

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019051269

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PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.

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DECISION

DECEMBER 2, 2019

On May 30, 2019, the Office of Administrative Hearings, referred to as OAH, received a due process hearing request from Parent on behalf of Student, naming William S. Hart Union High School District as respondent. Administrative Law Judge Elsa H. Jones heard this matter in Santa Clarita, California, on September 10, 11, 23, 24, 26, and 27, 2019.

Attorneys Bryan Winn and Eric Menyuk represented Student. Student's Mother attended all hearing days, and Student's Father attended part of one hearing day. Student testified at hearing, but he did not appear for any other portion of the hearing. Attorney Ian T. Wade represented Hart Union. Joanna White, Hart Union's Director of

Special Education, attended all hearing days on Hart Union's behalf, and Mike Kuhlman, Deputy Superintendent, attended a portion of one hearing day on Hart Union's behalf.

Sworn testimony and documentary evidence were received at the hearing. At the parties' request, the matter was continued until October 21, 2019, for written closing briefs. The briefs were timely filed, the record closed, and the matter submitted on October 21, 2019.

## ISSUES

1. Did Hart Union deprive Student of a free appropriate public education, referred to as a FAPE, by failing to timely assess Student in failing to respond to Parents' requests, from December 2017 to May 2018, that Hart Union assess Student?
2. Did Hart Union violate the procedures of the Individuals with Disabilities Education Act and Education Code in developing Student's September 11, 2018 individualized education program, referred to as an IEP, so as to deprive Student of a FAPE, by failing to:
  - a. Appropriately consider the family's input, recommendations, and concerns for Student's education;
  - b. Consider relevant assessment data to meet Student's academic, developmental, and functional needs;
  - c. Include an accurate statement of Student's present levels of performance; and
  - d. State the frequency, duration, and type of Student's related services in the IEP?

3. Did the September 11, 2018 IEP fail to offer Student a FAPE in the least restrictive environment, by failing to offer Student the following:
  - a. A small highly structured classroom with intensive staff support;
  - b. A modified curriculum;
  - c. Instructional accommodations, specifically modeling of tasks, modeling of appropriate behaviors; consistent routines, and redirection and prompting;  
and
  - d. A consistently implemented sensory diet, and sensory breaks when Student was frustrated with a task or overstimulated?

On the first day of hearing, Student requested the last sub-issue, 3d., which appears in the complaint, be added to the issues to be heard.

Student's complaint contained a variety of issues and allegations that the parties agreed were not relevant to this case. The specific issues which are discussed in this Decision were agreed upon and confirmed by counsel for the parties on the record at the prehearing conference and on the record at hearing as the only issues for hearing.

## JURISDICTION

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

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. §1400(d)(1); See Ed. Code, §56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Here, Student is the petitioning party, and has the burden of proof. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. sec. 1415(h)(4); Ed. Code, sec. 56505, subd. (e)(5).)

Student was 17 years old and in 12th grade at the time of hearing. Student resided within Hart Union's geographic boundaries at all relevant times.

During the 2017-2018 school year, Student was a 10th grade general education student who attended West Ranch High School, within Hart Union. Student was one of approximately 2500 children who attended West Ranch. From the beginning of the 2018-2019 school year through the time of the hearing, Student attended Bridges Academy, a private school that is not certified by the State of California.

## EDUCATIONAL BACKGROUND

From kindergarten through fifth grade, Student attended Castaic Elementary School, a public school in Castaic Union School District. He was diagnosed with

attention deficit hyperactivity disorder and motor tic disorder when he was young. Consequently, when Student was in second grade, Castaic developed a 504 Plan. A 504 Plan is a plan developed by school personnel and parents in conformity with Section 504 of the Rehabilitation Act of 1973. A 504 Plan provides accommodations for students who were not, or not yet, found eligible for special education, but who have physical or mental impairments that significantly interfere with one of life's major activities. Subsequently, when Student was in fifth grade at Castaic, Student was assessed for special education. The Castaic IEP team found him not eligible for special education and related services.

Student attended Albert Einstein Academy, a small charter school, from sixth grade through ninth grade, where his grades were mostly As and Bs. While there, he also had a 504 Plan. At the end of the 2016-2017 school year, Student's ninth grade year, Einstein closed. Student transferred to West Ranch High School, his home school in Hart Unified, at the beginning of the 2017-2018 school year, for 10th grade.

**ISSUE 1: DID HART UNION DEPRIVE STUDENT OF A FAPE BY FAILING TO TIMELY ASSESS STUDENT BY FAILING TO RESPOND TO PARENTS' REQUESTS, FROM DECEMBER 2017 TO MAY 2018, THAT HART ASSESS STUDENT?**

Student contends that Hart Union violated its child find obligations by failing to assess Student pursuant to Parents' December 2017 request, or at any other time before May 2018. Student contends that Hart Union knew of Student's struggles with anxiety and depression, and his struggles warranted an assessment for special education.

Hart Union contends that it properly and timely responded to Parents' assessment requests in December 2017 and May 2018, by referring Student for

assessment in May 2018. Until May 2018, when Hart Union began the assessment process, Hart Union contends it had no reason to suspect that Student had a disability, and that special education services may be needed to address that disability.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006.)) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176; *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000]; *E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

A school district is required to actively and systematically seek out, identify, locate, and evaluate all children with disabilities, including homeless children, wards of the state, and children attending private schools, who are in need of special education and related services, regardless of the severity of the disability, including those individuals advancing from grade to grade. (20 U.S.C. § 1412(a)(3)(A); Ed. Code, § 56171, 56301, subds. (a) and (b).) This duty to seek and serve children with disabilities is known as "child find." A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect a disability, and reason to suspect that

special education services may be needed to address that disability. (*Dept. of Ed., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (*Cari Rae S.*)). The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot evade that responsibility by substituting informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121.) At the same time, a medical or psychological diagnosis pursuant to the Diagnostic and Statistical Manual of Mental Disorders, referred to in this Decision as the Diagnostic Manual, is not synonymous with eligibility under the IDEA. (Office of Special Education Programs, *Letter to Coe*, 32 IDELR 204, Sept. 14, 1999.)

The school district's duty for child find is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Cari Rae S.*, *supra*, 158 F. Supp. 2d at p. 1194.); *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

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 noted that procedural

flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.)

Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*) These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if it:

- impeded the child's right to a FAPE;
- significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or
- caused a deprivation of educational benefits.

(20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, and that special education services may be necessary to address the disability must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (citing *Fuhrmann v. East Hanover Board of Ed.* (3rd Cir. 1993) 993 F.2d 1031).) Further, a student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.)

## SEPTEMBER 1, 2017 504 PLAN MEETING

Student started school at West Ranch on August 10, 2017, the first day of the 2017-2018 school year. By letter dated August 29, 2017, Alex Lazar, M.D., the psychiatrist who managed Student's medications, wrote a letter that advised Hart Union



Student was under his care for treatment of attention deficit hyperactivity disorder, tic disorder, anxiety, and depression. Dr. Lazar recommended that Student's 504 Plan continue at school.

On September 1, 2017, Hart Union convened a 504 Plan meeting. The team included Mother, Student, and Student's counselor Ms. Woolridge. The team also included Student's Modern Civilization teacher Dolores Garcia, Student's Algebra II/Trigonometry teacher Danae Towne; Student's English teacher Sheila O'Dwyer; and Student's Advanced Placement Chemistry teacher Jennifer Harris.

The team noted Student was currently struggling to adjust to West Ranch. He was currently doing well in most of his classes. The team considered moving Student from Advanced Placement Chemistry to regular Chemistry. Advanced Placement Chemistry was a very fast-paced class, with two-to-three hours of homework per night. Student, like several of his classmates, was already behind in it. Parent and Student declined to move to the slower-paced class. Physical education was also stressful for Student, and all team members agreed that class would be replaced with a student service period and Student would most likely take physical education over the summer.

Hart Union, and specifically Student's teachers, implemented the 504 Plan. Student remained in Advanced Placement Chemistry throughout the fall semester.

## STUDENT'S PERFORMANCE DURING THE FALL SEMESTER 2017

Student's first quarter progress report, measuring his progress from August 10, 2017, through September 15, 2017, showed grades of A+ in English and Modern Civilizations; A- in Spanish 1A; C+ in Algebra II/Trigonometry; and C-in Advanced Placement Chemistry. He received a Pass in Student Services class, and the teacher commented on the report card, "Student doing outstanding work."

Student's term grades for Quarter 1, including the period from September 18, 2017, through October 13, 2017, were A in Spanish 1A; A- in Modern Civilizations; B- in English and Algebra II/Trigonometry, and a D in Advanced Placement Chemistry. The report card showed a Comment of "Low test scores" with respect to Chemistry, and a Comment of "Student Doing Outstanding Work" from his Student Services teacher, who gave him a grade of Pass.

Student was absent from school for five class periods during Quarter 1, four of which were excused. He had zero tardies.

Student's Quarter 2 Progress Report Card covered the period from October 16, 2017 through November 17, 2017. His grades were A in Modern Civilizations; A-in Spanish 1A; B in English, B- in Algebra II/Trigonometry, and D in Advanced Placement Chemistry. The Comment on the report card noted Student was in danger of failing Chemistry. Student received a Pass in Student Services.

At some point during the fall semester, Parents retained a private tutor to help Student with Advanced Placement Chemistry. Hart Union was not notified that Parents had done so.

Student's Fall Semester report card covered the period from November 2017 through December 14, 2017. His grades were A- in English and Modern Civilizations, B+ in Spanish; C+ in Algebra II/Trigonometry; C- in Advanced Placement Chemistry, and a Pass in Student Services.

Student was absent for 11 class periods during Quarter 2 of the first semester. All of the absences were excused, and all but one were due to illness. The remaining absence was due to a school evacuation due to a wildfire. Student had zero tardies.

Student was texting Mother frequently during the school day regarding his anxiety and discomfort at school. Hart Union was not advised about these texts. Mother testified that she picked Student up from school early approximately five times because of these texts. When she did so, she would tell the school nurse that Student was leaving early because he was not feeling well. When Student was picked up early from school, he sometimes told the school nurse or attendance office that it was due to stress. Father also occasionally picked Student up early from school.

Student's teachers observed that Student had good relationships with his teachers and his peers. He was shy, and preferred to work alone, but would participate well in group projects when asked to do so. He participated in class, usually completed his work, and talked to his peers and teachers outside of class. His teachers routinely asked their students how they were doing, or how they were feeling. Student occasionally mentioned to a teacher that he was anxious or stressed, but other students would make similar confessions to Student's teachers.

At one point during the fall semester, Student advised Ms. Rivas, his Spanish teacher, that he did not want to make an oral presentation to the class. At hearing, Ms. Rivas mentioned that every year there was a student who did not want to give the oral presentation. Ms. Rivas called Mother, and suggested that Student could do the presentation to Ms. Rivas, one-to-one, but that Ms. Rivas wanted him to make the presentation to the whole class, because she thought he was capable of it. Mother encouraged Student, and he did the presentation to the class.

Towards the end of the school year, Student did not want to do an assignment in his English class to make a drawing pertaining to *The Tempest*. Ms. O'Dwyer, his English teacher, gave Student an alternative assignment. Ms. O'Dwyer testified that *The*

*Tempest* was a work that often challenged the comfort-level of her students. This was the only occasion when Ms. O'Dwyer changed an assignment for Student.

As far as his teachers were concerned, Student was a typical 10th grader trying to adjust to West Ranch after transferring from a small school. He was not bullied. None of Student's teachers or school personnel reported any negative changes in Student's attitude or behavior during the semester while in class, such as lack of interest or engagement. They characterized him as shy, but they did not characterize him as abnormally shy.

Student did not feel comfortable at West Ranch. He did not like having to walk long distances between his classes, and worried that the lengthy walks would make him tardy for class. He did not like the large classes, and did not feel as though he had any friends, just acquaintances. Student liked his teachers, but felt that they could be more supportive.

## MOTHER'S FIRST REQUEST FOR SPECIAL EDUCATION SERVICES

In November 2017, Student began to see Zainy Pirbhai, a marriage and family therapist, for talk therapy regarding his social-emotional struggles at school. He usually had sessions once weekly, and he requested Mother be present. Ms. Pirbhai holds a master's degree in psychology, and a pupil personnel services credential, and provides individual, family, couples, and group counseling. She developed a "worry scale" by which Student would choose a number from zero to 10, with 10 being "high," to signify the level of his distress. Student would include the number in his many texts to Mother during the school day, so that Student and Mother could decide whether Student needed to leave school. Hart Union was not advised of the texts or of Student's use of a "worry scale."

Towards the end of November 2017, Mother requested a meeting with Ms. Woolridge, Student's counselor, to discuss Student's spring semester schedule. The meeting was set for December 4, 2017. On November 30, 2017, Mother sent an email to Ms. Woolridge, stating in addition to discussing Student's schedule on December 4, she would also like to discuss initiating an IEP for Student. In the email, Mother stated that Student had been seeing a psychiatrist and was also seeing a therapist due to his significant anxiety and depression.

At the December 4, 2017 meeting, Ms. Woolridge referred Mother to the school psychologist, Leana Duzdabanyan, to discuss the IEP process. Ms. Duzdabanyan received a master's degree in school psychology and counseling in 2003, and holds a pupil personnel services credential. She has worked at Hart Union for 16 years as a school psychologist.

On December 4, Mother emailed Ms. Duzdabanyan. Mother wrote she had concerns that Student was experiencing significant anxiety and depression due to school-related issues. She advised that Student was seeing a psychiatrist and that he recently started seeing a therapist. She expressed her concern regarding the continued stress and anxiety that was impacting Student, and requested that an IEP be initiated. She asked that Ms. Duzdabanyan let her know how to proceed. Ms. Duzdabanyan responded to Mother on December 8, by voicemail and email, and requested that Mother call her.

