not offer Student the best educational program of which Student was allegedly capable. However, under *Rowley, supra*, the District has no obligation to provide Student the best education available.

25. Dr. Martinez testified that District had an obligation to place Student in A-G classes because, in his opinion, based upon her success at Westview and her present levels of performance as set forth in the IEP, she was capable of performing that level of

work. Dr. Martinez's opinion is not persuasive, however, for several reasons. First, his opinion does not conform to the *Rowley* standard, discussed above, that District's obligation is to provide Student a program that is reasonably calculated to provide her some educational benefit. Second, Dr. Martinez's opinion was retrospective, based upon his knowledge of Student's success at Westview, and not from the standpoint of what the District knew, or should have known, at the time of any of the IEP's at issue in this case. His opinion therefore did not take into account the "snapshot" rule. Third, Dr. Martinez demonstrated no specific knowledge regarding any Westview courses, and he based his testimony on the unproven assumption that the Student's Westview A-G courses did not have a modified curriculum. He admitted that he had no specific knowledge regarding any Santa Monica High courses, and did not know what the curriculum was in any Santa Monica High specialized academic instruction classes. His opinions regarding this issue therefore lacked both legal and factual foundations. More generally, Dr. Martinez's lack of knowledge of special education law was demonstrated by his incorrect definition of "least restrictive environment," and his incorrect assertion that school districts are required to ensure that transition plan goals are met (an issue that is further discussed below). All of these factors diminished the persuasiveness of Dr. Martinez's testimony.

26. Given the fact that the information District had at the May 25, 2011 IEP meeting was derived from District's academic testing and input from Westview , and reflected that Student's academic functioning was at least a year or two below grade level in academics, District could properly determine that Santa Monica High's specialized academic instruction classes were at an appropriate level for her, and were reasonably calculated to provide her with an educational benefit.

27. Focusing on the program offered by the District, as the law requires, and applying the "snapshot" rule, the May 25, 2011 IEP offered Student a FAPE.

At Santa Monica High, Student would have participated in a diploma-track modified general education program, which met state standards and would have provided her the opportunity to attend a variety of four-year colleges directly after high school graduation. Based on the information available to District, District reasonably believed that Student would have received some educational benefit by attending Santa Monica High's specialized academic instruction classes, with related services to address her hearing needs, and the panoply of elective courses, extracurricular activities, and elective courses that were available on a general education high school campus.

ISSUE 1(E): MAY 25, 2011 IEP OFFERED PLACEMENT IN A SELF-CONTAINED CLASS WITH A ONE-TO-ONE AIDE AND POOR ACOUSTICS

28. Student contends that the offered placement at Santa Monica High was not in the least restrictive environment, because Student would have been placed in a self-contained class with a one-to-one aide, and Student would have been exposed to more typical peers and an expanded curriculum at Westview.<sup>9</sup> Furthermore, Student contends that Westview's classrooms, and not Santa Monica High's, were acoustically appropriate. District contends that the IEP did not offer a one-to-one aide, and that Student would be exposed to typical peers at Santa Monica High during elective classes, during passing periods, at lunch, and during other activities.

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<sup>9</sup>In her closing brief, Student contends that the District's least restrictive environment analysis at the IEP meetings was improper, and thus District violated Student's procedural rights. This issue was not alleged in the amended complaint, and was not included in the issues set forth in the prehearing conference order which were developed at the prehearing conference and discussed at the outset of the hearing. Therefore, this issue will not be considered in this Decision. (Ed. Code, § 56502, subd. (i).)

29. Legal Conclusions 1-4 are incorporated by this reference. In determining the educational placement of a child with a disability, a school district must ensure that: (1) the placement decisions are made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; (2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; (3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; (4) in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modification in the general education curriculum. (34 C.F.R. § 300.116 .) School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); Ed. Code, § 56031.) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, § 56000, subd. (b).) Mainstreaming is not required in every case. (*Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1056.) However, to the maximum extent appropriate, special education students should have opportunities to interact with general education peers. (Ed. Code, § 56040.1.).

30. To measure whether a placement is in the least restrictive environment when a general education placement is at issue, four factors must be considered: (1) the academic benefits available to the disabled student in a general education classroom,

supplemented with appropriate aids and services, as compared with the academic benefits of a special education classroom; (2) the non-academic benefits of interaction with children who are not disabled; (3) the effect of the disabled student's presence on the teacher and other children in the classroom; and (4) the cost of mainstreaming the disabled student in a general education classroom. (*Sacramento Unified School District v. Holland* (9th Cir. 1994) 14 F.3d 1398, 1403) (*Holland*.) If the IEP team determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.)

