

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021040043

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

DECISION

JULY 23, 2021

On April 1, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Bellflower Unified School District, as respondent. Administrative Law Judge Penelope Pahl heard this matter by videoconference on May 25 through 28, and June 1 through 4, 7, and 9, 2021.

Attorneys Alexis Casillas and Steve Catron represented Student. Parent attended all hearing days on Student's behalf. Student did not attend the hearing. Attorneys

Richard Brady and Marcia Brady represented Bellflower Unified School District. Matthew Adair, Bellflower's Special Education Program Administrator, attended all hearing days on Bellflower's behalf.

The matter was continued to July 12, 2021 for written closing briefs. Briefs were timely received, the record was closed, and the matter was submitted on July 12, 2021.

ISSUES

On the first day of hearing, Student made an oral motion to reconsider the rulings regarding issue clarifications made by the Administrative Law Judge in the Prehearing Conference order. The hearing was recessed for the day, beginning mid-morning, and the parties were given the opportunity to put any concerns regarding the issues in writing. A motion and opposition were filed. The next morning, after discussion, the issues were further clarified as follows:

1. Beginning April 1, 2019, until April 1, 2021, did Bellflower deny Student a free appropriate public education, called a FAPE, by failing to assess him in the area of behavior?
2. Did Bellflower deny Student a FAPE by failing to conduct legally sufficient assessments, specifically:
 - a. The November 12, 2020 language and speech assessment and report;
 - b. The November 16, 2020 psychoeducational assessment and report;
 - c. The November 16, 2020 transition assessment and report?
3. From April 1, 2019, through April 1, 2021, did Bellflower deny Student a FAPE by failing to offer appropriate placement and services to enable

Student to make meaningful educational progress in the areas of academics, behavior, communication, and social skills?

4. From March 16, 2020, through April 1, 2021, did Bellflower deny Student a FAPE by failing to implement his operative individualized education programs, called IEPs, specifically specialized academic instruction, instructional aide services, counseling, speech and language, and transition services including college and career awareness?
5. Did Bellflower commit the following procedural violations which significantly impeded Parent participation or caused a deprivation of educational benefit, and thereby denied Student a FAPE:
 - a. Failing to provide legally compliant prior written notice in its November 16, 2020 letter;
 - b. Failing to provide Parent an assessment plan for the January 8, 2020 transition assessment;
 - c. Failing to obtain Parent permission to conduct the January 8, 2020 transition assessment; and
 - d. Failing to review the November 16, 2020 transition assessment at an IEP team meeting within 60 days of receiving Parent consent?

Student argued issues in his closing brief that were not pled in the complaint; or discussed during the prehearing conference, or when issues were clarified during the hearing. For example, Student argued Bellflower failed to provide adequate goals and predetermined IEP offers. This decision is limited to the issues pled in the complaint, as clarified in changes determined following prehearing motions at the beginning of the hearing. No other claims argued are analyzed in this decision.

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case, Student filed the case and bears the burden of

proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing Student was 17 years old, in 11th grade. He attended Mayfair Middle and High School, where he had been enrolled since the sixth grade. Student was eligible for special education under the categories of autism, specific learning disability and speech and language impairment. Student resided within Bellflower's geographic boundaries at all relevant times.

LEGAL FRAMEWORK

A free, appropriate public education, or FAPE, means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized academic instruction or SAI 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 Dist. v. Rowley (1982) 458 U.S. 176, 201-204; Endrew F. v. Douglas County School Dist. RE-1 (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

ASSESSMENTS

Student asserts that Bellflower failed to properly assess him, resulting in a lack of information regarding his disabilities and needs. Student contends that from April 1, 2019 to April 1, 2021, Bellflower failed to assess him in the area of Behavior. Student further asserts that his November 2020, triennial speech, language and communication assessment; psychoeducational assessment, also called a multidisciplinary assessment; and transition assessment; were all legally insufficient.

A student is eligible for special education and related services if an IEP team determines that the results of a legally compliant assessment demonstrate the child has a disability; and that the degree of the child's impairment requires special education and related services that cannot be provided with modification of the regular school program. (Ed. Code §§ 56026, 56320; Cal. Code Regs., tit. 5, § 3030, subd. (a).) Reassessments must be conducted at least once every three years, to evaluate Student's continued eligibility and the necessity and adequacy of special education and related services being provided to the Student unless both the parent and the school district agree that there is no need for the assessments. (20 U.S.C. § 1414 (a)(2)(B)(ii).)

ISSUE 1: DID BELLFLOWER DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION, BY FAILING TO ASSESS HIM IN THE AREA OF BEHAVIOR FROM APRIL 1, 2019, THROUGH APRIL 1, 2021?

Student asserts that Bellflower Unified School District denied him a FAPE by failing to assess him in the area of behavior from April 1, 2019 through April 1, 2021. Although Student used the broader term "behavior" in the issue statement, contentions in the complaint, as well as argument in hearing and in Student's closing brief, limited

the issue to whether Bellflower denied FAPE by failing to conduct a functional behavior assessment related to Student's prompt dependence and his failure to make friends. As such, only the alleged failure to conduct a functional behavior assessment will be addressed in this decision.

Student argues that Bellflower should have conducted a functional behavior assessment because a 2016 functional behavior assessment identified concerns about Student's lack of ability to socialize, inability to maintain attention in class, lack of understanding of what it takes to be a good learner, to participate and know how to ask for help and to interact appropriately with peers. Student asserts that, in addition to the concerns identified in the 2016 functional behavior assessment, Bellflower was on notice that Student remained prompt dependent and should have conducted a functional behavior assessment to better understand why Student didn't initiate classroom routines.

Bellflower argues that a functional behavior assessment was not warranted. Bellflower acknowledges that Student had a set of well-known behaviors. However, Bellflower contends, there were no changes that would have led anyone to suspect there was an additional behavior need that was not being addressed. Therefore, there was no need to reassess in the area of behavior. Student contends that Student being the subject of an attack in the bathroom and making inappropriate comments to an aide in February of 2020, resulting in her quitting, were changes that should have prompted a functional behavior assessment.

To meet the continuing duty to develop and maintain an appropriate IEP, the school district must assess or reassess the educational needs of the disabled child. (Id. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) The school district must conduct a

reassessment of the special education student not more than once a year, but at least once every three years. 20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381(a)(2).) Reevaluation is required if requested by Parent, or a teacher. The district must also conduct a reassessment if the district “determines that the educational or related service needs, including improved academic achievement and functional performance of the child warrant a reevaluation.” (R.A. v. West Contra Costa Unified School District (N.D. Cal., Aug. 17, 2015, No. 14-CV-0931-PJH) 2015 WL 4914795, at *2, aff’d sub nom., R.A. by and through Habash v. West Contra Costa Unified School District (9th Cir. 2017) 696 Fed. Appx. 171, citing, 20 U.S.C. § 1414(a)(2)(A); see also Ed. Code, § 56381(a).)

The IDEA also requires that where a child's behavior “impedes the child's learning or that of others,” the IEP team must “consider the use of positive behavior interventions and supports, and other strategies, to address that behavior.” (20 USC 1414(d)(3)(B)(i).) California law requires that children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions in accordance with the IDEA. (Ed. Code, § 56520 (b)(1).) These behavior intervention plans are often preceded by a functional behavior assessment.

Student failed to establish that Student’s behaviors required a functional behavior assessment. No expert recommended a functional behavior assessment to evaluate Student’s prompt dependence, social skills deficits or communication skills deficits. Student presented only double hearsay evidence of an attack on Student in the bathroom in 2019. Hearsay “shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions”. (Cal. Code Regs., tit. 5, § 3082, subd. (b).) However, even if it was found that Student had been attacked, Carolyn Thompson, the Board Certified Behavior Analyst who had worked with Student for three years, credibly testified it would not have triggered the need for a functional behavior

assessment. Thompson explained that, while a functional behavior assessment might be conducted on the aggressor of an attack on another Student, it would not be conducted on the person attacked.

Neither Thompson nor Sandra Gagliardino, Bellflower's school psychologist, believed a functional behavior assessment was warranted due to a single incident of Student making an improper comment to his aide in February of 2020. They explained that the incident was a misunderstanding that stemmed from Student's lack of ability to express himself clearly and his difficulty reading body language or taking another person's perspective. They did not think a functional behavior assessment would have provided additional insight under the circumstances presented.

Student failed to prove that Bellflower denied him a FAPE by failing to conduct a functional behavior assessment in the area of behavior from April 1, 2019 to April 1, 2021.

ISSUE 2 A: DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO CONDUCT A LEGALLY COMPLAINT SPEECH AND LANGUAGE ASSESSMENT AND PREPARE A LEGALLY COMPLIANT REPORT DATED NOVEMBER 12, 2020.

Student asserts he was denied a FAPE because the November 12, 2020 speech and language assessment, and report, were legally insufficient. Student complains the assessment was given in English based on a faulty English Proficiency reclassification; that the information from the assessment was inaccurate and that the presentation of the assessment at the IEP team meeting was late. Bellflower argues that the assessment

met legal requirements and Student failed to meet his burden of proving a defect rendering the assessment legally insufficient.

Legally compliant assessments are conducted by qualified assessors who select valid, reliable assessment instruments, and other means of evaluation, that avoid discrimination on the basis of sex, race, or culture. The assessments must be administered according to the assessment producer's instructions, in a language and form most likely to yield accurate results regarding the student's academic, developmental and functional abilities. (20 U.S.C. § 1414 (b)(3)(A); Ed. Code § 56320, subd. (a) and (b)(3).) Assessors are required to use a variety of technically sound assessment tools and strategies to gather relevant information, including information provided by a parent, to assist in determining whether the child has a disability; and, if so, the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code § 56320, subd. (b).) Assessors are prohibited from relying on a single measure or assessment as the sole basis for determining whether a child is eligible for special education or the appropriate content of an eligible student's IEP. (20 U.S.C. § 1414 (b)(2)(A); Ed Code. § 56320, subd. (e).

Bellflower contracted with Speech Com, Inc. to provide Student's speech and language assessment. The assessment was conducted in November 2020, by speech language pathologist Keovmorkodh ("Kai") Kucharski, who was contracted with Speech Com. Kucharski's assessment included observations, a discussion with Parent and email communications with some of Student's teachers.

The observations, Parent interview and communications with teachers were performed by Nelli Antich, a speech language pathologist, employed by Speech Com,

who had been providing Bellflower's speech services to Student for three years. Antich observed Student in class, spoke with Parent and received email from teachers about their concerns. Antich then reported her impressions to Kucharsky for inclusion in the November 12, 2020 Speech, Language and Communication report. Antich presented the results of the Speech, Language and Communication report at the November 16, 2020 IEP team meeting.

Student failed to establish that the testing was "inherently flawed" because Student was tested only in English. Student failed to prove that Student was not proficient in English at the time of the testing or that the administration of the Speech assessments in a combination of English and Spanish did not yield accurate, reliable results. Assessments must be provided in the student's native language and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally. (Ed. Codex § 56320, subd. (a); 34 C.F.R. § 300.304 (C)(1)(ii).) Student is bilingual. He has taken classes at Mayfair High School in English since at least April 1, 2019; and participates in speech therapy sessions in English. Dr. Alberto Restori, Student's independent educational evaluator, informed the IEP team in his 2018 psychoeducational assessment that while Parents spoke Spanish to student at home, Student replied to them in English.

While conducting the testing for the speech assessment, Kucharsky took the fact that Student was a native Spanish speaker into account, noting that the testing instruments were not normed for English Language Learners. Kucharsky tested Student as an English learner. She described Student as "English dominant, Spanish (L1)" on the first page of the Comprehensive Assessment of Spoken Language, second edition protocols. She conducted the Expressive One-Word Picture Vocabulary Test and

Receptive One-Word Picture Vocabulary Test using Spanish bilingual language testing materials. All other testing was conducted in English.

Student points to his 2018 reclassification as English Proficient from 2018 as support for his assertion that the testing was faulty. Student argues that the underlying testing results for the reclassification demonstrate that he did not qualify for reclassification as "English proficient." However, the reclassification is not at issue in this case. No determination is made in this decision regarding whether Student qualified for the reclassification. Student did not prove that the testing itself failed to provide accurate results because he could not complete the assessments as administered. There was no evidence that Student did not understand the assessment instruments administered in English and that therefore scores were inaccurate. Nor did evidence establish the assessments did not reflect Student's abilities because they were administered primarily in English.