Ms. Duzdabanyan and Mother spoke by telephone on December 11, 2017. Mother requested an IEP. Mother testified that Ms. Duzbanyan talked her out of pursuing an IEP, and told Mother that what Mother wanted could be accomplished through modifying Student's 504 Plan, which was a better alternative. Ms. Duzdabanyan testified that she did not try to talk Mother out of an assessment, as it was her job to

perform assessments. Rather, she explained to Mother that an assessment was necessary before an IEP could be developed, and said she would send an assessment packet.

During the call, Ms. Duzdabanyan explained the assessment packet and the process. Mother said she did not want Student to go through the assessment process again, and that she wanted to modify the 504 Plan instead. Mother testified at hearing that she substantially expressed such feelings to Ms. Duzdabanyan. On December 12, 2017, Ms. Duzdabanyan emailed Mother, and advised she informed Ms. Woolridge that Mother did not want to move forward with an assessment for special education services. Ms. Duzdabanyan added that she and Ms. Woolridge discussed some supports that could be added to the 504 Plan, and that Ms. Woolridge would contact Mother about scheduling a meeting to review the 504 Plan.

Ms. Duzdabanyan planned to attend the meeting, which was not her usual practice. At the time of her conversation with Mother, Ms. Duzdabanyan did not have enough information to determine whether Student required an assessment, and she wanted to go to the 504 Plan meeting to find out more about Student. Typically, she collaborated with Parents to determine whether an assessment should be performed. If she had enough concerns about Student that he should be assessed, she would pursue an assessment. Before the 504 Plan meeting, Ms. Duzdabanyan talked to Ms. Woolridge and his teachers, and nothing they said raised concerns that Student needed an assessment.

## STUDENT'S FIRST HOSPITALIZATION

The second semester began on January 8, 2018. On January 7, 2018, at the end of Winter Break, Student experienced weakness in both legs. Parents took him to Urgent Care and then to Tarzana Medical Center, where he was hospitalized overnight. Tarzana could not determine the cause, and referred Student to Children's Hospital.

On January 10, 2018, Mother emailed several individuals at Hart Union, including Student's teachers Ms. Garcia, Ms. Rivas, Ms. O'Dwyer, and Ms. Harris. In the email, Mother wrote that Student had not been feeling well. Mother wrote that Student was hospitalized and had a lumbar puncture on January 7, 2018, to rule out a medical condition, and the results were normal. However, the procedure caused him to experience severe headaches when he sat or stood up for short period of time. Mother realized that Student was missing a lot of class time, but at this point he did not feel up to checking websites for his assignments due to the headaches.

The email did not specify the reasons for Student's hospitalization. It did not mention Student's bilateral leg weakness.

## JANUARY 18, 2018 504 PLAN MEETING

Hart Union convened a 504 Plan meeting on January 18, 2019. Before the meeting, Student wrote a letter to Ms. Woolridge explaining his concerns, in case he was not comfortable speaking at the meeting.

Student wrote that it was hard for him to focus while taking tests. He became distracted when others finished with their test or class was ending and he was still sitting there with his test not finished. He felt time pressure while taking tests. He felt that it would help if he could sit in a quiet location when taking a test.

Student's letter also stated he also had difficulty taking notes during class. He had difficulty writing because his tics interfere with his hand movements, and he became stressed. Student believed it would help if he were given the notes beforehand.

Additionally, Student wrote he sometimes had difficulty focusing in class. When too much was going on in his head, he needed a break to relax. He felt a stress pass would help to decrease his anxiety and let him refocus.

Student's letter also mentioned how his medications impacted him. He took multiple medications every day, which helped to control his tics, improved his attention, and decreased his overall depression and anxiety. He wanted to share how much effort school was for him, even with the medications. He hoped when Ms. Wooldrige saw him struggle or succeed she might have a better understanding what an effort it was for him, even with all of the help and support he received.

Student's letter to Ms. Woolridge did not mention his bilateral leg weakness.

The 504 team included Mother; Student; Ms. Woolridge; Ms. Towne; Ms. Garcia; Ms. O'Dwyer; Ms. Rivas; Assistant Principal Tracy Moscoe, and Ms. Duzdabanyan. Ms. Duzdabanyan's presence was not documented on the 504 Plan document.

The team agreed upon additional accommodations to the 504 Plan, and included strategies for Parents and Student to work with Student's teachers. To address his organization challenges, Parents would work with Student daily to make sure backpack and notebooks are organized. To address Student's issues with homework and class assignment completion, Student would fill out his planner each period and teacher would initial it upon request. Parents would provide a structured time and place for Student to complete homework. Parents would check homework and Student would obtain Parent's initials that the homework was completed. Student could use a



computer, when available, for class and homework assignments. With respect to time for testing and class assignments, Student could request, in advance, extra time. With respect to communication, Parents could email teachers through the school's website. Hart Union maintained teachers' websites and a campus portal for assignments and grades, that Parents could check. Teachers would clarify directions when Student communicated that he did not understand them.

To accommodate Student in the area of comprehension, teachers would check for understanding when appropriate. When available, teachers would provide copies of class notes in advance. Student was encouraged to attend a tutorial period before school and Library Nights for additional help with his studies. To address Student's challenges with distractions, Student would have preferential seating, near the point of instruction and away from distractions. Student could request to work in a private or a quiet space, if available, for tests and assignments. To address Student's anxiety, Student would receive a stress pass, which he could use, with notification to the teacher, to step out of the room for a few minutes or see his school counselor.

After the 504 Plan meeting, Ms. Duzdabanyan did not have concerns that Student needed a psychoeducational assessment. No concerns were expressed by teachers, and she perceived no significant concerns about Student's functioning in the general education environment. No significant social-emotional concerns were raised by Student or staff. Ms. Duzdabanyan observed Student at the meeting, and, in her opinion, he seemed comfortable being there and advocating for himself.

The accommodations regarding the stress pass, giving Student advance copies of notes, and allowing Student to move to a separate location to take tests were additions to Student's existing 504 Plan, in response to Student's letter to Ms. Woolridge.

At the January 19, 2018 504 Plan Meeting, neither Mother nor Student revealed that Student's hospitalization had been due to bilateral leg weakness. Nor did Mother request an assessment or IEP at the meeting, or invite Ms. Pirbhai, Student's therapist, to attend.

## STUDENT'S SECOND HOSPITALIZATION

On February 7, 2018, Mother wrote an email to various Hart Union personnel, including teachers Ms. Garcia, Ms. Rivas, Ms. O'Dwyer, Ms. Harris, and Ms. Towne. The email advised that Student was seen at Children's Hospital for a medical appointment on February 6, 2018, and admitted for further testing. Mother had no information as to how long Student would be hospitalized.

On February 11, 2018, Mother sent another email to Student's teachers regarding Student's status. She advised that Student would return to school the next day, February 12. She also reported that the testing ruled out any serious medical conditions. Mother wrote Student's medications were being changed, and due to the medication changes, Student might experience some challenges in class during the next few weeks.

None of Mother's emails mentioned Student's bilateral leg weakness. None of them stated the reason why Student sought medical treatment, or gave a reason why Student was hospitalized, or included a discharge diagnosis. When Student was hospitalized at Children's Hospital, Mother learned that he had previously had suicidal ideations. Information about Student's suicidal ideations, as well as information about Student's bilateral leg weakness and its cause, was not provided to Hart Union until May 31, 2018, the day before the last day of school for the 2017-2018 school year.

Approximately 50 to 100 West Ranch students are hospitalized every year. If Hart Union was not notified of the reason for the hospitalization, or if parents did not express concerns that the impact of a hospitalization was affecting a student's progress at school, Hart Union would not follow-up to seek more information with respect to the hospitalization.

## STUDENT'S PERFORMANCE AND ATTENDANCE DURING SPRING SEMESTER, 2018

Student changed from Advanced Placement Chemistry to regular Chemistry after winter break. Student's Quarter 3 Progress Report covered the period from January 8, 2018, through February 9, 2018. Student earned grades of A+ in English and Advisement; A- in Modern Civilizations; B+ in Spanish; B in Chemistry; and a D in Algebra II/Trigonometry. There was a comment for the D grade that Student's absences were affecting his grade. Student's absences during the period covered by this Progress Report were mostly due to his hospitalizations.

Student's Quarter 3 Report Card covered the period from February 12, 2018, through March 16, 2018. Student received an A+ in Advisement; Bs in English, Chemistry, Modern Civilizations, and Spanish; and a D in Algebra II/Trigonometry. The comment for the math grade was "Missing Assignments, Low Test Scores, Absences Affecting Grade, in Danger of Failing Class."

During Quarter 3, Student missed 30 class periods for various reasons, including his two hospitalizations. One absence was due to an on-campus school activity. All of the absences were excused. Student was tardy to one class one time.

Student's Quarter 4 Progress Report covered the period from March 16, 2018, through April 27, 2018. It showed an A in English; and; Bs in Modern Civilizations and Spanish; Cs in Algebra II/Trigonometry and Chemistry; and a Pass in Advisement.

During March or April 2018, Mother retained Lori Waldinger, an educational advocate, to assist Parents in exploring other options for school placement, and to obtain an IEP for Student. Ms. Waldinger had worked with other Hart Union students, and had attended approximately 50 IEP team meetings in Hart Union. During the spring, Student applied to one school, which rejected him. In approximately April 2018, Mother started to consider Bridges as an alternative placement.

On May 1, 2018, Mother wrote to Ms. Duzdabanyan, requesting a meeting to review Student's 504 Plan as soon as possible, because she was very concerned about Student's mental and social well-being. She stated, "The timeline is starting now, May 1, 2018." On May 2, 2018, Mother spoke to Ms. Duzdabanyan, and clarified that she wanted an IEP. On May 4, 2018, Ms. Duzdabanyan generated an assessment plan, which Mother signed on May 9, 2018. Also on that date, Assistant Principal Tracy Moscoe emailed mother to ask if she still wanted a 504 Plan meeting. Mother responded that she wanted an IEP team meeting, and was completing the assessment forms. On May 14, 2018, Hart Union received the signed assessment plan, and Ms. Duzdabanyan commenced Student's psychoeducational assessment.

Hart Union did not violate its child find obligations by failing to assess Student prior to May 2017. Hart Union did not fail to respond to either of Mother's requests for assessment.

Mother first requested an assessment by email on November 30, 2017. Student contends that Ms. Duzdabanyan and Ms. Woolridge talked Mother out of pursuing the

IEP process. There was no evidence, besides Mother's testimony, that this was the case. The evidence demonstrated that Ms. Woolridge forwarded Mother's request for an IEP to Ms. Duzdabanyan, whose job it was to perform assessments for special education eligibility. Ms. Woolridge credibly denied talking Mother or anyone out of an assessment, as special education assessments were not her domain. During her conversation with Ms. Duzdabanyan, Mother decided not to pursue the assessment and IEP process, because the family had unsuccessfully pursued that process when Student was in fifth grade. She did not want Student to go through that experience again if Student's difficulties could be handled another way, such as through the 504 Plan. Mother testified at hearing that she had indeed expressed these thoughts to Ms. Duzdabanyan, which lends credibility to Ms. Duzdabanyan's denial. Ms. Duzdabanyan's December 12, 2017, email to Mother confirmed that Mother did not want to move forward with an assessment and the IEP process. There was no evidence that Mother responded to this email to clarify that she wanted to move forward with an assessment, or that Mother documented at any time that she had been talked out of pursuing an assessment by Ms. Duzdabanyan or by anybody else at Hart Union.

The second time Mother requested an assessment, by email on May 1, 2018, Ms. Duzdabanyan responded on May 2, 2018, and generated an assessment plan on May 4, 2018. Mother signed the assessment plan on May 9, 2018, which Hart Union received on May 14, 2018, and Ms. Duzdabanyan started the assessment.

Mother only requested an assessment or IEP twice during the 2017-2018 school year. In both of these instances, Hart Union promptly responded to Mother's requests for an assessment or an IEP. In the first instance, Mother withdrew her request. In the second instance, Hart Union timely clarified Mother's request and promptly began the assessment process. Student did not demonstrate that Hart Union's responses to her

assessment requests violated the IDEA and Education Code so as to deprive Student of a FAPE.

Turning to Hart Union's obligations under the doctrine of child find, which are imposed upon Hart Union regardless of any request by Parent for an assessment or an IEP, again Hart Union met its obligations under the IDEA and the Education Code.

Student's first day at West Ranch was August 10, 2017, the first day of the 2017-2018 school year. This marked the first time Student attended a Hart Union school. Hart Union convened a 504 Plan meeting upon learning that that Student had a Section 504 Plan at his previous school, and upon receipt of Dr. Lazar's letter of August 29, 2017, advising of Student's diagnoses of attention deficit hyperactivity disorder, tic disorder, anxiety, and depression. As was stated in *Letter to Coe*, 32 IDELR 204, *supra*, such medical diagnoses are not determinative of whether a Student requires special education. At the time of the December 2017 504 Meeting, Student had near-perfect attendance at West Ranch. He was earning mostly As, with a couple of Cs. Significantly, one of those Cs was in Advanced Placement Chemistry, which was a good grade for that class. Hart Union did not know that Student received private tutoring for that class in fall 2017. Student was not bullied, either during the fall semester or at any other time during the school year. At the time of this 504 Plan meeting, Hart Union had no reason to suspect that Student had a disability that may require special education and related services.