31. Each special education local plan area shall ensure that a continuum of program options is available for special education students. The continuum of program options shall include all, or any combination, of the following, in descending order of restrictiveness: (a) regular education programs; (b) a resource specialist program; (c) designated instruction and services; (d) special day classes; (e) nonpublic, nonsectarian school services; (f) state special schools; (g) instruction in non-classroom settings; (h) itinerant instruction; (i) instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115; Ed. Code §§ 56360, 56361.)

32. As an initial matter, District is correct that the IEP did not offer a one-to-one aide. Therefore, any contention that an aide made District's offer inappropriate is rejected. Student is correct that District offered placement in a self-contained class, which would be the equivalent of a "special day class" on the continuum of placement options, but the class was on a large, general education high school campus.

33. A determination of whether a district has placed a pupil in the least restrictive environment (i.e., a general education setting) involves the analysis of the



*Holland* factors. Regarding the first factor, the evidence demonstrated that, in order to access the curriculum, Student required specialized teaching methods and small group instruction in a small class setting for her core subjects. Specifically, Student required substantial assistance in addressing her English, math, and reading skills, as a result of Student's deafness and auditory memory deficits. Student's receipt of educational benefit solely in a general education setting would have been limited.

34. Regarding the second *Holland* factor, Student could receive a non-academic benefit of interacting with her typical peers, giving Student more opportunity to practice her socialization skills. However, the third factor, specifically the effect Student's full time presence would have on the teacher and children in the regular class, could pose some problems for the teacher, who would be required to alter his or her presentation methods by repeating and rephrasing peer questions and comments during class discussion. The teacher would also be required to repeatedly prompt and redirect Student, and check with Student to ensure her understanding of the material, which could potentially take time away from other students. Finally, regarding the fourth *Holland* factor, neither party introduced any evidence demonstrating the costs associated with educating Student in a general education setting versus a special education setting. Weighing the above factors, the only benefit of educating Student in a general education placement was the increased opportunity for social interaction. Therefore, an exclusively general education placement for Student would not have been appropriate. Accordingly, the next area of inquiry is determination of whether Student was offered an appropriate placement on the continuum of placement options. (See *Daniel R.R. v. State Board of Ed.*, *supra*, 874 F.2d at p. 1050.)

35. Based on the legal definition of the continuum of placements, Santa Monica High is a less restrictive environment than any small, nonpublic school with a majority special education population. Santa Monica High is the school Student would

attend if she were not disabled, and the program District offered could meet Student's unique needs while still providing maximum interaction with typical peers. Based on the facts of this case, placement at Santa Monica High was the least restrictive environment.

36. Student's contention that District should have offered her Westview because it offered a less restrictive environment in comparison to Santa Monica High is not supported by the law or by the facts. From a legal standpoint, under *Gregory K., supra*, the focus must be on the District's proposed placement, not on the Parents' preferred placement. Even so, from a factual standpoint, Student's contentions do not demonstrate that placement at Santa Monica High was more restrictive. In particular, Student's contention that Westview offered an expanded curriculum was unsupported. For example, Westview only offered Spanish as a foreign language, while Santa Monica High offered French, Japanese, Chinese, Spanish, and Latin. Student also contends that she had exposure to typical peers in every class at Westview, based on the Westview's administrator's comment at the May 25, 2011 IEP meeting that approximately 20-25 percent of the students who attended Westview did not have an IEP, and that was not always because parents "refused" it. Without any evidence as to what the administrator meant by this comment, Student interprets that "refusal" to mean that some unknown percentage of that 20-25 percent of children were typical children, and thus Student had typical peers in each class. This argument ignores the fact that the Westview representative at the IEP stated that Westview was a special education school, and all of the classes were considered special education classes. Given that the law does not require special needs children whose parents independently enroll them at private schools to have IEP's, or that the parents of such children even pursue a FAPE from a public school, there is no basis to assume that any appreciable number of typical children is enrolled at Westview. In contrast, at Santa Monica High, with a typical student population of approximately 2800 students, Student had the opportunity to

interact with numerous typical peers, not only in elective classes and in physical education, but also in extracurricular activities, as well as at lunch and during passing periods. Mother testified that Student's older sister, who was a general education student who had recently attended Santa Monica High, had told Mother that the special education students did not mingle with the general education students, but such purely anecdotal hearsay observation is not reliable. Many special education students do not have an obvious disability, so it is unclear how sister was defining "special education" students. She might not have realized that her classmates were, technically, "special education" students. Furthermore, Student's sister's experience was necessarily limited. On a campus of 3,000 students, Student's sister generalization about the experience of all other students on campus is suspect.

37. Student also asserts that she should have been offered placement at Westview because she was able to take academic A-G courses at Westview, and therefore Westview provided her a more typical general education curriculum. Again, this contention is unsupported by the facts. At the May 25, 2011, IEP meeting, Westview affirmed to the District that it was a special education school, and that all of the instruction was special education instruction. As was discussed above, there was no specific evidence as to the content or curriculum of Westview's A-G classes, or of Santa Monica High's A-G courses or specialized academic instruction classes. On the other hand, Santa Monica High unquestionably provided both a general education environment as well as a special education environment, and Student had the opportunity to attend classes in both environments. In particular, at Santa Monica High, Student could take both core academic A-G courses (had she demonstrated to an IEP team that such courses were appropriate for her), as well as elective A-G courses, in a general education environment.

