

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. BASSETT UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016060145
<hr/> BASSETT UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016080019

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 1, 2016, naming Bassett Unified School District. On July 28, 2016, District filed a due process hearing request, naming Student, and moved to consolidate the cases. On August 9, 2016, OAH consolidated both cases, and determined that the Decision timeline was based on the filing of the complaint in Student’s case. OAH granted Student’s motion to amend his complaint and deemed the amended complaint filed on September 8, 2016.

Administrative Law Judge Kara Hatfield heard this matter in La Puente, California on November 2, 3, and 9, 2016.

Lisa Denis, Attorney at Law, represented Student. Advocate Hamlet Yarijianian and attorney Caroline Olsen assisted Ms. Denis. Mother and Father attended the hearing the morning of November 2, 2016, but left before the first witness was called. Mother

attended the hearing on November 9, 2016, until the conclusion of her testimony, and Father attended the hearing on November 9, 2016, all day. OAH provided Parents with a Spanish language interpreter whenever they were present. Student did not attend the hearing. Tara Doss, Attorney at Law, represented District. Rakhee Comar, District's Director of Special Education, attended all days of hearing.

At the request of the parties, OAH continued the matter for written closing arguments. The matter was submitted and the record closed on November 26, 2016, upon receipt of closing briefs from the parties.

ISSUES¹

STUDENT'S ISSUES:

1. Did District deny Student a free appropriate public education by making a predetermined offer of placement in Student's April 21, 2016 individualized education program, which resulted from IEP team meetings held on February 29, 2016, March 22, 2016, and April 21, 2016, depriving Parents of meaningful participation in the development of Student's IEP?

¹ The issues have been rephrased for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) In particular, for purposes of clarity, the final offer of goals, placement, services, and accommodations was made at the conclusion of the third individualized education program team meeting, on April 21, 2016. Despite the document bearing the date on which the IEP team meeting began, February 29, 2016, the offer and total IEP is referred to as the April 21, 2016 IEP.

2. Did District deny Student a FAPE by failing to offer an appropriate placement in the least restrictive environment in Student's April 21, 2016 IEP, which resulted from IEP team meetings held on February 29, 2016, March 22, 2016, and April 21, 2016?

DISTRICT'S ISSUE:

1. Did District's offer of placement and services in the April 21, 2016 IEP, which resulted from IEP team meetings held on February 29, 2016, March 22, 2016, and April 21, 2016, constitute a FAPE in the least restrictive environment, such that District may implement the April 21, 2016 IEP without Parents' consent?

SUMMARY OF DECISION

Student did not prove District denied Student a FAPE as District did not predetermine its placement offer. Mother attended, asked questions at, and contributed to the discussion at each of the three IEP team meetings, including the final meeting at which placement was discussed. The final offer of placement, while not what Parents preferred, was made only after District considered Mother's requests and preferences and Mother rejected alternative proposals. Student also failed to prove that District's placement offer was not designed to meet Student's unique needs and not reasonably calculated to confer some educational benefit in the least restrictive environment.

However, District did not prove the April 21, 2016 IEP offered Student a FAPE because District failed to prove compliance with several procedural requirements under the Individuals with Disabilities Education Act. Therefore, District may not implement the IEP without Parents' consent.

Student's and District's requests for relief are denied.

FACTUAL FINDINGS

1. Student was 15 years old at the time of the due process hearing. At all relevant times, Student was eligible for special education and related services, with primary eligibility of autism and secondary eligibility of speech or language impairment. Student resided within District with Parents.

BACKGROUND

2. Student attended District schools from kindergarten through fourth grade, and was found eligible for special education at the end of third grade. He attended fifth and sixth grades in another district, and returned to District for seventh and eighth grades.

3. When Student returned to District for seventh grade in the 2013-2014 school year, District recommended continuation of his placement in general education classes with resource support program services and counseling. District also offered the addition of speech and language services.

THE 2014-2015 SCHOOL YEAR

4. During eighth grade, the 2014-2015 school year, Student had difficulty socializing as well as working with peers. Student's English Language Arts class was co-taught by a special education and a general education teacher. The special education English teacher, Rene Tiscareno, was also Student's case carrier. Although Mr. Tiscareno tried to prompt Student to work with peers, Student had difficulty collaborating with others. He preferred to work alone. Mr. Tiscareno put him in groups where peers were more willing to work with him, but he still had difficulty working with his peers.

5. District's Coordinator of Special Education at the time was Rahkee Comar. Ms. Comar became the Director of Special Education in the 2016-2017 school year.

Mother reported to Ms. Comar her concerns that Student was having “trouble in class,” not getting along with his peers, did not have friends, and seemed unhappy about those things. He came home from school crying about not having any friends.

6. In response to Mother’s concerns, Ms. Comar conferred with Sharon Floyd, an employee of the West Covina Unified School District. Ms. Floyd was the autism program coordinator for the East San Gabriel Valley Special Education Local Plan Area (SELPA), of which District is a member. In her capacity as the SELPA’s autism program coordinator, she managed many aspects of the SELPA’s various autism programs. Her duties included training teachers, staff, and instructional aides, and coordinating in-service trainings for the member districts. She assured parity among the autism programs, meaning that there were the same foundations in all the autism programs, from preschool through high school, focusing on evidence-based practices for working with students with autism, and taking data in all programs in all districts throughout the SELPA. She processed requests from member districts to access the SELPA’s autism programs. She participated in directors’ meetings, and created monthly reports for the districts regarding the availability of space in the various programs. One SELPA program was the Autism Spectrum Disorder – Intermediate Program, which served students with borderline to moderate cognitive abilities, who were functioning a little below grade level. Another SELPA program was the Autism Spectrum Disorder Program (ASD Program);² it started about 20 years ago to provide social and behavioral skills supports for students close to or at academic grade level. In the 2014-2015 school year, the SELPA had ASD Programs at three high schools: Charter Oak High in the Charter Oak

² The witness who testified and the April 21, 2016 IEP team meeting notes refer to the program as the ASD program, and this Decision therefore uses this term.

Unified School District; Glendora High in the Glendora Unified School District; and Walnut High in the Walnut Valley Unified School District.

7. District held an amendment IEP team meeting on April 16, 2015, to discuss Mother's concerns about Student's difficulty socializing with his peers and others in and outside of the classroom, and when working with peers. Both Parents attended. Ms. Comar attended and invited Ms. Floyd to the meeting to observe and listen to what the team discussed about Student so she would know the Student's situation and Parents' and teachers' concerns. Mother reported that Student claimed he was being bullied in class. Teachers explained Student made comments to peers that caused them to make comments back to him. Student interpreted the responses as bullying or at least that his classmates were not being nice to him. Student did not understand he was the one starting the negative interactions both in and out of class. Mother reported Student had trouble verbalizing and expressing himself. The IEP team reviewed that Student had been receiving counseling services through a community clinic³ twice a week since the beginning of the school year. District committed to providing "designated instruction and services" (school-based) counseling once a week for 30 minutes beginning the week after the meeting.

8. District developed a new social-emotional goal to address Student's unique needs regarding accurately expressing his emotional state. The school psychologist and speech language pathologist were responsible for working on the goal with Student. As of April 2015, Student often gave exaggerated responses such as, "I

³ The agency was described as delivering service "by way of the Latina Youth Program Centro Familiar/Family Center at Bassett High School. The Latina Youth Program [] is school based and offers a broad spectrum of mental health services and resources for youth and their families."

don't want to be here" and "I hate this." He required a verbal prompt from school personnel to restate his comment or ignore what was bothering him. He perseverated on negative thoughts and ideas, and had perfectionistic tendencies that led him to be easily frustrated if he did not get a good grade. The new goal involved identifying situations that caused him increased frustration or anxiety, identifying appropriate emotional language to express his frustration, anxiety, or emotional state, and using that appropriate emotional language.

9. Mother requested a goal for Student to avoid all group work for the next year. The other team members discussed the idea and believed it would negatively impact Student, as he needed to gradually learn how to work with peers in groups. The team agreed the topic would be revisited at Student's upcoming annual IEP team meeting that was coming soon.

10. Student's annual IEP team meeting was held on June 5, 2015, at the end of eighth grade. Parents' concerns centered on Student becoming involved with school, and feeling like he was part of the class and school. With respect to progress on prior goals, Student made great improvement in his ability to remain in his seat and not put down other students during group speech therapy. He continued to need to work on not interrupting and making inappropriate comments. As identified in the social-emotional goal developed only a few weeks earlier, he had difficulty accurately expressing his emotional state, and had just begun to work on the new goal. District developed new goals in the areas of reading comprehension, mathematics, and social skills. District offered Student placement for the 2015-2016 school year at Bassett High School in the general education classes full-time, with related services of specialized academic instruction provided in a full inclusion model with collaboration between the general education teachers and a special education teacher for 100 minutes (two class periods) every day, and group speech therapy for 30 minutes a week. District offered

several accommodations/modifications and supports. Although District included the social-emotional goal developed at the April 2015 IEP team meeting in the June 5, 2015 IEP, Student had only met with a school psychologist three times in the seven weeks after District promised to provide weekly school-based counseling. District's offer for the next school year listed on the IEP's "Offer of FAPE – Services" page did not include any school-based counseling. However, the notes page of the IEP stated that school psychologist "[s]ervices will continue at the high school. "Parents signed consent to the June 5, 2015 IEP.

11. Student's social skills deficits and their impact on his social-emotional functioning affected Student outside the classroom environment. For example, at the end of eighth grade, District held a promotion dance. Mother shared with Ms. Comar her concerns about Student going, and persuading him to go. Ms. Comar shared some suggestions to help him attend. Student attended, but he appeared to his peers and the assistant principal to be noticeably very uncomfortable. District staff called Mother to pick him up because he could not enjoy the eighth grade dance with his peers, and he left after around 20 minutes.

THE 2015-2016 SCHOOL YEAR

12. Student began ninth grade at Bassett High in the 2015-2016 school year. Bassett High was a comprehensive high school campus with approximately 1,100 students. One school psychologist provided any necessary services to all the students.

13. Mother told school psychologist Bernardo Peinado she did not want Student to receive pull-out services during certain classes. Mr. Peinado arranged to take Student out of class for his individual counseling 30 minutes before the end of biology class. Student had physical education after biology and the physical education teacher agreed that he could occasionally arrive a little late. Mother was comfortable with Student missing some time from science.

14. Bassett High used a block scheduling system. Student was enrolled in six classes. He attended three of his classes on Monday and Thursday for two hours each, three of his classes on Tuesday and Friday for two hours each, and all his classes on Wednesday for 45 to 50 minutes each.