As the fall semester continued, Student's difficulties escalated. When he was at school, he began to text Mother about his anxiety and stress. Mother occasionally picked him up from school early because of his anxiety, but told the school nurse that Student was not feeling well. In November, 2017, Student began to see Ms. Pirbhai once per week. She recommended that he and Mother use a code system to define his

level of distress, and Student would text the code to Mother to let her know whether he needed to be picked up from school. Mother testified that she received numerous texts from Student.

None of this information was given to Hart Union. Hart Union did not know that Student was texting Mother from school about his distress, that Student was receiving therapy from Ms. Pirbhai, or that Mother and Student had developed a code to signify Student's level of distress when he texted Mother. Moreover, Hart Union's attendance records reflected that, during the entire fall semester, Student missed only 16 class periods, three of which were excused absences for a religious holiday observance, and one of which was due to a school evacuation because of a wildfire. Student's final grades ranged from A- to C-. Indeed, Mother testified she only picked Student up from school during the school day because of his stress approximately five times during the entire school year. Father also picked Student up early from school during the school year several times. When Student was picked up from school early, he sometimes reported to the school nurse or attendance office that it was due to stress. Nevertheless, Student's absences from school were minimal, and his absences due to stress were infrequent.

Student's teachers observed no behavior or other issues that put them on notice that Student required special education or related services. Student used his stress pass one time, when he became upset and began to cry in Ms. O'Dwyer's class. Later, when Ms. O'Dwyer asked him about what happened he told her that he used the stress pass because he was not reacting well to his new medication. At hearing, Mother and Student expressed that Student experienced stress using the stress pass, because he felt self-conscious using it and worried about the classwork he would miss. However, there was no evidence they reported this to anyone at Hart Union.

None of Student's teachers expressed that Student required any modified curriculum, modeling of appropriate behaviors, or modeling of tasks. He did not require any more prompting or redirection than their other students.

Student had average to above-average grades in all classes but Advanced Placement Chemistry, nearly perfect attendance, and perfect behavior on campus during fall semester 2017. Furthermore, Student's diagnoses, based on Diagnostic Manual criteria, are not determinative of whether a Student is eligible for special education. Student did not present on campus during fall 2017 as a Student in crisis, or with severe social-emotional problems. The law requires that general education interventions be considered and used before a student is referred for special education. (*Panama-Buena Vista Union School Dist. v. A.V.* (E.D. Cal. Dec. 5, 2017, No. 1:15-cv-01375-MCE-JLT) 2017 WL 6017014, \*\*5-6.) Student demonstrated the ability to function well when he was in class with a 504 Plan of general education interventions.

Hart Unified had no reason to assess Student for special education during fall semester 2017, and, in particular, in December 2017 when Mother asked for, and then withdrew, her request for an assessment. As of the end of the fall semester, Hart Union had no reason to suspect that Student was a student with a disability who needed special education and related services to access his curriculum

Hart Union's winter break extended from December 18, 2017, through January 5, 2019. Just prior to the end of winter break, Student developed bilateral leg weakness, and he was hospitalized twice, once in January and once in February. Mother notified Hart Union of the hospitalizations, but never explained why he was hospitalized or related it to any difficulties with school. After Student's hospitalization, he wrote a letter to Ms. Woolridge with suggestions of accommodations he wanted the 504 Plan team to consider at a 504 Plan meeting. His carefully written and thoughtful letter,



which was written with Mother's knowledge, did not mention his January hospitalization or any possible causes for it.

Student's 504 Plan meeting was held on January 19, 2018, shortly after his first hospitalization. Both Mother and Student attended the meeting, and did not mention the causes for Student's hospitalization. Furthermore, even though Mother had withdrawn her request to pursue the IEP process, Ms. Duzdabanyan attended the January 19, 2018 504 Plan meeting to learn more about Student and whether Student warranted an assessment for special education. She did not usually attend 504 Plan meetings. Based upon her discussions with Student's teachers before the meeting, and what she learned at the meeting, she determined that Student did not require an assessment for special education.

Parents did not notify Hart Union of the reason for Student's second hospitalization in February 2019, or the causes for it. They did not notify Hart Union of any diagnosis they received, or that Student had suicidal ideations, until late May 2018, after Hart Union had begun the assessment process. Generally, between the hospitalizations and May 4, 2018, when Ms. Duzdabanyan provided Mother with an assessment plan, the only substantive information Parents gave to Hart Union about Student's health and hospitalizations were that he had not been feeling well before the January hospitalization, that he was suffering from headaches after the lumbar puncture, that his medications would be changed, and that the doctors found no serious medical conditions. Mother provided no information to Hart Union regarding the deterioration in Student's social and emotional state that she reported in her letter of May 31, 2018.

Hart Union promptly responded to Mother's May 1, 2018, request for an assessment and generated an assessment plan on May 4, 2018, to begin the special

education assessment process. Hart Union acted appropriately and promptly to Mother's request, thereby fulfilling its child find duty.

The 2017-2018 school year ended on June 1, 2018. On May 31, 2018, Mother emailed all of Student's classroom teachers, Ms. Duzdabanyan, and Ms. Woolridge, to seek their input regarding Student. In the email she advised them, for the first time, of the depth of Student's struggles at West Ranch. She acknowledged that while he may not have shown it, he was "crumbling inside." She reported he had difficulty socially and lacked friends. He frequently described his day at school as "feeling lost." For the first time, Mother revealed that his two hospitalizations were due to physical symptoms of his anxiety, although she did not reveal that those physical symptoms consisted of bilateral leg weakness, or reveal any formal diagnosis that resulted from the hospitalizations. For the first time, Mother advised that Student was suicidal. For the first time, Mother revealed that Student might not be able to return to West Ranch, or attend any comprehensive high school due to his symptoms, and Parents were planning his school placement for the following school year.

Student's teachers' favorable opinions of Student's school performance, behaviors, and peer relations had not changed over the course of the school year. This was reflected in their testimony, and in the letters that Ms. Garcia, Ms. Rivas, and Ms. Towne each promptly and separately wrote to Mother in response to her May 31, 2018 email. Each of them expressed that they enjoyed having Student in their classes, as he was respectful and likeable. Each of them noted that he had done well in their classes academically. Ms. Garcia noted he worked well in groups even though that was not a preferred activity for him. Ms. Towne wrote that he socialized with peers at lunch. Each of these teachers, plus Ms. O'Dwyer and the other recipients of Mother's email, were surprised to learn that Student had such emotional struggles at West Ranch.

Student did not feel comfortable at West Ranch during the school year. He did not like having to walk long distances between his classes, and worried that the lengthy walks would make him tardy for class. He did not like the large classes, and he did not feel as though he had any friends, just acquaintances. Student liked his teachers, but felt that they could be more supportive.

Student's Quarter 4 Report Card reflected grades of A+ in Advisement; B's in English, Chemistry, and Modern Civilizations; B- in Spanish; and a C in Algebra II/Trigonometry. During this quarter, Student was absent for six class periods, all of which were excused. He was tardy seven times for second period.

Hart Union knew of Student's average or above-average grades and good school attendance through the second semester of the 2017-2018 school year. Student's teachers had high opinions of him as a student in their classes. Hart Union had no knowledge of the reasons for Student's hospitalizations, no knowledge that Student had suicidal ideations at any time, and no knowledge that Student was "crumbling inside," all of which Mother did not disclose until her May 3, 2018, email. Under these circumstances, Hart Union could reasonably conclude that Student's 504 Plan was effective throughout the 2017-2018 school year.

Hart Union had no reason to suspect that Student was a student with a disability who required special education services, and no duty to assess Student, prior to the time Mother requested an assessment in May 2018. Hart Union did not violate the child find mandate so as to deprive Student of a FAPE.

ISSUE 2A: DID HART UNION VIOLATE THE PROCEDURES OF THE IDEA AND EDUCATION CODE IN DEVELOPING STUDENT'S SEPTEMBER 11, 2018 IEP SO AS TO DEPRIVE STUDENT OF A FAPE, BY FAILING TO APPROPRIATELY CONSIDER THE FAMILY'S INPUT, RECOMMENDATIONS, AND CONCERNS FOR STUDENT'S EDUCATION

Student contends that the September 11, 2018 IEP offer did not reflect what Dana Chidekel, Ph.D. recommended or what Parents requested. Hart Union contends that Parents' concerns for Student were discussed during the IEP team meeting by Parents, Student's private neuropsychologist, and Student's educational advocate, and that Parents' concerns were noted in the IEP document.

A parent's right to be involved in the development of their child's educational program is one of the most important procedural safeguards. (*Amanda J. v. Clark County School Dist., et al., supra*, 267 F.3d 877, 892-895.) To fulfill the goal of parental participation in the IEP process, the school district is required to conduct a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d 1479, 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., supra*, 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].)

An IEP team must consider a parent's input, but it need not necessarily follow a parent's wishes. For example, in *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314, (*Gregory K.*), the court stated that if a school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*) Similarly, when presented with an outside expert's report, a school district need only review and consider the report; it need not follow its recommendations. (*G.D. v. Westmoreland School Dist.* (1st Cir. 1991) 930 F.2d. 942, 947.) (*Westmoreland*)

## PARENTS' EXPLORATION OF OTHER PLACEMENTS

Beginning in spring 2018, Mother and Ms. Waldinger, Student's educational advocate, began to explore other school placements for Student for the 2018-2019 school year. Ms. Waldinger recommended that Mother consider enrolling Student at Bridges. Mother also considered applying to another school, STEM-3.

On July 15, 2018, Mother sent a letter to Ms. O'Dwyer, explaining that Student was applying for enrollment at Bridges, and requesting Ms. O'Dwyer to write a letter of recommendation. Ms. O'Dwyer wrote such a letter and sent it to Bridges in July 2018. In the letter, Ms. O'Dwyer referred to the positive student-teacher relationship she had with Student. She wrote of his respectfulness to her and his classmates. She was proud of his improvement over the school year with his writing, tests, group work, and a group presentation he did in front of the entire class. At hearing, Ms. O'Dwyer affirmed that the letter accurately represented her opinions of Student.

In June or July 2018, Mother contacted Dr. Chidekel to assess Student. Mother had to obtain an assessment of Student so that Student could apply to other schools, such as Bridges. Ms. Waldinger recommended Dr. Chidekel. Dr. Chidekel completed her assessment report on July 30 2018. On August 2, 2018, Mother emailed Ms. Duzdabanyan and Ms. Woolridge what she labeled a "10-Day Notice," expressing that Student was unable to return to West Ranch in fall 2018, due to the severity of his social/emotional issues. Mother reported that a recent assessment conducted by Dr. Chidekel supported that Student needed a very specialized school placement. Student was applying to Bridges Academy and STEM-3, and Mother was putting Hart Union on notice that once Student was accepted at one of these schools, he would enroll there for the 2018-2019 school year. Mother wrote that she would request reimbursement for all costs associated with such a placement, as well as reimbursement for Dr. Chidekel's neuropsychological evaluation. Mother stated that she would send the report and bill later. On August 6, 2018, Mother emailed a 10-day notice to Ms. Duzdabanyan, Ms. Woolridge, and Ms. Moscoe, advising that Student had been accepted at Bridges, and would attend there starting in fall 2018. In the notice, Mother again sought reimbursement for Bridges and for Dr. Chidekel's assessment.

Tracy Glen, a special education coordinator for Hart Union, responded to Mother's August 2 letter on August 14, 2018, acknowledging Mother's intention to enroll Student at Bridges or STEM-3. Ms. Glen advised Mother that she might be financially responsible for all costs incurred in such a placement. She also advised that Hart Union wanted to complete its assessment, which it had already begun, and hold an IEP team meeting to discuss the results of that assessment. Ms. Duzdabanyan would contact Mother to schedule the completion of the assessment and the subsequent IEP team meeting. Ms. Glen also noted that Dr. Chidekel's assessment had not been shared with Hart Union.

## DR. CHIDEKEL'S NEUROPSYCHOLOGICAL ASSESSMENT

Dana Chidekel, Ph.D., is a neuropsychologist. She received her Master's degree in Clinical Psychology in June 1992, and her Ph.D. in Clinical Psychology in June 1993, both from the California School of Professional Psychology. She is board certified by the American Board of Pediatric Neuropsychology and the American Board of Professional Neuropsychology. Currently, her practice exclusively consists of performing neuropsychological assessments.

Dr. Chidekel assessed Student on July 10 and 11, 2018, for approximately four hours each day, and wrote an assessment report dated July 30, 2018. She obtained background information regarding Student and his family from the initial telephone call with Mother, which lasted approximately a few minutes, and from an in-person meeting with Parents, which lasted approximately an hour to 90 minutes. At no time during her assessment did Dr. Chidekel review any of Student's medical or educational records, which she failed to state in her assessment report. Her assessment also did not include any input from any of Student's teachers, because her assessment took place during the summer. She also did not observe Student in class or on campus as part of her assessment.

Dr. Chidekel reported that she was retained to assess Student as a function of problems he had been encountering in school, and the assessment was to clarify Student' social, emotional, and academic needs to facilitate treatment and academic planning.

The information Dr. Chidekel included in her report about Student under the headings Reason for Referral, Developmental and Medical History, Academic History, and Psychosocial History, were based upon her brief initial telephone conversation with

Mother, her approximately one hour to 90-minute conversation with Parents, and her interview with Student. She noted his previous diagnoses of Tourette's Syndrome, attention deficit hyperactivity disorder, anxiety, and depression. She described what had been told to her of Student's social and emotional difficulties at school and his suicidal thoughts. She reported he developed bilateral leg weakness in January 2018 for which he was hospitalized twice, and the problem was diagnosed as a likely tic arising in response to substantial anxiety and stress.