The assessment did, however, have deficiencies. The assessment was deficient because it did not follow the required testing instrument protocols. (20 U.S.C. § 1414 (b)(3)(A)(v); Ed Code, § 56320 (b)(3).) The Comprehensive Assessment of Spoken Language 2 was not administered according to the assessment producer's instructions. Those protocols limited repetitions of questions to a single repetition. Yet, Kucharski's testing observations noted that "[Student] required multiple repetitions and demonstrated prolonged responses as questions became more difficult, which resulted in lengthy testing times."

Additionally, the Comprehensive Assessment scoresheets were not marked as instructed by the manufacturer's protocols. (20 U.S.C. § 1414 (b)(3)(A)(v); Ed Code, § 56320 (b)(3).) The examiner was instructed to, "write a plus (+), minus (-) or NR (no

response) to indicate the how the individual performed on each administered item.” The purpose of this method of marking was explained in the protocols. “This allows for a visual representation of strengths and weaknesses and can aid in interpretation of the results.” Kucharski made none of the prescribed marks and did not use a standardized method of marking the score sheets. Instead, she made slashes through the numbers for some items and circled the numbers of others. Her markings were not explained anywhere on the score sheets.

Following the manufacturer’s instructions is required. (20 U.S.C. § 1414 (b)(3)(A)(v); Ed Code, § 56320 (b)(3).) In this case, it was even more important as Kucharski was not the assessor who presented the results of the testing to the IEP team and was only contracted to the district to conduct this assessment. There was no certainty that she would be available at a later date to explain the testing outcomes. Antich was required to explain the testing administered. Deviating from the required standardized marking system left the reporting assessor without adequate information to explain the testing results. Failing to follow the standardized marking procedures also left anyone who referred to the protocols for additional assessment information without a clear explanation of the testing outcomes.

Kucharski also administered test questions for the wrong age range when administering the Sentence Expression subtest of the Comprehensive Assessment. Student was 16 years old when this test was administered. Yet, Kucharski started the subtest with the questions intended to be used for a student aged 11-14. Failing to follow the protocols per the manufacturer’s instructions for the testing instrument violated the law, rendering the assessment defective. (20 U.S.C. § 1414 (b)(3)(A)(v); Ed Code, § 56320 (b)(3).)

Finally, the assessment was deficient because the observations conducted as part of the assessment were inadequate, leading to unreliable conclusions. While an observation is not required for a speech assessment, if one is going to be done and considered in reaching conclusions regarding Student's speech language, and communication capabilities, it must meet basic assessment standards of being sufficiently comprehensive and thorough to provide reliable information. (34 C.F.R. § 300.304 (c)(6); Ed Code § 56320(b)(2).) In this case, the observations were described inaccurately during hearing and in the report.

Antich observed Student in his English class during an online session from a remote location. Based on that observation, Antich concluded, Student was "highly engaged in the class, was able to answer two of three questions correctly and his verbal output was fluent and cohesive." During hearing, in response to a question regarding her observations of Student's need for prompting, Antich initially testified that Student responded to questions independently. Upon further questioning, she admitted that she could not see Student clearly during her observation and did not know whether an aide was helping him with his work or prompting him. Antich's conclusions regarding Student's communication capabilities during the class lacked credibility and were not thorough, valid or reliable, rendering the assessment and the assessment report, defective. (Ed. Code, § 56320, subd. (b)(2) and § 56327.)

Student also asserts that Student was denied FAPE because the speech report was not presented within the time required by state and federal law. Bellflower was required to present the report to the IEP team within 60 days of receipt of Parent's consent to the assessment. (20 U.S.C. § 1414 (a)(1)(C)(I); Ed. Code, § 56327.) Consent to the assessment was received on September 18, 2020. The report was not presented until December 2, 2020.

The failure to timely present the results of an assessment is a procedural violation. However, solely technical defects do not rise to the level of a denial of FAPE. (*Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 892.; 34 C.F.R. § 300.510(a)(2).) Student failed to prove any denial of educational benefit connected with the presentation of the Speech, Language and Communication report on December 2, 2020 instead of November 19, 2020. Nor did Student establish that Parent was denied a meaningful opportunity to participate in the IEP development process as a result of the extra few days' delay between the November 19, 2020 IEP and December 2, 2020, most of which was attributable to the 2020 Thanksgiving holiday. Therefore, while the late presentation of the report was a procedural violation, Student did not prove it rose to the level of a substantive denial of FAPE

The other procedural violations pertaining to this assessment, however, were not benign. Failures to conduct a reliable, accurate assessment and provide accurate, thorough, and reliable reporting of the assessment results denied Parent a meaningful opportunity to participate in the IEP development process. (*Doug C. v. Hawaii Dept. of Educ.*, (9th Cir. 2013) 720 F.3d 1038, 1043.) Without accurate assessment information Parent was unable to determine the types of services necessary or evaluate the services or placement recommended for Student. The evidence established that the Speech, Language and Communication Assessment presented at the November 16, 2020 IEP team meeting did not meet legal requirements, thus denying Student a FAPE.

ISSUE 2B: DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO CONDUCT A LEGALLY COMPLAINT PSYCHOEDUCATIONAL ASSESSMENT AND REPORT DATED NOVEMBER 16, 2020?

Student contends the November 2020 Psychoeducational assessment, included in Bellflower's November 2020 Multidisciplinary Team Report, was flawed in several ways. First, Student asserts that the assessor who conducted the assessment was not qualified to assess. Second, Student argues that the assessment instruments selected failed to assess the contribution of cognitive and behavioral factors; and failed to assess all areas of suspected disability. Third, Student contends, the assessment did not adequately assess social emotional issues. Student also argues the assessment report was confusing due to inaccurate statements regarding testing results.

Bellflower argues that Student failed to establish any defect rendering the assessment legally insufficient. Bellflower contends that its selection of the Wechsler Abbreviated Scales of Intelligence mirrored the test selection of Student's independent evaluator and the results of the testing, showed Student's "cognition was good;" and found student eligible under the correct categories. Bellflower further asserts that the assessment was fully explained at the November 19, 2020 IEP team meeting.

Bellflower conducted a triennial psychoeducational assessment of Student during the fall of 2020. The November 16, 2020 psychoeducational assessment and report did not meet legal standards. It was not thorough and contained significant errors.

A triennial assessment is intended to be a comprehensive review of Student's educational needs, present levels of academic achievement and related developmental needs. The triennial assessment reviews Student's continued need for special education

and whether any additions, modifications to his special education and related services are needed to enable him to meet his goals and to participate, as appropriate, in the general education curriculum. (20 U.S.C. 1414(c)(1)(B); Ed. Code, § 56381, subd. ((b)(2).)

Most of the psychoeducational assessment was conducted by a contract school psychologist working for Bellflower. Sandra Gagliardino, Bellflower's school psychologist, was unsure of her name but recalled it to be Zanelle Cahon or Calhoun. Gagliardino administered the Gilliam Autism Rating scales, the Adaptive Behavior Assessment System, and the Behavior Assessment System for Children, 3rd edition. All of the other testing was administered by the district school psychologist chosen by Bellflower to complete the assessment.

Student failed to establish that the school psychologist who worked with Gagliardino on the report lacked the adequate qualifications to conduct the assessment. Student presented no evidence as to the assessor's identity or qualifications.

Bellflower's testing was deficient. The testing was reviewed by Dr. Carlos Flores, Psy.D., a neuropsychologist who reviewed Student's assessment history. Dr. Flores has been a practicing neuropsychologist since 1994, having served his internship at the Columbia University Neuropsychology Institute. He has been licensed in California since 2002. Although Dr. Flores did not personally test Student, he identified concerns the testing result comparisons raised based on Student's profile. His comments were thoughtful and detailed. His testimony was given significant weight.

Dr. Flores established that several of the psychoeducational assessments conducted were insufficient. The Wechsler Abbreviated Scales of Intelligence did not adequately assess Student's needs in the areas of auditory processing or working memory. Substantial discrepancies of nearly 30 points between perceptual and verbal

reasoning subtests on the Abbreviated Wechsler test were not explored. Discrepancies between the outcomes on timed and untimed tests were not addressed. Student's well below grade level reading comprehension scores were not examined completely. Additionally, only a single test of auditory processing was performed. Dr. Flores established that such discrepancies required explanation or additional assessments.

In selecting assessment tools, the assessor must do more than choose a generally valid instrument. Tests and other assessment materials must be used for purposes for which the assessments or measures are valid and reliable. (20 U.S.C. § 1414(a)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) Assessment tools must be tailored to assess specific areas of educational need. (Ed. Code, § 56320, subd. (c).) Special attention must be given to the child's unique educational needs. (*Id.*, subd. (g).) Gagliardino was unable to explain the testing anomalies or why additional testing was not conducted when substantial discrepancies between cognitive function and academic achievement were revealed. Nor could she explain why additional testing regarding Student's reading comprehension, auditory processing or working memory were not conducted given the outlying scores and the IEP team's longstanding concerns regarding Student's educational deficits in those areas.

Dr. Flores compared the 2017 triennial psychoeducational assessment conducted by Bellflower; the 2018 psychoeducation assessment conducted by Dr. Alberto Restori, and the November 2020 Psychoeducational assessment by Bellflower. Dr. Flores also reviewed testing that was completed in April of 2021 that had not been available to the November 2020 Bellflower psychoeducational assessors. Information regarding that testing is included as it adds insight into the additional information that could have been available to Bellflower had further exploration of the open questions Dr. Flores identified, been pursued.

Dr. Flores concluded that the abbreviated Wechsler administered for the November 2020 psychoeducational assessment was insufficient, because it did not provide a thorough comparison of Student's capabilities and deficits. Student scored a 129 on his perceptual reasoning subtest and a 95 on his verbal reasoning subtest. Dr. Flores explained this 34 point difference was seen in only 1-2 percent of the general population and required further exploration that was not conducted by Bellflower. Dr. Flores also explained Student's Full Scale IQ score produced by administering the Abbreviated Wechsler was likely inaccurate because the Abbreviated Wechsler does not test working memory or processing speed.

Dr. Flores compared Student's historical reading comprehension testing from 2017 to more current testing, including the Dr. Alberto Restori's 2018 independent psychoeducational evaluation and the Stowell Center's 2021 test results. Student's reading comprehension scores from these tests, as well as the test results from the 2020 triennial testing do not align with Student's average IQ. Student received direct services in reading fluency from 2017 to 2020. However, his reading comprehension did not improve. Dr. Flores opined that the lack of progress should have warranted assessment of attention and processing disorders. Student's testing indicates he can read. His decoding skills, as shown by word attack test results and sight word efficiency scores from phonemic decoding testing in 2021, are in the average to high range. His accuracy is at approximately the 12.5 grade level. While rate and speed are at the 6th grade level, reading comprehension remains close to a third grade level. The reading comprehension score is at the 2nd percentile as measured by the Woodcock Johnson and Grey Oral Reading Test results. Gagliardino, nor any other Bellflower witness, contradicted Flores' persuasive testimony regarding the discrepancies identified.

In this case, Student's long-standing auditory processing deficits, and working memory concerns, had been known to Bellflower since at least Student's prior triennial assessments and his 2018 independent evaluation. Since that assessment, Student had made very little progress on reading comprehension goals, or goals having to do with memory and attention. His grades had dropped from A's and B's in middle school to C's and many D's in high school. This data, accompanied by the observations of Bellflower team members, confirmed Student's difficulty following class instruction and keeping track of his work assignments. Those factors established that Bellflower needed to conduct more extensive evaluation assessing those needs in its November 2020 psychoeducational assessment.

Bellflower conducted a single assessment of auditory processing by administering the Test of Auditory Processing Skills for the November 2020 psychoeducational assessment. Dr. Flores testified that the Test of Auditory Processing was a "screener." He noted that the working memory tests of the Test of Auditory Processing were not completed. He explained that conducting working memory testing which also would have been provided by the expanded Wechsler Intelligence Test for Children, as opposed to the abbreviated Wechsler, was critical to a complete understanding of Student's needs. Absent complete information about Student's auditory processing skills and deficits, the IEP team did not have reliable, research-based information on which to determine the educational services necessary to meet his needs.

Dr. Flores believed that the psychoeducational assessors should also have considered the results of the speech and language testing which showed a very large discrepancy between the Receptive One Word Picture Vocabulary Tests and the Expressive One Word Picture Vocabulary Test. Flores established that thorough testing required an analysis of the discrepancy between Student's reading comprehension

scores and his processing deficits given the 26-point difference between his receptive and expressive vocabulary scores.

Dr. Flores persuasively testified that, as Student's academic work has involved more sophisticated language, such as Student's progression through middle school to high school, Student's lack of comprehension has negatively impacted his ability to access his academic subjects. This negative impact should have been ameliorated given Student's cognitive potential. However, his reading comprehension needs have not been addressed.