15. In August 2015, Diamond Bar High School, in the Walnut Valley Unified School District, started an ASD Program, with three or four students. Enrollment in the three other SELPA high school ASD Programs was at or above capacity, with 14 to 16 students in each of them. Adriana Garibay, a credentialed special education teacher with an autism authorization certificate, was the classroom teacher beginning in September 2015.

16. Ms. Comar recommended to Mother that she consider the ASD Program at Diamond Bar High because of Mother's concerns for Student, namely his social skill deficits and resulting social-emotional health challenges. That program allowed low average to average cognitive students to attend as many general education academic classes as they could access. It provided a sixth period Directed Study class in which a speech language pathologist provided group speech therapy, a school psychologist dedicated only to the ASD Program provided group psychological services, and specialized academic instruction supported students for their school- and homework. Students who required pull-out services were pulled from the Directed Study class instead of any of their general education classes. Trained aides were present during the Directed Study class and could accompany students to their general education classes to provide support as needed for applying the pragmatic speech, social skills, and academic skills they learned and practiced in the Directed Study class.

17. On September 15, 2015, Ms. Comarmet with Mother and explained the ASD Program at Diamond Bar High. She told Mother she could observe the program, and that she needed Mother to sign a form to begin the process and get authorization

for a site visit. In Mother's presence, Ms. Comar completed a SELPA form called "Request for Special Education Services" and presented it to Mother to sign, along with a form written in Spanish authorizing District to release Student's educational records to Walnut Valley Unified. SELPA members used the form to request service from another member district if the student's district of residence was not able to meet a student's needs based on the disability and a program at another district was necessary to provide the student a FAPE. Mother signed these forms, which began the process of the SELPA considering whether the ASD Program at Diamond Bar High would be an appropriate placement for Student.

18. On September 25, 2015, Student's case carrier informed the speech language pathologist providing Student's group speech therapy that Mother did not want Student to receive therapy during his classes within school hours. Mother requested that he no longer receive speech therapy. District and Mother agreed that Student could receive speech therapy during his physical education class time.

19. In September 2015, Ms. Floyd received District's request for services and came to Bassett High to observe Student. She went to his Business and Personal Finance class, provided by the Regional Occupational Program. During the observation, Student was well-mannered in the classroom and sat in his seat, but he was not engaged with any of his peers. They were giving presentations, and Student inconsistently attended to what they were doing. He required a lot of prompting and direct help from the teacher with transitioning, relying on requests by the teacher. He was more comfortable talking with an adult, the teacher, than with the students. He had a hard time with reciprocity in social communication, even among the group of students whom Ms. Floyd described as very kind. He needed prompting how to expand on giving compliments to the students giving presentations, beyond his scripted speech of "good job, good job." He had a hard time getting started with tasks and needed prompting. Ms. Floyd believed Student's

social skills and ability to attend needed to be addressed, and she thought he would benefit from the ASD Program.

20. Parents were invited to observe the ASD Program at Diamond Bar High. On October 12, 2015, Student's eighth grade special education teacher/case carrier Mr. Tiscareno accompanied Parents to Diamond Bar High. Carolina Perez, a program specialist for the ASD Program, also participated in the site visit. Both Mr. Tiscareno and Ms. Perez spoke Spanish and communicated with Parents in their native language. After arriving at the school, on the walk to the ASD Program classroom, Ms. Perez provided a brief introduction to the setting. The group visited the ASD Program classroom and observed for about 20 to 25 minutes, while eight students took notes from a visual presentation the teacher was going over. The group toured other parts of the campus and then talked with Mother for about 30 minutes. Mother asked Mr. Perez questions, and Ms. Perez responded. Mother asked Mr. Tiscareno questions, and he also responded.

21. Mother told Mr. Tiscareno she thought the students in the ASD Program classroom were lower functioning than Student. She was concerned that Diamond Bar High was some distance away from home. Mother inquired about what might happen if she agreed to Student attending the ASD Program at Diamond Bar High but later did not like it and wanted Student to return to Bassett High. She also asked if District could offer the ASD Program part time. Mr. Tiscareno assured her that if she wanted to try the ASD Program at Diamond Bar High for ninth grade and she did not like it, District would hold an IEP team meeting to request to bring Student back to Bassett High. District interpreted Mother's statements and questions to mean that Mother was undecided about whether she wanted Student to attend the ASD Program at Diamond Bar High. Mother believed her statements and questions amounted to her telling Mr. Tiscareno she did not like the program.

22. Student's teachers completed weekly progress reports, which were sent home to Parents, from and after at least September 2, 2015. The progress reports noted Student's current grade in each class; whether his attendance for the week was good, average, or poor; whether he turned in homework always, sometimes, or never; whether he participated in class always, sometimes, or never; what Student could do to improve his academic performance; and any additional notes the teacher wanted to send Parents. In October or November 2015, Mother attended conferences with Student's teachers and discussed Student's performance up to that point in the school year. Student's class participation was variable. During the fall semester, almost weekly at least one teacher noted on the progress reports that Student needed to "complete class/homework," improve his test scores, work on his study habits, limit negative socializing in class (picking on students and calling them names), improve his behavior (foul language), or follow directions.

23. On November 23, 2015, Yvonne Gutierrez became Student's case carrier. She was a long-term substitute teacher who did not have a teaching credential but had a permit. She had a bachelor of arts in Liberal Studies and was enrolled in an education specialist credentialing program that would qualify her to become a special education teacher. She expected to graduate in June 2017. As Student's case carrier, she managed Student's IEP folder, communicated with his teachers, and reported on his goals at and managed his IEP team meetings. From her conversations with his teachers, Ms. Gutierrez learned that Student was unable to participate in class discussions or group work, especially in his English, Business and Personal Finance, and Spanish classes.

24. To assist Student in participating and to help him ask questions during class, Ms. Gutierrez gave Student Post-It notes on which he could write his question or comment. He could then place the note on the edge of his desk so the teacher would see it. His question or comment could then be shared with the teacher or the group. Ms.

Gutierrez did not know whether Student was using the notes, or using them correctly, but she gave him the Post-It notes twice.

25. Student complained that his classes were too noisy, so Ms. Gutierrez got him noise cancelling headphones. Student did not like them because they made him look different than the other Students, and he refused to use them. Ms. Gutierrez later gave Student small, engineer-type ear plugs, which were more discreet, that he could insert into his ears to reduce noise; Student also refused to use those. Student's teachers did not understand why Student complained that the classes were too loud because they observed him listening to music from his cell phone with headphones on, that he played very loud.

26. Student's final grades for the fall semester were B+ in English 9; C+ in Biology; C- in Business and Personal Finance; A+ in Physical Education; C in Integrated Mathematics; and C in Spanish Speakers 1. He had a 2.50 grade point average.

27. In early January 2016, Ms. Comar requested to meet with Mother to discuss Mother's concerns. Mother met with Ms. Comar and another District employee only identified as Ms. Monarezz. They explained to Mother the various programs that Bassett High had by writing them on a board. They asked Mother if she thought those programs were appropriate for Student. Mother felt like they were just trying to convince her to move Student to the Diamond Bar High ASD Program because she had told them she did not like that program.

28. A few days later, Mother went to observe the ASD Program at Diamond Bar High again. District Spanish language interpreter Sara Gonzalez went with Mother, Ms. Comar, and Student, where they met with Jennifer Wolf, a program specialist for the ASD Program. The visit was approximately one hour, and included observation of the ASD Program class, conversation directly in Spanish with the ASD Program classroom

teacher Ms. Garibay, and observation of at least three core academic classes. Mother asked Ms. Garibay questions, which she answered.

29. At the end of the observation, Ms. Comar believed Mother was happy and considering moving forward with Student attending the ASD Program at Diamond Bar High. She believed that the concerns Mother had expressed after her first visit were clarified during the second visit. Mother told Ms. Comar the program was very good, and that she was very thankful that she could see the full program, including the general education classes. However, despite what Mother said to the District team, her opinion of the program had not changed; she continued not to like it.

30. For the SELPA to consider providing a placement in the ASD Program, the SELPA required assessments that were less than one year old. Student's last assessments were slightly older than one year. Student's triennial IEP was due in a few months, and District proposed advancing the triennial IEP, including conducting updated assessments. District informed Mother the purpose of the early assessments was to support the referral to the SELPA's ASD Program. Mother signed an assessment plan.

January 29, 2016 Addendum IEP Team Meeting

31. District convened an IEP team meeting on January 29, 2016, at Mother's request, to review Student's progress on his goals from the June 5, 2015 IEP. Student surpassed his annual goal in reading comprehension. The English teacher was going to write a new goal to increase Student's independent reading level and continue to tie it to the same state standard. Student met his second short term objective for his math goal, and was on track to meet the annual goal. The math teacher reported Student needed to attend tutoring after school to work on areas in which he was struggling. Mother reported Student was embarrassed to stay after school because he did not want others to think he was "behind." Student was making progress on his social skills goal and social-emotional goal. Mother asked how Student was doing working in groups.

District staff informed her that Student was sometimes calling his peers “stupid.” District said the school psychologist and speech therapist would teach him other ways to communicate when he felt frustrated or angry with his peers, and help him understand how others may feel when they were called stupid. The IEP team developed a new reading comprehension goal, and revised the math goal to increase the level of accuracy required to meet the annual goal. Mother consented to the amended goals.

February 2016 Academic, Psycho educational, Health, and Speech and Language Assessments

32. Ms. Gutierrez conducted the academic functioning assessment using the Woodcock-Johnson Tests of Achievement, Third Edition. Standard scores and percentile rankings from Ms. Gutierrez’s administration of the Tests of Achievement were not reported in Mr. Peinado’s Multi-Disciplinary Assessment Report. Although Ms. Gutierrez was not a credentialed special education teacher, Mr. Peinado referred to her in his report as a “Special Education Specialist Teacher.” Mr. Peinado summarized Student’s academic achievement levels based on his own administration of the Kaufman Test of Educational Achievement, Second Edition. Student’s skills were in the low average and average ranges, but borderline/low average in reading comprehension. Mr. Peinado’s psycho educational assessment report directed the reader to “refer to the achievement test results provided by the Special Education Specialist Teacher from Bassett High School for additional information.” Neither party introduced into evidence a document meeting this description. In her testimony Ms. Gutierrez stated she administered the “Woodcock Johnson Academic of Achievement.” Neither District nor Student offered evidence regarding the administration of this instrument to Student or Ms. Gutierrez’s qualifications for doing so.

33. School psychologist Mr. Peinado administered numerous instruments to Student and conducted observations and interviews on February 17 and 18, 2016.