She described Student's developmental and medical history, as reported by Parents, without any review of medical records. Dr. Chidekel noted in particular that Student was diagnosed with and hospitalized for, polycythemia, which Dr. Chidekel testified was a type of blood cancer, shortly after birth. Dr. Chidekel reported Student had several cyanotic episodes during that early hospitalization, which Dr. Chidekel attributed to the polycythemia. She wrote that he met developmental motor milestones on the late side of normal, and he met developmental verbal milestones precociously. She noted he was diagnosed with attention deficit hyperactivity disorder in second grade, and started on medication. Dr. Chidekel reported that at the time of the evaluation, he was prescribed four medications, and he maintained his medication regimen during the assessment. Based solely on Parent or Student report, and without any review of documentation, Dr. Chidekel reported Student had multiple sensory hypersensitivities.

Dr. Chidekel's report noted Student's academic history and psychosocial history, again based upon parental report and no documentation. She reported Student had difficulty connecting with peers and had been seeing his therapist, Ms. Pirbhai, since November 2017. Dr. Chidekel also briefly reviewed Student's family history.



The report listed all of the tests Dr. Chidekel administered, and included Student's response sheets or score profiles for many of the tests. The body of the report summarized Student's results on various of the tests, often without tying the results to any specifically identified test.

Dr. Chidekel observed Student at her office during the evaluation. Student avoided eye contact and tended to avert his face. Sometimes he rested his arms on the table and put his face in the crook of his elbow. On the first day of testing, he brought his Mother's sweater and buried his face in it. Dr. Chidekel believed he was in extraordinary distress at such times, though Student denied it. Student said he was tired. His affect was flat.

Student talked in a quiet voice, and had momentary lapses in attention during which he seemed to be utterly disengaged and not responsive to simple directions. He would follow directions when the assessor reoriented him and repeated them. He exhibited a resting tremor and fidgeted with his fingers. He blinked repetitively, but it was not particularly obvious.

Student stated he had been brought for testing because the school he wanted to attend needed it. He felt intimidated by West Ranch, which was a larger campus with more students and teachers than his previous school. Student reported he had no friends at school. He was not comfortable in a class setting, or sometimes with other people. He felt others were criticizing him. He liked math and science, and he liked to read for history, but did not like to write. He had difficulty organizing when he wanted to write. Student had friends from his former school, with whom he spoke but did not visit. He liked to play video games. His mood was usually positive but also anxious, worried, or confused. He stressed about something coming up or just random things. He worried about how things would turn out or if plans changed.

He had felt stressed and anxious before he transitioned to middle school and for a time thereafter, but he found he enjoyed going to school with older children. He had negative and stressful thoughts again with respect to starting and attending West Ranch. It was hard to focus on completing tasks, his weight increased, and he had suicidal thoughts. Right before he went back after winter break, the stress caused his legs to stop working.

Dr. Chidekel assessed Student's general intellectual functioning by relying on a Global Abilities Index Score on the Wechsler Adult Intelligence Scale, Fourth Edition. He scored in the Superior Range.

His assessment results in the areas of attention and concentration reflected a generally limited ability to focus upon an incoming stream of information and execute systematic responses. His ability to shift attention was variable. Rating scales completed by Parents showed Student manifested resistance to new ways of solving problems, tended to become upset in new situations and disturbed by changes in teacher or class, and to think too much about the same topic. Parents' ratings also reflected that Student had significant deficits in initiation, and in working memory. Mother saw deficits in planning and organization, and in monitoring.

Student's scores on executive functioning measures were in the Average to High Average range. Student failed to integrate feedback and adapt his responses, but he could problem solve. Student's working memory was generally limited. He demonstrated strong conceptual abilities on a structured task, and performed adequately on a less structured conceptual task. Student had difficulty with a complex memory and learning test.

Dr. Chidekel assessed Student's language function. He had a sophisticated vocabulary. He could use language to conceive and describe relationships between ideas, and could follow verbal instruction. He scored in the Low Average and Average ranges on two timed tasks.

Student performed very poorly on sensory- and visual-motor function assessments. He performed very slowly on fine motor tasks, and made very significant errors with both hands on a sensory task of finger discrimination.

Student scored in the average range on mathematics tasks. His reading rate fell in the lower part of the average range, and he scored in the average and high average ranges in reading comprehension.

Student's composition skills were assessed by a non-standardized assessment requiring him to write an essay. His composition was simplistic in form and content, and he did not consistently follow the prompt. His sentence structure was correct, and he used correct punctuation.

Student's scores on a more comprehensive self-report inventory portrayed him as having a very negative opinion of himself and his abilities, which made him shy and awkward in social situations. He was sensitive to others' comments and criticism, and consequently he tried to protect himself by dampening his desire for closeness and affection. He would not voice complaints that he was distressed, as he anticipated rejection. However, Dr. Chidekel also reported that he would voice feelings of futility with minimal provocation. His consistent anticipation of rejection led him to isolate himself. He avoided any type of competition and acquiesced to the wishes of those who act more assertively. Ordinary responsibilities felt excessively demanding. He felt fatigued, and feared others' questions, seeing them as a road to embarrassing

self-exposure. Dr. Chidekel found evidence of a prominent anxiety disorder and a recent increase in depression. He was downhearted, occupied with matters of personal adequacy, plagued with self-doubt and felt useless and unattractive.

Dr. Chidekel summarized her report. She outlined Student's strengths. He had extraordinary verbal skills. He could see relationships in visual-spatial information, which suggested that math concepts made sense to him. Student performed well on most measures of inhibition and impulse control, and he performed well on tests of sustained attention. He could attention shift under certain circumstances. He performed well on tasks requiring him to use cause and effect reasoning to solve problems with concrete materials that he could manipulate. He quickly generated ideas and could follow verbal instruction. His memory storage was intact. Interpersonally, he could understand others' facial expressions, make inferences about implicit aspects of situations, interpret idioms, and match pictured facial expressions to situational context.

Areas of relative deficit were motor and sensory. The physical act of writing was difficult. Student's difficulty sequencing motor movements affected problem-solving, as he had difficulty when he has to keep a lot information in mind. He also failed to integrate feedback from a task that offered an opportunity for him refine his approach to become increasingly productive. These deficiencies impacted his academic skills, such as writing and reading. His inability to keep complex information in mind also had interpersonal implications, as it precluded him from figuring out how to act in social situations.

Student also demonstrated substantial limitations in performing tasks efficiently. He did not generate an efficient rhythm to move through quasi-routine tasks with a minimum of cognitive effort.

Student did not shift quickly. He required more time and effort than others to adjust when new demands were made that required action. This affected him academically and socially. Peer interactions unfold quickly and unpredictably, requiring Student to quickly process what is happening and appropriately respond. Student's difficulties in this area were compounded by his expectation that others would humiliate and shame him. The results of the social and emotional area of assessment portrayed Student as extremely anxious. Dr. Chidekel suggested that the leg weakness he developed for which no physiological cause could be found might have been the manifestation of a conversion disorder, driven by and an expression of unresolved emotional conflicts.

Dr. Chidekel concluded that Student's problems were longstanding and had a neurodevelopmental foundation. Student believed he could be helped by being placed in a smaller school with quirkier children, because he had some relief when he was in that environment in middle school. Student had catastrophic expectations of what would happen in public school. Dr. Chidekel's report concluded that those feelings crippled Student during the previous school year at West Ranch, and had grown stronger. She stated Student could not return to that environment. The suicidal thoughts, feelings of hopelessness, and the disabling anxiety he experienced in the last school year showed he was at considerable risk.

Dr. Chidekel diagnosed Student with a variety of conditions: Attention Deficit Hyperactivity Disorder, Inattentive Type; Generalized Anxiety Disorder; Social Anxiety Disorder; Persisting Depressive Disorder; Developmental Coordination Disorder; Specific Learning Disorder Impacting Writing; Tourette's Disorder (by history, motor tic observed); Consider Conversion Disorder; Rule out Avoidant Personality Traits.

Dr. Chidekel concluded her report with nearly three pages of recommendations, most of which were focused on his education. She noted that Student was a twice-exceptional student, which meant, in his case, that he had a high IQ coupled with substantial learning, executive functioning, production, and social-emotional challenges. She considered gifted children to be a special needs population, and twice-exceptional children also to be a special needs population.

In her opinion, Student required a school-setting that could be responsive to the asynchronous qualities of development that characterized twice-exceptional children, which made them, as she called them, "quirky." Dr. Chidekel described asynchronicity in twice-exceptional children to mean such children have unique mixes of extraordinary strengths but their other abilities do not match those extraordinary strengths. In her opinion, Student needed a setting with dual-differentiated instruction, and small classes in which a social skills curriculum was embedded within all activities throughout the day. At hearing, Dr. Chidekel defined dual-differentiated instruction as instruction that focused on a student's strengths, and harnessed those strengths to overcome areas in which the student was deficient.

Dr. Chidekel also recommended that Student's educational setting should have children with comparable strengths and challenges for him to feel safe and create friendships. Dr. Chidekel considered such a setting, combined with dual-differentiated instruction, to be beneficial for twice-exceptional children, because then it becomes normal to be unusual. This leads to greater self-acceptance, which can promote empathy with other people. That, in turn, may lead one to connect with others more, because one is not afraid of being different, or standing out.

Dr. Chidekel's report recommended that Student's IEP provide the following services, such as, school-based counseling, integrated social skills training and support, an assistive technology assessment, specialized academic instruction in writing, specialized academic instruction to facilitate aspects of executive functioning, and adapted/specialized physical education.

Dr. Chidekel's report recommended numerous accommodations.

For testing, she recommended Student receive 50 percent extra time for all standardized testing that required reading, and a keyboard for writing. Also, that he not use Scantron response sheets because his processing speed limitations made him vulnerable to error when using Scantron forms.

For anxiety, Student should be allowed to leave the classroom when he was stressed, and to have a place where he felt safe to which he could retreat.

For his developmental coordination disorder, Dr. Chidekel recommended Student keyboard written assignments, and receive support in touch typing. She recommended that Student's written work be spell-checked and checked for grammar on the computer, so he could focus attention on developing content. She suggested text-to-speech software be used for proofreading. Student should have access to software for solving math problems.

To help maintain performance without over-taxing his working memory, Dr. Chidekel's recommendations included numerous accommodations, including prompting Student to listen for important points; having a hard copy of steps, formulas, and similar information to reduce the burden of keeping these elements in mind, minimizing distractions, preferential seating near the teacher; repeated and simplified instructions; checking that Student focused; and being provided a model or sample of

work to follow, or a demonstration of how to approach new tasks. She also recommended the teacher preview new information, break down tasks or information into smaller pieces, and test him using multiple-choice formats.

To help Student shift to perform new tasks, Dr. Chidekel's recommendations included clarifying the order of activities and alerting Student to variations in the usual sequence of events, prompting when transitioning between tasks; modeling how to approach a new task and guiding him at the beginning of a new task; and having others model a new activity. She also recommended visual organizers, and offering a whole-to-parts approach to instruction.

To help Student with deficits in initiation, Dr. Chidekel's recommendations included structuring Student's environment so that it built implicit prompts for routines; he should have short breaks and a variety of learning methods, and methods by which a teacher could subtly remind him to start work.

Dr. Chidekel's assessment and recommendations did not refer to, and were not based upon, providing Student with a free appropriate public education in the least restrictive environment.

## HART UNION'S PSYCHOEDUCATIONAL ASSESSMENT

Ms. Duzdabanyan conducted Hart Union's psychoeducational assessment of Student during May and August 2018, and wrote a report of the assessment. The reason for referral for assessment was concerns regarding Student's social, emotional, and academic needs. She noted his diagnoses of attention deficit hyperactivity disorder, anxiety, depression, and Tourette's Syndrome, and that he currently took medication to manage his symptoms. She listed the assessment tools used, including a teacher



consultation, observations, and a records review. At the end of the report, Ms. Duzdabanyan included tables of Student's scores and score reports.

The assessment report described Student's educational history.

Ms. Duzdabanyan reviewed the results of Dr. Chidekel's assessment, summarized the conclusions as to Student's strengths and weaknesses, and listed Dr. Chidekel's diagnoses.

Ms. Duzdabanyan listed Student's ninth grade final term grades from Einstein and his 10th grade final term grades from West Ranch. She listed his spring 2016 results of Student's California Assessment of Student Performance and Progress. In English, Student obtained scores of Standard Exceeded; in Math Student obtained scores of Standard Met.

Mother completed a Health and Developmental History questionnaire. Ms. Duzdabanyan asked Mother several times for Student's medical records regarding his hospitalizations and diagnosis from Children's Hospital. Parents never provided the records. Parents gave Ms. Duzdabanyan a release to speak with Ms. Pirbhai. Ms. Duzdabanyan called Ms. Pirbhai three times, but Ms. Pirbhai never returned her calls.

Mother reported the same concerns with Student's mental health reported at the May 2018 504 Plan meeting. Mother reported Student was significantly impacted by anxiety and depression, and struggled emotionally with being in large size classes on a large campus, but he was able to manage his academics most of the time.

During the assessment process, Ms. Duzdabanyan sent questionnaires to Student's teachers at West Ranch. She summarized their responses in the assessment report. Ms. Harris, Student's Chemistry teacher, reported that Student was smart, kind, respectful, wanted to do well, and completed his work. He got along fine with peers, but did not go out of his way to interact with them. He kept to himself most of the time, and interacted well during group or lab activities. She would like to see Student interacting more with others in class.