Dr. Flores further established that Student's processing deficits also impacted his ability to achieve higher academic achievement scores in math. It was not that Student could not understand the concepts. He was just unable to execute them successfully on timed tests. The abbreviated Wechsler, as opposed, to the full Wechsler Intelligence Scales for Children, did not include the subtests that would have provided more detailed information about Student's processing deficits. Bellflower offered no persuasive evidence contradicting Dr. Flores's opinion that the testing conducted required a more thorough comparison or further assessment.

The Social Emotional testing conducted as part of the November 2020 psychoeducational assessment was also deficient. Dr. Flores explained that the failure to obtain teacher input rendered both the Behavior Assessment System for Children and the Gilliam Autism Rating scales incomplete. Gagliardino did not ask any of Student's teachers to complete either questionnaire, which, at hearing, she acknowledged to be an error. Gagliardino's explanation that, due to the pandemic, the teacher would not have a "full reading on how Student was doing" was not a reasonable basis for excluding teachers from providing ratings. Gagliardino assumed that none of Student's

teachers could provide valuable input. While Parent input is important, the teachers' observations and opinions regarding Student's behavior and feelings are equally important. The perceptions of both Parent and teachers were necessary to an understanding of Student's behavior and social functioning in relation to his education. Both teacher and Parent views of Student's autism presentation and impact were also necessary. Without the teacher's input, the assessments were incomplete.

Additionally, Parent's ratings of Student as "At Risk" on the Behavior Assessment ratings, indicating possibly significant problems requiring monitoring in the areas of externalizing problems, hyperactivity, aggression, withdrawal, attention, social skills and leadership were not explored beyond the gathering of these ratings. Nor were Parent's ratings of "clinically significant", which, according to the report indicate a "high degree of maladjustment" in the areas of adaptability, activities of daily living, and functional communication explored further. Dr. Flores believed Parent's ratings on the Behavior Assessment ratings required additional assessment.

Bellflower argued that its assessment found Student eligible under the correct categories. No legal support was provided for this position. Reaching a correct conclusion regarding eligibility does not overcome the testing deficits. The assessment results are used to help the IEP team design an appropriate program for student, not just to reach an eligibility determination.

Student established that Bellflower's psychoeducational evaluation was not legally compliant which constitutes a procedural violation of the IDEA. The assessments, specifically the BASC, was not administered according to the assessment producer's instructions, in that no teacher input was obtained. Additionally, the variety of

assessments given, was insufficient to be considered technically sound in that the testing overall failed to thoroughly explore multiple discrepancies identified in the testing.

Student also raised several concerns regarding the insufficiency of the report. The method of conducting the assessment itself results in the assessment being deemed invalid. Therefore, there is no need to examine the various alleged insufficiencies related to the construction of the report.

The failure to provide Parent with thorough information regarding Student's educational and social-emotional deficits was resulted in a denial of critical information Parent required for meaningful participation in the IEP development process. Parent was denied the information necessary for her to fully evaluate the IEP offer Bellflower made. The failure to provide a legally sufficient psychoeducational assessment resulted in Student being denied a FAPE.

ISSUE 5B AND 5C-DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO PROVIDE PARENT A TRANSITION ASSESSMENT PLAN AND CONDUCTING A TRANSITION ASSESSMENT WITHOUT PARENTAL CONSENT?

At the January 25, 2020 IEP team meeting, a transition plan was discussed that referred to a transition assessment. Parent was unaware that a Student had been involved in a transition assessment. Student contends that Bellflower conducted a transition assessment of Student in January of 2020 without providing parent with an assessment plan and without securing Parent's written consent. Bellflower argues that

the January 2020 Transition assessment was just an interview and not an assessment and, therefore, neither an assessment plan nor consent was required.

Beginning not later than the first IEP to be in effect when the pupil is 16 years of age, and updated annually thereafter, the IEP must also contain appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa) and (bb); Cal. Educ. Code, § 56345(a)(8)(A) and (B).)

Prior to conducting a special education assessment, a school district must give a parent a written proposed assessment plan, accompanied by a copy of Parent's procedural safeguards under the IDEA and California state law. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300 (c); Ed. Code, §§ 56321, subd. (a), and 56381, subd. (f)(1).) The assessment plan must provide parents written notice that meets the statutory requirements of California Education Code section 56321. The assessment plan itself must be in language easily understood by the general public; be in parents' native language; explain the type of assessment to be conducted and inform Parent of anyone to whom information about the student will be released. The plan must also inform the parent that no IEP will be changed based on the assessment without a parent's consent. (Ed. Code, § 56321, subd. (b); 34 C.F.R. § 300.9 (a) and (b).) The assessment performed must be in conformance with the provided assessment plan to which the parent consented. (34 C.F.R. § 300.9(b).)

The assessment plan must notify a parent, that an IEP team meeting will be convened following completion of the assessment that will include a discussion of

whether student is an individual with special needs, the assessment results, the educational recommendations, and the reasons for the recommendations made. (Ed. Code § 56329(a)(1).)

Student was due for his first transition assessment with his January 2020 annual IEP as he turned 16 in March of 2020. Bellflower conducted Student's initial transition assessment in January 2020. There is no question the transition interview was intended to be an assessment. Christine Woodward, Student's special education teacher, conducted the interview and testified it was an assessment. The Individual Transition Planning page of the IEP called it an assessment. As such, all of the rules pertaining to an assessment applied.

The evidence established that no assessment plan was offered to Parent prior to conducting this initial transition assessment. The results of the assessment, described as an interview, were reported to the IEP team on January 8, 2020 during the IEP team meeting.

The informed involvement of parents is central to the IEP process. (*Winkelman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Federal and State law therefore require that parents of a child with a disability be afforded an opportunity to participate in decisions with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) Protection of parental participation is among the most important procedural safeguards in the IDEA. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

Parental consent must be obtained prior to conducting an assessment on any student with a disability unless the assessment is conducted on all students without the need for consent. (34 C.F.R §§ 300.9 and 300.300 (c)(1)(i); Ed Code, § 56346(a)9.)

Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication. For the consent to be valid, it must describe that activity and list the records (if any) that will be released and to whom they will be released. Validity also requires that the parent understand and agree in writing to the carrying out of the activity for which consent is sought; and understand that the granting of consent is voluntary and may be revoked at any time. (34 C.F.R. § 300.9 (a), (b), and (c)(1).)

Here, Parent was not informed of the fact that her child was being assessed; or given the opportunity to agree, disagree, or to limit the activity. Nor did Parent have the opportunity to understand to whom Student's records are being released. This was a violation of Parents rights pursuant to the IDEA.

The IDEA requires the IEP Team, which includes the parents as members, to take into account any "concerns" parents have "for enhancing the education of their child" when it formulates the IEP. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, [127 S.Ct. 1994, 167 L. Ed. 2d 904], citing, 20 U.S.C. § 1414(d)(3)(A)(ii).) Excluding parents from the process of determining how a child will be assessed, excludes them from a critical opportunity to express their concerns about their child's education. The lack of an assessment plan for the January 8, 2020 Individual Transition Plan constituted a procedural violation that was a serious infringement of parent's opportunity to participate in the IEP formulation process. (*Doug. C., supra*, 720 F. 3d at 1043.) Parent

has a right to know when her child is being assessed. Without an assessment plan, Parent has no ability to participate in the decision regarding the scope of the assessment.

Failure to provide the opportunity to decide whether or not to consent to an assessment usurps a Parent's right to decide whether proceeding with the assessment proposed by the school district is the right decision for their child; or offers what they believe is the correct form of assessment of the child's disability or needs. Bellflower's failure to provide an assessment plan and obtain Parent's consent to the assessment in advance of the assessment being conducted, violated the IDEA and denied Parent a meaningful the opportunity to participate in the IEP process, resulting in a denial of FAPE. (*Doug. C., supra*, 720 F. 3d at 1043.)

ISSUES 2C AND 5D-DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO CONDUCT A LEGALLY COMPLIANT TRANSITION ASSESSMENT AND TIMELY PRESENT THE ASSESSMENT?

After the January 2020 IEP team meeting where Parent learned that an assessment had been conducted without her consent, Bellflower agreed to conduct another transition assessment. Bellflower sent Parent an assessment plan for a transition assessment, which Parent signed on February 10, 2020. Pursuant to Parent's February 10, 2020 consent, a transition assessment was performed for Student in March of 2020. Student asserts that Parents' receipt of the transition report via email on September 16, 2020 was untimely and thus denied Student a FAPE. Additionally, Student asserts that the reports' recommendations were not tailored to Student's actual interests and that the report was unclear.

Bellflower acknowledged the transition assessment results were presented late to Student's IEP team. It argues that the school site closures resulting from the Covid-19 pandemic caused the delay. Bellflower contends it mailed Parent the report on September 16, 2020; it was made part of the November 20, 2020 psychoeducational assessment and presented to the IEP team on November 19, 2020 in connection with the psychoeducational assessment. Bellflower further argues that the IEP team discussed Student's transition planning at several IEP team meetings beginning in January of 2020 at which Student was present and participated.

The assessment was conducted by Irene Ramirez, Bellflower's transition specialist. Her report was completed March 30, 2020. Ramirez did not testify at the hearing.

School sites across the state of California closed during the Covid-19 pandemic in March of 2020. Bellflower closed all of its school sites from March 16, 2020 to March 27, 2020 during which time no instruction was provided. Bellflower then initiated limited instruction on a shortened schedule in a distance learning model, via computer, for the remainder of the 2019-2020 school year. The 2020-2021 school year began on August 18, 2020. Instruction continued to be provided on a shortened schedule in the distance learning model. Schools were required to continue to comply with the IDEA. (*Marrero v. Puerto Rico* (D.C. Puerto Rico, 2021) 2021 WL 219195, p. 3.)

Student's transition assessment report was sent to Parent via email by Adair on September 16, 2020. Parent should have received the report by April 11, 2020. The email neither acknowledged nor explained the delay. The email informed Parent that Student's case carrier would be scheduling an IEP team meeting to review the report.

Student's next IEP team meeting occurred on November 19, 2020. While the assessment report was blocked and copied into Student's November 19, 2020 Multidisciplinary assessment report, the evidence established the report was never reviewed with the IEP team.

Contrary to Bellflower's assertion, Gagliardino did not present the transition report to the IEP team on November 19, 2020 as part of the discussion of the psychoeducational report. Gagliardino testified that she was not familiar with the assessment instruments that were used to conduct the assessment. An IEP team reviewing an assessment report must include an individual who can interpret the instructional implications of evaluation results. (20 U.S.C. § 1414 (d)(1)(B)(v).) At hearing Gagliardino was unable to explain why the transition report became part of her psychoeducational report except for saying, "because it was done." The evidence established that the transition report was never discussed in an IEP team meeting in violation of California Education Code section 56344, subdivision (a).

Student failed to establish that the content of the transition assessment was deficient. Although the report was admitted into evidence both in its original form, from March 3, 2020, and as part of the November 20, 2020 Multidisciplinary report, no one testified as to the content of the report. Thus, there was no evidence that it failed meet legal requirements. No evidence was presented regarding how the assessment was conducted, the accuracy of the information included, or the quality of the analysis of Student's needs. The assessor was not made available for examination and cross-examination. Hearsay "shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions". (Cal. Code Regs., tit. 5, § 3082, subd. (b).) In this instance, the Student failed to establish that the report would be admissible

over objection in a civil action or that the information in the report met the standard of being “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs” as is required for evidence consideration in an administrative hearing. (Ca. Govt. Code, §111513, subd. (c).) As a result, the content of the report could not be considered.

However, the transition report did not comply with applicable procedural requirements. The failure to provide the transition report to Parent or review it during an IEP team meeting within 60 days of parental consent was a procedural violation. The violation resulted in a significant delay in providing information to Parent necessary to evaluate Student’s needs in the area of transition support. This resulted in a serious infringement of parent’s opportunity to participate in the IEP formulation process. (*Doug. C., supra*, 720 F. 3d at 1043.) Without the information from a thorough transition assessment, Parent was denied adequate information regarding the transition services including courses of study, needed to assist the child in reaching those goals that is required to be included in the transition report. (34 C.F.R. § 300.320(a)(7).)

The delay in providing the report also impeded Student’s access to educational benefit as he was denied the opportunity to explore the supports available to him or benefit from transition supports and services from January 2020, when his transition assessment was originally due. Student had higher education aspirations in 10th grade. By 11th grade, he had decided he would not be able to manage post-secondary education and instead was exploring the military. From January 2020, when his transition assessment was originally due, Student was not offered the transition supports and services he needed to help him fully understand his post-secondary options because no valid assessment had been completed.