Student waived any possible deficiencies in the psycho educational assessment in closing argument, stating, "It is undisputed that [school psychologist Mr. Peinado] validly and comprehensively assessed Student in preparation of Student['s] triennial IEP . . ." The assessment identified Student as having average cognitive abilities, with a full scale IQ of 93 according to the Wechsler Intelligence Scale for Children, Fourth Edition, and a score of 102 on the Test of Nonverbal Intelligence, Fourth Edition. Based on discrepancies between ability and achievement as measured with the Kaufman Test of Educational Achievement, Second Edition, Student had a moderate to significant probability of a severe discrepancy (indicative of a specific learning disability) in the areas of reading comprehension and math concepts and applications.

34. Mr. Peinado assessed Student's social-emotional skills by rating scales completed by Mother and Student's English teacher, Rosalinda Osnaya. Ms. Osnaya was a credentialed special education teacher. Mother reported that Student demonstrated a moderate/mild deficit in social skills. He did not have a best friend, did not show the same level of emotions as those around him, and did not demonstrate an understanding of hints or indirect cues in conversation. Ms. Osnaya rated Student as having a mild deficit in social skills. She reported he did not have a best friend, did not take turns without being asked, did not demonstrate an understanding of hints or indirect cues in conversation, and did not participate in class discussions with others.

35. Mother rated Student with a mild deficit in daily living skills. He could not tell time by five minute segments, count change from a purchase, nor evaluate the quality and price when selecting items to purchase. Ms. Osnaya rated Student as low average in daily living skills, being able to bring appropriate materials to school, complete and turn in homework assignments, and maintain a neat and appropriate appearance throughout the day. However, he was unable to plan and organize a long-term goal/project.

36. Mother rated Student with a mild deficit in the area of communication. He was unable to follow three-part instructions, stay on topic in a conversation, understand sayings that were not meant to be taken word for word, nor read and understand material of at least the ninth-grade level, while he was in the spring semester of ninth grade. Ms. Osnaya rated Student's communication skills as borderline. Although he was able to follow three-part instructions and read and understand materials of at least the sixth-grade level, he was unable to give complex directions to others, write a report at least three pages long, nor give an oral report at least 10 minutes long.

37. Mr. Peinado administered the Test of Auditory Processing Skills, Third Edition, to measure various areas of Student's auditory-perceptual skills, assessing the ability to perceive and process auditory stimuli, including the ability to discriminate, understand, interpret, and express. Student had average basic phonological processing, with a standard score of 102. He had low average basic memory processing, with a standard score of 86. Mr. Peinado reported his score as "Mild" in auditory cohesion, with a standard score of 68. Student encountered difficulty with responding to implied meanings, inferences, and abstractions to arrive at a logical conclusion. The combination of scores on the three indices gave him an overall score of 88, in the low average/average range.

38. Student's weekly progress reports from the fall semester indicated challenges with negative peer interactions and foul language; by early in the spring semester teachers were no longer reporting those concerns, either on the weekly progress reports to Parents or when interviewed by Mr. Peinado for the psychoeducational assessment. But new comments from the weekly progress reports prior to the February 29, 2016 IEP team meeting indicated other concerns. Ms. Osnaya noted that Student needed "to work on collaboration (social) skills." His physical

education teacher noted, "Sometimes he asks to be alone. So I say OK!". His math teacher commented that Student needed to attend tutoring.

39. Mr. Peinado confirmed Student's continuing eligibility for special education under the category of autism. He recommended the IEP team consider eligibility under the category of other health impairment due to a prior medical diagnosis of attention deficit hyperactivity disorder, contingent upon the findings and recommendations of the school nurse. He recommended that speech and language services be based on the results and recommendations in the assessment report of the speech language pathologist.

40. District's nurse Kimberly Cortez, R.N., prepared a Health Screening Report on February 22, 2016. She conducted a records review, assessment of Student, and phone interview with Mother. Student had a current medical diagnosis of autism and took a daily medication to help with his social anxiety. Although he had a prior diagnosis of attention deficit hyperactivity disorder and had taken a stimulant medication to treat it, the medication was discontinued in fifth or sixth grade and Student was no longer being treated for the disorder. He passed hearing and vision screenings, and no other current health concerns were noted.

41. On February 22 and 24, 2016, Jennifer Farley conducted a speech and language assessment. Ms. Farley was a licensed speech language pathologist. She was an independent contractor with INVO Healthcare, who contracted with District for speech and language therapy services. She provided services at one of District's middle schools, at Bassett High, and at a private high school. She began providing services at Bassett High in August 2015 and provided group speech therapy to Student during the same school year in which she conducted her assessment. The assessment report did not contain and no testimony was offered to prove that the speech and language assessment was appropriate in all of the legal requirements for assessment. For

example, criteria such as validation of the testing instruments, methods of assessment, and adherence to the instruments' publishers' instructions were not reported. The assessment report did not make recommendations for service types or levels. It only addressed continued eligibility for special education under the category of language or speech disorder. The report offered this summary: Student's receptive language, expressive language, and pragmatic language scores were in the well below average range and were more than 1.5 standard deviations below is Test of Nonverbal Intelligence standard score of 102, in the following eight areas: receptive vocabulary; expressive vocabulary; core language; expressive language; receptive language; language content; language memory; and pragmatic judgment. Ms. Farley believed these delays would directly affect his academic performance within the classroom. The delays did not appear to be due to cultural differences. Due to delayed speech in two or more areas, Student qualified for speech and language services.

Student's Performance in Services and Classes

42. Ms. Farley provided Student speech and language therapy in a group composed of two other students from the orthopedic impairment special day class. Those students had lower cognitive functioning than Student did. Student was not comfortable with them. Student often, but not always, participated in the group speech sessions. He interacted with the other students when given one to two visual or verbal cues per interaction, and he needed the cueing. Examples of Student's comments during speech therapy were, "I don't like that;" "That's stupid;" "Why are you saying nice things to me?"; "I hate speech;" and "I hate this group." He commented about clothing people wore and said, "Why would you wear something like that?" If Ms. Farley gave him a compliment, he responded with comments like, "Why do you care about me?"; "You don't care about me;" and "You don't care about me doing better."

43. Ms. Farley occasionally saw Student on campus during lunch, and he was always alone. She invited him to come to the speech therapy room and eat lunch with her. She suggested she could find the other students who liked the play the card game Yugio and they could play together. He always declined her invitations, saying he did not like eating lunch, that he did not eat, and when invited just to play a game he said he wanted to listen to his music. Ms. Farley's invitations and Student's rejections occurred between 10 and 20 times.

44. Ms. Gutierrez reported to Ms. Farley that Student's teachers indicated Student had a hard time being in a group with his peers and doing class work or projects in a group. Speaking and listening in a group were California state standards for ninth grade. One example of the standard was something like "student will be able to ask clarifying questions when working in a group setting." Ms. Farley understood from Ms. Gutierrez's reports that Student still was not working in groups and that what she was teaching Student during speech therapy was not transferring over to the classroom. Ms. Farley and Ms. Gutierrez discussed different ways they could give Student breaks, or other ways to get him through a class period so he did not feel so overwhelmed. They discussed decreasing the group size and then working to increase it. They discussed that speech therapy techniques used in the speech room might help in the classroom.

45. In Ms. Osnaya's English class, when group work was required, Student would only work with one student he got along with, as his partner, but not in a group. In the spring semester, three or four new students joined the class. Ms. Osnaya asked Student if he would work in a group with them; he declined. The new students offered to help him and work with him, and Student agreed to work with only one person, as a partner. Student turned in assignments but they did not always meet grade level standards. Ms. Osnaya reviewed the work with him and explained what the expectations of the assignment were. Sometimes he was willing to correct his work and sometimes he

was not. For assignments that were required to be completed in a group, he did not always complete the group part, he only partially completed the assignment, and he did not receive full credit for the work. If he completed group work with a partner, he received full credit. But sometimes he would not work with another student, and Ms. Osnaya gave him an alternative assignment to complete on his own, but it did not reflect the state standard addressing working in a group.

46. Student's biology teacher, Wendy Bowers (also known as Ms. Steward), described Student as quiet, keeping to himself. Although he did his work, he did not participate in collaborative or group work. He sat on the concrete in front of Ms. Bowers' classroom in the morning, by himself and intently working on his cell phone. She never saw him converse with another student before class. He had a negative demeanor, greeted Ms. Bowers with a negative comment, and he was generally grumpy. One morning in the fall semester, in October, Student told Ms. Bowers, "My mom says I'm moving schools." Ms. Bowers talked to him briefly about it. Student received C's, and Ms. Bowers did not think Student could have earned a better grade because he only did the bare minimum, and did no extended work. He did not provide deep responses, and did not elaborate on free response questions. He did not participate in class discussions. He showed no interest in anything in the class. During the spring semester, Student started talking more to the students at the surrounding tables, and used some provocative language. They said, "Watch it!" back to him. Student seemed to be trying to converse, but he said things that were not appropriate for the moment. Ms. Bowers was concerned about his ability to interact with classmates, because school-wide, classes were moving to project-based learning, with groups of nine to ten students in a major group, each with their own responsibilities. She felt Student would have difficulty with the increasing requirement of group projects, because he did not work well with others.

For group work, Ms. Bowers seated Student with a very quiet, sweet classmate and occasionally he collaborated with her.

47. Student was in Omar Barberena's math class. There were approximately five special education students included in the class, and an aide to assist Mr. Barberena and those students. The students in the class were very social and Student was one of the few people who worked by himself. Student could work with others, but did not like to. He had a few preferred peers and would work with them at "stations." During the school year, Student reduced blurting things out for no reason or saying things to peers that were offensive or condescending. He started saying things that made other students laugh and he improved in his interactions with his classmates.

48. Student was a native Spanish speaker and had progressed from being an English language learner to being identified as English-proficient in June 2015. Student took Spanish class with Maribel Ayon. In the fall semester, he liked to participate in class a lot, volunteered to read, raised his hand, and talked to Ms. Ayon frequently about what was going on in the classroom and at home. He went through different phases, sometimes liking video games, then watching scary movies. At the start of the spring semester, things changed. Student did not want to be in class anymore. He complained that it was too loud, and he left class to go to his case carrier Ms. Gutierrez's classroom every day (which meant three days per week, totaling close to five hours, because of the block scheduling system). He came to class, asked Ms. Ayon for his work, and he left. While he had been respectful to Ms. Ayon in the fall semester, in the spring he told her, "Give me my assignment," and would snatch papers from her hand. There had not been much group work during the fall semester, but it started to increase at the end of the fall term. In the spring semester, he would leave when students were doing group work. Ms. Ayon tried to have Student use the noise-cancelling headphones he had been given but he refused without providing a reason. Ms. Ayon sometimes gave Student work that

was the same as what the other students were completing so he could go work on it alone in Ms. Gutierrez's classroom, but some of the work she gave him was replacement work because the work the other students were doing involved group participation. Student completed the work he took to Ms. Gutierrez's classroom, and he received his grade based on what he turned in.