38. Santa Monica High was the school Student would have attended if she were not disabled. It offered Student the maximum exposure to typical peers, through her participation in electives, activities, and campus life. In addition, Student's contentions that Student's course selections were limited at Santa Monica High were not supported by the evidence. Student failed to demonstrate that the District's offer of placement at Santa Monica High was not the least restrictive environment.

39. Student also contends that placement at Westview was more appropriate because Westview classrooms had better acoustics than did Santa Monica High classrooms, and Student would hear instruction that she would not be able to hear at Santa Monica High. Again, Student's contention does not comport with *Gregory K., supra*, in that the analysis must focus on the District's offered placement. Student's IEP offered deaf/hard of hearing services for Student at Santa Monica High, which would include the deaf/hard of hearing specialist arranging for acoustic improvements, if needed, for Student's classroom, as well as real-time transcription services, an FM system, or any other services Student might need so that she could access her curriculum.

40. District's offer of placement of Student at Santa Monica High with the related services set forth in the IEP was appropriate and was in the least restrictive environment.

ISSUE 1(F) THE TRANSITION PLAN IN THE MAY 25, 2011 IEP WAS INAPPROPRIATE BECAUSE ITS GOAL COULD NOT BE IMPLEMENTED UNLESS STUDENT'S COURSES MET A-G REQUIREMENTS

41. Student contends that the May 25, 2011, IEP was defective, because the transition goal in the IEP was inconsistent with the educational program in the IEP. Student contends that the educational goal in the IEP required Student to identify possible post-secondary education paths that interested her and to identify the

coursework she would need to pursue those paths. Student contends that since the academic courses in her IEP were not A-G courses, Student was foreclosed from pursuing certain college paths that might have interested her, such as pursuing an education in the California State University and University of California systems.<sup>10</sup> District contends that District was not required to provide Student with A-G classes so as to guarantee Student's success in achieving her transition goals.

42. Legal Conclusions 1-4 and 20-26 are incorporated herein by this reference.

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<sup>10</sup> Student's closing brief also discusses a variety of issues that were not raised in the amended complaint, or mentioned at the prehearing conference, or included in the issues that were included in the prehearing conference Order that was discussed at the outset of the hearing. For example, Student contends that the May 25, 2011, IEP was defective because it did not include a formal transition plan, that no proper transition plan could be developed because Student was not invited to the May 25, 2011, IEP meeting, that her desires were not taken into account, that Parents were not advised of the above-referenced defects in the transition plan, and that various personnel, such as a high school guidance counselor or general education teacher should have attended the May 25, 2011, IEP meeting to discuss the transition goal. Notwithstanding that some of these contentions are factually inaccurate (*e.g.*, Student was, in fact, invited to the May 25, 2011 IEP meeting, Student's wishes and desires were discussed at the meeting, and a general education teacher attended the meeting), these and other additional issues raised in Student's closing brief will not be considered in this Decision, because they were not raised in the amended complaint. (Ed. Code, § 56502, subd. (i).) Student's failure to raise these issues in a timely manner is particularly egregious, because, as of the time of the hearing, this case had been on file for nearly a year, and Student had already amended her complaint.

43. For each student, beginning with the first IEP to be in effect when the student is 16, the IEP must include a statement of the transition service needs of the student. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) The IDEA defines transition services to require a focus “on improving the academic and functional achievement of the disabled child to facilitate the child’s movement from school to post-school activities,” which is based upon the child’s needs, and considers the child’s strengths, preferences, and interests. (20 U.S.C. §1401 (34).) The IDEA also requires that the IEP include a statement of measurable goals based on transition assessments and an outline of services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) The failure of an IEP team to comply with the requirements for transition planning is a procedural violation of the IDEA. (*Virginia S., et al. v. Dept. of Ed., State of Hawaii* (D. Hawaii, January 8, 2007, Civ. No. 06-00128) 2007 WL 80814, \*10.) The mere absence of a stand-alone transition plan does not constitute procedural error. (*Lessard v. Wilton-Lyndeborough Coop. School Dist.* (1st Cir. 2008) 518 F.3d. 18, 25.)

44. There is no requirement that a transition plan dictate IEP goals. Unlike the IEP, a transition plan is not a strictly academic plan, but relates to several post-secondary skills, including independent living skills and employment. (*K.C. v. Nazareth Area School Dist.* (3rd Cir. 2011) 806 F.Supp.2d 806, 822, citing *High v. Exeter Twp. School Dist.* (E.D. PA 2010) 2010 WL 363832 at \*6.) A school district is not required to ensure a Student is successful in fulfilling all desired goals, including transition plan goals. The IDEA is meant to create opportunities for disabled children, not to guarantee a specific result. (*K.C. v. Nazareth Area School Dist., supra*, at 822.) The test in evaluating a transition plan is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits. (*Lessard v. Wilton-Lyndeborough Coop. School Dist., supra*, 518 F.3d at 30.)

45. The transition goal in the May 25, 2011 IEP required Student to identify the coursework and activities she should pursue to ensure that she was a good candidate for a post-secondary program of interest to her. The goal was predicated on a baseline formulated with input from Westview representatives and Parents, which stated that Student was just starting to explore post-secondary programs and had not decided on any specific programs in which she was interested. Further, Student's IEP in general offered her placement and services which would have permitted her to graduate from Santa Monica High with a general education high school diploma. Such a diploma would have allowed her to attend a wide variety of post-secondary institutions, including four-year colleges, and did not foreclose her from attending college in the California State University or University of California systems. Student's argument falsely assumes that the only path for Student to attend those institutions would be by taking the requisite number of A-G courses. However, Student could be admitted to a college in either of those state university systems by another path, such as by transferring from a community college, or by reason of high SAT scores. Nothing in Student's IEP would have precluded her from following those paths to admission into a California State University or University of California school.

46. Student's transition plan was appropriate. Since, as described above, Student's May 25, 2011, IEP as a whole was reasonably calculated to provide her with some educational benefit, District did not deprive Student of a FAPE on this ground.

#### ISSUES 2A AND 3A: PREDETERMINATION OF PLACEMENT IN THE APRIL 24, 2012, AND JUNE 12, 2013 IEP'S

47. Student contends that District predetermined that it would not offer Student a placement at a nonpublic school. District contends that District did not predetermine Student's placement, but rather received information and input from Parents and Westview at the IEP meeting, and the IEP team discussed the continuum of

placement options before the District members of the team determined that Student's goals and objectives could be implemented at Santa Monica High with the program offered in the IEP's.

48. Legal Conclusions 1-4 and 5-10 are incorporated herein by this reference.

49. Student did not demonstrate that there was any predetermination of placement. These IEP's were not presented to Parents already developed, on a "take it or leave it" basis. Rather, the evidence was uncontradicted that these IEP's were developed during the respective IEP meetings, with input from Parents, because the District had no contact with Student during the 2011-2012 school year and the 2012-2013 school year. District had requested the ability to assess Student in language and speech during the April 2012, IEP, and Parents refused to consent to any such assessment. District had requested permission to perform a triennial assessment of Student in preparation for the June 12, 2013 IEP meeting, but Parents rejected that request. District also requested and did not receive parental consent to speak with Westview in advance of the June 12, 2013, IEP meeting or to observe Student at Westview. Therefore, District only received information about Student at these IEP meetings, during which the Westview representative proposed goals and provided the data for the present levels of performance and goal baselines, all of which were discussed at the meeting.

50. These IEP meetings were lengthy, and, indeed, the April 24, 2012 IEP meeting had to be reconvened because it could not be completed in one session. The discussions at these IEP meetings were wide-ranging, and the IEP notes in these IEP's reflect that Parents' input on each topic was constantly solicited by the District. The discussion at both sessions of the April 24, 2012, included the IEP basics, such as the present levels of performance, goals, accommodations, services, and placement. Parents or their counsel contributed input to these topics. The team discussed a variety of other topics and subtopics, including the manner in which transition services were provided at



Santa Monica High and Westview, the transition activities that would be available to Student at Santa Monica High, the number of academic credits Student had and what courses she would need to be on track for graduation with a diploma, whether Student would take the California High School Exit Examination, during which Father's comments were noted; a discussion regarding deaf/hard of hearing services in response to a question by Mother regarding self-advocacy by adults who were deaf, Parents' affirmation that the IEP team adequately discussed her needs as a hearing-impaired student, a discussion as to whether Student required auditory-verbal therapy, in which Parents and their attorney participated, a discussion of why Parents wanted Student to go to Westview and their criticisms of Santa Monica High, as well as a discussion of why District would not provide services to Student if she were not enrolled in the District, various strategies to smooth Student's transition to Santa Monica High should Parents choose to enroll her there, and the Parents' proposal to observe classes at Santa Monica High.

51. The IEP meeting of June 12, 2013, contained a similar wide-ranging discussion, in which Parents' input was requested and in which Parents participated. The team discussed the basic elements of the IEP, such as the present levels of performance, goals, classroom and testing accommodations, services, and placement. Mother discussed Student's postsecondary plans, and the team discussed the California High School Exit Examination. District answered the Parents' questions about the examination. The team considered Parents' concerns as to Student's attendance at a four-year college. Dr. Woolverton explained the specialized academic instruction program to Parents. Parents asked if Student's courses at Santa Monica High would meet A-G requirements, and the teacher at the meeting responded that some classes do and some do not, depending upon how much the curriculum was modified. Father expressed his concern that it would be disruptive for Student to transfer from Westview

to Santa Monica High for her senior year. The team discussed Student's auditory-verbal therapy needs, and Father provided input.

52. Furthermore, as was discussed with respect to Issue 1(A), the District was able to offer the full continuum of placements at both of the IEP's. Again, while the academic specialized instruction courses that Student was offered were not A-G courses, Student would have been enrolled in elective A-G courses. Student could also have been enrolled in A-G academic courses had an IEP team agreed that she could have succeeded in them. Since Student never attended the regular school year at Santa Monica High, the IEP team did not have the opportunity to determine whether Student was capable of taking Santa Monica High academic A-G courses.

53. Student did not demonstrate that District predetermined Student's placement. District made unsuccessful efforts to determine Student's unique needs in advance of the meetings, which fact in itself suggests that there could not be predetermination because District had no basis on which to determine anything. Furthermore, Parents, their attorney, and Westview representatives had an opportunity to ask questions, and provide input in the development of the April 24, 2012 IEP and the June 12, 2103, IEP, and their concerns were considered by the IEP teams. The District offered a program tailored to Student's individual needs in each of the subject IEP's, which were determined at each of these IEP meetings during discussions that included and considered the comments of all meeting participants. Parents meaningfully participated in these IEP meetings. District did not commit any procedural violation of the IDEA or of the Education Code on this ground.

#### ISSUES 2B AND 3B: PREDETERMINATION OF THE APRIL 24, 2012 IEP AND THE JUNE 12, 2013 IEP BY FAILING TO PROVIDE A-G COURSES

54. Student contends that District predetermined Student's program because the April 24, 2012, and June 12, 2013, IEP's did not offer a curriculum that included

academic A-G courses. Rather, Student contends, District offered only the program it had available, and refused to consider alternatives, such as Westview's program. Student contends that Student's needs required A-G courses, and therefore District's failure to consider such courses as part of Student's specialized academic instruction program meant that District did not consider the full continuum of placement options. District contends that there was no predetermination, and that the District appropriately determined that to appropriately implement Student's goals and objectives, Student required specialized academic instruction with a modified curriculum for her core academic classes.

55. Legal Conclusions 1-4 and 5-14 are incorporated herein by this reference.

56. District had no current information about Student at the time of these IEP meetings so as to develop any part of the IEP's. Rather, at both sessions of the April 24, 2012 IEP meeting, and at the June 12, 2013 IEP meeting, the IEP team discussed Student's needs and present levels or performance and developed goals based on those needs, based on information provided by Westview, with input from Parents or their counsel. The entire team agreed with the goals. The team discussed the continuum of placement options. Based on the information that District had at these IEP meetings, Student was performing well below grade level in core academic classes. Due to her hearing impairment and her learning disability in auditory processing, District determined that Student would have been unable to access the general education curriculum without specialized instruction and unless it was modified. Westview personnel did not disagree with this conclusion, and, indeed, District understood that Westview, a special education school, was providing Student with a modified curriculum in her core academic classes. District reasonably believed that the modifications that Student required precluded Student from taking A-G courses at Santa Monica High.

Under these circumstances, there was no evidence that District predetermined Student's program.

57. District did not commit any procedural violation of the IDEA or of the Education Code on this ground, and did not deny Student a FAPE.

ISSUES 2C AND 3C: FAILING TO PROVIDE A SUFFICIENT NUMBER OF A-G COURSES IN THE APRIL 24, 2012, AND JUNE 12, 2013 IEP'S

58. Student contends that District's failure to offer Student A-G academic courses deprived Student of a FAPE because Student was able to succeed in such courses. District contends that it offered a program that constituted a FAPE, based upon the information it had at the time of the April 24, 2012, and June 12, 2013, IEP meetings. District further contends that it had no obligation to provide Student with special education at all during the period covered by the June 12, 2013, IEP (the extended school year session of 2013 and the 2013-2014 regular school year), because Parents did not consent to the triennial assessment.<sup>11</sup>

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<sup>11</sup> District raises this contention for the first time in this proceeding, in its closing brief. District did not express this position at the lengthy June 12, 2013 IEP meeting, or in the prior written notice dated June 30, 2013, which District sent to Parents rejecting their request for an independent assessor. The cases District cites in support of its position, *Gregory K., supra*, 811 F.2d 1307, at p. 1315 and *Andress v. Cleveland Independent School Dist.* (5th Cir. 1995) 64 F.3d 176, 178, recognize that a school district's remedy when parents refuse to consent to a triennial assessment is to compel an assessment of Student. Here, District could have filed a request for a due process hearing with OAH to accomplish this. There was no evidence that District ever availed itself of that remedy. District cites no legal authority that, in lieu of the recognized remedy which District has foregone, District may wait until the conclusion of a due