Bellflower's failed to provide any evidence that the Covid-19 pandemic impeded its ability to provide Parent with a copy of the transition report or its ability to convene an IEP team meeting to discuss it by April 11, 2020, when it was due. Instead, Bellflower emailed the report to Parent one day after the September 15, 2020 IEP team meeting, without an offer of an IEP date on which it would be discussed. Bellflower's attempt to argue in closing that the report was presented at the November 19, 2020 IEP team meeting, when Gagliardino candidly admitted during her testimony, that she did not present the report at meeting and could not have, as she lacked information about the instruments used in the assessment, was disingenuous at best. Bellflower denied Student a FAPE by failing to provide and discuss the transition report in a timely manner.

ISSUE 3: FROM APRIL 1, 2019, THROUGH APRIL 1, 2021, DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE PLACEMENT AND SERVICES TO ENABLE STUDENT TO MAKE MEANINGFUL EDUCATIONAL PROGRESS IN THE AREAS OF ACADEMICS, BEHAVIOR, COMMUNICATION, AND SOCIAL SKILLS?

Student asserts that Bellflower's IEP offers did not offer him a FAPE because Bellflower's offers of placement and services were inadequate in the areas of academic, behavior, communication, and social skills. Specifically, Student contends, the offers did not allow Student to make progress commensurate with his potential in the areas of academic, behavior, communication, and social skills. Student points to his lack of progress on goals and his declining grades as evidence that the repetitive IEP offers from Bellflower were not reasonably calculated to provide Student with meaningful benefit in light of his circumstances.

Bellflower argues that Student's IEP's were reasonably calculated to, and actually did, confer meaningful educational benefit. Bellflower contends that the reasonableness of the offers is demonstrated by the fact that Student was progressing in the management of his stuttering; was provided with a number of goals and accommodations in each IEP, that were refined over time; and was allocated a one-to-one aide. Bellflower argues that the FAPE standard only requires that Student's educational program be reasonably calculated to enable Student to make progress appropriate in light of the child's circumstances. It asserts that his IEP's, including services and supports, were designed to allow Student to make meaningful progress in his circumstances, even though the Covid-19 pandemic created new problems for everyone involved in his education.

A school district is required to provide a disabled student a FAPE that is "appropriately designed and implemented so as to convey the [s]tudent with a meaningful benefit." (J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist., (9th Cir. 2010) 626 F.3d 431, 432-433.) A school district must ensure that the IEP team revises the IEP, as appropriate, to address "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. § 300.324(b)(2).)

An IEP offer is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, if it is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum, taking into account the progress of his non-disabled peers, and the child's potential." (M.C. by & through M.N. v. Antelope Valley Union High Sch. Dist. (9th Cir. 2017) 858 F.3d 1189, 1201 (quoting Endrew F. 137 S. Ct. at p. 994).) An IEP must include a statement of the special education and related

services, and supplementary aids and services, based on peer reviewed research to the extent practicable, to enable the pupil to advance appropriately toward attaining the annual IEP goals and be involved in and make progress in the general education curriculum in accordance with their abilities. (Ed. Code § 56345(a)(4)(A) and (B).)

STUDENT'S ACADEMIC, BEHAVIOR, COMMUNICATION AND SOCIAL SKILLS NEEDS FROM APRIL 1, 2019 TO APRIL 1, 2021

Over the period from April 1, 2019 to April 1, 2021, Student made little progress in several key areas of deficit that obstructed his ability to progress academically. Student's assessors and IEP team members agreed that his educational deficits intertwined with each other to impede his ability to access his academics, communicate and interact socially.

Student had difficulty communicating. He made basic grammar mistakes that were out of place for a teenager, such as confusing tenses. He did not understand non-literal language and could not interpret non-verbal communication. He was aware of his disabilities and wanted a social life he was unable to develop. His communication deficits and his feeling of being less advanced than his peers made him reluctant to ask questions in class. When he did not ask questions in class or was reluctant to admit he had missed information, it impacted his ability to succeed academically. Missing information and not wanting to admit it resulted in his being unable to keep up with the information being presented in class. This impacted his ability to focus in class and resulted in difficulty with keeping track of assignments and deadlines. This led to a failure to get work turned in on time. His frustration with the impact of his interrelated educational challenges grew over the period from 2019 to 2021.

Student's language deficits impacted his reading comprehension. Dr. Flores found that assessments consistently found Student's ability to read fluently to be good. He could decode words, and within the confines of his acquired vocabulary, understood what the words meant. However, his reading comprehension deficit primarily involved difficulty understanding non-literal language, so Student struggled to comprehend inferences or to be able to "read between the lines." Student's 2018 independent educational evaluation had estimated he was 3 to 4 years behind grade level in reading comprehension. The reading comprehension deficit impeded both his ability to understand the various nuances of many of the reading materials presented to him in his college preparatory general education classes, or to analyze their meaning. It also interfered with his ability to write essays requiring that he state an opinion based on a text and support his opinion using references from the text.

Beyond academics, Student's inability to grasp the concept of non-literal language and non-verbal communication impeded his ability to interact with peers and adults socially. Student did not understand sarcasm or joking and often did not understand why people reacted in the ways they did to things he said. More fundamentally, he struggled to construct grammatically accurate sentences, confusing tenses and searching for words. He admitted to Parent that, in social situations, he often ran out of things to talk about.

But Student was a tenacious young man. Despite many awkward and sometimes humiliating social experiences, most days he would try to interact with his peers. He would randomly approach people during lunch or breaks and try to start conversations. Unfortunately, due to his lack of skills, he had little success. Conversations were often

short and sometimes he was ridiculed. Student took these experiences hard and from January of 2019, the IEP team knew he was becoming depressed because of his inability to make friends.

Teachers agreed that Student was not a behavior problem. All of his teachers described him as polite, cooperative and friendly. He worked fairly well in groups although his aide and classmates had to prompt him to participate when it was his turn to contribute. He had more difficulty when working in pairs, as the expectation for his contribution was higher. All his teachers noted how hard he tried. Despite this, Student's grades went from A's and B's in middle school to C's and D's and even F's in high school.

Student was consistently assessed as having average to above-average cognitive abilities with above-average to superior visual perceptual abilities and low verbal skills. These results were consistent in his 2017 triennial evaluation, his 2018 independent psychoeducational evaluation and his 2020 triennial evaluation. At every IEP team meeting between January of 2019 and April 1, 2021, it agreed that an appropriately ambitious course of study for Student involved college preparatory classes including, integrated Math, Biology, and Chemistry, which Student pursued despite his challenges.

During the two years at issue, Parent consistently reminded the IEP team during IEP team meetings and in emails to individual IEP team members, of Student's educational needs; and asked for more support. Parent was particularly concerned that Student was not receiving an adequate amount of specialized academic instruction for his classes, resulting in low grades. Specifically, Parent asked for additional, pull out resource specialist program assistance pertinent to Student's higher level Science and Math courses. She also requested specifically focused reading comprehension and

writing remediation. Parent also asked for more assistance with Student's communication, and social skills deficits as well as assistance to help Student become a more independent learner.

IEP OFFERS APRIL 1, 2019 TO MARCH 13, 2020

ACADEMIC PLACEMENT AND SERVICES

Student established that Bellflower's IEP offers combining general education placement with services consisting of two classes co-taught by a general education teacher and resource specialist, combined with the services of a one-to-one instructional aide, did not meet his needs in the areas of academics from April 1, 2019 to March 13, 2020. Student was nearly finished with his Freshman year in high school in April of 2019.

Student's 2019 Annual IEP was operative on April 1, 2019; and developed over three meetings on January 25, 2019 (but dated January 9, 2019), May 13, 2019 and June 5, 2019. The IEP team discussed Student's needs and listened to Mother's concerns that Student required more resource specialist instruction in a pull-out, small group model to meet his needs. Parent reminded them of Dr. Restori's 2018 recommendation for such services to keep Student in the general education setting.

Bellflower's January 25, 2019 IEP offer was 55 minutes per day of SAI in each of two co-taught Math and English classes; one group and one individual speech session of 50 minutes each per week; 30 minutes of counseling a month; and a one-to-one instructional aide for his entire school day to assist him in classes and with social skills during unstructured time. This offer did not substantially change from January of 2019 to the beginning of distance learning in March of 2020.

Bellflower consistently offered Student an instructional aide. However, Student's aide's capabilities were limited; and they primarily offered support to keep Student focused in class. The aides did this by using prompts. Although the aide was intended to assist Student with academics, in addition to helping him maintain focus in classes and seek needed help, Mother repeatedly expressed concern to the rest of the IEP team that the aide was unable to assist Student with his academic needs, especially as he enrolled in increasingly difficult, although still high school level, classes.

During the May 13, 2019 IEP team meeting, in response to Parent's restated request for additional specialized academic instruction, Student was offered the "SAI Study Skills" class. However, Parent was told it was full. It would not be available until the Fall of 2019. No additional specialized academic instruction was offered from April 2019 to the end of the 2018-2019 school year despite the identified need. Bellflower added 1200 minutes of supervision of the instructional aide. However, it was unclear who supervised the aide and what the supervision consisted of.

Student's 2019 IEP was completed on June 5, 2019. Despite three meetings discussing Student's academic deficits, noting those academic deficits were complicated by his inability to ask questions and follow the information provided, Student's IEP offer never changed. No specialized academic instruction, other than the co-taught English and Math classes was offered. No focused reading or writing remediation was offered despite Student's reading comprehension and writing deficits. Student was encouraged to access Math intervention after school. However, this was not a special education program, and instruction was not presented by a special education teacher to meet Student's individualized needs. It also conflicted with private counseling sessions which were scheduled after school.

Bellflower's limited specialized academic instruction program did not meet Student's individualized needs. No specialized academic instruction was offered for social science, non-English language courses, electives or science classes. Thus, no specialized academic instruction was offered for pupils, like Student, for whom college preparatory courses were appropriately challenging. Bellflower offered no resource specialist support outside the co-taught English and Math classes, and the "SAI Study Skills" class that was not available.

Student continued to struggle academically during tenth grade in the 2019-2020 school year. The SAI offered in the co-taught classes continued to be limited. While the special education case carrier who taught Student's 10th grade English class said she worked with Student on organization and other goals in this class, she acknowledged there were 30 students in the class so individual time with Student was limited. The Integrated Math II class was co-taught by a credentialed special education teacher; but no systematic method of providing specialized academic instruction for the class was established. Student's individual needs were not being addressed.

In the fall of 2019, Student gave up his wood shop elective, a class he particularly enjoyed, and in which he had some social interaction, to enroll in the SAI Study Skills class. He found it far too easy and told Parent it offered him no benefit.

The SAI Study Skills class focused on reading fluency. Parent had been told in May of 2019 that it also allowed students to get individual help on homework and would be an opportunity for Student to get the additional SAI he needed for math and science. The class lasted 55 minutes and there were approximately 14 students in the class. Individual specialized academic instruction was limited. Furthermore, no specialized academic instruction was offered for courses the SAI Study Skills teacher was

unprepared to teach, such as science or in some instances, higher math. Parent was told that, in those instances, the SAI Study Skills teacher would call the general education teacher for those classes. If the teacher was available, Student would get help during the SAI Study Skills class. If not, a message would be left that Student needed help. However, the general education teachers were not trained in presenting material to special education students using specialized academic instruction methods. Thus, even if the teacher was available, Student still did not receive specialized academic instruction in all areas of need.

During the October 28, 2019 IEP team meeting, the IEP team discussed Student's continued academic struggles and lack of progress. Parent informed the IEP team that the SAI Study Skills class did not offer Student the help he needed. SAI in the form of the SAI Study Skills class was removed from Student's IEP offer as of October of 2019. However, Student remained in the SAI Study Skills class for the rest of the 2019-2020 school year, despite the fact that he received no benefit from the class. His academic performance did not improve. No other specialized academic instruction was offered to address Student's academic needs. His IEP offer remained the same as the one offered on June 5, 2019. At the end of the first semester of his 10th grade year, Student had a C- in English 10; D's in Modern World History and Biology; a C in Integrated Math II, a B+ in SAI Study Skills and an A in PE.

Student's annual IEP, which occurred over two meetings, in January of 2020 and on February 21, of 2020. Ultimately, he was offered the exact same IEP offer made in the October and December of 2019 IEP meetings, despite the team acknowledging Student continued to display difficulties with an inability to ask for help, to express himself, and to understand non-literal language. Data showed he was not progressing in his academic, communication or social skills goals. Student did not meet any academic

goals from the prior year. At each IEP team meeting, Parent asked Bellflower to provide pull-out resource specialist support for her son for his academic classes. At each meeting she was told such support was not available at the high school level. No alternate offer of specialized academic support was made. Student's academic performance continued to decline. Parent consented to the February 21, 2020 IEP offer on March 11, 2020 but noted she did not believe it provided Student a FAPE.