Ms. Rivas, Student's Spanish teacher, reported that Student was very polite, intelligent, and respectful. He got along well with her and others. He was very shy and stayed to himself. He did not talk during class, unless there was a particular activity when he needed to talk to his peers. He could mostly stay on task, but there were times when he would be distracted by scratching/picking at his arms. He needed to focus on completing all of his homework assignments on time, as there were a few homework assignments he failed to turn in during the spring semester. He always completed in-class assignments. He seemed to understand the subject matter, and he typically scored well on vocabulary quizzes.

Ms. Towne, Student's Algebra II/Trigonometry teacher, reported that Student was hard-working, respectful, kind, and had a positive attitude. He paid attention and requested to sit up front to better focus. He could improve in completing homework and making corrections of his work to understand any mistakes. He worked hard to understand the material, yet his work was consistently turned in late, which affected his performance on tests since he was behind on the materials.

Ms. Garcia, Student's Modern Civilizations teacher, reported Student's strengths as his abilities to comprehend the material by listening, and his work completion. He was shy and did not talk a lot; he could articulate detailed answers when prompted.

He usually paid attention and concentrated on classwork. Occasionally, he strayed off-task but would return to task when prompted. Student got along well with classmates, but he often preferred to work alone. He was respectful and obedient. She believed he could improve by completing all assignments. However, his overall performance and work ethic were above average.

Ms. O'Dwyer, Student's English teacher, reported Student's strengths included his critical skills and reading comprehension. Student got along with students she put him with for group work or who sat near him. He had an overall positive attitude in class. He was sometimes quiet and could get overwhelmed, but he would express that to her when it happened. Student would take a break if needed and stay after class to clarify if needed. He would usually work alone unless placed in a group, and she thought he would improve in his desire to collaborate with peers. He performed well in her class.

Ms. Duzdabanyan reported on her observations of Student during the assessment and in the classroom at West Ranch. Student was assessed on four days in August and September. He arrived on time to all testing sessions. He presented as polite and cooperative. His eye contact improved as he became more comfortable with Ms. Duzdabanyan, but it was inconsistent. He demonstrated repetitive blinking that was more pronounced sometimes than at other times. He easily engaged in conversation with her. He participated in all tasks, and put forth genuine effort even when the tasks became difficult. She considered the assessment results a valid representation of his current level of functioning.

Ms. Duzdabanyan observed Student in his Algebra II/Trigonometry class for one hour. Student was working on the problems independently on his worksheet. He picked at the skin on his upper arms and shoulders. After the class reviewed the problems, the teacher passed out the final exam. Student worked on the exam quietly

throughout the remainder of the observation period, and stayed on task. He fidgeted with his shirt collar and glasses while completing the exam.

On the next day, Ms. Duzdabanyan observed Student in English class for 40 minutes. The teacher was reviewing a poetry assignment with the class. Student was on task. He copied down notes. He picked at the skin on his upper arms and shoulder while listening to the teacher's lecture. During natural class breaks, Student sat quietly and did not chat with peers seated near him. When the class had free time, students were allowed to work in groups, but Student chose to work alone and remained in his seat. He again picked at the skin on his arms. At hearing, Ms. Duzdabanyan commented she did not consider Student's skin picking to be tic or anxiety-related, but rather typical adolescent behavior.

The teacher asked Student if he wanted to join a group. He declined and proceeded to work on his assignment in his seat. He continued to complete the assignment for the remainder of the observation period.

Ms. Duzdabanyan administered the Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition, to examine student's cognitive ability and learning potential. Student's general intellectual ability fell in the Superior range. However, the report warned that the score should be interpreted with caution, as Student's performance across domains of the test varied from Average to Very Superior.

Ms. Duzdabanyan administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition, to examine Student's visual-motor processing skills. Student scored in the Average range. Student was able to perceive and interpret complex visual-motor information.

She examined Student's visual processing skills by administering the Motor-Free Visual Perception Test, Fourth Edition, which assesses an individual's visual perceptual ability without any motor involvement. Student scored in the Average range. Student was able to process visual information adequately in the classroom.

Ms. Duzdabanyan assessed Student's auditory processing skills by administering the Test of Auditory Processing Skills, Third Edition. This assessment measured Student's ability to listen and remember material presented orally. Student scored in the Average range in auditory comprehension and reasoning skills. His short-term auditory memory of words, sentences, and numbers was also in the Average range.

Jessica Jacquez, a Hart Union special education teacher, administered the Woodcock-Johnson IV Tests of Achievement and Woodcock-Johnson IV Tests of Oral Language to assess Student's current academic functioning in the areas of reading, writing, math, and oral language.

Student scored in the Average range on several oral language skills clusters, and in the Low Average range on the Oral Expression cluster, a measure of comprehensive knowledge of language skills.

Student scored in the Average to High Average range on the reading skills clusters, on the mathematics skills clusters, and on the written language skills clusters.

Student scored in the Average to High Average range on the cross-domain academic clusters, which are combined measures of academic skills in reading, writing, and math.

Ms. Duzdabanyan assessed Student's social-emotional development by several measures, including an interview with Student. During the interview, Student discussed his likes, dislikes, relationships, and attitudes toward school. Student revealed that he enjoyed playing video games, reading, and gardening. He reported that he got along well with his family members and feels supported by them. He mentioned he had a "few" friends at West Ranch, and a "few" friends outside of school to whom he spoke on the phone or online. He did not see any friends outside of school. He said he liked his teachers at West Ranch, but did not like the size of the school and found the class sizes to be too big and overwhelming. He reported he did not have any problems or difficulties with peers in school. He felt uncomfortable in class, and found it hard to focus around a lot of people. He stated that he was hospitalized because his "leg went limp," and that at that time he was feeling high levels of anxiety and stress related to school. His favorite class during the last semester was Chemistry, which he also found to be the most difficult. Student wanted to be successful in school and to attend college. He was interested in studying biology.

Ms. Duzdabanyan reported Student's responses to the Sentence Completion Test. revealed he was happy when he could relax, and he described himself as very anxious. He reported difficulty with focusing when in crowds and he did not like how large West Ranch was. What he most liked about school was the teachers. He reported feelings of anxiety related to school.

Ms. Duzdabanyan requested Student, Parent, and Student's teachers complete the rating scales of the Behavior Assessment System for Children-Third Edition. These rating scales measured numerous aspects of behavior and personality. Scores in the Clinically Significant Range suggest a high level of maladjustment.

Student reported concerns in the Clinically Significant range in the areas of Anxiety and Attention Problems. He did not report any other elevated concerns.

Mother's ratings reflected concerns in the Clinically Significant range in the areas of Anxiety, Withdrawal, Depression, and Attention Problems.

Ms. O'Dwyer rated Student in the Clinically Significant range in the areas of Anxiety and Somatization. Ms. Harris reported Clinically Significant concerns in the area of Anxiety. Ms. Rivas reported Clinically Significant concerns in the areas of Withdrawal and Leadership. Ms. Garcia reported Clinically Significant concerns in the area of Withdrawal. Ms. Towne did not report any concerns.

All of the results on these rating scales were reliable according to the reliability features included in the instrument.

Student completed the Reynold Adolescent Depression Scale, 2d Edition, which assists in the evaluation of depressive symptoms in adolescents. Student's overall score and all four subscale scores fell within the normal/age typical range.

Observations and interviews reflected that Student demonstrated appropriate conversational speech and language skills, and appropriate adaptive behavior. Student was able to use appropriate self-help skills to functions successfully in the world.

Ms. Duzdabanyan summarized her report, including her findings regarding Student's cognitive ability and academic achievement. His overall cognitive ability was within the Superior to Average range. His cognitive processing speed, cognitive efficiency, and short term working skills were areas of weakness, but still in the Average range. His visual-motor integration and visual processing skills were areas of relative weakness for him, but again, were in the Average range. Student demonstrated

challenges in the classroom with executive functioning skills as related to his diagnosis of attention deficit disorder. Academically, Student demonstrated a significant weakness in the area of oral expression. Classroom performance and teacher reports revealed that Student maintained average grades.

Ms. Duzdabanyan summarized her findings regarding Student's social-emotional status, and concluded that Student appeared to have significant social-emotional stressors that may be preventing him from performing his best at school. It appeared that he did not have adequate coping skills. She recommended that the IEP team consider Student's eligibility for special education in the categories of other health impairment, emotional disturbance, and specific learning disability. She cited the statutory/regulatory criteria for each of these categories, and determined that Student met them. He qualified under the category of other health impairment, because he presented with limited strength, vitality and alertness in his current educational setting that adversely affected his educational performance.

In Ms. Duzdabanyan's opinion, Student also met the emotional disturbance criteria of having a general pervasive mood of unhappiness or depression, over a long period of time and to a marked degree, which adversely affected his educational performance. She based this conclusion on Student's diagnosis of depression, for which he took medication and was seeing a private therapist to alleviate his symptoms. He also struggled with significant anxiety. His teachers did not report observing significant depressive symptoms in school, but they reported that Student was withdrawn in class, and Mother reported elevated concerns for Student in the area of depression observed in the home environment. Records review and Dr. Chidekel's report reflected Student had previously experienced suicidal thoughts related to academic or social stressors.



Ms. Duzdabanyan concluded that Student also demonstrated the learning profile consistent with a specific learning disability, because he had a significant discrepancy between his ability and academic achievement in the area of oral expression. He demonstrated processing challenges in the area of attention, as shown by his difficulties in the areas of executive functioning, attention, working memory and processing speed.

Ms. Duzdabanyan noted that the IEP team would determine Student's eligibility for special education. She concluded her report by suggesting several recommendations for the IEP team to consider. These overlapped somewhat with the accommodations in Student's 504 Plan. She recommended school-based counseling, to address Student's social-emotional concerns. To address his attention issues, she recommended Student sit near the front of the classroom away from distractions; teacher should refocus student with verbal and/or nonverbal cues, as needed; and teacher should repeat instructions and check for understanding, as needed. To address executive functioning issues, she recommended that he receive extra time for tests and quizzes, as needed; that he consistently use a planner or other daily organization chart; teacher should refocus student with verbal and/or nonverbal cues, as needed; and teacher should repeat instructions or check for understanding, as needed. To address his anxiety, she recommended Student be encouraged to break large projects or assignments into component parts or steps, and Student should continue to ask for or seek assistance when he did not understand an assignment.

## STUDENT'S ENROLLMENT AT BRIDGES

Student took two summer classes at Bridges during the summer of 2018. Each class was one-week long. The first class began on June 4, 2018, shortly after the end of the regular school year at West Ranch.

On August 6, 2018, Mother wrote a follow-up letter to Ms. Duzdabanyan, Ms. Woolridge, and Ms. Moscoe, advising that Student was admitted to Bridges and would attend there during the 2018-2019 school year. The letter again advised that Student would seek tuition and costs reimbursement for Bridges, as well as reimbursement for Dr. Chidekel's assessment.

Student began attending Bridges in mid-August, 2018. Student seeks reimbursement for tuition and fees for Bridges, which amounts to \$44,479 for the 2018-2019 school year. Student presented no evidence as to the cost of Dr. Chidekel's assessment.

#### SEPTEMBER 11, 2018 IEP

On September 11, 2018, Hart Union convened an IEP team meeting. The IEP team included Parents; their advocate Ms. Waldinger; Student's therapist Ms. Pirbhai; Dr. Chidekel; Ms. Rivas; Ms. Glen; Ms. Duzdabanyan; Ms. Woolridge; Ms. Moscoe; and Susie Westall, a resource specialist from West Ranch. The meeting lasted approximately three hours.

The team noted Student's demographic information, and Parents accepted the educational rights document. The team reviewed reports from each of Student's teachers at West Ranch. Dr. Chidekel presented her report of the results of her neuro-psychoeducational evaluation and Ms. Duzdabanyan presented the results of her psychoeducation evaluation. Each of these presentations lasted about one hour.

The team considered Student's present levels of academic achievement and functional performance. Student's strengths and interests reflected Student was polite and well-behaved. Parent expressed concern with Student's social-emotional functioning, stress, and anxiety as they related to school.

The team reported Student's results on the state Smarter Balanced Assessments. Student exceeded the standard in English/Language Arts overall, and met the standard in Math overall.

The team listed Student's academic and functional skills scores from Ms. Duzdabanyan's psychoeducational assessment. The areas of communication development and adaptive/daily living skills were not areas of concern. His gross/fine motor skills were in the average range.

In the social-emotional area, the team summarized and combined relevant aspects of the findings of both Dr. Chidekel's and Ms. Duzdabanyan's assessments. The team also included Student's and Mother's comments regarding the stress and anxiety Student felt at school.

In the vocational area, Student generally turned in assignments on time. He was generally on task in the classroom and attended school regularly.

In the health area, the IEP repeated Student's diagnoses, adding specific learning disability affecting writing. The team noted Student wore glasses to correct astigmatism, and listed his medications.

The team discussed the disabilities that were primarily impacting Student to determine his eligibility for special education and related services. Parents, Dr. Chidekel, and Ms. Pirbhai felt the attention and processing deficits that characterized the eligibility categories of other health impaired and specific learning disability were primarily impacting Student. The Hart Union members of the team felt that Student's specific learning disability was not impacting him as much as his social-emotional functioning, and thought emotional disturbance should be the secondary eligibility. Parents objected to listing emotional disturbance as a secondary disability. The IEP team then

agreed that Student met criteria as a student with other health impairment that adversely affected his educational performance, and a secondary eligibility of specific learning disability. The team specifically determined there was a severe discrepancy between intellectual ability and achievement based on valid standardized tests in the area of oral expression. The discrepancy was directly related to a processing disorder in the area of attention. The degree of this specific learning disability required special education. The team agreed that Student also demonstrated an emotional disturbance in the area of pervasive mood of unhappiness and depression.