59. Legal Conclusions 1-4 and 19-26 are incorporated by this reference.

60. Student's contentions on this issue are based upon several misconceptions of both the law and the facts, as described above with respect to Issue 1D. First, according to the "snapshot" rule, an IEP is evaluated prospectively, not in retrospect. There was no evidence that, at the time of the April 24, 2012 and June 12, 2013, IEP's, District had any information that Student could access any academic A-G courses. As was discussed above, at the time of the April 24, 2012, IEP meeting, Westview reported that Student had an eighth grade level of written vocabulary. Student was pulled out from her Westview classes one day per week to work on vocabulary, and Student was working on seventh and eighth grade vocabulary in her classes. Her reading comprehension goal in this IEP, which was a goal to be accomplished in eleventh grade, involved working with tenth grade level texts. Westview teachers reported that Student needed redirection every 10 minutes, if not in all settings, at least in less structured classes. District had no information as to Student's progress on her previous IEP goals.

61. At the time of the June 12, 2013 IEP meeting, District learned that Student had met her two transition goals and her math goal, but she had not met the nine other goals in her April 24, 2012 IEP. District also learned that Student could stay on task for 15 to 20 minutes with one to two prompts; she was refusing to receive speech therapy, and her goals involved writing an essay using ninth grade level vocabulary, and

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process hearing to raise its statutory right to assess as a complete defense to Student's claim that the District's June 12, 2013 IEP did not provide a FAPE. Under the circumstances of this case, District's contention is legally unsupported and unmeritorious. This conclusion does not prohibit District from contending, as it has, that its IEP offer was based upon limited information because it was unable to assess Student.

comprehension of tenth grade level texts. At this time, Student was completing eleventh grade. As was mentioned above, at the June 12, 2013 IEP meeting, the Westview representative agreed that Student still required District's specialized academic instruction program for English, history, math, and a support period. Consequently, there was no evidence that District had any information that Student did not continue to need the modified curriculum of the type offered to her in the specialized academic instruction classes.

62. Second, as discussed above, Student's contention is based upon at least two assumptions: (a) that Westview's academic A-G academic courses were more challenging than the specialized academic classes offered by the District at Santa Monica High; and that District should have offered Student academic A-G courses because she was able to succeed in such classes at Westview. However, as was discussed in Legal Conclusion 22, there was no evidence to support assumption (a), and, even if assumption (a) were correct, assumption (b) is incorrect. As was stated in *Rowley, supra*, an IEP need only be reasonably calculated to provide some educational benefit. It need not provide the best or most challenging education. In this regard, Student did not demonstrate that she would not receive some educational benefit from the specialized academic courses at Santa Monica High. To the contrary, District's offer in the April 24, 2013, and June 12, 2013, IEP's, including the specialized academic instruction courses, would have permitted Student to progress toward receiving a high school diploma by June 2014. With such a diploma, Student would have been able to pursue an array of post-secondary educational opportunities. She could have been admitted to a variety of four-year colleges, including art schools, directly from high school, without A-G courses. She could also have been admitted to colleges in the University of California and California State University systems without academic A-G courses, whether by

transferring from a community college, or directly after high school graduation by some other means, such as high SAT scores.

63. Third, as was also discussed above, Student couches her argument in terms of Student's "unique need" to be educated in A-G classes, but Student presented absolutely no evidence that Student's unique needs required A-G courses, and no such need was discussed at these IEP meetings. Fundamentally, the substance of Student's contention is that District did not offer Student the best educational program of which Student was allegedly capable, to maximize her potential for admission into the college of her choice, which was also the educational program that Parents preferred. However, under *Rowley, supra*, and *Gregory K., supra*, the District has no obligation to provide Student the best education available, or the educational program that Parents preferred.

64. For the reasons set forth in Legal Conclusion 24, Dr. Martinez's opinion that the District had an obligation to place Student in A-G classes is not persuasive.

65. Given the fact that the information District had at the April 24, 2012, and June 12, 2013 IEP's reflected that Student's academic functioning was at least a year below grade level in academics, that she had not met most of her goals from her April 24, 2012 IEP, and that Student continued to demonstrate significant impairment in her auditory processing abilities, particularly with respect to working memory, District could properly determine that Santa Monica High's specialized academic instruction classes were at an appropriate level for her, and were reasonably calculated to provide her with an educational benefit.

66. Focusing on the program offered by the District, as the law requires, and applying the "snapshot" rule, the April 24, 2012, and June 12, 2013, IEP's offered Student a FAPE. At Santa Monica High, Student would have participated in a diploma-track general education program, and, upon completion of the program, she would have graduated with a diploma which met state standards and would have provided her the

opportunity to attend a variety of four-year colleges directly after high school. Based on the information available to District, District reasonably believed that Student would have received an educational benefit by attending Santa Monica High's specialized academic instruction program, with related services to address the needs arising from her hearing impairment, and the panoply of elective courses, extracurricular activities, and elective courses that were available on a general education high school campus, such as Santa Monica High

ISSUES 2D AND 3D: IEP'S OF APRIL 24, 2012 AND JUNE 12, 2013, DID NOT OFFER PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

67. Student contends that the placement offers in the April 24, 2012 and June 12, 2013 IEP's, were not in the least restrictive environment for Student, because the IEP's offered placement at Santa Monica High in a self-contained class. Student contends she was exposed to more typical peers and an expanded curriculum at Westview. District contends that the placement offered in these IEP's was appropriate and the least restrictive environment in the continuum of placements, and that Student would be exposed to typical peers at Santa Monica High during elective classes, during passing periods, at lunch, and during other activities.

68. Legal Conclusions 1-4 and 27-39 are incorporated by this reference. For the reasons set forth in the discussion regarding Issue 1E, District's placement offer at Santa Monica High was a placement in the least restrictive environment.

ISSUES 2E AND 3E: IEP'S OF APRIL 24, 2012, AND JUNE 12, 2013, DID NOT OFFER SUFFICIENT CLASSROOM SUPPORT, SUCH AS AN FM SYSTEM OR REAL-TIME CAPTIONING SERVICES.

69. Student contends that the subject IEP's were inappropriate and did not offer a FAPE to Student, as they did not offer sufficient support for Student's hearing



disability. District contends that the IEP's provided all services necessary to constitute a FAPE.

70. Legal Conclusions 1-4 and 38 are incorporated by this reference.

71. Student's IEP's of April 24, 2012, and June 12, 2013 offered individual and consultative deaf/hard of hearing services, which would have consisted of the deaf/hard of hearing therapist determining what types of services and accommodations, such as real-time captioning, an FM system, or methods of improving classroom acoustics Student would require. Nobody who was present at the IEP team meeting questioned the levels of deaf/hard of hearing services offered in these IEP's.

72. Student criticizes these IEP's on the grounds that they did not contain a specific offer of real-time captioning services or an FM system, but District had no information on which it could make such a determination. Indeed, during the May 25, 2011, IEP, District learned that Student had not wanted an FM system, and did not need real-time captioning services, and neither Westview nor Parents provided any further information on these topics. During the April 24, 2012, IEP, District specifically asked Parents if there were any items that should be addressed in the IEP to meet Student's needs as a deaf/hard of hearing student. Parents, who were represented by counsel in that meeting, responded in the negative. At each of these IEP meetings, the team recognized that, if Student attended Santa Monica High she might require real-time captioning services or an FM system, and District was prepared to provide such services. Similarly, District had no current information regarding Student's need for auditory-verbal therapy services at these IEP meetings, and District never received any updated information regarding Student's need for auditory-verbal therapy, although District had requested it. In these IEP's, District offered to provide auditory-verbal therapy services, when District received information as to Student's needs in this area. At hearing, Dr. Woolverton stated that had Student returned to the District, District would have

provided 60 minutes per week of auditory-verbal therapy services, based upon Student's last agreed upon and implemented level of service, pending the receipt of updated information regarding Student's needs.

73. Student did not offer any evidence as to Student's needs with respect to auditory-verbal therapy or real-time captioning services had Student attended Santa Monica High. There was no evidence that Student, who attended some summer classes on the Santa Monica High campus, had any difficulty hearing in those classes, or that classrooms in which she was placed required any acoustical modifications. There was also no evidence that District had any notice of any such difficulties or of any need for acoustical modifications.

74. Under these circumstances, Student failed to demonstrate that the IEP's of April 24, 2012, and June 12, 2013, offered insufficient auditory supports for Student had she attended Santa Monica High, such that these IEP's deprived her of a FAPE.

#### ISSUES 2F AND 3F: TRANSITION PLANS IN APRIL 24, 2012, AND JUNE 12, 2013, IEP'S WERE INADEQUATE AND INAPPROPRIATE

75. Student contends that the transition plans in the April 24, 2012, and June 12, 2013 IEP's were not appropriate, because they were not results-oriented, were not based on high expectations, and were not based on Student's strengths, preferences and interests, since they would not have permitted her to achieve her appropriate and achievable transition goal of attending Cal State Northridge directly after graduation. District contends that school districts are not required to guarantee success in achieving transition goals, and that the standard for determining the adequacy of a transition plan is whether it is reasonably calculated to confer some educational benefit upon the student.

76. Legal Conclusions 1-4 and 41-46 are incorporated herein by this reference.

77. Student's contention with respect to the April 24, 2012 IEP is inaccurate as to both the facts and the law. Considering the facts, Student's transition goal in the April 24, 2012 IEP was to attend a four-year college or possibly a community college in order to study art. The transition plan states that some colleges that were "of specific interest" were the Art Center College of Design, Otis College, and Cal State Northridge. The transition plan said nothing about Student preferring or wanting to attend any specific educational institution directly after graduation, or that Student's goal was only to attend Cal State Northridge.

78. The April 24, 2012 IEP, offered a program that was consistent with, and was in furtherance of, Student remaining on a diploma track and graduating with a high school diploma. With such a high school diploma, Student could have attended a community college or a four-year college, as was Student's desire as expressed in the transition plan. Furthermore, after graduating from a community college, Student could have attended Cal State Northridge, regardless of whether she had taken academic courses that met A-G requirements at Santa Monica High. Therefore, contrary to Student's contention, Student's transition goals in the April 24, 2012 IEP, which were based upon her stated wishes and preferences, were aligned with the educational program in her IEP.

79. Student is also incorrect with respect to the law. A transition plan is sufficient as long as the IEP, taken as a whole, is reasonably calculated to provide some educational benefit. As is discussed elsewhere in this Decision, considering the "snapshot" rule, the April 24, 2012 IEP was reasonably calculated to provide Student some educational benefit.

80. Turning to the June 12, 2013, IEP, Student's transition goal states that, "Upon completion of school I will attend California State Northridge if accepted or Santa Monica Community College." The transition plan specified that Student had decided to

apply to Cal State Northridge and would attend Santa Monica College as a back-up. This transition goal was the first one to mention that Student's first choice was to attend Cal State Northridge directly after graduation, and that attendance at Santa Monica College was her second choice.

81. Student's contention that District was required to offer her a program in the June 12, 2013 IEP to ensure Student reached her transition goal in the precise manner she desired is incorrect. First, Student has cited no legal authority that a District must guarantee such fulfillment of a transition goal, and, indeed, the law is to the contrary, as is explained in Legal Conclusion 44. Second, as stated in Legal Conclusion 44, there is no requirement that a transition plan dictate IEP goals, such that Student's academic IEP goals were required to include A-G classes so that Student could attain her transition goal. Third, Student cites no legal authority that her IEP must coincide with her most preferred transition goal. In this case, the evidence was uncontradicted that Student's IEP was congruent with Student's "back-up" plan to attend Santa Monica College, and that, after graduating from there, Student could have been admitted to Cal State Northridge. Furthermore, as noted above with respect to the May 25, 2011, IEP and the April 24, 2012, IEP's, Student's June 12, 2013, IEP was sufficient to support Student's and Parents' overall desire that Student attend a four-year college.

82. As was stated above, a transition plan is evaluated by determining whether the IEP as a whole was reasonably calculated to provide Student an educational benefit. As has been discussed elsewhere in this decision, applying the "snapshot" rule, Student's June 12, 2013 IEP was reasonably calculated to provide Student an educational benefit.

83. Under these circumstances, Student's transition plans in the April 24, 2012 IEP and the June 12, 2013 IEP were appropriate, and District did not deny Student a FAPE on this ground.

## REIMBURSEMENT

84. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Burlington v. Department of Ed.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (*Burlington*)(reimbursement for unilateral placement may be awarded under the IDEA if the district's proposed placement does not provide a FAPE.) Legal Conclusions 1-4 are incorporated herein by this reference.

85. Parents did not prove, with respect to any issue alleged in the amended complaint, that the District had not made a FAPE available to Student. Therefore, Parents are not entitled to reimbursement for Westview. However, Student seeks reimbursement for private speech therapy services and private auditory-verbal therapy services that Parents incurred while Student attended Westview, which services Student contends District refused to provide. Student contends that when parents consent to only part of an IEP, the school district must immediately implement that portion of the program, pursuant to Education Code section 56346, subdivision (e). Parents contend that they had agreed to such services in an IEP of June 2010, and had requested access to the speech therapy and auditory-verbal therapy services offered in the IEP's at the May 25, 2011, April 24, 2012, and June 12, 2013, IEP meetings, which District refused. Therefore, Parents contend they are entitled to reimbursement for same.

86. Student cites no legal authority that Education Code section 56346, subdivision (e) is applicable to this situation, when Parents did not provide written consent to any part of the IEP's at issue in this case. Rather, they rejected the IEP offers in full and availed themselves of their rights under the IDEA and *Burlington* to

unilaterally place Student in a private placement and then file a request for a due process hearing. Indeed, the *Burlington* court stated that, if Parents take such a course of action, they do so at their own financial risk. (*Burlington, supra*, 471 U.S. at p. 374.) Therefore, Student is not entitled to reimbursement of any of her expenses under any theory relating to the issues heard in in this matter.

## ORDER

All of the relief sought by Student is denied.

## PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all issues heard and decided in this matter.

## 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: June 2, 2014

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/s/  
ELSA H. JONES  
Administrative Law Judge  
Office of Administrative Hearings