Bellflower's limited specialized academic offers were not reasonably calculated to meet Student's needs from April 1, 2019 to March 15, 2020. The offers of instruction in his English and math courses, co-taught by a general education teacher and a credentialed special education teacher, failed to address Student's need for specialized academic instruction in other courses. Furthermore, the specialized academic instruction in the co-taught classes was limited, sporadic, and was not limited to Students with an IEP. Bellflower knew of Student's inability to ask for help and his concerns regarding asking questions in front of peers. This model failed to provide the consistent specialized academic instruction in the small group setting with other special education students that Student required. It also did not provide 55 minutes per day of resource support in English Language Arts or Math and did not adequately address his need for reading and writing remediation. Use of the instructional aide resulted in prompt dependence rather than helping Student to become an independent learner. The instructional aide also failed to provide the supplemental academic assistance that Bellflower stated was intended in its correspondence with Parent. Bellflower's IEP offers from April 1, 2019 to March 15, 2020 were not reasonably calculated to meet Student's academic needs.

COMMUNICATION PLACEMENT AND SERVICES

The 2019 and early 2020 IEP offers also failed to address Student's lack of progress and needs in the area of communication. Parent repeatedly expressed concern that Student could not construct grammatically correct sentences. The speech pathologist said he lacked vocabulary. Student did not meet his speech goals regarding inferences or non-verbal communication. While his stuttering issue was improving, other areas of his speech deficits were not. Despite this, no additional approaches were suggested to work on Student's speech.

Just prior to the June 5, 2019 meeting, Student had reported to Parent that group sessions did not involve group interaction. Rather, the group members took turns working on their individual needs. During that meeting, Parent asked that both of Student's sessions be made individual in the hope he would progress more quickly. Parent was told that the information from Student not accurate, that the services had been working and Bellflower believed the offer as is was FAPE. Antich informed Parent Student was making progress. However, she acknowledged Student's progress outside the confines of the speech sessions was limited. Parent's request for additional individual speech remediation was rejected. No alternative means of addressing Student's stagnation in speech improvement was offered. He continued to be offered 50 minutes per week of group speech services and 50 minutes per week of individual speech sessions. Bellflowers offers of speech services in the 2019 and early 2020 IEPs failed to meet Student's placement or services needs as was evidence by his lack of progress.

SOCIAL SKILLS PLACEMENT AND SERVICES

From April 1, 2019 to March 15, 2020, Student received some social skills training as a part of his group speech and language sessions. The interactive opportunities were limited by the nature of the environment. Furthermore, both the speech pathologist and the behavior analyst agreed that Student understood theoretically what to do. He could identify when a social interaction was approached incorrectly when presented with a social story. He could tell you the right approach in response to a question about how to handle an interaction. He just could not generalize it in practice. He froze. The social skills training offered in group speech and language sessions was not adequate to meet Student's needs. All IEP team members acknowledged he was making no progress in the area of social skills.

In early 2019, Student asked that his aide be instructed not sit with him during unstructured times such as breaks and lunch. IEP team members also acknowledged during 2019 and early 2020 IEP team meetings that having the aide sit with Student put other students off approaching him. Other students did not want to socialize with Student because he was sitting with an adult. Thompson testified that the IEP team knew the aide was interfering with Student's progress by sitting next to him. The other students knew who the aide was as they saw the aide with Student during the school day. As a result, having that person near Student during breaks and lunch also made him stand out to his peers. Thompson suggested another person could have monitored Student's needs from further away during the unstructured times of the school day, such as the school psychologist or the behaviorist. This way, other students would not necessarily know why the psychologist or behaviorist was in the common area.

However, that was never attempted. Thompson could not explain why it was not. No changes were made to Student's IEP to assist with social skills issues between April 1, 2019 and June 5, 2019.

In January of 2019, Bellflower's school psychologist, Stacy Kay, recommended that Student join a club. It was suggested the counselor accompany Student so she could model and coach social skills. Student tried two club meetings in the fall of 2019, but did not have a positive experience and did not want to return. At subsequent IEP team meetings having Student join a club was repeatedly suggested despite Student's rejection of the idea. No change to Student's IEP offer addressing social skills was made until June 5, 2019.

In June of 2019 Student's counseling was doubled to 60 minutes per month and offered in 15 minutes sessions weekly. It was acknowledged that Student's inability to make friends and his peers' reactions to his efforts to strike up conversations was resulting in him showing signs of depression. Student's counseling minutes were doubled to 60 minutes per month with school psychologist sessions to occur weekly for 15 minutes. The counselor was to use the time to discuss Student's feelings regarding his peer interactions. Giving Student additional counseling time to address his self-esteem and sadness at being unable to make friends was necessary. However, the additional counseling did not address the underlying issue of his need for additional social skills training.

During the June 5, 2019 IEP team meeting Thompson suggested that Student's aide be provided social mapping training. This would allow the aide to watch Student's interactions, from a removed location, and then debrief the communications later. Student would be asked to take the perspective of the peer thus both promoting

awareness of other's perspectives and improving Student's social interactions. Parent accepted the recommendation. Bellflower did not provide the social mapping training to an aide until October 30, 2020 and did not provide forms for data collection until December 2020. Parent reported that Student complained the feedback was very limited.

As of the date of the hearing, the IEP team members acknowledged that Student's abilities to socialize with his peers never improved. Despite that fact, less structured social group interactions, other than clubs, were not explored. The behaviorist acknowledged that there was another social group available; however, Student had participated in the program once in middle school, so she assumed he was not eligible. Student's ability to enter the program a second time was not explored.

Bellflower's IEP offers of placement and services related to Student's communication and social skills from April 1, 2019 to March 15, 2020 were not reasonably calculated to provide Student educational benefit in those areas.

BEHAVIOR PLACEMENT AND SERVICES

Student did not prove Bellflower failed to offer adequate placement and services in the area of behavior. As discussed earlier, Student failed to prove that he had behaviors that required assessment. All of his teachers acknowledged his good attitude and intense effort in class. Student did not meet the definition of a student who required behavior intervention. (20 U.S.C. § 1414 (d)(3)(B) and § 1415 (k)(1)(D).)

Although there was evidence that Student was prompt dependent, Student failed to prove that additional behavior services would address the concern. Nor did Student prove that Student's prompt dependence rendered his placement inappropriate.

Student failed to prove that Bellflower failed to offer adequate behavior placement or services from April 1, 2019, to March 15, 2020, to enable student to make meaningful educational progress in the area of behavior.

Student did prove, however, that Bellflower failed to offer appropriate services to enable student to make meaningful educational progress in the areas of academics, communication, and social skills from April 1, 2019, to March 15, 2020.

IEP OFFERS DURING DISTANCE LEARNING.

Beginning March 16, 2020, Bellflower school sites closed pursuant to a Covid-19 virus shelter-in-place order from California's Governor. "Enrichment activities" were offered to Students using a distance learning model from March 30, 2020 to June 4, 2020. The 2020-2021 school year began on August 18, 2020. Bellflower provided instruction using a distance learning model until April 1, 2021. Student asserts that Bellflower failed to offer IEP's that met the required standard during distance learning. Bellflower argues that the offered IEP's were designed to offer meaningful educational benefit to Student and did so within the confines of the district's abilities resulting from the pandemic.

COVID-19 EMERGENCY SPECIAL EDUCATION ORDERS

On March 4, 2020, Governor Newsom declared a state of emergency in California due to a catastrophic, worldwide pandemic involving an airborne virus called COVID-19. On March 13, 2020, Governor Newsom issued Executive Order N-26-20 which provided initial instructions for schools during school site closures. Executive Order N-26-20 directed the California Department of Education, or CDE and the California Health and Human Services Agency to jointly develop guidance ensuring that students with

disabilities received a free and appropriate public education during distance learning consistent with their individualized education program under the IDEA.

In March of 2020, The United States Department of Education published a series of questions and answers regarding local educational agency, or LEA, responsibilities regarding Covid-19. That guidance advised that,

If an LEA continues to provide educational opportunity to the general student population during a school closure, the school must ensure that Students with disabilities also have equal access to the same opportunities including the provision of FAPE. LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under the IDEA ...

(Questions and Answers on Providing Services to Children With Disabilities During a Covid-19 Outbreak (U.S.D.O.E., March 2020) Answer to Question A-1 p. 2.)

On March 31, 2020, pursuant to Executive Order N-26-20, CDE issued Special Education Guidance for COVID-19 regarding distance learning. That guidance advised districts that, if they could continue providing special education and related services as outlined in the IEP in a distance learning model, they should do so. Districts were told that, when they provided services to general education students, they were required to provide equitable access to students with disabilities by providing services appropriately tailored to the students' individual needs, to the greatest extent possible. (Special Education Guidance for COVID-19 (CA Dept. of Education, 3-31-2020) p. 1, §§ 1 and 2.) That same document advised districts that, if they were unable to mirror the IEP offer,

they would be responsible for making individualized determinations in collaboration with the IEP team, regarding whether compensatory education and services would be needed, taking into consideration the student's progress in the general education curriculum, progress towards their goals or evidence of regression. (Id. at p. 2, §3.)

On April 27, 2020, the Secretary of Education declined an opportunity provided by Congress to seek an extension of IDEA timelines due to Covid-19. (Policy and Guidance - Report to Congress of U.S. Secretary of Education Betsy DeVos: Recommended Waiver Authority Under Section 3511(D)(4) of Division A of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") April 27, 2020.) Thus, even "[i]f State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA." (Marrero, supra, at p. 3.)

On June 29, 2020 California passed legislation requiring an IEP to specify the means by which IEP services will be provided under emergency conditions. (Ed. Code, § 56345(9)(A).) School districts were required to ensure the information was included with "the development of an initial individualized education program or the next regularly scheduled revision of an individualized education program." (Id. § 56345(9)(B).) This requirement, however, did not excuse Bellflower from making an IEP offer to Student that was reasonably calculated to provide him a FAPE at all times during which Bellflower was providing his education. (Marrero v. Puerto Rico, supra, 2021 WL 219195, p. 3.)

IEP OFFERS FROM MARCH 16, 2020 TO APRIL 1, 2021

On August 13, 2020, Bellflower notified Parents of Students with IEPs that their IEPs would be provided in an “alternate manner.” Specifically, Parents were informed:

- Specialized Academic Instruction and related services would be provided via distance learning during the 240 instructional day that is in effect for the duration of the Covid-19 related school closure. SAI and related services set forth in a student’s IEP would be provided in similar frequency and duration proportions as in the student’s pre-Covid-19 service levels, considering the 240-minute instructional day that is in effect during the Covid-19 related school closure.
- Accommodations, modifications, supplementary supports will be provided as appropriate for distance learning.
- Goals from a student’s current IEP would remain in effect.

Student’s IEP team met on September 15, 2020, as required by Senate Bill 98, to create an emergency plan for implementing Student’s IEP, as schools remained closed. As is discussed in more detail later in this decision, Parent had been in communication on many occasions with Adair regarding her concerns about the failures of the Distance learning program to serve Student. All of the same concerns that had been discussed in prior IEP team meetings continued. She had additional concerns regarding Student’s inability to navigate the distance learning technology and access the instruction being presented online.

At the time of the September 15, 2020, meeting, Student was failing Math, Chemistry, and English. All instruction was being delivered by a distance learning model. The reduced school day of 240 minutes continued for all Students. “Office

hours” during which teachers made themselves available from 12:30 p.m. to 1:30 p.m. followed the morning instruction for all students to ask questions.

Teachers were not allowed to require students to have their computer cameras on during classes. Therefore, Student’s teachers did not have the ability to see if Student understood the material. Student continued to struggle with asking questions. As of the date of this IEP Student had not received the services of an aide during distance learning. Student did not understand the Chemistry instruction and had forgotten a lot of his Math. He was enrolled in Integrated Math 3, which was essentially an Algebra II class. Student continued to have organizational issues and difficulties completing work on time.

Parent informed the IEP team that Student was not receiving adequate assistance in the co-taught English and Math classes and needed additional specialized academic instruction to address Student’s needs in English, Math and Chemistry. Parent asked that Student’s services be restored to the levels identified in the February 2020 IEP. She was particularly concerned about the reduction in specialized academic instruction and speech and language services.

Parents request for additional specialized academic instruction was denied. Parent was advised to encourage Student to access the general education supports, specifically “office hours” provided after “synchronous” learning had ended. Parent was informed her request to restore speech and language to its prior level would be addressed in writing in the future.