The team determined Student's areas of need were social-emotional, oral expression, and organization/executive functioning, and the team developed goals in these areas. The social-emotional goal addressed Student's need to learn and use positive coping strategies to manage academic and social-emotional stressors. The oral expression goal addressed Student's need to clarify and show understanding when given information or directions in class. The organization/executive functioning goal addressed Student's need to maintain his academic calendar, prioritize tasks, and seek staff support as needed to timely complete assignments.

The team discussed and determined accommodations. The accommodations for statewide and school district assessments were flexible seating and flexible scheduling. The classroom accommodations in all subjects included several to address his attention issues, alternative setting for tests, extra time for tests, preferential seating, minimize distractions, check work in progress, repeat instructions, multi-sensory approach, have Student restate information, oral reminders, and visual reinforcement. Accommodations to address his organizational issues included use of a calculator, an assignment notebook, provide lecture notes/outline as needed; prior notice of tests, and posting of routines and assignments. Several of the accommodations served multiple purposes by

addressing both Student's attention and organizational issues, such as checking work in progress, giving oral reminders, and posting of routines and assignments. Some of them also addressed his weakness in oral expression, such as repeating instructions, having him restate information, and visual reinforcement. Some of the accommodations also addressed Student's anxiety issues, such as those involving reminders, alternative setting for tests, extra time for tests, prior notice of tests, posting of routines and assignments, and providing lecture notes/outlines.

The team also discussed and determined that Student's case manager and general education teachers would consult as needed for 10 to 15 minutes.

The team discussed program options. Ms. Glen reviewed available options in the school district, including the Resource Program, Learning Post, Academy of the Canyons, and Hart @ Home.

The services offered in the IEP were specialized academic instruction, in a group, for 50 minutes per day, in a separate classroom in a public integrated facility. This was the Resource Program, also referred to in the IEP as Resource Learning Strategies. The Learning Strategies class was part of the Resource Program. It was a class designed to support special education students, such as Student, who were in general education classes. The class was offered to address Student's needs in oral expression, social-emotional and executive functioning needs.

The Learning Strategies class size ranged from 12 to 20 students. It had one teacher and one assistant, as well as one-to-one aides who may accompany other students. The class addressed student's individual challenges, including behavioral and emotional challenges. Students were taught organizational skills. The Learning Strategies teacher would review assignments, coordinate with the general education

teachers, and counselors, and help students understand and complete their assignments. The Learning Strategies teacher would provide or obtain emotional support for Student, by reaching out to counselors, and working one-to-one with Student, including pulling Student out of classes to meet. The Learning Strategies teacher could also help Student develop strategies for navigating campus, to alleviate his anxiety about the size of the West Ranch campus. Student could access the Learning Strategies class any time he felt stressed or anxious not only during the school day, but the class was also available before and after school, and at lunch. Students in the class did not need a stress pass, but could leave the class any time they felt stressed or anxious. Moreover, there were students who had learning profiles similar to Student's in the class.

The IEP also offered school-based counseling and guidance on an individual basis in a separate classroom, for 60 minutes per month, to address Student's social-emotional needs. This service was based on the assessment reports of both Ms. Duzdabanyan and Dr. Chidekel. The IEP also offered vocational assessment, "20 minutes served Any other frequency or as needed" on a group basis; and college awareness, "20 minutes served Any other frequency or as needed" on an individual or group basis. For each of these two services, a period should have been inserted between the words "served" and "Any." Indeed, the same punctuation defect appears in the IEP document with respect to the offer of the Learning Strategies class and the school-based counseling. The IEP stated that all of the vocational and college awareness services were to start on September 11, 2018, and end on September 11, 2019.

The vocational assessment and college awareness services were part of an individual transition plan which was included in the IEP. The transition plan was based upon an age-appropriate transition assessment and interview. Student wanted to attend college, and was interested in studying biology, but was unsure of a career path.

The transition plan included goals in the areas of training or education, employment, and independent living. These goals were paired with activities to obtain the goal. For example, the post-secondary education goal provided that Student would enroll in a four-year college. The activities to support this goal were to complete elective classes related to his career choices, and research appropriate college choices. The goal to support post-secondary employment provided Student would obtain a part-time or full-time job to help with school and living expenses, and to receive on-the-job-training for later employment in his career choice. The activities to support the goal included exploring online possible job opportunities and the requirements for obtaining a job, and applying for assistance through a specified program for job placement and support. The transition plan also included a summary of Student's high school courses and credits, noting that he had completed 130 credits, and was anticipated to graduate with a diploma in June 2020.

Parents were informed that academic assessments would be administered annually and reviewed with Parents at an IEP team meeting. In addition, Parents were advised that the transition assessments for the college awareness and vocational assessment services would be administered annually. Parents understood that these assessment tools were used to monitor progress and develop goals in the areas of academics, training or education, employment, and independent living.

The team discussed extended school year services, and decided they were not necessary as Student was not anticipated to regress during school breaks. The team also determined Student did not require assistive technology or low incidence services or materials.

The IEP offered placement at West Ranch, where all services would be provided. Student would be on a diploma track. The IEP specified that Student would not participate in the regular class, and/or extracurricular and/or nonacademic activities during the elective of Resource Learning Strategies and during school-based counseling, because Student required those specialized academic supports and counseling services to access the general education curriculum.

The family reported that Student wanted to be in a school setting with other students, and not in a home-schooling or independent study placement. At the time of the IEP meeting, Student had been enrolled at Bridges for approximately two or three weeks. Student liked Bridges, he was doing well there, and the family felt it was a correct fit for Student. The family asked that Student be placed at Bridges and requested reimbursement for the placement and related services for the 2018-2019 school year. They also requested reimbursement for the private assessment completed by Dr. Chidekel. Hart Union agreed to respond in writing to these requests.

Several members of the IEP team remembered that the meeting ended hastily. Parents and their advocate were extremely disappointed in the offer of a FAPE, particularly the offer of placement at West Ranch, as opposed to an offer of Bridges. Certain witnesses, including Mother, did not have a good recollection of what occurred at the IEP team meeting. However, the weight of the evidence reflected that Mother became emotional when she learned the offer of placement was West Ranch and did not include Bridges. The advocate stated Parents would not consent to the IEP, and the



meeting quickly terminated, but not before the IEP team meeting notes were read aloud and Parents given a copy of the IEP. As a result of the unexpected end to the meeting, Ms. Westall, the resource specialist from West Ranch, who was present during the entire meeting, was unable to fully explain the Learning Strategies resource class. Additionally, there was not sufficient time for the team to fully discuss the individual transition plan.

Except for expressing their objections to the offer of placement at the IEP meeting, Parents and their representative at the meeting did not express objections to other aspects of the IEP at the meeting, such as the present levels of performance, the goals, the services, the level of services, and the accommodations. At hearing, Ms. Waldinger expressed that Student's IEP would have been appropriate for him at Bridges, but not in a public or nonpublic school, and Dr. Chidekel also emphasized that Student's placement should be at Bridges. At hearing, Dr. Chidekel and Ms. Pirbhai criticized the amount of counseling services offered in the IEP. However, there was no evidence from Student as to what level of counseling services, or what level of any other service, would have been appropriate.

By letter dated September 20, 2018, Ms. Glen denied Student's requests for reimbursement for tuition, fees, at related expenses in connection with Student's enrollment at Bridges, on the grounds that the September 11, 2018 IEP had offered a FAPE in the least restrictive environment. She also denied reimbursement for Dr. Chidekel's assessment, on the grounds that Dr. Chidekel's assessment was conducted before Hart Union had the time to complete its own assessment.

Student did not demonstrate that Hart Union failed to consider the family's input and recommendations in developing the September 11, 2018 IEP. The IEP team meeting was attended by Parents, their advocate, their neuropsychological expert Dr. Chidekel, and Student's therapist. Parents' concerns regarding Student's

social-emotional functioning, stress, and anxiety as they pertained to school were noted in the IEP document. Dr. Chidekel presented her assessment report to the IEP team for approximately an hour. The present levels of performance in the IEP incorporated information derived from Dr. Chidekel's report, including her diagnoses.

Ms. Duzdabanyan's assessment report, which was also presented at the IEP team meeting, referred to Dr. Chidekel's findings. Her report and Dr. Chidekel's report reflected many similar assessment results. The IEP team accepted Parents' suggestion that Student's primary and secondary eligibility categories not include emotional disturbance, even though Student's social-emotional state was largely responsible for the struggles he had at West Ranch during the 2017-2018 school year, and a cause for his bilateral leg weakness. Parents and their advocate were permitted to raise objections and express their disagreement with the IEP offer at the meeting, and request revisions. There was no evidence that Parents, their advocate, Dr. Chidekel, or Student's therapist were prohibited from speaking at the meeting.

Parents must be given an opportunity to discuss the proposed IEP at the meeting, and have their concerns considered by the IEP team. They must be given the opportunity to express their disagreement regarding the IEP team's conclusion, and request revisions in the IEP. That happened here. According to *N.L. v. Knox County Schools, supra*, 315 F. 3d 688, at 693, and *Fuhrman v. East Hanover Bd. Of Educ., supra*, 993 F. 2d 1031, 1036, Parents meaningfully participated in the IEP process.

Parents, their advocate, and Dr. Chidekel preferred that Student be placed at Bridges. The law is clear, however, that the IEP team is not obligated to make an offer in accordance with Parents' preferences, or to agree with the findings of their assessor, Dr. Chidekel.

Hart Union appropriately considered the family's input, recommendations and concerns for Student's education in developing the September 11, 2018 IEP. Hart Union did not substantially interfere with Parents' ability to meaningfully participate in the development of Student's educational program. Hart Union did not deprive Student of a FAPE on this ground.

## ISSUE 2B: FAILING TO CONSIDER RELEVANT ASSESSMENT DATA TO MEET STUDENT'S ACADEMIC, DEVELOPMENTAL, AND FUNCTIONAL NEEDS

Student contends that the September 11, 2018 IEP team did not follow the recommendation in Dr. Chidekel's assessment report that Student required a small school campus which would allow Student to feel less stressed and able to navigate his surroundings.

Hart Union contends that the IEP team considered Dr. Chidekel's report, and specifically considered Student's assessment data when developing the IEP.

If a parent obtains an independent assessment at public expense, or shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of a FAPE. (34 C.F.R. § 300.502(c) (2006); Ed. Code §§ 56341, subd. (b)(1) and 56381, subd. (b).) The duty to consider the evaluation does not obligate the school district to accept the evaluation or its recommendations, or discuss the report at the IEP team meeting. (*Westmoreland, supra*, 930 F.2d. 942, 947). A district's failure to consider an independent assessment is a procedural violation. (*Marc M. ex rel. Aidan M. v. Dept. of Ed.* (D. Hawaii 2011) 762 F. Supp 1235, 1245.)

In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a) (2006).)

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 Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) As the court noted in *Andrew F., supra*, 137 S.Ct. at p. 999, crafting an IEP requires a prospective judgment, and judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether it is regarded as ideal.

The evidence demonstrated that, at the September 11, 2018 IEP team meeting, Hart Union considered all assessment data in determining Student's academic, developmental and functional needs. Dr. Chidekel and Ms. Duzdabanyan both appeared at the IEP team meeting, and presented their respective reports to the team over the course of approximately two hours. Ms. Duzdabanyan's report and Dr. Chidekel's report were similar in a variety of ways, but there were differences in their approaches to the assessment. Unlike Dr. Chidekel, Ms. Duzdabanyan's report is required to comply with IDEA standards, and she therefore does not provide diagnoses such as those in the Diagnostic Manual. Furthermore, unlike Dr. Chidekel, Ms. Duzdabanyan's goal is to determine whether Student is eligible for special education placement and services under IDEA and Education Code criteria. These criteria do not bind Dr. Chidekel, whose assessment was undertaken, at least in part, as part of Student's endeavor to be accepted by Bridges, a private school not certified by

the State of California. Student's desire to attend Bridges, or similar education environment, was a factor which did not, and could not, influence Ms. Duzdabanyan's assessment. Similarly, the IEP team, in considering assessment reports and determining eligibility and placement, is bound by IDEA and Education Code requirements and policies.

The IEP team must keep these matters in mind when considering assessment reports, but this does not mean that they did not consider Dr. Chidekel's assessment report. Indeed, Ms. Duzdabanyan's assessment report itself summarized Dr. Chidekel's assessment report and findings. The IEP team specifically included Dr. Chidekel's diagnoses in the IEP. Furthermore, services were included in the IEP to address concerns raised by Parents and Student in both Dr. Chidekel's assessment report and Ms. Duzdabanyan's assessment report regarding Student's stress and anxiety about being on a large campus. The Learning Strategies class would have provided a safe space for Student to access when he felt stressed and anxious before, during, or after school. The class would have assisted Student in developing skills to navigate about the campus, and was a resource by which Student could learn to make a large campus smaller. The Learning Strategies personnel would also have provided emotional support when Student was stressed and anxious. The offer of school-based counseling services was also based upon both Ms. Duzdabanyan's and Ms. Chidekel's assessments and their concerns about Student's social-emotional status.

The accommodations developed in the IEP also were designed, in part, to alleviate Student's reported stress and anxiety, such as by providing prior notice of tests, alternative settings for tests, extra time for tests, posting of routines and assignments, giving reminders, and providing lecture notes and outlines.

The law does not require Hart Union to accept the recommendations of an independent assessor's report. Hart Union is only required to consider the report, which it did. The September 11, 2018 IEP team considered and addressed many of Dr. Chidekel's concerns. The team considered relevant data in designing a program of special education and related services to address Student's academic, developmental, and functional needs, in a manner consistent with the IDEA and the Education Code. Hart Union did not violate the procedures of the IDEA or the Education Code, or deprive Student of a FAPE, on this ground.