49. In his elective class, Business and Personal Finance, many group projects were required. Student used headphones all the time, supposedly to avoid noise in the classroom. But teacher Kari Salinas often walked by him and told him to stop watching YouTube videos. Ms. Salinas believed the headphones just gave Student the ability to watch cartoons. Student had a very hard time sitting next to anyone. Ms. Salinas tried to put him in different groupings of Students, but he was not successful in any group. He made negative remarks to students, which Ms. Salinas believed were repetitions of things he had heard in movies; taken out of context they irritated his classmates. Student said things to his group mates and eventually they came to Ms. Salinas saying they needed some space from him and asked to be moved. Ms. Salinas herself worked with Student, as his partner, so he would have the experience of collaborating in completing assignments. Under stress, Student chewed his fingernails until they bled. He also chewed off the teeth of his zipper in the top corner of his jacket. In the spring semester, Student sometimes became over stimulated, most commonly when called upon to do a presentation in class, and he would avail himself of the accommodation in his IEP to leave when he wanted a break and went to another classroom.

Student's Triennial IEP

50. Student's triennial IEP was developed over the course of three meetings, spanning eight weeks in three months. Each meeting lasted approximately two hours. Some members of the IEP team were the same at all three meetings, but some members came to one or two meetings but not all three. The details of each session of the IEP

team meeting are stated below. The meetings occurred on February 29, March 22, and April 21, 2016.

FEBRUARY 29, 2016 IEP TEAM MEETING

51. On February 12, 2016, Mother delivered to District a list of questions to be addressed at the next IEP meeting, set for February 23, 2016. The meeting was rescheduled to February 29 to accommodate Parents' availability. The meeting was scheduled for two and a half hours. District concluded the meeting after two hours, upon discovering that Mother was recording the meeting, but had not provided the required notice that she would record. Mother's recollection of the situation was that she herself ended the meeting early because she had to pick up a child from school, and that the disagreement about her recording the meeting happened at the beginning of the meeting and devolved into a conflict with Mother's accusations that it was District who was not complying with requirements. Ms. Comar's testimony and the IEP team meeting notes reflect that District discovered Mother was recording the IEP team meeting after significant substance had been discussed, and the meeting was then adjourned. District tentatively continued the meeting to March 9, 2016.

52. At the beginning of the February 29, 2016 IEP team meeting, District provided Parents with notice of their rights and procedural safeguards. Mother and Father attended. Student was invited but Parents did not consent to his participation. Parents were accompanied by someone they invited for support. District provided a Spanish language interpreter, Ms. Gonzalez. The other attendees, for at least part of the IEP team meeting session, were: assistant principal Gabriel Fernandez (administrator); special education coordinator Ms. Comar; Spanish teacher Ms. Ayon (general education teacher); English teacher Ms. Osnaya (special education teacher); case carrier Ms. Gutierrez; speech language pathologist Ms. Farley; District nurse Ms. Cortez; school psychologist Mr. Peinado; and counselor Veronica Montes.

53. Mother shared Student's interests and Parents' concerns, which were about his difficulty working in groups and that he did not have friends. Student's teachers and service providers shared how Student was doing socially and academically. Socially, Student was participating in group speech therapy and was sometimes funny and added good points to conversation. He did not work in a group in English class, but could work with a new student to the class as a partner. The counselor reported he could self-advocate, and the school psychologist confirmed Student was trying and reaching out. Academically, Student did group work by himself in the first semester of English. Mother stated she was concerned about his ability to work in groups and did not like that he was not working in groups. In Spanish class, Student was still only working alone, but in English he had, as noted above, begun to do work with a partner. Ms. Osnaya was also concerned about Student not working in groups because of project-based learning assignments and when Student did not do the group work, it took away from the lesson he was being given. Mother asked what could be done to help him in group work. Mother's question was written on a poster board on the wall, referred to as the "parking lot," where questions that could or should not be answered at that moment were written so they would not be forgotten and could be returned to when the topic was ready for discussion. District staff told Mother the team would later discuss that question and develop a solution with behavior modification, but they first needed to hear all the information, then discuss a plan, then develop solutions.

54. The IEP team members reported Student's progress on previous goals. He met his social-emotional annual goal and the IEP team agreed to develop a new goal in that area. He met this social skills/speech therapy annual goal. Mother asked for clarification about Student's progress in speech therapy, and Ms. Farley explained something she had previously said about Student's ability to recall sentences, and that

he was required to repeat the sentence back verbatim. Mother asked how that would affect him in his classes, and Ms. Farley stated it might impact his ability to take notes.

55. District asked if the English (special education) and Spanish (general education) teachers could be excused. District also asked if the school nurse could be excused, and attend the next meeting to give her report. District produced no evidence that Parents provided written consent to excuse those members of the IEP team from the meeting.

56. Ms. Farley presented her speech and language assessment report. She reviewed categories of evaluation and Student's scores in those areas. Student's areas of need were in understanding vocabulary, expressive vocabulary, and his vocabulary needs impact his use of semantics. Mother asked for clarification about standard scores and Ms. Farley explained the bell curve scale. Ms. Comar asked Parents if the conversation could move on to developing proposed goals related to speech and language and Mother agreed. Mother asked how they were going to address concerns. Ms. Comar explained the presentation of the report and again requested permission to move on to developing speech goals. Mother asked if the goals would start immediately or in June, and District staff told Mother the goals would start "now." The IEP team recommended speech therapy to increase Student's social and pragmatic skills. District staff presented a proposed goal in these areas to Mother, who reviewed it and said she had no comment. Mother requested to receive all the goals, and to have time to reflect and provide input on the goals. Ms. Farley presented another goal to increase vocabulary and improve semantics. Mother asked if it was a trimester or other type of goal. Ms. Farley explained the goal was an annual goal and would include short-term objectives for June and November 2016 to report on progress.

57. The February 29, 2016 IEP team meeting was stopped when District discovered Mother was recording the meeting and had not provided the required notice.

MARCH 22, 2016 IEP TEAM MEETING

58. The IEP team meeting reconvened on March 22, 2016. Parents were provided notice of their rights and procedural safeguards. Mother and Father attended. Parents were again accompanied by someone they invited for support, the same person who was at the first session of the IEP team meeting. District provided a Spanish language interpreter, Ms. Gonzalez. The other attendees, for at least part of the meeting, were: assistant principal Higinio Lujan (administrator); special education coordinator Ms. Comar; case carrier Ms. Gutierrez; speech language pathologist Ms. Farley; District nurse Ms. Cortez; school psychologist Mr. Peinado; and counselor Veronica Montes. Parents and District recorded the meeting.

59. Ms. Cortez presented her health evaluation, reviewing the information contained in her report. The IEP team invited Mother to ask questions to the nurse. Mother stated she was concerned about noise-blocking headphones Student had been given to use in classes that were too noisy. Mother asked if he needed to see a specialist. Ms. Cortez said no, adding that the purpose of the headphones was to block out sound. Mother asked if Student could see a specialist to check if they were the correct headphones. District informed Mother that sending the headphones to a specialist was not necessary; District would offer earplugs if the headphones did not work. Parents did not have more questions for the nurse.

60. Mother asked again about speech goals, and asked what the plan would be. Ms. Farley provided some examples of how things would progress and be measured by his ability to do things with greater frequency or accuracy, with decreasing need for prompting to do things; she gave examples of higher level questions that would be used

to evaluate progress. Mother asked about the box on the goal form that had been checked for “[a]ddresses other educational needs resulting from the disability” and what that meant. Ms. Farley explained that meant the goal was meeting his needs because of his secondary eligibility due to speech or language impairment, and that the goal was appropriate for his needs resulting from that disability. Referring to the January 29, 2016 IEP team meeting, Mother asked Ms. Farley what questions she had asked Student and what questions he did not answer, in the realm of pragmatics. Ms. Farley explained, and Mother asked several more questions, to which Ms. Farley provided answers, relating to Student’s ability to recall things and how that possibly affected his ability to take notes. Mother asked again how District was going to help Student. Ms. Comar told Mother the purpose of the evaluation was to identify Student’s difficulties and areas of need, so that appropriate goals could be written. Student had some accommodations, and modifications would be discussed later in the meeting, and recommendations would be discussed later, too. Mother asked Ms. Farley more questions about goals and the composition of the speech therapy group, which Ms. Farley answered.

61. Ms. Farley wanted to increase Student’s group speech therapy from 30 minutes a week to 50 minutes a week, but Mother did not want Student pulled from more classes. On a weekly progress report dated March 4, 2016, Student’s physical education teacher wrote that Student was “pulled out of class frequently. He’s missing much class time.”

62. District asked Parents if Ms. Farley could be excused. District produced no evidence that Parents provided written consent to excuse that member of the IEP team from the meeting.

63. Mother asked why counselor Ms. Montes was at the meeting. Ms. Comar explained that Ms. Montes was Student’s counselor, and although she was not a required IEP team member, she was there to support Student, add information, and

make herself available to Parents. Ms. Montes felt she had been helpful getting Mother in contact with Student's teachers. Mother asked about career and after high school. Mother asked Ms. Montes what courses Student would take in the summer, as she wanted him in summer school. District IEP team members told Mother the IEP team would address summer school at a later date.

64. Mr. Peinado presented his psycho educational assessment report. He reviewed information page by page, and only got to page seven of his 17 page report. Mother asked if Student's struggles in reading comprehension affected his classes. Mr. Peinado responded that they did; for example Student struggled with word problems. Student needed to know certain words to solve those problems.

65. The IEP team adjourned the meeting and scheduled a third session one week later. The agenda included the rest of the psycho educational report, a report from the case carrier, and the "parking lot" questions, to which headphones and modifications were added.

APRIL 21, 2016 IEP TEAM MEETING

66. The April 8, 2016 weekly progress report noted that Student needed to work on study habits, follow instructions, and improve behavior in Business and Personal Finance. The April 15, 2016 weekly progress noted Student needed to improve behavior in English regarding cooperation with group work, and to improve behavior in physical education. His physical education teacher noted Student said he liked to be alone and the teacher had to push him to participate. His Spanish teacher noted, in Spanish, that Student had not been delivering his work lately and did not even want to explain what he had to do.⁴

⁴ The translation from Spanish to English was provided by Google Translate.

67. The IEP team meeting reconvened on April 21, 2016. The IEP team provided Parents notice of their rights and procedural safeguards. Mother and Father attended. Student was invited but Parents did not consent to his participation. District provided a Spanish language interpreter, Ms. Gonzalez. The other attendees, for at least part of the meeting, were: assistant principal Higinio Lujan (administrator); special education coordinator Ms. Comar; case carrier Ms. Gutierrez; school psychologist Mr. Peinado; and Business and Personal Finance teacher Ms. Salinas (general education teacher). Parents and District recorded the meeting.

68. The copy of the IEP Student admitted into evidence contained a document titled "IEP Team Member Excusal." It purported to be a "mutual agreement between the parent . . . and designated representative of the local educational agency" that the presence and participation of listed IEP team members was not necessary and that they had been excused. The meeting date indicated was April 21, 2016, and the identified IEP team members were general education teachers Ms. Osnaya, Ms. Salinas, Ms. Ayon, school nurse Ms. Cortez, and counselor Ms. Montes. The boxes were checked for each of them to be "mutually excused from the IEP meeting . . . in part." However, the only person who signed the form was assistant principal Mr. Lujan.

69. Mr. Peinado summarized the information from the last meeting and moved on to page eight of his psycho educational assessment report. He shared that all of Student's scores regarding communication skills, daily living skills, and social skills were below average. Parents' batteries died and Mother requested to stop recording. Mr. Peinado invited Parents to ask questions about the scores he had just reported. Mother asked if the scores measured autism, and Mr. Peinado clarified that page nine of the report contained a separate autism assessment. Mr. Peinado reviewed scores from that evaluation for Parents. Mother asked if Student needed to be evaluated by a

psychologist or a specialist in autism. Mr. Peinado responded that he used the same rating scales as others would use.

70. Mr. Peinado explained that a specialist could look at things but as a psychologist, his job was to administer the tests and issue a report. He directed Parents to the criteria for autistic-like behaviors on page 15 of his report, and shared that the results of his assessment were consistent with the conclusion from three years before, confirming Student had autistic-like behaviors.

71. Mr. Peinado explained the results of the assessment of visual and auditory processing, and that the scores aligned with the speech and language evaluation and report. Student scored low in understanding words and using language. Mother asked what a subtest was, and both Mr. Peinado and Ms. Gutierrez answered and explained, and gave examples.

72. Mr. Peinado presented a proposed annual goal to “augment social awareness, “with short-term objectives for May and November. The goal was for Student, in class and other school settings, to identify and attempt five out of six requirements for participating in group activities aimed towards optimizing learning opportunities, peer interaction, and success in school. Mother liked and agreed to the goal. Mother asked for clarification regarding when she would receive progress reports, and the IEP team explained she would get two progress reports during the year and then a final report at the next annual IEP.

73. Mr. Peinado testified that if he had increased the amount of counseling time Student received to support Student in developing the ability to work in groups, he would have had to pull Student out of other classes, and Mother would not agree to that.

74. General education teacher Ms. Salinas arrived late to the April 21, 2016 IEP team meeting. She had not attended any of the other IEP team meeting sessions and

not heard any of the reports from the speech language pathologist, the school nurse, the school psychologist, the special education teacher or the general education teacher. Ms. Salinas reported Student's refusal to work in groups and that she had been working with him as a partner to do the group work assignments. Mother asked Ms. Salinas one question to which Ms. Salinas responded and provided additional information. District IEP team members asked Parents if they had any other questions for Ms. Salinas. Mother said no but she had another question for Mr. Peinado, and asked if Student's disability was affecting his academics. Mother was concerned about his refusal to do work. Mr. Peinado responded that Student's behaviors were consistent with autistic-like behaviors, and that the lack of interaction can affect him.

75. Ms. Gutierrez reported the scores from the Woodcock Johnson Tests of Achievement she administered. The scores aligned with what had already been stated, that Student struggled with reading comprehension and that a reading comprehension goal would be continued along with applying reading comprehension to solve math real-world problems. The IEP team proposed new annual goals for reading comprehension and math. Mother accepted them.

76. The IEP team discussed statewide assessments, and agreed Student would continue with previous accommodations and modifications for testing, adding that he would be able to complete work, quizzes, and tests in a separate room as needed.

77. Parent asked if the curriculum would be modified, and District told her the curriculum would not be modified. Mother stated she had no other questions.

78. The team discussed a continuum of placement options including general education, general education with specialized academic supports, a full specialized academic instruction program, and SELPA program options that were specific social skills needs-related, to address Student's disability.

79. District's primary concern was that while general education courses were providing Student with academic benefit, his social skill deficits (impeding group work in his classes and depriving him of friendships) were significant and the limited services he received through group speech therapy and school-based counseling were not enabling him to gain non-academic benefit from the time he was in his general education courses. District wanted to increase his speech and language therapy and counseling service time, but Mother would not agree to Student missing any more time from general education courses. District believed the least restrictive environment in which Student could receive academic and non-academic benefit was the ASD Program because Mother rejected any increase in services at Bassett High based on her concern that Student would miss time from his other classes.

80. At the ASD program, Student would attend five general education courses each day, and have a dedicated sixth period special education directed study class. In the directed study class he would receive group speech therapy, group counseling from a school psychologist dedicated to the ASD Program, and specialized academic instruction. He could be pulled from directed study for individual counseling without impacting his time in his academic courses. He would have access to classroom aides trained in working with students on the autism spectrum and familiar with the daily skills being worked on in the sixth period Directed Study class; those aides would accompany Student to his general education classes to support implementation of the social skills Student would learn in the directed study class. Mother resisted Student being in a special education class because Student then could not participate in a general education elective. She also did not want Student to look different than any of the other students, and did not want anyone to know Student was receiving special education services.

81. District offered placement in the SELPA's ASD Program at Diamond Bar High, one 55-minute period per day of small group directed study in the ASD Program, one 55-minute per week session of small group speech/language services, and social skills opportunities provided by a school psychologist, with services embedded into the program.

82. Mother asked what else District could offer without moving Student to a different school. District responded that the SELPA program District offered was at Diamond Bar High. Mother refused to move Student out of Bassett High, and requested other options to bring the services to Bassett High. District staff informed her that Student had social and executive functioning needs, and Bassett High did not have services or a program to address those needs. District offered a program that could meet all of his needs, within the SELPA. Father stated that he did not understand, because Student responded well to adults. Ms. Salinas and Mr. Lujan responded that interactions can vary between adults and peers, and that although Student may be comfortable around adults, Student's scores were decreasing since 2010 and District wanted to provide a place or program that could provide consistent results, in an environment that would meet his needs. Mother stated she agreed, and she asked what other schools or options District could offer. District responded that it had a responsibility to offer a placement that would address Student's goals, and that the best place would be in an autism program, and that "we took the very best option and that is what we are offering." Mother asked for a list of schools to visit. District stated the only schools District could offer were through the SELPA. District gave Parents the opportunity to disagree, take time to think about it, or agree to the offered placement. Mother asked if she chose a private school, who would pay for it? District responded that all of Student's needs could be met at Diamond Bar High, implying that District would not pay for a private school program. Mother asked about transportation, and

District assured her it would provide transportation. Mother asked how long she had to consider District's offer, District asked her how long she needed, and she replied one week. District asked Parents if they had any other questions or concerns. Mother asked if she had the right to move Student to a different district; Ms. Comar responded that Parents could request a district transfer. Mother did not have any response, and the meeting was adjourned. Ultimately, Parents did not sign consent to the April 21, 2016 IEP offer, and Student remained at Bassett High.

83. Mother's testimony at the due process hearing was frequently nonresponsive and unclear. Her testimony corroborated Ms. Comar's testimony and the notes of the various IEP team meetings regarding Mother's vague or off-topic questions or comments. Mother felt she had been marginalized and shut down by Ms. Comar and the IEP team meeting process, that she was not allowed to ask questions of the professionals and that Ms. Comar always interrupted and answered for the professionals, or insisted that they were out of time and needed to end the meeting. Mother claimed that when she asked a question to Mr. Peinado about a scale because she did not understand what they were talking about, assistant principal Mr. Fernandez told her not to ask questions because Parents did not have to understand, only the professionals did, and they were only Parents. Mother's version of events was not persuasive, because Mr. Fernandez only attended the first session of the IEP team meeting, on February 29, 2016, and Mr. Peinado did not present about his psycho educational assessment at that meeting. Further, District conducted approximately six hours of IEP team meetings during which time Mother asked many questions and received answers directly from the teacher or related service provider who had been presenting or sharing information at the time Mother asked a question.

84. Mother also claimed that assistant principal Mr. Lujan threatened that if Parents did not accept the offer for placement at Diamond Bar High, District would send

her to court for negligence. Mother's testimony was not persuasive. A district has a right and obligation to request a due process hearing when a parent refuses to consent to a special education service the district believes is necessary for the student to receive a FAPE. However, there was no evidence that District even threatened to take that action, let alone to pursue charges of child neglect, if Parents did not consent to District's placement offer. At the April 21, 2016 IEP team meeting, District presented Parents with the options of accepting, taking time to consider, or rejecting District's offer, and they selected time to consider the proposal. Mother's perception of the events of the IEP team meetings were insufficient to discredit the testimony of District witnesses and the notes of the three IEP team meetings. Further, Mother had audio recordings of the entirety of the first two sessions and part of the third. Student did not introduce the recordings into evidence to contradict any of the written IEP team meeting notes or District employees' testimony. Student provided no persuasive evidence that District did not permit Parents to ask questions, that Parents did not receive answers to their questions, or that District threatened Parents about providing consent.

85. Mother expressed frustration that although she got to ask some questions during the meetings, the speech language pathologist and teachers had already left. She was concerned that in the first and second IEP team meeting sessions the teachers came for a short time and then Ms. Comar said they had to leave. Mother was correct that by the time the placement offer was presented at the third IEP team meeting session, Parents no longer had access to some of the IEP team members of whom they could have asked questions to evaluate the merits of District's offer.

APRIL 21, 2016 IEP WRITTEN OFFER OF FAPE SERVICES AND SETTING

86. Student's April 21, 2016 IEP document, consisting of all forms and notes, with pages numbered one through 25, is the written IEP Parents were ultimately provided. It contained five new annual goals, to be achieved by February 28, 2017. The

goals addressed Student's needs in the areas of reading comprehension, math, augmenting social awareness, pragmatics, and semantics.

87. The "Offer of FAPE – Services" page listed supplementary aides, services, program accommodations/modifications, and supports, all of which were to be provided in a general education classroom at a public school, in all periods, five days a week, starting on February 29, 2016 and ending on February 28, 2017: seating at the front of the class or near the teacher; allotted extra time to complete assignments; clarify directions; allow questions to be read to him, if needed; tasks broken up into smaller steps; provide a copy of notes and staple to the ones he completed himself, as needed; and separate setting to complete work/quizzes/tests, as needed. The box for special education transportation was checked "No."

88. The grid of special education and related services contained the following items: Specialized academic instruction in a group provided by "district of service" starting on February 29, 2017, and ending on February 28, 2017, for "120 min x 1" totaling 120 minutes weekly, in a regular classroom/public school, and noted to be "full-inclusion"; Language and speech in a group provided by "district of service" starting on February 29, 2017, and ending on February 28, 2017, for "30 min x 1" totaling 30 minutes weekly, in a separate classroom in a public integrated facility, and noted to be "30 minutes a week in a group setting"; Counseling and guidance, individual and group, provided by "district of service" starting on April 16, 2015, and ending on April 15, 2016, for "30 min x 2" totaling 60 minutes monthly, at" service provider location"; and "Other transition service" (relating to individual transition plan) provided by "district of service" starting on February 29, 2017, and ending on February 28, 2017, for "30 min x 1" totaling 30 minutes yearly, in a regular classroom/public school. Student was not offered extended school year.

89. The "Offer of FAPE – Educational Setting" page stated Student would participate in general physical education. It stated his district of service was Bassett Unified School District, and his school of attendance would be Bassett High, a public school. The box "Yes" was checked for "all special education services provided at student's school of residence." It was stated his time in the regular education environment would be 97 percent, and his time outside regular education would be three percent. It stated Student would not participate in general education for 30 minutes weekly for speech "because pragmatic skills."

90. At hearing, Ms. Comar was questioned about the fact that the written offer of placement and services was very different from what had been stated at the April 21, 2016 IEP team meeting. Ms. Comar explained that had Parents accepted the offer of placement at the ASD Program at Diamond Bar High and had Student started attending school there, a 30 day IEP team meeting would have been held, and the placement and services then would have been updated to reflect the ASD Program.

91. District had no plan for when to transition Student to the ASD Program at Diamond Bar High. At the April 21, 2016 IEP team meeting, District did not explain to or discuss with Parents any timelines for changing Student's placement to the ASD Program. District did not specify whether District was proposing that Student's placement be changed immediately while Student was still in ninth grade, or whether District was making an offer of placement there to start 10th grade, the next school year.

92. At hearing, Ms. Comar explained that the services grid reflecting an expired service for group and individual counseling was a typographical error that should have been changed before printing the document. The IEP team intended to continue offering counseling, at two 30-minute sessions per month, because there was a social goal, to be addressed by the school psychologist.

93. Regarding the services grid reflecting an offer of one two-hour session of specialized academic instruction, Ms. Comar explained at hearing that at Bassett High, specialized academic instruction was often implemented in a study skills class with a special education teacher. However, it was based on individual need. Student had not been accessing it in one two-hour class per week, but had only been using it on an as-needed basis.

UNANSWERED QUESTION REGARDING STUDENT'S LEAVING CLASS DURING GROUP WORK

94. With increasing frequency in the spring semester, Student complained about his classes being noisy or loud. Student reported the problem more in Spanish class, where students were practicing speaking. This often occurred during times for group work. When Student complained about the classroom being too noisy, and he refused to wear noise-cancelling headphones or earphones, the teacher allowed him to receive an assignment to take with him and leave to the special education classroom with Ms. Gutierrez. As the semester went on, Student was leaving Spanish class daily. This reduced the amount of time he was in a general education class and increased his time in a special education setting. District questioned whether Student truly was sensitive to the noise in his classes or whether he was using noise as an excuse to escape the task demand of group work. However, District did not conduct any type of assessment, either regarding sensory processing and integration or behavior. District did not further explore during the school year the issue of him leaving class, or the reasons for his absence from the general education environment. Instead, District permitted Student to leave class when he wanted to leave.

STUDENT'S EXPERT – ABBE BARRON

95. Parents privately retained Abbe Barron, Ph.D., to assess Student by records review and observation of Student at Bassett High, and to observe the ASD Program at Diamond Bar High shortly before the due process hearing. Dr. Barron was a licensed psychologist in private practice who only performed assessments and did not provide other services. She conducted psycho educational and neuropsychological assessments for students and as an independent educational evaluator for several school districts. She reviewed Student's "last IEP," psycho educational assessment, speech and language assessment, and triennial IEP. She observed Student during his English and chemistry classes at Bassett High on the morning of October 19, 2016. She met with Ms. Floyd and Ms. Wolf, administrators of the ASD Program, to get an overview of the ASD Program at Diamond Bar High and she observed the sixth period Directed Study class of the ASD Program at Diamond Bar High in the afternoon on the same date. She prepared a written report of her observations.

96. She testified as to her opinion that based upon her review of Student's IEP's and assessments, Student had been receiving educational benefit in his placement and services at Bassett High and he did not require the ASD Program at Diamond Bar High to receive a FAPE. She believed the ASD Program was a more restrictive placement because he would be required to take the Directed Study class instead of a general education elective, and that would result in him being out of the general education environment for one hour each day. Dr. Barron identified these signs that Student was receiving educational benefit at Bassett High: he was accessing the curriculum; passing his courses; able to follow along; did not need an undue amount of support; and was not disrupting himself or the class from being able to learn. Dr. Barron was concerned that because Student was in 10th grade at the time of the hearing, as a student with autism, transition to a new school from a school he was familiar with could be difficult

for him, particularly a transition to a school that had almost three times as many students as Bassett High.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.⁶; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁶ All references to the Code of Federal Regulations are to the 2006 version.

special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these

phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

5. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In Student's case, Student, as the complaining party, bears the burden of proof, and in District's case, District bears the burden of proof.

STUDENT'S ISSUE 1: PREDETERMINATION OF PLACEMENT OFFER

6. Student contends District predetermined its April 21, 2016 placement offer, depriving Parents of the right to meaningfully participate in the development of Student's IEP. District contends that its offer of placement resulted from six hours of IEP team meetings in which Parents were active participants, and that Mother refused District's proposal to increase related services to address Student's social skills and social-emotional needs at Bassett High because Student would miss more of his academic courses. District contends Parents participated in the IEP team meetings and had ample opportunity to discuss their concerns as well as options for placement. District further contends it offered placement in the ASD Program at Diamond Bar High

to provide Student the related services he needed in sufficient amounts without having to pull him out of his academic classes.

Legal Authority

7. In determining the educational placement of a special education student, the IEP team must consider placements along the continuum of alternative placements. (34 C.F.R. §§ 300.114-300.118; Ed. Code, § 56342.) Each special education local plan area must ensure that a continuum of program options is available for special education students. The continuum of program options shall include all, or any combination, of the following, in descending order of restrictiveness: (a) regular education programs; (b) a resource specialist program; (c) related services; (d) special day classes; (e) nonpublic, nonsectarian school services; (f) state special schools; (g) instruction in non-classroom settings; (h) itinerant instruction; (i) instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115; Ed. Code §§ 56360, 56361.)

8. Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances in which placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F. 2d 840, 857-859 (*Deal*)). To fulfill the goal of parental participation in the IEP process, the school district is required to conduct a meaningful IEP meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485, *superseded in part by statute on other grounds (Target Range)*.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusion, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 [parent who had an opportunity to

discuss a proposed IEP and whose concerns were considered by the IEP team has participated in the IEP process in a meaningful way].) "A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." (*Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

9. However, an IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an "education . . . designed according to the parent's desires."].) Furthermore, the law does not require that a school district place a child at his neighborhood school if there is no program available there to meet his needs. (*See, e.g. McLaughlin v. Holt Public Sch. Bd. of Educ.* (6th Cir.2003) 320 F.3d 663, 672 [least restrictive environment provisions and regulations do not mandate placement in neighborhood school]; *Hudson v. Bloomfield Hills Public Sch.* (6th Cir.1997) 108 F.3d 112 [IDEA does not require placement in neighborhood school]; *Urban v. Jefferson Cnty. Sch. Dist.* (10th Cir.1996) 89 F.3d 720, 727 [IDEA does not give student a right to placement at a neighborhood school]; *Wilson v. Marana Unified Sch. Dist. No. 6 of Pima Cnty.* (9th Cir.1984) 735 F.2d 1178 [school district may assign the child to a school 30 minutes away because the teacher certified in the child's disability was assigned there, rather than move the service to the neighborhood school].) Rather, the relevant question in considering whether there has been predetermination is whether the school district came to the IEP meeting with an open mind. (*Deal, supra*, 392 F.3rd at 858; *Doyle v. Arlington County School Bd.* (1982) 806 F.Supp. 1253, 1262.)

Analysis

10. Student did not demonstrate that District predetermined placement. Student offered no evidence that any of the IEP team members had been instructed as to what their views should be on placement prior to the IEP meeting. District and

Mother began exploring the possibility of Student attending a SELPA provider for the ASD Program as early as one year before District offered Student placement at the program at Diamond Bar High based on space availability among the SELPA's ASD programs. However, that fact does not establish that District had decided to offer placement there before receiving and discussing the triennial assessment results, information from Student's classroom teachers, and Parents' questions and concerns. Both parents visited Diamond Bar High once, and Mother and Student visited Diamond Bar High a few months later. The April 21, 2016 meeting included a discussion regarding the continuum of placements available in the District, including a general education placement with supports. Parents rejected the additional service time District thought was necessary to address Student's unique needs because they did not want Student to be pulled out of and miss more time in his academic classes. In accommodation of Parents' preferences, District offered the ASD Program at Diamond Bar High, in which Student could participate in five general education classes each day. He would also have sixth period as the dedicated time of his day when he would receive the related services to address Student's social skills, social-emotional, and executive functioning needs. This arrangement allowed Student to not miss any time in his academic classes. Parents had a meaningful opportunity to express their concerns and ask questions about Student's needs during each session of the three IEP team meetings. Parents participated in the discussion about possible placements as well as District's offered placement. The fact that District ultimately, after three lengthy IEP team meetings in which Parents were active participants, offered a placement that Parents did not want did not establish that District predetermined Student's placement, as that term is defined by the IDEA and case law.

STUDENT'S ISSUE 2: APPROPRIATENESS OF PLACEMENT OFFER

11. Student contends District's offer of placement in the ASD Program at Diamond Bar High did not offer him a FAPE in the least restrictive environment. Student argues because he would have five general education classes and one special education class each day, his time in general education was reduced and the placement was therefore more restrictive than necessary to afford him some educational benefit. District argues that while the types and levels of services Student received during eighth and ninth grades had supported him academically, they were insufficient to appropriately address his social and communication skills, social-emotional functioning, and executive functioning deficits. District proposed to increase his speech therapy and counseling services on a pull-out basis at Bassett High to appropriate levels, but Parents refused because they did not want him to miss more time from academic courses. District contends placing Student in the ASD Program at Diamond Bar High in one period daily of a special education Directed Study course to provide him the levels of speech and language therapy, social skills training, counseling, and specialized academic instruction he required was the least restrictive environment in which Student could receive academic, social, emotional, and developmental benefit.

Legal Authority

12. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California*

Special Educ. Hearing Office (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

13. An IEP is evaluated based on information available to the IEP team at the time it was developed; it is not judged exclusively in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

14. To determine whether a school district substantively offered a student a FAPE, the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1313-1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, comported with the student's IEP, and was in the least restrictive environment, then the school district provided a FAPE, even if the student's parents preferred another program, and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

15. School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot

be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); Ed. Code, § 56031.)

16. In determining the educational placement of a child with a disability, a school district must ensure that: 1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; 2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; 3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; 4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and 5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

17. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors: 1) the educational benefits of placement full-time in a regular class; 2) the non-academic benefits of such placement; 3) the effect the student had on the teacher and children in the regular class; and 4) the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050] (*Daniel R.R.*))

18. However, the Ninth Circuit has also found that a general education placement is not the least restrictive environment for every special needs child. In *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830 (*Poolaw*), the Ninth Circuit considered the *Rachel H.* factors and determined that a general education classroom was not the least

restrictive environment for the child in question. The Court acknowledged that there was a tension within the IDEA between the requirement that a district provide children with a FAPE to meet their unique needs and the preference for mainstreaming. The Court stated:

In some cases, such as where the child's handicap is particularly severe, it will be impossible to provide any meaningful education to the student in a mainstream environment. In these situations continued mainstreaming would be inappropriate and educators may recommend placing the child in a special education environment. This allows educators to comply with the Act's main requirement—that the child receive a free appropriate public education. Thus, "the Act's mandate for a free appropriate public education qualifies and limits its mandate for education in the regular classroom."

(*Poolaw, supra*, 67 F.3d at p. 834, citing *Daniel R.R., supra*, 874 F.2d at p. 1044.)

19. If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate based upon a continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than

classrooms; and instruction using telecommunication instruction or instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

20. Furthermore, as stated in Legal Conclusion 9, the law does not require that a school district place a child at his neighborhood school if there is no program available there to meet his needs. The IDEA also does not preclude busing children to special education programs of a school district or special education local plan area beyond the local school district, since multi-district cooperation in the delivery of special education related services is encouraged. (Bureau of Education for the Handicapped, *Letter to Waxler*, August 22 1978, 211 IDELR 60.)

Analysis

21. Student did not meet his burden of showing that District's April 21, 2016 offer was not an appropriate placement, which includes consideration of the least restrictive environment.

22. District offered Student placement in grade-level general education classes five periods a day. Student's low average to average cognitive abilities enabled him to gain academic benefit from general education courses and District sought to maximize his access to those courses to address his academic needs. Student received passing grades in all his fall semester classes, with no grade lower than C-. Student had been receiving specialized academic instruction on a push-in model, enabling him to access the general education curriculum within the general education environment. Still, Student did not always complete his class and homework, or complete it to grade level standards, and sometimes resisted revising his work to bring it up to standards. He showed executive functioning deficits regarding planning and organizing a long-term goal or project. Further, with the increasing implementation of project-based learning and state standards regarding working in groups, Student's communication and social skill deficits impeded his participation in academic group work; the work he completed

in lieu of group work was not meeting some of the academic standards tied to the ability to work in a group. Student required speech and language therapy to increase his overall understanding and expression of vocabulary and semantics, which impacted his reading comprehension. Student also required counseling to develop skills in participating in academic group work. Student's participation in group speech therapy and group or individual counseling required some time outside of general education classes.

23. Student received non-academic benefit from placement in general education courses, with opportunities to socialize as well as collaborate on academics with typical peers. However, due to Student's communication and social skills deficits, Student isolated himself from his peers by refusing to work with other students, refusing to work in groups, requesting to be alone, and requesting to take his assignments to-go and retreating to the special education classroom to complete class work there. When Student did not leave class during group work time, he showed signs of being especially anxious, such as in his Business and Personal Finance class when he chewed his fingernails until they bled and chewed the zipper teeth off the corner of his jacket. Student reported to Mother that he was being bullied in his classes, unable to recognize that his negative comments to peers regarding their clothing or calling them stupid initiated the responses he perceived as bullying. Student was sad about his social interactions with his classmates and cried because he had no friends. Student required speech and language therapy to increase his social and pragmatic skills in and outside of the classroom. Student also required counseling to develop skills in participating in academic group work. Student's participation in group speech therapy and group or individual counseling required some time outside of general education classes.

24. Student did not have a negative effect on his general education teachers. No teacher reported that attending to Student was unduly time consuming or

burdensome, or that Student was overly distracting to the classrooms. Student had some challenges with peer interactions and classmates sometimes requested to be relocated away from Student, but the other students in the general education classes were generally supportive and attempted to work with Student and include him in group work, to the extent he would tolerate it.

25. Neither party presented evidence regarding the cost of providing Student increased pull-out services at Bassett High or placing him at Diamond Bar High in the program proposed by District.

26. In analyzing the least restrictive environment for Student, Student did not prove that District's offered placement did not include general education to the maximum extent appropriate. While placed in six periods of general education, Student missed class time to participate in some of the related services addressing his academic, social, emotional, and developmental needs. Parents understood the possible negative effects of missing class, and District had acceded to Mother's demands regarding which classes she approved Student to miss for pull-out services: science and physical education. Weekly progress reports included the comment that Student was missing a lot of class because of his pull-out services. Student also sometimes removed himself from general education classes, retreating to a special education classroom to independently do class work. Piecemeal services had detracted from Student's participation in the general education courses and Parents refused to allow Student to miss any more academic course instructional time to receive needed related services. District's offer of five general education classes per day from which he would never miss instructional time, with special education and related services during the remaining period of the day, was reasonably calculated to provide Student with some educational benefit while maximizing Student's time in general education classes.

27. Bassett High did not have a program of coordinated delivery of related services, such as group speech and language therapy, psychological services, as-needed instructional aide support from aides trained in the social skills techniques taught and practiced during group speech therapy, and specialized academic instruction from a credentialed special education teacher with an autism authorization. The SELPA offered the ASD Program at several high schools in the San Gabriel Valley, but only one had space available for another student – Diamond Bar High. The ASD Program placement afforded Student five general education courses so he would not miss any time when receiving related services. It afforded specialized academic instruction from a credentialed special education teacher with an autism authorization, and instructional aides trained in working with students with autism. It included group speech and language therapy, group psychological services, and a dedicated time period in which to receive pull-out individual services.

28. District was not required to develop and implement the same programs and services at Bassett High as it could access through a SELPA provider. While Parents may have preferred Student to attend his neighborhood school, Student did not demonstrate that attending a school with an appropriate combination of general education courses and special education instruction and services was not appropriate. Student's expert's concerns about transition to a different school were not sufficient in this regard. Student offered no evidence regarding his difficulties with transition that would defeat the reasonableness of an otherwise appropriate placement.

29. Student failed to establish that the April 21, 2016 IEP did not offer Student an appropriate placement in the least restrictive environment.

DISTRICT'S ISSUE: AUTHORIZATION TO IMPLEMENT APRIL 21, 2016 IEP WITHOUT PARENTAL CONSENT

30. District contends the April 21, 2016 IEP offered Student a FAPE and seeks authorization to implement it without parental consent. Student contends District failed to prove it complied with all procedural as well as substantive requirements of the IDEA.

31. This decision does not determine or analyze every element of FAPE on which District had the burden of proof. For the reasons set forth below, this decision concludes that District did not satisfy its burden of proof regarding several major procedural elements of FAPE. Therefore, evaluation of all procedural and substantive components of District's offer is not necessary to the ultimate legal conclusions of this Decision. Even if District had met its burden of proof as to all the other elements of a FAPE, without compliance with the procedural requirements detailed below, District's offer of placement and services in the April 21, 2016 IEP did not offer Student a FAPE.

Legal Authority

32. If a parent refuses services in an IEP that had been consented to in the past, or the school district determines that the refused services are required to provide a FAPE, the school district shall file a request for a due process hearing. (Ed. Code, § 56346, subds. (d) & (f).)

33. When a school district seeks to prove that it provided a FAPE to a student, it must show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.) District must also show that the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

34. The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed

involvement of parents” is central to the IEP process. (*Id.*) Protection of parental participation is “[a]mong the most important procedural safeguards” in the Act. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

Assessments

LEGAL AUTHORITY

35. The IDEA and California state law require that a school district assess a student in all areas of his or her suspected disability. (20 U.S.C. § 1414(b)(3); Ed. Code, § 56320, subd. (f).) A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); see also Ed. Code, § 56320, subd. (b)(1)). The assessment must be sufficiently comprehensive to identify all of the student’s special education and related services needs, regardless of whether they are commonly linked to the student’s disability category. (34 C.F.R. § 300.304(c)(6).)

36. The assessment of a student must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions

provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) Districts shall not use any single measure, such as a single intelligence quotient, to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

37. Assessments of students' suspected disabilities must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School Dist.*(N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

38. A failure to properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001)158 F.Supp. 2d 1190 at p. 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2) & (j); *Target Range, supra*, 960 F.2d at p. 1484 [" . . . procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].) The hearing officer "shall not base a decision solely on non substantive procedural errors, unless the hearing officer finds

that the non substantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program.” (Ed. Code, § 56505, subd. (j).) While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist.*, *supra*, 267 F.3d at p. 892.)

ANALYSIS

39. District failed to establish procedural compliance with the IDEA because it did not establish that it assessed Student in all areas of suspected disability. District was aware Student complained that his general education classrooms were noisy or loud. District provided Student with noise-cancelling headphones, which some teachers reported he refused to wear and another said he abused to watch cartoons during class. District had information Student did not like to wear the headphones because they made him appear different from the other students. District also provided Student with earplugs, to block noise while being discreet. Student refused to use them. Instead, Student objected to noise in the classroom and requested or in some cases demanded to be provided with an assignment to take with him so he could leave class and go to the special education classroom to do the work. He did this more frequently during group work times, but by the time of the April 21, 2016 IEP team meeting he was leaving Spanish class daily. District staff questioned whether Student truly had a noise sensitivity that impacted his ability to access his education or whether he merely used a loud or noisy classroom as an excuse to avoid group work. Therefore, District suspected a disability either in the sensory realm or related to behavior. Mother asked if Student needed to see a specialist, but District dismissed it as unnecessary.

40. Student's difficulties with or refusal to participate in group work was Mother's listed concern at the beginning of the IEP team meeting that started on February 29, 2016. District had the same significant concern; District staff believed Student was not meeting grade-level state standards with regard to participation in groups. Whether Student was not participating in group work because true noise sensitivity was impacting his ability to access his education or whether it was because he was only using noise as an excuse to escape the non-preferred task of group work, Student was not completing work required to be done collaboratively. A new goal was therefore developed at the April 21, 2016 IEP team meeting to address Student's social awareness and improve his ability to participate in group activities, through counseling with a school psychologist or counselor. But District failed to assess Student's sensory processing or sensory integration, and failed to assess Student's functional behavior, to determine his true unique need.

41. Student conceded the appropriateness of the psycho educational assessment conducted by school psychologist Mr. Peinado. However, District was required to prove the appropriateness of the academic and speech and language assessments conducted by Ms. Gutierrez and Ms. Farley, respectively. District provided no evidence regarding the appropriateness of the academic assessment done by Ms. Gutierrez, who did not have a special education credential. Although she testified at the hearing, District elicited no testimony from her to support the validity of her assessment. Even if the written report referred to in Mr. Peinado's psycho educational assessment report contained the necessary proof, neither party produced and offered into evidence. Similarly, District did not prove the appropriateness of the speech and language assessment. Although Ms. Farley testified at hearing, District elicited no testimony to support the validity of her assessment. Her written report did not address several of the legal requirements for assessment, including establishing the validity of the assessment

instruments, the lack of discrimination in the selection and administration of the instruments, and Ms. Farley's compliance with the instructions provided by the producers of the instruments.

42. District did not establish that it procedurally complied with the IDEA by assessing Student in all areas of suspected disability and appropriately conducting the assessments it did perform. The assessments of Student were central to adequately informing Parents of Student's present levels of academic and functional performance and how Student's disability affected his involvement and progress in the general education curriculum. Without assessments in all areas of suspected disability and without appropriate assessments, the IEP team did not have sufficient information to develop a plan to address all of Student's unique needs. District's failure to appropriately assess Student in all areas of suspected disability significantly impeded Parents' participation in the development of Student's IEP.

IEP Team Composition

LEGAL AUTHORITY

43. The IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in the regular education environment; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources; someone who can interpret the instructional implications of assessment results; and, at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a).)

44. A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parents and school district agree that the attendance of such a member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. (20 U.S.C. § 1414(d)(1)(C)(i).) A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related service if (i) the parent and the school district consent to the excusal, (ii) the member submits written input to the team prior to the meeting for development of the IEP, and (iii) the consent is in writing. (20 U.S.C. § 1414(d)(1)(C)(ii) and (iii).) These procedures are slightly different. An "agreement" to excuse a team member refers to an understanding between the parent and the district. (71 Fed. Reg. 46,673 (Aug. 14, 2006).) The requirements for "consent" are more stringent, requiring the school district to fully inform the parent of all information relevant to the team member's excusal, in the parent's native language or other mode of communication, and to ensure that the parent's understanding that the granting of consent to the team member's absence is voluntary and can be revoked at any time. (71 Fed. Reg. 46,674 (Aug. 14, 2006).)

ANALYSIS

45. Student's April 21, 2016 IEP was developed over the course of three IEP team meetings, each held approximately four weeks after the one before it. The meetings totaled approximately six hours. Although Parents, the same Spanish language interpreter, special education coordinator Ms. Comar, case carrier Ms. Gutierrez, and school psychologist Mr. Peinado were present at all three meetings, the other IEP team members varied from meeting to meeting. While a credentialed special education

teacher –Ms. Osnaya– was present at the first session on February 29, 2016, she left part-way through the meeting and did not attend the other sessions. A credentialed special education teacher was not present at the March 22, 2016 IEP team meeting, and, most significantly, a credentialed special education teacher was not present at the April 21, 2016 IEP team meeting, at which District discussed Student’s placement and made a placement offer. Ms. Gutierrez was present during all three meetings, but was not a credentialed special education teacher. Although District often labeled her as an education specialist (special education teacher), District offered no evidence that her status as an employee with a permit and in a credentialing program satisfied the federal and state law requirements that a special education teacher be a member of an IEP team.

46. General education teacher Ms. Ayon attended the meeting on February 29, 2016, but also left part-way through. No general education teacher attended the IEP team meeting on March 22, 2016. The April 21, 2016 IEP team meeting began without a general education teacher, but Ms. Salinas joined the meeting at some point. While she was present during the discussion of Student’s placement and when District made a placement offer, she did not have any of the information others had provided at the two prior IEP team meeting sessions.

47. Nurse Cortez was present for part of the February 29, 2016 IEP team meeting, and for the March 22, 2016 IEP team meeting, but was not present at the April 21, 2016 IEP team meeting.

48. Speech Language Pathologist Ms. Farley was present for the February 29, 2016 IEP team meeting and for part of the March 22, 2016 meeting, but she was not present at the April 21, 2016 meeting for the discussion of Student’s placement and when District made a placement offer.

49. The only evidence that various IEP team members were excused in writing is a document purporting to excuse Ms. Osnaya -- a special education teacher identified on the form as a general education teacher --, Ms. Ayon, Ms. Salinas, Nurse Cortez, and school counselor Ms. Montes from the April 21, 2016 IEP team meeting. The document was only signed by assistant principal Mr. Lujan, was not signed by either parent, and did not relate to those or any other IEP team members being allegedly excused from any other IEP team meeting or part thereof.

50. The absence of multiple team members, without written consent from Parents, and especially during the discussion of Student's placement and when District made its placement offer, significantly impeded Parents' opportunity to participate in the decision making process. With respect to evaluating District's placement offer or the merits of any placement Parents preferred, Parents could not ask questions and get the opinions or advice of a special education teacher, or a general education teacher who was fully aware of the information that had been developed over the course of the three IEP team meeting sessions. As discussed above regarding Student's Issue 1, District did not predetermine its offer of placement in that Parents twice observed the ASD Program at Diamond Bar High, including general and special education classes, as well as attended all IEP team meetings and participated in the development of the IEP and discussion of placement options. However, District failed to prove that it procedurally complied with the IDEA by affording Parents meaningful participation in the decision making process, because the composition of the IEP team was incomplete, especially with respect to the IEP team meeting at which District made its disputed offer of FAPE.

Clear Written Offer

LEGAL AUTHORITY

51. In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, cert. denied, 513 U.S. 965 (*Union*), the Ninth Circuit held that a district is required by the IDEA to make a clear

written IEP offer that parents can understand. The Court emphasized the need for rigorous compliance with this requirement:

We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist parents in “present[ing] complaints with respect to any matter relating to the . . . educational placement of the child.”

(*Union, supra*, 15 F.3d at p. 1526 [quoting 20 U.S.C. § 1415(b)(1)(E)].)

52. *Union* involved a District’s failure to produce a formal written offer at all. However, numerous judicial decisions invalidate IEP’s that, though offered, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 769; *Bend LaPine School Dist. v. K.H.* (D.Or. June 2, 2005, No. 04-1468) 2005 WL 1587241, p. 10; *Mill Valley Elementary School Dist. v. Eastin* (N.D.Cal. Oct. 1, 1999, No. 98-03812) 32 IDELR 140, 32 LRP 6047; see also *Marcus I. ex rel. Karen I. v. Dept. of Education* (D. Hawaii May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 1, 7-8.) One District Court described the requirement of a clear

offer succinctly: *Union* requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108.)

53. The rule of *Union* extends to the statement of the frequency, location, and duration of offered services. The IDEA requires that an IEP include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IDEA also requires that an IEP contain a projected date for the beginning of special education services and modifications, and “the anticipated frequency, location, and duration of those services and modifications.” (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) The Ninth Circuit has observed that the length of time that an offered service will be delivered must be “stated [in an IEP] in a manner that is clear to all who are involved.” (*J.L. v. Mercer Island School Dist.*, *supra*, 592 F.3d at p. 953 [citation omitted].) The requirement ensures that “the level of the agency’s commitment of resources” is clear to all members of the IEP team, including parents. (*Bend LaPine School Dist. v. K.H.*, *supra*, 2005 WL 1587241 at p. 9 [quoting 34 C.F.R. § 300.347(a)(6)].)

54. The April 21, 2016 IEP did not clearly identify the nature, frequency, duration, and location of the services District offered. The IEP document page labeled Offer of FAPE - Services, with the services grid, stated District offered Student 120 minutes of specialized academic instruction in a group, once per week, in the general education classroom (“full-inclusion”), through February 2017. It stated District offered Student one 30 minute session of group speech therapy per week, through February 2017. It did not state that District was offering Student counseling services; it only indicated that the counseling service that had been provided in the past had an end date of April 15, 2016. The document stated Student was not being offered

transportation. The IEP document page labeled Offer of FAPE – Setting stated Student would attend Bassett High, and that all his special education services would be provided at his school of residence.

55. None of what the IEP document stated as the offer of services and the setting aligned with the discussion at the April 21, 2016 IEP team meeting. District verbally offered placement in the ASD Program at Diamond Bar High school, with one period of special day class per day, which included one hour of group speech therapy per week, one hour of group psychological services per week, and specialized academic instruction from a special education teacher with an autism certificate, with transportation to and from school every day. Mother indicated her reservations about and even resistance to District's offer and requested time to think about it before consenting or refusing to accept the offer. If Parents had wanted to accept District's offer and signed consent to the IEP, it would be completely unclear as to what, exactly, Parents were consenting. More significantly, when Parents wanted time to consider the program District offered, they did not have the clear written offer to which they were entitled to review exactly what, when, and where District's offer included.

56. District's description of the document as a draft and assurances that had Parents accepted placement at the ASD Program at Diamond Bar High everything would have been fixed at a 30 day IEP team meeting do not save the deficient document District presented to Parents. District admitted there was no discussion or offer for a date on which the ASD Program at Diamond Bar High placement was to begin, in violation of the IDEA's requirement that an IEP contain a projected date for the beginning of special education services. The lack of a clear written offer significantly impeded Parents' ability to meaningfully participate in the decision making process regarding Student's educational program.

57. Finally, even if each individual procedural deficiency alone did not significantly impede Parents' meaningful participation in the development of Student's educational program, the combination of the lack of all and appropriate assessments, the lack of participation of required IEP team members – especially during the meeting at which placement and services was discussed and offered – , and the lack of a clear written offer in combination with each other in their totality deprived Parents' of the meaningful participation to which the IDEA entitled them.

ORDER

1. In Student's case, all relief is denied.
2. In District's case, all relief is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District is the prevailing party on Student's Issues1 and 2. Student is the prevailing party on District's Issue.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: December 19, 2016

/s/

KARA HATFIELD

Administrative Law Judge

Office of Administrative Hearings