At the conclusion of the September 15, 2020 IEP team meeting Bellflower made two IEP offers: one for “when the temporary school closure due to Covid-19 ends and when school reopens” and the “offer of FAPE that will be provided under emergency

conditions” in which instruction of services or both, cannot be provided to the student either at school or in person for more than 10 school days.” As school was not open at that time, the offered services for the current emergency conditions were:

- Special education and related services will be provided via distance learning.
- Specialized Academic Instruction will be provided in proportion with the adjusted school day (240 daily minutes) and may include interaction, instruction, and consultation through the use of communication technology and printed material that is subject to written or oral feedback.
- The student will participate in 3x weekly synchronous interaction with the Education Specialist.
- Counseling and Guidance, 60 minutes per month, direct service on an individual basis.
- Language and Speech, 60 minutes per week.
- Intensive Individual Services, 1:1, 200 minutes per day, direct service, provided by a non-public agency in the home.

No explanation was provided regarding any connection between Student’s needs for specialized academic instruction, speech and language service, or aide support. Nor was the comment that, “interactions” with an education specialist that “may include interaction, instruction, and consultation through the use of communication technology and printed material that is subject to written or oral feedback” described in terms of its practical application.

Parent objected to the reduction in speech services and requested that speech service be provided as in his regular IEP, at 50 min group and 50 min individual per

week. Bellflower's special education administrator said he would respond to the request in writing. Although the counseling level remained the same, Student's speech services were reduced by nearly 50% with no indication regarding how the services offered would address Student's social skills needs.

Student still did not, however, prove that Bellflower's offer was not reasonably calculated to meet Student's behavior needs. Student did not prove Student had behavior needs and, as discussed earlier, even if Student was prompt dependent, Student failed to prove that additional behavior services would address the concern. Nor did Student prove that Student's prompt dependence rendered his placement inappropriate.

The September 15, 2020 IEP denied Student educational access by failing to offer services reasonably calculated to meet Student's academic, communication and social skills needs. The reduction in services was not tied to Student's needs. Parent did not consent to the reduced services in the September 15, 2020 emergency IEP.

At the September 15, 2020 IEP team meeting, Parent asked that Student's triennial assessments be conducted immediately rather than waiting until January of 2021. Bellflower agreed. Following the September 15, 2020 IEP team meeting, Student's speech and language services were restored to the level offered in February 2020 IEP, that is 50 minute per week group and 50 minutes per week individual. These sessions were to be conducted via teletherapy.

The November 2020 assessments demonstrated that Student continued to show substantial academic deficits in reading comprehension, writing and math; significant inabilities to understand non-literal language or non-verbal communication; and serious

social skills deficits. Parent's concerns about Student's inability to access his education had not changed since April 1, 2019. Student's grades had not improved since the September 15, 2020 IEP team meeting.

Despite information from the triennial assessments demonstrating Student's lack of progress academically and concerns in the areas of communication and social skills, The November 19, 2020 offer was substantially the same as the offer made on September 15, 2020 with three exceptions: First specialized academic instruction was reduced. The new offer eliminated the "3x weekly synchronous interactions with the Education Specialist." Instead, the November 19, 2020 IEP offered SAI only as part of the shorter, co-taught Math and English courses. Second, Student's instructional aide time was increased to 300 minutes per day. The increase was intended to give Student aide assistance during office hours which he continued to be encouraged to access as a substitute for additional SAI and for organizational issues. No aide supervision was offered. Third, College and Career Awareness sessions of 20 minutes per month, each, in a group setting were also added to the offer.

The November 19, 2020 distance learning offer was not reasonably calculated to meet Student's needs. Less specialized academic instruction was not reasonable given Student's clear academic struggles in his Math and Chemistry classes. Nor was adding additional minutes for the instructional aide to help Student attend office hours. Office hours did not offer specialized academic instruction, were not focused on Student's individual needs and required Student to assert himself to ask questions in front of his general education peers. "Office Hours" were not a special education service and its use as a specialized academic instruction substitute was not reasonably calculated to meet Student's individualized needs.

Nor were related service levels offered reasonably calculated to meet Student's needs in the areas of SAI, communication, and social skills as Student continued to stagnate in these areas. Language and speech continued at the restored level of 50 minutes group and 50 minutes individual via teletherapy. As discussed previously, however, these service levels did not meet Student's needs because he was not making progress in either his ability to understand non-literal language or to interact socially. Mother continued to be concerned about his inability to correctly structure sentences and his tendency to confuse tenses when he spoke. Nor was any information provided regarding how the counseling offered would assist Student with his social skills needs.

At the conclusion of the December 2, 2020 IEP team meeting, during which the IEP team completed the review of the triennial assessments, the IEP offer was identical to the offer made on November 19, 2020. The November 19, 2020 and December 2, 2020 IEP offer were not reasonably calculated to meet Student's need in the areas of academics, communication and social skills. Student did not establish the offer of placement and services regarding behavior was not reasonably calculated to meet Student's needs as Student did not prove Student had behaviors requiring behavior services and did not prove Student's placement was inappropriate due to Student's prompt dependence.

In late January of 2021, an IEP team meeting was convened during which an Assistive Technology assessment was reviewed. Student was offered two assistive technology programs. Bellflower offered a program to support Student's reading comprehension by allowing him to follow along visually while texts were read to him. "My Homework App" provided him the ability to track his homework and help him break assignments into manageable steps. Bellflower offered Student three hours of technology training and two hours of training on the technology was offered to the staff

members working with him so they could also be trained on the program. No other aspect of his IEP offer changed from that offered on December 2, 2020. The addition of these assistive technology services were reasonably calculated to provide Student with educational benefit. However, the additions did not render the IEP offer reasonably calculated to meet Student's needs in the area of academics, communication or social skills for reasons previously discussed.

On March 17, 2021, an IEP team meeting was convened to discuss an incident of inappropriate comments made by Student to his aide. His aide resigned in early March and was never replaced. Some of the comments were misunderstandings that resulted from Student's lack of social skills and his inability to express himself clearly. Student's IEP offer was not changed following this incident. Bellflower's failure to change Student's IEP to address his continuing need for communication and social skills training to avoid Student losing critical support personnel was not "reasonably calculated to remediate and/or accommodate Student's disabilities so that Student could make progress in the general education curriculum, taking into account the progress of his non-disabled peers, and his potential." (M.C. v Antelope Valley, *supra* at p. 1201.)

From April 1, 2019 to April 1, 2021, Bellflower failed to offer special education and related services, that addressed Student's unique needs for specialized academic instruction necessary to his appropriately ambitious academic courses. Nor did the IEPs offer adequate services to meet his needs in the areas of communication and social skills. The services offered did not allow him the opportunity to make more than de minimis educational progress, which was demonstrated across IEPs during that time frame by Student's lack of progress in self advocacy, communication, reading comprehension and his poor academic performance. The standard by which progress is measured is "markedly more demanding than de minimus progress." (Endrew F., *supra*,

at p. 994.) Student proved that from April 1, 2019 to April 1, 2021, Bellflower failed to offer IEPs reasonably calculated to allow Student to make meaningful educational progress in the areas of academics, communication, and social skills, resulting in a denial of FAPE. Student failed to prove that Bellflower did not make IEP offers reasonably calculated to allow Student to make meaningful educational progress in the area of behavior from April 1, 2019 to April 1, 2021.

ISSUE 4: FROM MARCH 16, 2020, THROUGH APRIL 1, 2021, DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO IMPLEMENT HIS OPERATIVE INDIVIDUALIZED EDUCATION PROGRAMS, SPECIFICALLY SPECIALIZED ACADEMIC INSTRUCTION, INSTRUCTIONAL AIDE SERVICES, COUNSELING, SPEECH AND LANGUAGE, AND TRANSITION SERVICES INCLUDING COLLEGE AND CAREER AWARENESS?

In his complaint, Student asserts that his operative IEP's were not implemented from March 16, 2020 to April 1, 2021, specifically in the areas of specialized academic instruction, intensive individualized services, also called instructional aide services, counseling, speech and language and transition services including college and career awareness. As a result, Student asserts he was denied a FAPE during this period.

Bellflower argues that any changes to the implementation of Student's IEP resulted from the need to address the Covid-19 pandemic school closures and the resulting need to institute a distance learning program. According to Bellflower, there was no material variance between the provisions of the operative IEP at the time of the closure and the distance learning and service Student received from the district. Bellflower contends Student failed to prove that any problems with the performance of

the aides resulted in a denial of FAPE. Bellflower also asserts that Student was provided with the means to access additional help he needed by accessing his teacher's office hours which he was repeatedly urged to do.

THE INSTRUCTION INTERRUPTION – MARCH 16, 2020 TO MARCH 27, 2020.

On March 4, 2020, California's Governor proclaimed a state of emergency to exist in the state as a result of the Covid-19 virus threat. (Executive Order N-26-20.) The Governor issued a "shelter in place" order that required all people who were not essential personnel to stay home and avoid public gatherings. On March 12, 2020, the U.S. Department of Education, called the US DOE, which is the agency responsible for developing regulations for and enforcement of the IDEA, outlined the States' responsibility under the IDEA to children with disabilities during the COVID-19 outbreak. (Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (U.S. Dept. of Education, March 2020).) When an agency interprets its own regulations, a very deferential standard applies, and such an interpretation is controlling unless plainly erroneous or inconsistent with the regulation. (Federal Express Corp. v. Holowecki (2008) 552 U.S. 389, 397.) On March 19, 2020, a statewide "shelter in place" order took effect pursuant to California State Public Health order as confirmed by Executive Order N-33-20. This shelter in place order had been announced on March 13, 2020.

From March 16, 2020 to March 27, 2020, Bellflower closed all district school sites and did not offer instruction to any of its students. Student did not receive any of the services he was entitled to under the operative February 2020 IEP during this 10-day period.

Only a material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, (9th Cir.2007) 502 F.3d 811, 822.) A procedural violation occurs when a State violates the IDEA's statutory or regulatory procedures in creating or implementing an IEP. (J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist., (9th Cir. 2010) 626 F.3d 431, 432–33.)

On March 21, 2020, the US DOE issued supplemental guidance, that stated school districts must provide a FAPE to students with disabilities during the COVID-19 pandemic, but expressly recognized that education and related services and supports might need to be different in a time of unprecedented national emergency. (Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020, Office of Civil Rights and OSEP) at p. 2.) It stated that FAPE may include, as appropriate, services provided through distance instruction provided virtually, online or telephonically. (Id., at pp. 1-2.) The US DOE emphasized that the IDEA allowed for flexibility in determining how to meet the individual needs of students with disabilities. (Id., at p. 2.) If there were inevitable delays in providing services, it directed IEP teams to make individualized determinations of whether and to what extent compensatory services were due when schools resumed normal operation. (Ibid.)

Based on the guidance provided by the US DOE, Bellflower was not required to provide Student a FAPE while Bellflower schools were closed to all students to prevent the spread of the Covid-19 virus. Bellflower did not deny Student a FAPE by failing to implement his IEP from March 16, 2020 to March 29, 2020.

THE REDUCED SCHOOL DAY WITH ENRICHMENT ACTIVITIES- MARCH 30, 2020 TO JUNE 4, 2021.

On March 30, 2021, Bellflower resumed instruction by offering what it called "enrichment activities." Enrichment activities were provided to Students in their homes, by computer, during a shortened school day of 240 minutes through June 4, 2020. Each teacher decided what kinds of activities to provide. Google Meet was used for online class meetings with the teacher. Those online meetings were called "synchronous" instruction. Students were not required to have their camera on during class to maintain the privacy of their homes and attendance was optional. "Asynchronous" instruction involved assignments, delivered to the students through Google Classroom, to be completed by students after the synchronous meetings were completed. Students could contact teachers through Google Classroom. Enrichment activities were graded and graduation credit awarded, but the work was only allowed to improve a Student's grade, functioning as a type of extra credit. Work completed during the period from March 30, 2020 to June 4, 2020, could not cause a student's grade to be lowered from its level prior to the school site closures.

During the period at issue there were two operative IEPs: The February 21, 2020 IEP and the January 28, 2021 IEP to which Parent consented on March 22, 2021. The IEP's differed only in an offer of assistive technology services, and a reduction of services listed in an emergency plan which showed how Bellflower proposed services should be implemented in a situation where school sites were closed, and Student was unable to receive in-person instruction for more than 10 days. When Parent consented to the January 2021 IEP, she did not consent to any reductions of services. As a result, the

service levels in Student's February 21, 2020 IEP applied to the entire period from March 16, 2020 to April 1, 2021.

Beginning March 30, 2020 through the end of the 2019-2020 school year, Bellflower unilaterally reduced the school day from 408 minutes a day to 240 minutes a day. No IEP team meeting was convened to discuss this change and Parent was not offered the opportunity to participate in a discussion regarding whether, or how, this service reduction would meet Student's needs.