## ISSUE 2C: FAILING TO INCLUDE AN ACCURATE STATEMENT OF STUDENT'S PRESENT LEVELS OF PERFORMANCE

Student contends that Hart Union did not have an accurate grasp of Student's present levels of performance, because the IEP team emphasized Student strengths and downplayed his emotional issues. Student contends that, had his present levels of performance been accurately described, Hart Union would have listed Student's secondary eligibility as emotional disturbance, and would have realized that its offer could not meet his needs. Hart Union contends that the IEP included accurate present levels of performance.

The IEP team discussed the assessment reports of both Dr. Chidekel and Ms. Duzdabanyan. The team considered the reports of Student's classroom teachers at West Ranch, and considered the nurse's report. The team listened to and documented Parents' concerns with Student's academic and social-emotional functioning.

The IEP contained more than two pages that described Student's present levels of performance. Student did not demonstrate that the levels reported in the September 11, 2018 IEP were inaccurate or incomplete. At the meeting, Mother, her

advocate, Dr. Chidekel, and Ms. Pirbhai did not object to the present levels of performance, goals, or services. At hearing, Mother affirmed that the present levels of performance were accurate.

Student's contention that the IEP's failure to designate emotional disturbance as a secondary eligibility for Student is evidence that the present levels of performance were not accurate is particularly unpersuasive. The evidence was uncontradicted that Parents, their advocate Ms. Waldinger, their expert Dr. Chidekel, and Student's therapist Ms. Pirbhai did not believe it was appropriate for the IEP to list Student's eligibility as emotional disturbance, despite Hart Union recommending that emotional disturbance be listed as a secondary qualifying eligibility category. Student and his representatives on the team believed that Student's disabilities that qualified him as eligible in the categories of other health impairment and specific learning disability were primarily impacting Student at the time of the IEP team meeting. Hart Union acquiesced, and listed Student's primary eligibility as other health impaired and his secondary eligibility as specific learning disability.

Student cannot now credibly complain that, by agreeing with the stated position of Parents, their experts, and their advocate with respect to the impact of Student's disabilities on the designation of Students eligibility, Hart Union somehow inaccurately described Student's present levels of performance and deprived Student of a FAPE. Taking Student's current position that Hart Union, not Student's team members, were correct and Hart Union should have maintained emotional disturbance as a qualifying category would require discounting much of the information from Student's team. In other words, Student's contention that Hart Union should have listed emotional disturbance as an eligibility category is an admission that Student made an error in analyzing the assessment information.

In any event, the “IDEA does not concern itself with labels, but with whether a student is receiving a [FAPE],” and a classification error is harmless if the student is otherwise provided with a FAPE. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2014) 758 F.3d 1162, 1173.) Here, the September 11, 2018 IEP addressed Student’s emotional needs in several ways. Student’s social-emotional status was documented in the present levels of performance section of the IEP. The IEP provided a goal for Student to learn and increase his use of coping strategies to manage his academic and social-emotional stressors. The IEP services included counseling and the Learning Strategies class to help Student learn and use coping strategies. Some of the accommodations in the IEP, such as prior notice of tests, extra time for tests, alternative setting for tests, giving lecture notes and outlines, and posting of routines and assignments, were directed at assisting Student to manage his stress and anxiety. Based on their experience at West Ranch, their knowledge of the Learning Strategies class, and their knowledge of Student, obtained through assessment and teacher reports, Ms. Westall and Ms. Duzdabanyan persuasively testified that these services and supports appropriately addressed Student’s social-emotional needs.

Student did not demonstrate that the present levels of performance in the IEP were inaccurate. Hart Union did not deprive Student of a FAPE on this ground.

## ISSUE 2D: FAILING TO STATE THE FREQUENCY, DURATION, AND TYPE OF STUDENT’S RELATED SERVICES IN THE IEP

Student contends that the IEP team’s offer is not clear, particularly with respect to the 50 minutes of specialized academic instruction served daily.



Hart Union contends that the description of the specialized academic instruction and counseling and guidance services in the IEP have clear start and end dates, specific defined durations and frequency, and they include the location and method of service. Parents, their advocate, and their experts at the IEP team meeting did not raise any questions about the meaning of the offer of services at any time during the IEP team meeting.

The contents of the IEP are mandated by the IDEA. The IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and non-academic activities; and a statement of the program modifications or supports for school personnel that will be provided. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320 (2006); Ed. Code, § 56345, subd. (a)(7).) The IEP must also include an assortment of information, including a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals designed to meet the child's needs that result from his disability to enable the child to be involved in and make progress in the general education curriculum, and, when appropriate, benchmarks or short-term objectives, that are based upon the child's present levels of academic achievement and functional performance, a description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports of the child's progress will be issued to the parent. (20 USC § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320 (2006).) An IEP must contain the projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of those services and modifications. (20 U.S.C. § 1414(d)(1)(A)(VII); Ed. Code, § 56345, subd. (a)(7).) Additionally, an offer of services in

the IEP must be clear so as to avoid factual disputes. (*J.L. v. Mercer Island Sch. Dist.* (9th Cir. 2010) 522 F.3d 938, 952-953.)

No information need be included in an IEP beyond what is statutorily required, and the IEP team need not include information under one part of the IEP that is already contained in another part of the IEP. (20 U.S.C. § 1414 (d)(1)(A)(ii).)

The September 11, 2018 IEP offered three types of services. First, it offered specialized academic instruction, also referred to in the IEP as the Resource Program, or Learning Strategies Resource, and specified the date for the beginning of services, and the anticipated frequency, location, and duration of those services. The services were to be delivered on a group basis in a separate classroom on campus. Student contends that the nature of these services were not clear from a reading of the services page on the IEP, asserting Ms. O'Dwyer, one of Student's West Ranch classroom teachers during the 2017-2018 school year, did not understand the services. It is hardly meaningful that a general education teacher of Student from the previous school year, who was not providing the services on the IEP services pages, who had not attended the IEP meeting, and who was unfamiliar with the IEP, could not explain a particular special education service being offered.

Parents, on the other hand, were present at the IEP meeting, along with their advocate, Student's therapist, and their neuropsychological expert. At the IEP team meeting, Ms. Glen explained that the specialized academic instruction was the Learning Strategies class in the Resource Program. The Resource Program is referred to twice in the Notes section of the IEP. Ms. Westall, a Learning Strategies class teacher gave a general explanation of the class. Ms. Westall has been a credentialed special education teacher since approximately 1998, and holds a resource specialist certificate. She has

been a teacher at Hart Union for 28 years, and a special education teacher for approximately 20 years.

However, Parent and her representatives left the meeting without allowing time for Ms. Westall to describe the class further, and for the IEP team to discuss the class. The Resource Learning Strategies program is named and defined as special education in the portion of the IEP that designates the percentage of time that Student would be in special education each day. Therefore, although the services only have to be described once, in this IEP they were referred to on the services page, in the Notes, and in yet a third section of the IEP, the educational settings page. Finally, during her testimony at hearing, Ms. Waldinger, Student's advocate, referred to the specialized academic instruction in the IEP as the "Learning Lab," thus demonstrating her awareness that the Learning Strategies class was the specialized program offered.

Parents and their advisors had the opportunity during the meeting to ask questions regarding the Resource Program and the Learning Strategies class. They did not. Ms. Westall attended the meeting prepared to explain in detail how the offered specialized academic instruction, that is, the Learning Strategies class, would be implemented. However, because Mother became emotional at the end of the meeting, the meeting was quickly terminated before Ms. Westall was able to do so.

Second, the IEP offered school-based counseling services, and, as with the specialized academic instruction services, stated the date for the beginning of services, and the anticipated frequency, location, and duration of those services. Specifically, the IEP stated the counseling services would begin on September 11, 2017, and end on September 11, 2018. The services would be delivered in a separate classroom, for 30 minutes, two times a month, totaling 60 minutes monthly. The services were to be delivered on an individual basis, in a separate classroom on campus.

Third, the IEP offered two types of transition services. The first transition service was described on the services page as vocational assessment, counseling, guidance, and career assessment. The IEP specified that the services would begin on September 11, 2017, and end on September 11, 2018. The IEP specified that the services would be delivered in a separate classroom, on an individual basis. The IEP also specified the duration of the services as "20 minutes served Any other frequency or as needed." The Notes section of the IEP explains that parents understood that the transition assessments would be administered annually. Further, Ms. Westall explained at hearing that the vocational transition assessment would encompass at least 20 minutes, such that the services were offered for at least 20 minutes annually. However, additional discussions about vocational matters would likely take place during the year, and therefore the IEP provided for additional time, as needed.

The second transition service was described as college awareness. As with the vocational services, the IEP specified September 11, 2018, as the date for the beginning of the service, and September 11, 2019, as the date for the end of the service. As with the vocational services, the college awareness services were offered for "20 min. served Any other frequency or as needed." The services would be delivered in a separate classroom at school. Again, the Notes page of the IEP describes that Parents understood that the transition assessments would be administered annually. Ms. Westall explained at hearing that the college transition assessment, like the vocational transition assessment, would be administered annually and would encompass at least 20 minutes. However, activities pertaining to college awareness services, as set forth in the transition plan, would occur at various times throughout the year, including during the Learning Strategies class. Therefore, the IEP provided for additional time, as needed.

The IEP also described the college awareness services as being offered on an individual and/or group basis. In certain instances, such as for speech and language services, a failure to specify whether the services are offered on an individual or group services can be a procedural violation of the IDEA. (*S. H. v. Mount Diablo Unified School Dist.* (N.D. Cal. 2017) 263 F.Supp. 3d 746, 764-765.) However, some of the college awareness services transition activities may legitimately occur on an individual basis, as Student researched colleges on a computer, or discussed particular colleges one-on-one with a teacher or counselor. They may also legitimately occur on a group basis, during a class discussion of how to apply for college, for example.

The transition services were sufficiently specific to meet the IDEA's procedural requirements because each of these transition services contained a basic offer of 20 minutes served. (*Jack P. v. Auburn Union Elementary Sch. Dist.*, (E.D. Cal. Aug. 23, 2005, No. S-04-896 LKK/PAN) 2005 WL 2042269, \*20.) At hearing, Ms. Waldinger testified to her understanding that each of these transition services were provided for 20 minutes annually. Moreover, the college awareness services were the type of services that could provide benefit whether provided on an individual or a group basis. If Parents, their advocate, or anybody else at the meeting had any questions about these services, they could have asked for clarification at the meeting, but did not.

The offer of services in the IEP contained all legally required content. Student has failed to establish any procedural violation of the IDEA and the Education Code with respect to the offer of services in the IEP. Hart Union did not deprive Student of a FAPE on this ground.

ISSUE 3: DID THE SEPTEMBER 11, 2018 IEP FAIL TO OFFER STUDENT A FAPE IN THE LRE BY FAILING TO OFFER STUDENT:

- a. a small highly structured classroom with intensive staff support;
- b. a modified curriculum;
- c. instructional accommodations, specifically modeling of tasks, modeling of appropriate behaviors, consistent routines, and redirection and prompting;  
and
- d. a consistently implemented sensory diet, and sensory breaks, when Student was frustrated with a task or overstimulated?

Student contends that, in general, as a twice-exceptional Student, West Ranch could not meet his needs. Rather, he contends Bridges Academy was an appropriate placement. Student was successful in the smaller environment of Bridges. Student contends he also required a modified curriculum, instructional accommodations of modeling of tasks, modeling of appropriate behaviors, consistent routines, and prompting. Student's closing brief does not mention his need for a sensory diet and sensory breaks. That issue was withdrawn at the prehearing conference at Student's request, but then included at hearing at Student's request. Therefore, it is discussed in this Decision.

Hart Union contends that Student offered no evidence that placement at Bridges was the least restrictive environment, or that Student required a modified curriculum, or that Student required accommodations other than those offered in his IEP to receive a FAPE.

To determine whether the school district offered a FAPE, the focus must on the adequacy of the district's proposed program. (*Gregory K., supra*, 811 F.2d 1307, 1314.)

Both federal and state law require Hart Union to provide Student special education in the least restrictive environment appropriate to meet his needs. (20 U.S.C. § 1412 (a)(5); 34 C.F.R. § 300.114(a)(2)(i) (2006); Ed. Code, § 56040.1.) This means that Hart Union must educate a special needs pupil with nondisabled peers “to the maximum extent appropriate,” and the pupil may be removed from the general education environment only when the nature or severity of the student’s disabilities is such that education in general classes with the use of supplementary aids and services “cannot be achieved satisfactorily.” (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii) (2006); Ed. Code, § 56040.1.)

As a corollary to the requirement that a school district determine the least restrictive environment, the school district must make available a continuum of placement options. (34 C.F.R. 300.115 (2006).) In California, this includes regular education programs, resource specialist programs, related services, special classes, and nonpublic, nonsectarian school services, as well as others not at issue here. (Ed. Code, § 56361.) The continuum of placement options is to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment appropriate for them. (71 Fed.Reg. 46,586-46,587 (Aug. 14, 2006).)

The Ninth Circuit Court of Appeals, in *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, set forth the standards by which the least restrictive environment must be determined. The court adopted a balancing test that required the consideration of four factors:

1. the educational benefits of placement full time in a regular class;
  2. the non-academic benefits of such placement;
  3. the effect the student would have on the teacher and children in the regular class;
- and

4. the costs of mainstreaming the student. (*Id.* At p. 1403.)

In *Letter to Anonymous*, 55 IDELR 172, (January 13, 2010), the Office of Special Education Programs cogently explained the contours of a school district's obligation to twice-exceptional students, stating:

The IDEA is silent regarding 'twice exceptional' or 'gifted' students. It remains the Department's position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations. Under 34 C.F.R. §300.8, a child must meet a two-prong test to be considered an eligible child with a disability: (1) have one of the specified impairments (disabilities); and (2) because of the impairment, need special education and related services. For example, a child with high cognition and ADHD could be considered to have an 'other health impairment,' and could need special education and related services to address the lack of organizational skills, homework completion and classroom behavior, if appropriate.

## BRIDGES ACADEMY

No representative of Bridges Academy testified at hearing. The high school at Bridges is located on one floor of its building. Classes were small. Bridges specialized in teaching students who, like Student, were twice-exceptional. Bridges was generally described as a school that focused on students' strengths, and offered a dual-differentiated education which took into account the asynchronicities that characterized twice-exceptional students. Not all of its teachers were credentialed. Two of its teachers were described as "educational specialists," but there was no specific



evidence that these teachers, or any Bridges teachers, were credentialed special education teachers. There was no evidence that Student received any specialized academic instruction, or counseling services there, or any of the services set forth in his IEP. There was no evidence as to how the classrooms were organized, how teachers conducted their classes, any details of the curriculum, and what the grading rubrics were. There was no evidence that Student received dual-differentiated instruction. There was no specific evidence as to whether any of Student's needs, as determined by the IEP team, or even as determined by Dr. Chidekel, such as Student's difficulties shifting, were systematically addressed there. There was no specific evidence that Bridges offered any counseling, accommodations, or other individualized supports to Student to address Student's emotional needs, which is significant in view of Student's contention at hearing that he qualified for special education under the category of emotional disturbance.

Dr. Chidekel, Ms. Waldinger, and Ms. Duzdabanyan each observed Bridges on separate occasions. During Dr. Chidekel's and Ms. Duzdabanyan's observations at Bridges, a dog was roaming around the classroom. Dr. Chidekel saw that one student was monopolizing most of the teacher's time and attention, which Dr. Chidekel found distracting and even annoying. The students were working on a common project, but each one was doing something on their own. Dr. Chidekel, Ms. Duzdabanyan, and Ms. Waldinger, during their separate observations, all observed Student working alone on his computer, and other students were working alone on their computers. Ms. Waldinger noted that some children were sitting at their desks, and some students were sitting on their desks. Ms. Duzdabanyan noted materials piled up in the corners and situated randomly around the classroom. The classes were small, and Mother and Student contended Student was doing well in them, but there was no evidence of any structure. Dr. Chidekel referred to the classroom as "flexible."

Student liked Bridges. He had friends there, and was not anxious about missing work when he had to leave school. Student believed the teachers were more helpful there. Student liked that it was an easier place to navigate, that he did not have to walk far between classes, and that there were fewer oral presentations and more written work. He felt less anxious and stressed. He found it easier to make friends there, and the students were more accepting.

Parents preferred to keep Student at Bridges, which they believed was the best placement for him, and a placement that Student liked. They wanted the September 11, 2018 IEP team to offer to place Student there. Parents' and Student's preferences, however, do not determine whether placement at West Ranch with related services offered a FAPE in the least restrictive environment. Moreover, whether Bridges offered a better program for Student than West Ranch is not relevant. Rather, the focus must be on Hart Union's offer as it pertained to West Ranch. That West Ranch might not be a perfect placement for Student in Parents' opinion, or anybody else's opinion, does not govern whether West Ranch, which was located in Student's home school district, was an appropriate placement, and whether Student's IEP was reasonably calculated to provide Student a FAPE.

Hart Union's offer of placement in a general education environment at Hart Union with the Learning Strategies resource class and counseling did not deprive Student of a FAPE in the least restrictive environment. As Letter to Anonymous, *supra*, explains, twice-exceptional students, such as Student, are not eligible under the IDEA for special education placement and services because of their status as gifted, or because of their status as twice-exceptional, because these are not eligibility categories under the IDEA. Nor are they eligibility categories under California law, which echoes the IDEA's eligibility categories. (Cal. Code Regs., tit. 5, § 3030.) Rather, a gifted or

twice-exceptional student in California is eligible for, and entitled to receive, special education placement and services only because the student has a disability that comports with the eligibility categories in the IDEA and California law, and, due to that disability, the disability causes the student to require special education and related services. Therefore, Student's needs as a student eligible for special education as a student with other health impairment, a specific learning disability, and emotional disturbance are the focus of the special education and services Hart Union must provide to Student. Significantly, Student cites no legal authority to the contrary. Dr. Chidekel's opinion that Student has special needs because he is gifted, and special needs because he is a twice-exceptional student, is not grounded in the IDEA or the Education Code. Rather, because of Student's disabilities that qualify him for the eligibility categories of other health impairment, specific learning disability, and emotional disturbance pursuant to the IDEA and the Education Code, Student needs special education and related services to access his education.

Student's IEP was, pursuant to the law, developed based upon these considerations. Hart Union is only legally required to offer special education and related services that comport with Student's IEP and are reasonably calculated to provide Student with a meaningful educational benefit in the least restrictive environment. (Gregory K., *supra*, 811 F.2d 1307, 1314.)

Student was not comfortable with the size of the West Ranch campus or the size of his classes, and that sometimes he was required to work in groups. The September 11, 2018 IEP was reasonably calculated to address his stress and anxiety regarding West Ranch, as well as his other needs, by, among other things, including services such as counseling and the Learning Strategies class, and goals and accommodations, all to help him learn strategies to manage his discomfort, as well as to

assist him in developing organizational skills, to help his attention issues, and to help him better understand teacher directions.

With respect to the requirement that Student be educated in the least restrictive environment, the evidence showed that Student was successful academically when he attended West Ranch. He had good grades, and was advancing from grade to grade, and had positive relationships with peers and teachers. Student was not disruptive. The cost of his placement in general education was not at issue at hearing. Therefore, the IEP team reasonably determined that placement at West Ranch, a general education campus, with the services, goals, and accommodations in his IEP, was the least restrictive environment for Student. The IDEA prohibits his placement in a more restrictive environment, such as Bridges, as Student does not require a more restrictive environment to receive a FAPE.

Student relies on Dr. Chidekel's assessment and opinions regarding Student's educational needs, and faults Hart Union for not offering a placement and services that conformed with Dr. Chidekel's recommendations. However, Dr. Chidekel's assessment and opinions were not wholly persuasive, for several reasons. First, her recommendations were grounded in her opinions that Student is a special needs student because he is a gifted student and a twice-exceptional student. As such, she believed he should be in a school such as Bridges with few or no typical peers and with a number of students who are dual-exceptional. Dr. Chidekel's opinions do not comport with either the eligibility requirements of the IDEA and the Education Code, or the doctrine of the least restrictive environment, and neither do her recommendations.

Second, Dr. Chidekel's assessment of Student did not include a school observation of Student, a review of any of Student's educational records, a review of any of Student's medical records, a review of any other records pertaining to Student, or any information from any of Student's teachers. Her assessment was based solely on the tests she performed, and her conversations or interviews with Parents and Student. In contrast, Ms. Duzdabanyan had observed Student in class, reviewed his educational records, and reviewed reports and other information from Student's teachers. Her opinion, and that of the Hart Union personnel at the IEP team meeting, that West Ranch was an appropriate placement for Student was supported by information from those who had observed Student in an educational environment, and who knew the educational environment West Ranch could provide.

Third, Dr. Chidekel's assessment was conducted as part of Student's application to Bridges for admission. Unlike Ms. Duzdabanyan's assessment, Dr. Chidekel's assessment was not undertaken to determine what would constitute a free appropriate public education for Student in the least restrictive environment. Dr. Chidekel's assessment and recommendations do not refer to, and are not based upon, these concepts.

These deficits in Dr. Chidekel's assessment report and opinions extend to some of her recommendations, but her recommendations have other defects as well. For example, Student contends that the IEP of September 11, 2018 is deficient because it failed to offer Student a small, highly structured classroom with intensive staff support. However, the evidence did not reflect that Student was in a highly structured classroom at Bridges. A dog roamed around the classroom, which Dr. Chidekel described as "flexible." In another classroom, some children were sitting at their desks, and some students were sitting on their desks. Materials were piled up in the corners and situated

randomly around a classroom. The classes were small, and Student contended he was doing well in them, but there was no evidence of any structure. In contrast, the Learning Strategies classroom offered not only specialized academic instruction, but, with its six to 12 students, a credentialed resource specialist, and adult aides, would likely have provided just as small of a class, and more structure and intensive staff support than Student's classroom at Bridges.

Student also contends that he required a modified curriculum. There was evidence that Student required classroom accommodations, which were provided in his 504 Plan and which were offered in his September 11, 2018 IEP. However, there was no testimony from any witness, including Dr. Chidekel, or any other evidence, that Student required a modified curriculum. To the contrary, all of Student's classroom teachers from West Ranch asserted that he did not require any curriculum modifications. Student's average to above-average grades at West Ranch, average to high average scores in standardized measures of academic achievement, and statewide test results meeting or exceeding grade level standards, also did not reflect that Student needed any curriculum modifications, just the accommodations provided to Student in the 504 Plan and IEP offer. Student contends that his need for curriculum modifications was demonstrated by Ms. Reyes's offer that he need not do a particular oral presentation in front of the whole class, but just to her. The evidence showed this was a one-time offer, and Student did not even accept it. Instead, he successfully presented in front of the entire class.

Another time, when Student's English class was studying *The Tempest*, Ms. O'Dwyer gave Student, at his request, an alternate assignment because he did not want to do a particular drawing. Ms. O'Dwyer commented that *The Tempest* had a tendency to make her students uncomfortable.

Neither of these rare events demonstrated that Student required a modified curriculum.

Student contends that the September 11, 2018 IEP deprived Student of a FAPE, because it failed to offer Student the accommodations of modeling of tasks, modeling of appropriate behaviors, consistent routines, redirection, and prompting.

Student's contention is not meritorious. The accommodations in Student's September 11, 2018 IEP, included various forms of providing consistent routines, redirections, and prompting, such as prior notice of tests, posting of routines, posting of assignments, provide lecture notes/outline as needed; repeat instructions, oral reminders, and visual reinforcement. Student did not demonstrate that these accommodations were not sufficient to meet Student's needs. Parents and their representatives at the IEP team meeting did not criticize or questions these accommodations at the meeting. Indeed, these accommodations are similar to several of the accommodations Dr. Chidekel recommended with respect to prompting, redirection, and routines.

The IEP did not specify modeling of tasks and modeling of appropriate behaviors, which were included in Dr. Chidekel's recommendations. However, Student did not demonstrate that he required these to receive a FAPE. First, there was no evidence that Student had any behavior issues. Second, Student's classroom teachers during the 2017-2018 school year at West Ranch denied at hearing that he required modeling of tasks and modeling of appropriate behaviors. Third, in response to Mother's May 31, 2018 letter, Student's teachers at West Ranch independently wrote to Mother that Student was well-behaved and they enjoyed having him in their class. Fourth, there was no evidence that any staff at Bridges modeled tasks or modeled appropriate behaviors, yet Student contends he is performing well at Bridges. This casts additional

doubt on the notion that Student needed behaviors modeled for him to access the curriculum. Student did not meet his burden of demonstrating that Hart Union denied Student a FAPE on this ground.

Student contends that he required a sensory diet and sensory breaks when he was frustrated with a task or overstimulated. There was no evidence that Student required a sensory diet. Student's expert, Dr. Chidekel, did not include such an item in her recommendations. There was also minimal evidence that Student had sensory issues that affected his education, such that he required sensory breaks when he was frustrated or overstimulated. There was no evidence that Student's occasional skin-picking was a sensory issue. Indeed, there was no specific evidence as to why Student engaged in this behavior. Ms. Duzdabanyan considered it normal adolescent behavior.

Rather, the evidence showed that, during the January 2018 504 Plan meeting, Student requested and received a stress pass that Student could use to leave class when he was stressed or anxious. He used the stress pass one time. Similarly, Dr. Chidekel recommended that Student be permitted to leave class when he was stressed. She also recommended that a place should be designated at school where he felt safe to which he could retreat, and preferential seating. These accommodations viewed broadly, could arguably be considered a means to address sensory issues. The accommodations in the September 11, 2018 IEP would similarly address any sensory issues, if viewed broadly. Testing accommodations for statewide and school district assessments were flexible seating and flexible scheduling. The classroom accommodation of alternative settings for tests, would provide a quiet test area. The classroom accommodation of extra time for tests would allow Student time to self-regulate. The classroom accommodations of preferential seating away from visual or auditory distractions, and a



multi-sensory approach to instruction, also could address sensory issues. Furthermore, the Learning Strategies class offered a safe place for Student to go on campus if he were stressed or anxious for any reason. The evidence reflected that the September 11, 2018 IEP addressed any sensory issues Student may have had.

Student did not demonstrate that the placement, services, and accommodations in the September 11, 2018 IEP were not reasonably calculated to provide him meaningful educational benefit so as to enable him to make appropriate progress in light of his circumstances. Student did not demonstrate that Student required an environment largely devoid of typical peers to obtain a meaningful educational benefit. Student did not meet his burden of demonstrating that Student's IEP of September 11, 2018, failed to offer Student a FAPE in the least restrictive environment.

## ORDER

All of Student's requests for relief are denied.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Hart Union prevailed on all issues heard and decided.

## RIGHT TO APPEAL THIS DECISION

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

*/s/*

Elsa H. Jones

Administrative Law Judge

Office of Administrative Hearings