The IDEA directly addresses how parties may amend an IEP. Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP, which also requires parental consent. (Board of Education of Yorktown Central School District v. C.S., (2d Cir. 2021) 990 F.3d 152, 170, citing, 20 U.S.C., § 1414(d)(3)(F).) An IEP may not be changed unilaterally. (M.C. ex rel. M.N. v. Antelope Valley Union High Sch. Dist., (9th Cir. 2017) 858 F.3d 1189, 1197.)

Student was entitled to special education and related services during this 10-week period pursuant to his operative February 2020 IEP; but he only received a small fraction of them. For specialized academic instruction, instead of 55 minutes per day in an English class co-taught by a general education and a special education teacher, and 55 minutes per day in a co-taught Math class, Student had contact with Christine Woodward, his special education teacher, two or three times during the entire period from March 30, 2020 to June 4, 2020 during which time they discussed organization. They did not work on his reading comprehension or writing goals. There was no regular schedule for specialized academic instruction. No specialized academic instruction was provided in math.

Bellflower failed to implement Student's other IEP services required by his February 2020 IEP during this period as well. Although Student was supposed to receive 20 minutes per month of college awareness and 20 minutes per month of career awareness in a group, no career or college awareness groups were convened from March 30, 2020 to June 4, 2020. Student was supposed to receive 50 minutes per week of group speech instruction and 50 minutes per week of individual speech instruction. Instead, he was sent worksheets that were inappropriate for his age and development level. They provided Student no educational benefit. Student received no speech sessions. Student was supposed to receive 60 minutes per month of counseling but received none. Student was not provided an aide for any of the 408 minutes per day he was supposed to receive aide services. Without an aide Student had difficulties navigating the Google classroom and Google meet systems. He missed opportunities to improve his grades.

Bellflower acknowledged the need for compensatory education for the speech sessions missed and provided all but two group and two individual sessions owed during the summer of 2020. Those four sessions that were not provided, were never made up. No compensatory services for the lost counseling or for the lost instructional assistance were provided.

The reduced services provided to student from March 30, 2020 to June 4, 2021 constituted a material failure to implement Student's IEP, resulting in a denial of educational benefit to Student. This reduction in services, and the changes to the type of services provided, denied Student a FAPE. (Van Duyn, *supra*, 502 F.3d at p. 822.)

DISTANCE LEARNING FROM AUGUST 18, 2020 TO MARCH 21, 2021

When school resumed for the 2020-2021 school year, instruction continued to be delivered on a "distance learning" platform for a reduced amount of time. Classes were offered in a block schedule for 180 minutes per day. The total school day continued to be 240 minutes. Students were expected to complete written work for an additional hour after classes during the school day. Following classes, and a lunch break, all teachers held "office hours" from 12:30 p.m. to 1:30 p.m. daily. Office hours were not considered part of the 240-minute school day.

Student was enrolled in co-taught English 11 and co-taught Integrated Math III classes. He was also enrolled in Chemistry, U.S. History, Spanish, and Weight Training. Parent did not consent to an IEP reducing any of Student's IEP services after February 2020. Thus, service levels provided for in Student's February 2020 IEP still applied during the 2020-2021 school year to April 1, 2021.

The evidence established that a material reduction of SAI occurred. Student's did not receive the 55 minutes per day of SAI in a co-taught English class and 55 minutes per day of SAI in a co-taught math class the IEP provided him. The specialized academic instruction in Student's English and math classes were intended to provide Student with support, that is, instruction provided by special education teachers who would employ learned techniques to assist students with disabilities with accessing the course work. No SAI was provided in the math class. The teacher decided that moving students into separate google "rooms" for small group instruction took too much of their limited instruction time. Small group instruction was offered only occasionally "when they had time," in Student's English class. When small groups were offered, they were not limited

to Students with IEP's and did not focus on Student's goals or his individual needs. The SAI provided during distance learning was a material reduction in type and time from that offered in Student's operative IEP.

Bellflower pointed out that Student had access to "office hours" for additional small group instruction. The teachers made themselves available during office hours for one hour every day from 12:30 p.m. to 1:30 p.m. to answer questions. Office hours for all classes were held at the same time. The office hours provided students an open, non-mandatory, drop-in Google meeting that students could join to ask questions. Students could ask their question and leave; or stay and listen to the discussions of other students' questions.

However, office hours were not the equivalent of specialized academic instruction. Office hours were a general education resource. Office hours for all classes were offered at the same time, putting Student in the position of having to choose which class or classes he needed help with the most. The time was not devoted to specialized academic instruction of either the math or English coursework and did not offer a consistent amount of time devoted to working on Student's goals or to presenting the currently covered course materials using specialized academic instruction approaches. Office hours included general education students. Student had to affirmatively seek help by getting to the google meeting he needed and then he had to ask questions, two of his known executive function weaknesses.

Bellflower knew it was difficult for Student to admit he needed help. Student was aware of his disability and found asking questions difficult. He often failed to recognize when he needed help, and frequently told Parent, his teachers and his aides that he did not need to ask questions or attend office hours. Despite this, Bellflower emphasized

office hours as a means of providing Student with the help his IEP team knew he needed. As discussed in more detail later in this decision, the district increased Student's allotted aide services so the aide would stay and direct Student to attend office hours. Student rarely attended office hours as he frequently told the aide he did not need to go.

Eventually, by February of 2021, Student was directed to Vanderbaan's office hours every day so that she could help him choose which class he needed to go to office hours for the most. Vanderbaan usually directed him to Chemistry. However, his Chemistry teacher, Daniel Rajan, could only recall Student actually attending his office hours 2 or 3 times between August 18, 2020 and April 1, 2021. Rajan believed Student needed a tutor and told Vanderbaan he thought Student required more focused help. Rajan was a new teacher and believed his recommendation would result in his special education student being provided with additional support for the class. Student did not receive additional support for the Chemistry class and received a "no mark" in the course. Rajan decided the no mark would do less harm to Student's grade point average than the F he was earning; and give Student the opportunity to repeat the class so he could get the credit to meet the "a-g" requirements necessary to qualify for a California public university.

Office hours were not a specialized academic instruction substitute. The failure to provide Student 55 minutes per day of specialized academic instruction in co-taught English and Math course was a material variance in the IEP services offered. The reduction of SAI time implemented coupled with the change in the method used to offer it constituted a material failure to implement Student's IEP. This failure caused Student a loss of educational benefit and resulted in a denial of FAPE.

Student's instructional aide services were also reduced from August 18, 2020 to April 1, 2021. Prior to the beginning of school, Bellflower informed Parents of IEP students via email "blasts" and form letters that IEP services were being reduced "proportionate to the reduced school day." Student's IEP provided for 408 minutes per day of instructional aide assistance. No IEP team meeting was convened prior to reducing the aide support and no IEP team discussion involved whether the offered level of "proportionate" services met Student's needs in the distance learning environment. Bellflower initially allocated Student 200 minutes per day of instructional aide services when the school year began on August 18, 2020. Parent complained about the failure to provide an instructional aide when the school year began, the reduction in instructional aide assistance and in the lack of SAI in letters to Adair.

An IEP team meeting was held on September 15, 2020. This was the first IEP team meeting in which an "emergency" IEP offer was made. The emergency IEP offer memorialized the reduced services that had been in place since March 30, 2020. Parent did not consent to the reductions. In November of 2020, Bellflower increased the allocated instructional aide assistance to 300 minutes per day for the purposes of helping Student access office hours and helping him with coursework organization.

When aides began being provided again, on September 20, 2020 they were very unreliable. The evidence established that they did not accurately record their time, logging time on days they did not come to work and logging hours that were longer than the hours they actually worked. It was not uncommon for aides to miss work, come late, or leave early. Some aides were unable to provide basic redirection to keep Student focused and assist him with asking questions. None of the aides assigned were able to assist Student with all of his high school classes, leaving him without needed assistance, especially in math and chemistry.

Stepping Stones, the non-public agency providing the in-home assistance, replaced unreliable aides, and the aide who could not provide redirection, but could not find aides who could help Student with Algebra II, the primary subject matter of his Integrated Math III class, in which he was receiving no SAI; or Chemistry, which Student was failing. Without instructional aides who were at least trained to assist Student with the communication deficits impeding his ability to ask questions and follow assignment requirements, and who reliably came to work, Student did not keep up in his classes.

Student was not consistently supported in trying to access extra help from instructors. Furthermore, the aides were not provided adequate supervision to understand and utilize basic specialized academic instruction approaches in their work with Student. Approaches such as chunking information, checking for understanding or reteaching the information they could reteach, could have helped Student. Their contact with teachers was limited to occasional communications regarding assignments or deadlines. Student had three different aides between September 20, 2020 and February 16, 2021. Student's third aide quit after an uncomfortable exchange with Student that was, in part, a misunderstanding. Student had no instructional aide support from February 17, 2021 to April 1, 2021. The failure to provide the aide support Student was due, constituted a material reduction in his IEP services. The lack of aide support impeded Student's ability to access his education and denied him FAPE. (*Van Duyn, supra*, 502 F.3d at p. 822.)

Student failed to prove Bellflower did not implement the counseling services he was owed. Gagliardino's service logs demonstrate that she provided Student with the 60 minutes per month of services to which Student was entitled.

Student's 2020-2021 school year speech services did not begin until September 29, 2020, resulting in a six-week loss of speech sessions. Student was due two sessions per week of 50 minutes each, one in a group format and one individual. Student's speech sessions were intended to help him work on his communication and social skills, particularly, his ability to read body language and other non-verbal cues from others. Student was making little progress in that area, however, as demonstrated by the loss of his instructional assistant due to Student's inability to understand her reaction to his inappropriate comments in February of 2020. The loss of six-weeks of speech services was a material reduction in Student's speech services that resulted in Student being denied access to his education. This material failure to implement Student's IEP cause Student a denial of FAPE. (*Van Duyn, supra*, 502 F.3d at p. 822.)

As a Junior in high school, Student was entitled to transition services that were not provided. Student's 20-minute monthly college and 20-minute monthly career awareness group sessions were never provided. A student's Junior year is an important planning time for transition to post-secondary education. Student's loss of the direction he would have received from the transition assistance he was supposed to receive was a material failure to implement his IEP resulting in a denial of FAPE. (*Van Duyn, supra*, 502 F.3d at p. 822.)

ISSUE 5A -FAILING TO PROVIDE LEGALLY COMPLIANT PRIOR WRITTEN NOTICE IN ITS NOVEMBER 16, 2020 LETTER

Student asserts that the letter sent from Special Education Director Adair to Parent on November 16, 2020 did not constitute legally compliant prior written notice.

Bellflower contends the procedural inadequacies of the letter did not deny Student a FAPE because the issues were all discussed three days later in the November 19, 2020 IEP team meeting.

Parent's October 27, 2020 letter raised concerns regarding Bellflower's limited IEP team meetings, the delay in scheduling IEP team meetings to resolve issues, concerns about Student's instructional aides having inadequate academic abilities to meet Student's needs and the need for additional resource support in Math and Chemistry. The conflict between Student's speech services appointments and recommended office hours. Parent noted Student had a failing grade in Chemistry and asked that resource support be provided at 2:00 PM in the afternoons to avoid pulling Student from his general education classes. Parent also noted Student's accommodation of having information repeated was not provided resulting in Student's auditory processing deficits causing him to miss information. Additionally, Parent noted the failure to provide all speech services in the 2019-2020 school year, and the fact that other related services were not provided during the time the schools were closed during the 2019-2020 school year. Parent questioned why only compensatory speech services were offered during the summer and why those were not completed. Her letter also questioned why Student had not received the IEP services he needed in the 2020-2021 school year.

Bellflower sent a November 16, 2020 letter, titled "Response to October 27, 2020 letter and Prior Written Notice: The Bellflower Unified School District will not offer after school service to support [Student's] Math and Chemistry class."

A local educational agency must provide a notice of its intent or proposal to initiate or change or refuses to initiate or change the identification, evaluation, or

educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. § 1415(b)(3).) That notice must include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action. The notice must also state a description of other options considered by the IEP Team and the reason why those options were rejected; and a description of the factors that are relevant to the agency's proposal or refusal. The notice must also provide a statement that the parents of a child with a disability have protection under the procedural safeguards of the IDEA and the means by which a copy of a description of the procedural safeguards can be obtained. The notice must include sources for parents to contact to obtain assistance in understanding the provisions of the IDEA. (20 U.S.C. § 1415(c).)

Failure to provide a prior written notice is a procedural violation. This means that for a denial of FAPE to result, Student needed to prove that the notice did not meet legal standards and that the provision of a legally deficient written notice resulted in the denial of a meaningful opportunity for Parent to participate in the IEP process or resulted in a denial of educational benefit to Student. (*Amanda J., supra*, 267 F.3d at p. 892.)

The evidence established that the November 16, 2020 prior written notice did not meet the requirements for a prior written notice under the IDEA. The notice did not clearly describe the action being refused followed by the required explanations of reasoning for the decision. Instead, the letter states five bullet points recharacterizing Parent's concerns in ways that do not address all elements of the issues Parent raised.

The November 16, 2020 Prior Written Notice did not address Parent's concerns. All the issues raised by Parent alleged "the initiation or change; or refusal to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child." (20 U.S.C. § 1415 (b)(3).) Therefore, the prior written notice should have addressed each of them. (*Ibid.*)

The notice did not address any concerns raised by the changes to Student's program resulting from the distance learning model. The notice asserted Student was passing all his classes and concluded the supports and services being offered were "appropriate at this time." However, the notice failed to say what records were used to make determinations regarding the status of Student's grades or in reaching the conclusion that his supports were appropriate.

The prior written notice failed to meet the statutory requirements. This procedural violation resulted in the denial of a meaningful opportunity for parental participation in the determination of Student's individualized educational program by depriving Parent of complete information regarding Bellflower's reasoning for denying her requests. Bellflower argues this did not rise to a denial of FAPE as Parent's concerns were discussed at the November 19, 2020 IEP. However, the purpose of a prior written notice is to allow a Parent to understand the basis for a district decision and be prepared to discuss it. Without an accurate prior written notice, Parent was put at a disadvantage in her ability to advocate for her son. This denied her a meaningful opportunity to participate in the IEP development process resulting in a denial of FAPE.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Issue 1: Student did not establish that Bellflower denied Student a FAPE by failing to assess him in the area of behavior from April 1, 2019 to April 1, 2021. Bellflower prevailed on issue 1.

Issue 2A: Student established that Bellflower denied Student a FAPE by failing to conduct a legally sufficient November 12, 2020 language and speech assessment and report. Student prevailed on issue 2A.

Issue 2B: Student established that Bellflower denied Student a FAPE by failing to conduct a legally sufficient November 16, 2020 psychoeducational assessment and report. Student prevailed on issue 2B.

Issue 2C: Student did not establish that Bellflower denied Student a FAPE by failing to conduct a legally sufficient November 16, 2020 transition assessment and report. Bellflower prevailed on issue 2C.

Issue 3: Student established that Bellflower denied Student a FAPE by failing to offer appropriate placement and services from April 1, 2019, through April 1, 2021, to enable Student to make meaningful educational progress in the areas of academics, communication, and social skills. Student did not establish that Bellflower denied Student a FAPE by failing to offer appropriate placement and services to enable Student

to make meaningful educational progress in the area of behavior. Student substantially prevailed on this issue.

Issue 4: Student established that Bellflower denied him a FAPE by failing to implement his operative IEPs specifically in the areas of specialized academic instruction, instructional aide services, counseling, speech and language services, and transition services, including college and career awareness, for the period from March 30, 2020 to April 1, 2021. Student did not establish that Bellflower denied him a FAPE by failing to implement his IEP during the time period schools were closed to all Students, that is, from March 16, 2020 to March 29, 2020. Student substantially prevailed on this issue.

Issue 5A: Student established that Bellflower committed a procedural violation which significantly impeded Parent participation or caused a deprivation of educational benefit, and thereby denied Student a FAPE by failing to provide legally compliant prior written notice in its November 16, 2020 letter. Student prevailed on issue 5A.

Issue 5B: Student established that Bellflower committed a procedural violation which significantly impeded Parent participation or caused a deprivation of educational benefit, and thereby denied Student a FAPE by failing to provide Parent an assessment plan for the January 8, 2020 transition assessment. Student prevailed on issue 5B.

Issue 5C. Student established that Bellflower committed a procedural violation which significantly impeded Parent participation or caused a deprivation of educational benefit, and thereby denied Student a FAPE by failing to obtain Parent permission to conduct the January 8, 2020 transition assessment. Student prevailed on issue 5C.

Issue 5D. Student established that Bellflower committed a procedural violation which significantly impeded Parent participation or caused a deprivation of educational

benefit, and thereby denied Student a FAPE by failing to review the November 16, 2020 transition assessment at an IEP team meeting within 60 days of receiving Parent consent. Student prevailed on issue 5D.

REMEDIES

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (School Comm. of Burlington v. Department of Educ. (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385 (Burlington)]; Parents of Student W. v. Puyallup School Dist., No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); Burlington, supra, 471 U.S. 359, 374 [the purpose of the IDEA is to provide students with disabilities “a free appropriate public education which emphasizes special education and related services to meet their unique needs.”].) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (Puyallup, supra, 31 F.3d. at p. 1497.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (Parents of Student W. v. Puyallup Sch. Dist., No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496.) The authority to order such relief extends to hearing officers. (Forest Grove Sch. Dist. v. T.A. (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft “appropriate relief” for a party. (Parents of Student W. v. Puyallup Sch. Dist., No. 3, supra, 31 F.3d at p. 1496.) An award of compensatory education need not provide “day-for-day compensation.” (Id. at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the

individual student's needs. (Reid v. District of Columbia (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific. (Ibid.)

In addition, staff training is an appropriate compensatory remedy under these facts. The IDEA does not require compensatory education services to be awarded directly to a student. Staff training can be an appropriate compensatory remedy; and is appropriate in this case. (Park v. Anaheim Union High School Dist. (9th Cir. 2006) 464 F.3d 1025,1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief considering the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (Ibid.)

ASSESSMENTS:

Student established that Bellflower's psychoeducational assessment and speech and language assessment failed to meet legal standards. As a result, Student is entitled to independent educational evaluations in these areas at public expense. Student did not provide evidence either identifying proposed assessors or the fees for the assessments. Therefore, the psychoeducational and speech and language assessments shall be conducted by assessors of Student's choice but at a cost that complies with the applicable SELPA guidelines. Additionally, Bellflower shall pay the independent psychoeducational and speech and language assessors to attend an IEP team meeting to explain the results of the assessment.

As an equitable remedy for the failure to complete the transition assessment process completely and within the prescribed timelines, Bellflower shall fund the cost of

a transition assessment through direct contract with a provider of Student's choice, at a cost that complies with the applicable SELPA guidelines. Additionally, Bellflower shall pay for the assessor to attend an IEP team meeting to explain the results of the assessment.

Within 15 days of Parent identifying requested assessors in writing to one of Bellflower's Special Education Administrators, Bellflower shall contract with the proposed assessor. Bellflower shall contract with the assessors to conduct the assessment, write a report, and attend an IEP meeting to explain the results.

Bellflower shall convene an IEP team meeting within 15 calendar days of receipt of the last of the three assessment reports ordered in this decision to review the results of the assessments.

COMPENSATORY EDUCATION

Student submitted evidence of only one preferred program as a remedy for the denials of FAPE: Stowell Learning Center. Stowell Learning Center is a California non-public agency that focuses on addressing cognitive processing disorders, executive functioning deficits and remediating academic deficits.

Student's auditory processing deficits were not adequately addressed by any of Bellflower's IEP offers of special education and related services from April 1, 2019 to April 1, 2021. This was a critical time Student's educational life, who teachers described as ambitious and committed to do his best. The failure to address Student's processing deficits hobbled his ability to access the course of education the IEP team members believed was appropriately ambitious. The lack of support demoralized and depressed Student and impacted his self-esteem. Student has one more year of high school. This

is a situation in which a strict one-to-one analysis of hours lost will not adequately remedy the educational benefit lost due to a failure to provide FAPE.

The evidence presented regarding the Stowell Learning Center program established that it is appropriate for Student. The program focuses on Student's auditory processing and working memory deficits that are directly impacting his academics, communication, and social skills. Step one of the recommended program focuses on auditory processing and comprehension. The programs included are, The Listening Program, In Time with Bone Conduction; Auditory Stimulation Training-Comprehension with Enhanced Lateralization, and Brain Integration Training. Step one of the program is estimated to require 96 hours. Step two of the program is intended to improve processing speed, timing and memory and includes a continuation of The Listening Program with Bone Induction as well as the Attention Memory and Processing Skills – Cognitive, course. Step two of the program is estimated to require 83 hours of instruction. The focus of the program is directly related to the FAPE denials established.

Bellflower shall directly contract with Stowell Learning Center to pay for Student's services and attendance at the Stowell Center for both the recommended 96 hours of the Step One program and the 83 hours of the Step Two program. This includes tuition and start-up fees as well as the cost of any required or recommended equipment or books for the two-steps of the program. Additionally, Bellflower shall reimburse Parent for the cost of one round-trip transportation to and from Stowell Center from the date of registration to completion of the two-steps of the recommended course. The Stowell Learning Center program shall be provided to Student in addition to his regular school day.

Having considered all the proven FAPE denials, Stowell Learning Center's recommended program is found to be a sufficient supplement to Student's regular educational opportunity to remedy underlying deficits that were not addressed from April 1, 2019 to April 1, 2021, as described in this Decision. Within 15 days of the date of this decision, Bellflower shall contact Stowell Learning Center to initiate the process of establishing a direct contract to provide the services ordered in this decision.

TRAINING

Bellflower's staff failed to adhere to the procedural requirements regarding, prior written notices and transition assessments. Bellflower shall arrange for a 90-minute training for all Mayfair High School special education staff who prepare assessment plans or prior written notices. This training shall focus on the legal requirements when issuing prior written notices and assessment plans, including the requirements for securing a parent or guardian's informed consent and completing transition assessments. This training shall not be presented by a trainer that is employed by Bellflower.

ADDITIONAL REQUESTED REMEDIES

In his closing brief, Student requested that a series of changes be ordered to his IEP prospectively. The end date of the case considered herein, as defined by the issues pled, is April 1, 2021. Therefore, prospective IEP changes have not been ruled on in this decision.

ORDER

1. Within 10 days of the date of this order, Bellflower shall contact Stowell Learning Center to initiate the process of establishing a contract for services for Student

for both Step One of the program recommended for Student for 96 hours and Step Two of the program recommended for Student for 83 hours at Stowell Learning Center's current, hourly rate applicable for the programs ordered, as well as any costs of equipment or books required or recommended to complete both Steps One and Two.

2. Bellflower shall fund an independent psychoeducational assessment by an assessor of Student's choice, at public expense in an amount that complies with the applicable SELPA guidelines. Bellflower shall also fund the attendance of the assessor at an IEP team meeting in which the assessment is discussed for purposes of exploring the need to adjust Student's IEP services accordingly. Within 15 days of Parent identifying her preferred assessor in writing to one of Bellflower's Special Education Administrators, Bellflower shall contract with the assessor to conduct the assessment, write a report, and to attend an IEP meeting to explain the results.
3. Bellflower shall fund an independent speech and language assessment at public expense with an assessor of Parent's choice in an amount that complies with the Special Education Local Plan Area or SELPA guidelines. Bellflower shall also fund the attendance of the assessor at an IEP team meeting in which the assessment is discussed for purposes of exploring the need to adjust Student's IEP services accordingly. Within 15 days of Parent identifying her preferred provider in writing to one of Bellflower's Special Education Administrators, Bellflower shall contract with the provider to provide the assessment and to attend an IEP meeting to explain the results.
4. Bellflower shall fund an independent transition assessment at public expense with an assessor of Parent's choice in an amount that complies with the Special Education Local Plan Area or SELPA guidelines. The transition assessment shall

thoroughly explore the supports Student requires to improve his communication and executive functioning skills for the purposes of a career or higher education as well as Student's aptitudes and career preferences. Bellflower shall also fund the attendance of the assessor at an IEP team meeting in which the assessment is discussed for purposes of exploring the need to adjust Student's IEP services accordingly. Within 15 days of Parent identifying her preferred provider in writing to one of Bellflower's Special Education Administrators, Bellflower shall contract with the provider to provide the assessment and to attend an IEP meeting to explain the results.

5. Within 10 days of the date of this order, Bellflower shall provide Parent with the necessary information to establish reimbursement for mileage costs at the current IRS mileage reimbursement rate for one round trip drive from Student's home or school to the assessment location and for one round-trip drive from Student's home or school for each day Student attends the Stowell Center for registration and participation in the ordered program.
6. Bellflower shall convene an IEP team meeting within 15 days of receipt of the final assessment report ordered herein, to review the results of the assessments.
7. Bellflower shall arrange for a 90-minute training for Mayfair High School special education staff who prepare assessment plans or prior written notices. This training shall focus on the legal requirements of these processes and shall be presented by a trainer that is not employed by Bellflower. This training shall be completed no later than December 31, 2021.

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/

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings