

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

STUDENT,

v.

SANTA CLARA UNIFIED SCHOOL  
DISTRICT,

OAH Case No. 2015030117 (Primary)

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SANTA CLARA UNIFIED SCHOOL  
DISTRICT,

v.

STUDENT.

OAH Case No. 2014120222 (Secondary)

**DECISION**

Santa Clara Unified School District filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on December 4, 2014, naming Student. Student, through Parents, filed a complaint with OAH on February 25, 2015, naming District. The matters were consolidated for hearing by order dated March 6, 2015, with Student's matter designated as the primary case for purposes of calculating the 45-day deadline for issuance of a decision. By order dated April 15, 2015, OAH granted Student's motion to amend her complaint and reset the timelines for the case. The consolidated matters were continued for good cause on May 26, 2015.

Administrative Law Judge Alexa J. Hohensee heard this matter in Santa Clara, California on June 9, 10, 11, 15, 16, and 17 and July 9, 2015.

Roberta S. Savage, Attorney at Law, represented Student. Student's Mother and Father attended the hearing on behalf of Student.

Kirsten Y. Zittlau, Attorney at Law, represented District. Cathy Welply, District's Director of Special Education, attended the hearing on behalf of District.

At the close of the hearing, a continuance to July 27, 2015, was granted for filing of written closing arguments. On that day, the parties timely filed their briefs, the record was closed, and the matter was submitted for decision.

## ISSUES<sup>1</sup>

### Student's Case

1. Did District deny Student a free and appropriate public education for the 2014-2015 school year, through the individualized education program dated March 19, 2015, by preventing Parents from meaningfully participating in the decision making process by failing to accept Student's assignment of educational rights?

2. Did District deny Student a FAPE in the IEP of August 14, 2014, by failing to:

- a. Develop appropriate annual goals in all areas of need, specifically:
  - (i) motivation;
  - (ii) self-regulation;
  - (iii) basic vocational skills;
  - (iv) social language;
  - (v) social skills;
  - (vi) functional academics;
  - (vii) critical thinking; and
  - (viii) safety;
- b. Develop an appropriate individual transition plan; and
- c. Offer a program and services reasonably calculated to provide meaningful educational benefit?

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<sup>1</sup> The issues have been rephrased and reorganized for clarity. In particular, the issues are stated to address the specific IEP's challenged in Student's complaint, rather than the school years during which those IEP's were in effect. 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.)

3. Did District deny Student a FAPE in the IEP of March 19, 2015, by:
  - a. Failing to accept Student's assignment of educational rights;
  - b. Predetermining its offer;
  - c. Failing to consider the input of Student and her privately funded educational team;
  - d. Failing to develop appropriate annual goals in all areas of need, specifically:
    - (i) motivation;
    - (ii) self-regulation;
    - (iii) basic vocational skills;
    - (iv) social language;
    - (v) social skills;
    - (vi) functional academics;
    - (vii) critical thinking; and
    - (viii) safety;
  - e. Failing to develop an appropriate individual transition plan; and,
  - f. Failing to offer a program and services reasonably calculated to confer meaningful educational benefit?

District's Case

4. Did District, in the August 14, 2014 IEP, as clarified by the November 14, 2014 prior written notice, offer Student a FAPE in the least restrictive environment?

SUMMARY OF DECISION

For the reasons set forth below, all of Student's requests for relief are denied and District's request for a determination that the IEP of August 14, 2014, as clarified in the letter of November 14, 2014, offered Student a FAPE in the least restrictive environment is granted. Student assigned her educational decision making authority to Parents, but although District committed procedural errors in disregarding the transfer, those errors did not result in a substantive denial of FAPE to Student. Parents represented Student at the IEP team meetings of April 1, May 20, June 5, August 14, 2014, and March 19, 2015, and meaningfully participated in each of those meetings. District team members considered the information provided by Parents and Student's service providers in drafting its IEP offers,

and did not predetermine the services or placement in any of the IEP's. For both the IEP's of August 14, 2014, and March 19, 2015, District developed appropriate goals, appropriate transition plans, and offered Student special education and related services reasonably calculated to provide Student with educational benefit.

## FACTUAL FINDINGS

### *Jurisdiction and Background*

1. Student was 19-years-old during the course of the hearing. Student was diagnosed with autism spectrum disorder, and at all times relevant was eligible for special education and related services on that basis.

2. Student lived with her parents within the boundaries of District at all times relevant to this proceeding.

3. Pursuant to an agreement between Parents and District that is not at issue in these consolidated cases, from the 2010-2011 school year through the 2013-2014 school year, Parents provided Student with a home-based educational program. These were Student's high school years, or 9th, 10th, 11<sup>th</sup>, and 12th grades.

4. Parents are engineers. They are not credentialed teachers, psychologists, or board certified behavior analysts. Parents wanted Student in a home-based functional skills program.

### *2013-2014 School Year*

5. At the beginning of the 2013-2014 school year, Parents obtained a private developmental neuropsychological assessment from Dr. Carina Grandison. The assessment report was never finalized, but the standardized test results are undisputed. Student has high average intelligence, with processing speed and executive functioning in the average to high average range. Student has strong visual memory and superior perceptual reasoning skills. In September 2013, Student was at or above average in all academic areas (at the 12th grade level or above), except reading comprehension in which Student was average (at the 10th grade level). In light of the mostly strong academic results, Dr. Grandison found Student's average reading comprehension skills to be a "relative" weakness. Except for the standardized scores, the draft consisted of anecdotal information on Student's adaptive functioning and social skills as reported to Dr. Grandison, and lacked objectively quantifiable information or conclusions based upon Dr. Grandison's own observations.

6. At Parents' direction, behavior consultant Lia Wilkerson designed a functional skills home program for Student. Ms. Wilkerson had worked with Student in elementary and middle school while a consultant to District, and was first retained by Parents at that time to

guide them in raising their daughter. Ms. Wilkerson had not earned a California teaching credential in special education, or an authorization to teach students with autism spectrum disorder.<sup>2</sup> She was not board certified as a behavior analyst and was not a licensed psychologist. Ms. Wilkerson held herself out as an autism and behavior specialist based primarily on her experience of working alongside credentialed special education teachers and board certified behavior analysts in public middle schools for almost 10 years. Ms. Wilkerson also read extensively about autism and lectured to parent groups.

7. The home-based program focused on two areas of concern identified by Parents: (i) social communication and interaction, to address Student's difficulty with reciprocity, understanding nonverbal cues, and sustaining age appropriate relationships; and (ii) behavior, to address Student's restricted patterns of interest and inappropriate responses when angry or stressed. An example of inappropriate behavior commonly cited by Student's witnesses was that Student would tune out when adults were speaking to her and fantasize about being a musician, singer, or movie star ("going into her head"). Student was also reported by Parents to be manipulative and rude (rolled her eyes), and to tantrum when she did not get her way at home (cried, swore, yelled, and slammed doors).

8. For the 2013-2014 school year, Student's home program consisted of 12 to 15 hours of weekly programming, in contrast to a District school week of 30 hours. Ms. Wilkerson wanted Student to be self-motivated, so allowed Student to create the agenda for each week. Ms. Wilkerson did not follow any set curriculum. She gave Student academic materials at an elementary or middle school level, and did not grade Student's academic work or assess Student's academic levels. Ms. Wilkerson encouraged Student to work on functional skills such as planning meals, budgeting groceries and cooking. She agreed with Parents that functional skills, rather than academic knowledge, would better serve Student as an adult on the autism spectrum. Student did not earn any high school credits during her five years in the home program.

9. The 2013-2014 home program included two to three hours each week of counseling by videoconference with Ms. Wilkerson, in which Student self-evaluated her behavior and conversational exchanges over the past week using rubrics and with guided questioning. At Ms. Wilkerson's direction, and with Student's agreement, Student created shopping lists from recipes and was driven to the grocery store to purchase ingredients.

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<sup>2</sup> The California Commission on Teacher Credentialing adds authorizations to special education teaching credentials in specialized areas. According to the California Commission on Teacher Credentialing website, "The autism spectrum disorders added authorization authorizes the holder to conduct assessments, provide instruction, and special education related services to individuals with a primary disability of autism across the continuum of special education program options are the grade level and age levels authorized by the prerequisite credential." <http://www.ctc.ca.gov/credentials/CREDS/special-ed-added-authorizations.pdf>.

Student went to the library to work on academic materials or read books, and Fridays were reserved for fun activities such as going to the movies. Student did not interact with peers while out in the community because other students her age were in school. Locations such as the grocery store and library offered few opportunities for social interaction.

10. Parents were afraid that Student would be lured away by strangers or would inappropriately share personal information while in the community. Father employed an adult female with a car, Marie, to accompany and transport Student for 8 hours per day, 40 hours per week. Ms. Wilkerson directed Marie to “infuse” Student’s week with the information overheard in Student’s lessons. Marie also reported to Parents daily on everything Student had done throughout the day. Most of Student’s school day was spent alone at home with Marie, or with one of adults implementing her home program.

11. For three hours each week, Student worked with her tutor, Ms. Rahimi, at the local library. Ms. Rahimi was a parenting skills teacher and the director of a preschool, and was not a credentialed special education teacher. Ms. Wilkerson and Parents relayed to Ms. Rahimi the topics or skills that Student was working on and provided materials. She did not grade Student’s work or assess her, and did not know her reading level. Ms. Rahimi was unaware that Student had high average intelligence, and interacted with Student as though Student had a moderate to severe disability.

12. Two times per week, Student had one-hour speech therapy sessions at Ms. Ward’s office. Ms. Ward was a speech pathologist who worked with Student on pragmatic (social) language, including receptive processing (listening to what is said), expressive language (formulating correct sentences) and understanding nonverbal cues (body language, tone of voice). Ms. Ward worked with Student individually, accompanied by Marie. Ms. Ward directed Marie to assist Student throughout the week in actual social conversations with others. Ms. Ward also watched CNN Student News segments with Student, and had Student practice note-taking skills, defining difficult words, and identifying main ideas during speech therapy sessions.

13. Parents wanted Student to get a job and be independent by the time she turned 22. In response, Ms. Wilkerson arranged for Student to volunteer for four to nine hours per week in the community as a vocational component of the home program. Ms. Wilkerson determined that Student needed “hard skills,” such as the ability to perform a task accurately for a long day, and “soft skills,” such as higher-level thinking and social skills. Ms. Wilkerson reasoned that the best way to learn job skills was to perform them on the job. Student did not want anyone to know that she had a disability, so Ms. Wilkerson directed Marie to volunteer for the same work alongside Student and assist her surreptitiously. During the 2013-2014 school year, Student volunteered for one day each week at a community farm, performing such tasks as washing produce, putting produce in boxes and taking compost to chickens. Two Fridays each month, she volunteered at the kitchen of a local senior center and helped prepare and serve lunches. She volunteered at Ms. Rahimi’s

preschool one to three times a week for two and a half hours, where she performed routine tasks such as washing toys and cleaning tables. At a local parks and recreation department, she picked up trash and raked leaves. These volunteer activities occurred during the school day, so Student interacted with adults, not same-aged peers, during these activities.

14. During the 2013-2014 school year, Student also participated in extracurricular activities. She was on the same swim team for the fifth year in a row and participated in a home school choir, accompanied by Marie who would sit with the parents. Student began attending an evening youth group with three friends who were daughters of a pastor. The pastor supervised the youth group and was trusted by Parents, and Marie did not attend. Parents permitted Student to text her friends using her mother's cell phone. Student also took fiddle lessons and performed Irish music in the evenings without one-on-one support.

15. In December 2013, Student started an online course in 8th grade level math. She successfully completed the full course in one semester, in July 2014, by working online for a little over one hour per week. Ms. Wilkerson had Student self-monitor her progress on this course.

16. Student turned 18 years of age on December 13, 2013.

#### *District Assessments*

17. In Spring 2014, District arranged to conduct assessments of Student and hold an IEP team meeting to offer Student a program for the 2014 extended school year and the 2014-2015 school year. The assessment plans were sent to Parents on December 18, 2013, and returned with Mother's signature on February 7, 2014.

18. On March 6, 2014, Mother dropped Student off at Wilcox High School for a full day of assessments. Mother provided District staff with the last pages of Dr. Grandison's draft report, showing results of the standardized tests that had been administered in August 2013. Wilcox High School was Student's school of residence.

19. Dr. Ketch Hess, a credentialed school psychologist, assessed Student's cognitive ability and processing skills. As Student walked with Dr. Hess to her office, Student described her current educational program, and commented that the video sessions with Ms. Wilkerson were stressful and her least favorite part of the week. Student was very engaging, discussed music and her fiddle lessons, and told Dr. Hess that she would love to go to college. Student appeared comfortable before and during testing, laughed at a book she read during breaks, and seemed motivated by her strong assessment scores. During a lunch break, Student saw a friend from elementary school, and spent the duration of the lunch hour visiting with her and other students. After lunch, Dr. Hess observed that Student was very happy and had no difficulty refocusing on test tasks. Dr. Hess assessed Student for a total of two hours, and did not observe her failing to pay attention at any time.

20. Dr. Hess chose different tests from those used by Dr. Grandison, but the test results were consistent. Student's auditory skills, which were necessary for the development, use, and understanding of language, were in the high average range. Her visual processing, or the ability to make sense of what was seen, was average in all areas except visual memory, which was in the low average range. Dr. Hess combined the cognitive ability scores Student obtained with scores reported by Dr. Grandison and calculated that Student had a high average full scale intelligence quotient (IQ) of 115, which is higher than 80 percent of the general population.

21. Dr. Hess measured Student's social/emotional skills in comparison to same aged peers by scoring responses of Student and Mother to questionnaires on a ratings scale in the areas of conduct, learning, psychosomatic, impulsive-hyperactivity, anxiety, and attention. Student reported herself in the average range in all areas except learning problems, where she had slightly more anxiety than her peers. Mother reported that Student had severe inattention, difficulty with friendships and social connections, and difficulty in learning and remembering academic concepts.

22. Also in the afternoon, Student's academic achievement was assessed by Kimberly Scott, a highly qualified and credentialed resource specialist who had taught and assessed high school students with mild to moderate disabilities at Wilcox High School for 15 years. Ms. Scott easily established a rapport with Student, who was grinning from ear to ear and said she had enjoyed lunch with her friend. Student said she was interested in a high school diploma and going to college, and wanted to be a chef or musician. Student told Ms. Scott that she was very nervous about academic testing, particularly in the area of reading comprehension, but was cooperative.

23. Ms. Scott administered the reading comprehension test first, and Student scored below average. Student then scored in the high average range in essay composition, word reading, and numerical operations, and in the above average range in math problem solving and math fluency. In a timed 10-minute writing test, Student wrote a three-paragraph essay with a clear introduction and conclusion that earned a score in the high average range. Ms. Scott concluded that Student was performing at grade level or above in all academic areas except reading comprehension. Ms. Scott believed Student's score in this area was impacted by Student's anxiety, because Student had scored in the average range for reading comprehension six months earlier with Dr. Grandison.

24. Ms. Scott also gave Student an aptitudes inventory, and Student marked her areas of strength as music, art, and science/math. On a career interest assessment, Student was interested in jobs as a chef, cosmetologist, musician, artist, or cashier.

25. On March 18, 2014, Gloria Critelli, a District speech pathologist, assessed Student's speech and language skills using standardized measures. Student had high average skills in expressive and receptive vocabulary, and average skills in making inferences, determining solutions, problem solving, interpreting perspectives, and transferring insights

(comparing analogous situations).<sup>3</sup> Ms. Critelli had a copy of a recent August 2013 speech and language assessment of Student by Ms. Ward with generally consistent results, but which also reported low average scores in the use of idioms, syntax, recalling sentences of increasing length and complexity, and making inferences, and below average scores in pragmatic (social) language. During each one-hour testing session with Ms. Critelli, Student interacted well on a variety of age-appropriate topics, used age-appropriate vocabulary, was able to follow complex directions, attended well and appeared to give her best effort.

26. On March 26, 2014, Dr. Hess and Ms. Scott observed Student during her volunteer activities at a local farm for 20 to 30 minutes. Student was very friendly and polite as she greeted them, and showed them how she was helping to propagate plants for resale. Student appeared very engaged in the process and was able to articulate what she was doing. Marie was at Student's side the entire time.

27. On March 31, 2014, Student signed a document prepared by Student's attorney to assign her educational decision-making authority to Parents.

*April 1, 2014 IEP Team Meeting*

28. On April 1, 2014, District convened an IEP team meeting. Parents and Ms. Rahimi attended in person, and Student's attorney attended by telephone. Also in attendance were assessors Dr. Hess, Ms. Scott, and Ms. Critelli, as well as District's special education director Cathy Welply, District's attorney, and an occupational therapist. The team also included a resource specialist from District's post-secondary vocational program Catherine Wolpert-Adams (Kate Adams).

29. Dr. Hess presented her psychoeducational assessment of Student, noting Student's strong processing skills and above average intelligence scores, and commenting that Student's responses were often expansive as well as correct. She recommended that Student be taught strategies for test anxiety. Dr. Hess asked Parents for a complete and finalized copy of Dr. Grandison's draft September 2013 assessment report, but Parents said that they were still working with Dr. Grandison to finalize it.

30. Parents disagreed that Student had the knowledge to respond correctly during psychoeducational testing, or to elaborate on those responses. Parents and Ms. Rahimi told the team that Student used a strategy when responding to questions by talking a lot and looking for body language, or "tells," to determine if she was on the right track. They

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<sup>3</sup> Ms. Critelli did not testify at hearing. Her written report was explained at hearing by Christine Williams, a qualified speech pathologist. It is unclear from the written report which standardized testing was performed on March 18, or later on April 4, and April 22, 2014. All results of Ms. Critelli's standardized testing are reported here.

explained that Student adapted her responses accordingly, which made Student appear smarter than she was. Ms. Rahimi stated that Student wanted to please authority figures, and that Student's anxiety had been an act to cover her inabilities.

31. Ms. Scott presented the results of Student's vocational and career inventories, in which Student expressed interest in potential jobs as a chef, cosmetologist, musician, artist, or cashier.

32. Parents told the team that Student was a good cook in the home but over-estimated her abilities as Student believed she could be a famous chef or Broadway star. Ms. Rahimi reported that she was working with Student on developing more realistic career plans.

33. In light of Parents' insistence that Student had tested higher on assessments than she could actually perform, the IEP team decided to gather more information with Parents' consent. Parents recommended, and District agreed, to have retired District speech pathologist Judith Wells-Walberg observe and report on the components of the home program. The IEP team agreed to reconvene after Ms. Wells-Walberg conducted her observation and prepared her report.

#### *Additional Assessments and Observations*

34. On April 2, 2014, Ms. Scott again tested Student's reading comprehension by administering a standardized passage comprehension subtest. Student scored in the average range, at the 10th grade level. Ms. Scott revised her report to indicate that Student was at or above average and grade level in all academic areas except reading comprehension, where her scores had been mixed.

35. On April 4, and April 22, 2014, Ms. Critelli performed additional standardized testing of Student's speech and language skills.<sup>4</sup> Ms. Critelli also reviewed a report of the results of two comprehensive language tests administered by Ms. Ward in September 2013, on which Student scored in the average range on all subtests. Ms. Critelli amended her report to add that those scores indicated strengths in semantic skills, syntax, grammatical skills, formulating sentences, paragraph comprehension, determining meaning from context, and understanding ambiguous sentences, and low average ability in processing and producing complex language and social uses of language.

36. Ms. Critelli informally assessed Student's language during observations of Student in the home with Marie on March 21, 2014, and in a speech session with Ms. Ward on April 24, 2014. During both observations, Student attended well and responded

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<sup>4</sup> These test results are summarized in Factual Finding 25, above, as part of the March 18, 2014 testing results.

accurately. Student's overall organization of verbal information was good with age-appropriate vocabulary and use of descriptive language. Student exhibited good conversational skills, as she began and ended conversations appropriately, introduced and maintained topics appropriately by adding relevant comments, asked appropriate questions, avoided the use of perspective and redundant information, and asked for information when a situation was confusing or unclear. While watching CNN Student News during her speech session with Ms. Ward, Student's attention was good and required minimal prompting, and Student answered all questions about the news report correctly. Student was able to follow complex directions, took notes independently, actively participated, and displayed good self-advocacy skills by asking for help or clarification when needed. Student demonstrated an appropriate understanding of facial cues, body language, tone of voice, and personal space. An informal language sample demonstrated age-appropriate syntactical and grammatical skills in a variety of simple and complex sentences, and turn-taking and referencing within normal limits.

37. During April and May 2014, Ms. Wells-Walberg observed Student in the home and at the library with Ms. Rahimi. She spoke to Ms. Ward over the telephone. Ms. Wells-Walberg also observed Student performing volunteer work in several settings. At the senior center, Student used excellent interpersonal skills by making appropriate on-task comments and asking appropriate questions. Student was well-regarded by adult volunteers, who asked her to participate in small tasks, but Student showed little regard for time pressure when preparing a coffee cake and needed reminders to follow the recipe. During municipal parks service, Student raked debris, picked up litter, weeded grass, spread mulch, and cleaned playground equipment. The parks manager spoke highly of the work Student and Marie did. At the local farm, Student repotted seedlings and plants, thinned fruit trees, stayed focused on task, and interacted appropriately with the farm manager and other volunteers.

38. On May 12, 2014, Ms. Scott observed Student during her competitive swim practice. Student swam laps and participated in typical lane chatter with her teammates during short rest periods.

39. On May 16, 2014, Ms. Wilkerson prepared a draft progress report for the IEP team that discussed a long list of skill deficits. Ms. Wilkerson reported that Student had the general knowledge of a late elementary school student, and was slow on most tasks when compared to same-aged peers, although motivation was a possible factor. She described Student's ability to problem solve in real life, non-scripted situations as extremely impaired, and reported that combined with atypical motivation and self-regulation, this led to serious judgment problems and safety issues in the absence of direct adult guidance.

40. Academically, Ms. Wilkerson reported that Student was reading at a late elementary school level, was writing at a 4th grade level, had functional math skills at a 7th to 8th grade level, was at a late elementary school level in science, and at an early middle

school level in history and social studies. Ms. Wilkerson did not reference any standardized testing or other assessments, and did not explain how she had determined these academic levels. She concluded that Student required maximum facilitation to access middle school level activities.

41. Behaviorally, Ms. Wilkerson conceded that Student could be engaging, courteous, and appropriate, but stated that Student was inappropriately focused on pleasing others, and copied exaggerated mannerisms from the media, such as being overly sexualized or overly emotional. She reported that Student was challenged by situations that were non-scripted, and had atypical motivation and self-regulation. Student was dependent on adult intervention for higher-level thinking and generalization. She enjoyed social interaction, tended to identify with younger peers, and wanted friends her own age, but Ms. Wilkerson believed that Student lacked the perspective-taking skills and empathy necessary to make and maintain friendships. Student's understanding of social environments and social cues had improved, but remained impaired. Student was motivated to engage in pursuit of her immediate wants, interests, or activities, and less so in nonpreferred activities. Ms. Wilkerson speculated in her report that Student lived in a family of high achievers and grew frustrated about having to set realistic goals in light of her own limitations, which contributed to Student's withdrawal into a fantasy world. In her opinion, Student's "fantasy life" of composing music or being discovered as a vocalist interfered with her progress towards realistic interaction with the world.

42. Vocationally, Ms. Wilkerson reported that Student had improved "hard skills" and could follow directions, seek clarification, and stay on task. Student also had emerging "soft skills" of social skills, time management, work ethic, and the ability to work in a structured group setting. Ms. Wilkerson ventured that Student possessed the stamina to complete a six-hour day of prevocational tasks. Ms. Wilkerson concluded that Student was thriving in her current home program.

#### *May 20, 2014 IEP Team Meeting*

43. On May 20, 2014, the IEP team reconvened to review the additional assessment results, observation reports, and Ms. Wells-Walberg's report. In attendance were Parents; assessors Dr. Hess, Ms. Scott, Ms. Critelli; and administrator Ms. Welply.

44. At the meeting, Parents provided District with a complete draft copy of Dr. Grandison's 2013 neuropsychology assessment and a draft of Ms. Wilkerson's May 16, 2014 progress report. The IEP team agreed that these would need to be reviewed and subsequently discussed at another IEP team meeting.

45. Ms. Scott reported that Student had scored in the average range on two of three standardized reading comprehension instruments over the past few months. Parents stated that the reading comprehension tests must not have required extensive inferencing or in-depth responses.

46. Ms. Scott proposed an individual transition plan. Transition Goal 1 was for Student to pass the California High School Proficiency Exam (Proficiency Exam) and transition to college. This goal was supported by activities of taking a short “college survival” course at the local community college, Mission College, in fall 2014, and touring Mission College with its disabled students’ advisor. Transition Goal 2 had Student define her own future transition goals, with activities of researching available vocational programs and participating in paid or volunteer employment training. Transition Goal 3 was for Student to demonstrate self-advocacy skills to communicate her learning style and request accommodations as needed. Activities included reviewing the accommodations in her IEP, and meeting with a Mission College disabled students’ adviser to learn about accommodations available in college. The first transition goal was linked to Student’s proposed annual reading goal of learning to compare information from various written sources, and the other goals was linked to Student’s annual vocational goal of learning about and explaining the accommodations she needed to be successful in school and the workplace.

47. Parents responded that Student’s general knowledge was not at age level, and that they had concerns about Student being on a college campus due to safety, impaired judgment, naiveté, lack of higher-level thinking, and inability to process complex sequential language. Parents also worried about Student mimicking exaggerated gestures from the media and creating a dangerous situation. For example, in a television comedy, a young woman might flirt with a young man by striking a pose of lounging across a chair with a “come hither” look. Student would not perceive that the gesture was exaggerated for comic effect, and might inappropriately use such a gesture to flirt on a college campus.

48. The team then considered annual goals. Ms. Scott proposed measurable annual goals in the areas of reading comprehension, specifically paraphrasing and comparing multiple literary works, and vocational skills, to learn about her disability and explain her need for accommodations to others. Goal 1, in reading, reflected state curriculum standards, addressed Student’s relative weakness in reading comprehension, and was based on the results of assessments by Dr. Grandison and Ms. Scott. Vocational Goal 2 addressed Student’s deficit in self-advocacy skills. Parents wanted to review the proposed goals with Ms. Wilkerson and Ms. Rahimi.

49. Ms. Critelli reported that Student was average or above average on all standardized tests of speech and language skills. During Ms. Critelli’s observations, Student had displayed good social skills, good attention skills, and responded accurately to questions. Ms. Critelli had only seen Student speaking with adults, but she did not observe any pragmatic difficulties and Student’s conversational skills were appropriate. Student’s sentences were appropriate in terms of length, complexity, and grammar. Parents commented that Student worked very hard to be perfect when she was being observed. Parents were concerned that Student was adept at using scripts and had likely faked appropriate participation in the conversations observed. Ms. Critelli concluded that her testing and observations had found no speech or language deficits, but in light of Ms. Ward’s

report and Parents' concerns, she recommended speech therapy for Student to work on social cognitive and pragmatic skills. Ms. Critelli proposed measurable annual speech goals to define the difference between figurative and literal language using examples with sarcasm and to infer meaning from magazine passages or video clips. The annual goals addressed Ms. Ward's report that Student's greatest need in the area of speech and language was pragmatic/social language.

50. District made a program offer for the 2014 extended school year and the 2014-2015 school year based on the information available to date. The offer was for a full-time post-secondary program at Wilson High School, where Student could prepare to pass the Proficiency Exam, take some college classes, and develop job and leisure skills, with shorter hours during the summer 2014 extended school year. The offer included two hours of individual and small group speech therapy, a full-time one-on-one aide and behavior intervention aide supervision.

51. Parents did not consent to the offer. The team adjourned the meeting to reconvene after District team members reviewed the new reports and Parents reviewed the proposed goals.

#### *Review of Private Reports and District's Behavior Records Review*

52. After the May 20, 2014 IEP team meeting, Dr. Hess, Ms. Scott, Ms. Adams, and Ms. Welply reviewed the complete draft of Dr. Grandison's September 2013 psychological assessment, and Ms. Wilkerson's draft progress report. They were concerned by the extensive amount of qualitative anecdotal information, and the lack of quantitative data, in both reports. However, in light of concerns regarding inappropriate behavior reflected in both Grandison's and Wilkerson's reports, District arranged for one of its behavior specialists, Diana Kinsey, to perform a complete review of Student's records for behavior information and report at the next IEP team meeting.

#### *June 5, 2014 IEP Team Meeting*

53. On June 5, 2015, District reconvened the IEP team meeting. Present were Parents, Ms. Rahimi, Ms. Wilkerson (by telephone), Dr. Hess, Ms. Scott, Ms. Adams, Ms. Kinsey, Ms. Welply, Ms. Wells-Walberg, and a District special education director.

54. Ms. Wilkerson presented her May 2014 progress report, emphasizing that she was consulting with Student to strengthen Student's higher-level thinking, fixed mindset, self-system, and language skills. Ms. Wilkerson was unable to provide Student's academic levels, beyond 8th grade math online, explaining that it was difficult to assess Student's levels because Student needed so much prompting and assistance. Ms. Wilkerson told the team that she relied on her observations of Student and her review of Student's work samples rather than on any standardized testing in determining Student's abilities and progress.

55. Ms. Kinsey presented her behavior records review, noting that despite the lack of quantitative data, the qualitative information indicated that Student had made a lot of growth in acting appropriately. Ms. Wilkerson responded that Student's behavior continued to interfere with learning when she was distracted by strong interests, such as media trends, music, boys, and becoming a performer. Parents added that Student lost the ability to use even well-established skills when consumed by thoughts in these areas, that is, when she had retreated into fantasy. Due to unclear and contradictory reports of when and how Student's behavior interfered with learning, District offered to conduct a functional behavior analysis to identify inappropriate behaviors, document the frequency and duration of the behaviors, determine the antecedent causes or motivations for the behaviors, and assess the consequences or benefits to Student from the behaviors. The data-gathering was intended to develop a plan to reduce those behaviors and replace them with appropriate ones.

56. Ms. Wells-Walberg reported to the team on the components of Student's home program and her observations. Ms. Wells-Walberg had been requested to observe and prepare a description of the home program for the IEP team. Nonetheless, Ms. Wells-Walberg characterized herself as a "reviewer" of the program and ventured outside her field of expertise to opine to the team that Student was successful in the home program because it effectively addressed Student's educational needs. Ms. Wells-Walberg recommended that the IEP team reconsider whether to offer Student a means of earning a diploma or its equivalent, in light of the home program's effectiveness.

57. Ms. Wells-Walberg's presentation prompted a discussion of whether the IEP offer should include an academic component, with academic goals and program supports to enable Student to earn a high school diploma or its equivalent. Ms. Wilkerson expressed her opinion that the best use of Student's remaining years in special education was functional skill development. Ms. Welply and Ms. Adams disagreed, stating that every student with the ability to pass the Proficiency Exam deserved an opportunity to earn a diploma or its equivalent, and that employment opportunities would be limited if Student did not have a diploma. Parents characterized earning a high school diploma as regurgitating memorized material, and rejected the idea of an academic program for a student of Student's limited abilities in favor continuing a program focused on functional skills.

58. The team then reviewed proposed annual goals in the areas of (1) reading - to paraphrase and compare ideas in several literary works on the same topic; (2) vocational - to learn about her disability and explain necessary accommodations needed; (3) social skills - to monitor the impressions she and others made and guess the emotional state of members of small group; (4) social skills - to describe her reaction or perspective when talking about personal events in her daily life, (5) social skills - to describe behaviors she needs to modify using concepts of self-awareness, self-control, and self-monitoring; (6) expressive language - to define new idioms appropriately and define the difference between figurative and literal language using sarcasm examples; and (7) expressive language - to read short passages or watch video clips and infer verbal and nonverbal meaning. Each of these goals addressed Student's areas of need, were appropriate and included a means for measuring progress on that goal. Several of the goals addressed multiple areas of need.

59. Parents wanted to review the goals with their consultants, and to observe the District's post-secondary program at Wilson High.

60. The team adjourned the meeting and agreed to reconvene after Parents had an opportunity to observe the post-secondary program. District continued to offer the same educational program as at the June 5, 2014 IEP team meeting for the 2014 extended school year and the 2014-2015 regular school year. The District reiterated its offer of a functional behavior analysis, and added the offer of an assistive technology assessment. Parents were provided with an assessment plan. Parents did not consent to the IEP or the assessments.

61. August 5, 2014, Parents sent District a letter stating that District was not offering a FAPE, and that Parents would fund Student's home program for the 2014-2015 school year and seek reimbursement.

62. Prior to the next IEP team meeting, Ms. Welply and Ms. Scott met to discuss whether District's high school program at Mission College, called Middle College, was an alternative to Wilcox High School that should be considered by Student's IEP team. Such a discussion was likely to entail creation of a hybrid program with Student attending both Middle College for academics and the post-secondary program for job and life skills, and they wanted to discuss scheduling to determine if such a program was physically possible. The scheduling issues appeared to be surmountable, and District invited representatives of the post-secondary program and Middle College to attend the next IEP team meeting to discuss whether these programs were appropriate for Student.

#### *August 14, 2014 IEP Team Meeting*

63. On August 14, 2014, District reconvened the IEP team meeting. All necessary team members attended, among them Parents, Student's attorney by telephone, Ms. Scott, Ms. Critelli, Ms. Welply, and Ms. Adams. Teachers from the post-secondary and Middle College programs also attended.

64. The meeting opened with a discussion of the private assessments by Dr. Grandison and Ms. Ward. District team members commented that both assessments were filled with anecdotal, qualitative information reported by Parents and other adults, and with recommendations outside the assessors' areas of expertise. However, District team members did not dispute Dr. Grandison's quantitative standardized test scores, which were consistent with District's own assessment results and generally established that Student had strong cognitive abilities, average or above average processing skills, average or above average academic knowledge, and average or above average speech and language skills (except in the areas of pragmatics). Parents asserted that Student's actual academic work told a different story, in apparent disagreement with Student's own experts. District team members asked Parents to provide samples of Student's academic work.

65. The team again reviewed proposed annual goals and the individual transition plan. At Parents' request, District team members clarified the baselines for each goal. Parents believed that Student needed additional goals, but their attorney informed the team that they would not discuss additional goals due to time constraints. District team members agreed that District would schedule an IEP team meeting 30 days into the 2014-2015 school year, and that new goals could be added at that time.

66. Teachers from Middle College described their program to the team. Parents had serious concerns about Student's safety on a college campus, and placement at Middle College for the 2014-2015 school year ultimately was not offered.

67. A post-secondary teacher described the post-secondary program at Wilson High School to the team. The post-secondary program used community-based instruction to teach functional academics and job training with social skills development. The program partnered with Workability, a State-funded program that allowed students to earn minimum wage in supported job positions, and included travel training. It had 36 students between the ages of 18 and 22, most of whom had moderate to severe intellectual disabilities or autism. The program was taught by a teacher and two paraeducators, and some students had one-on-one aides for safety or behavior reasons. The program included life skills and vocational components, and students could take classes of interest at Mission College, in such subjects as art, physical education and basic academics.

68. The post-secondary life skills classes covered cooking, hygiene, sex education, travel training, and extracurricular activities. The program taught a safety class once a week, but most safety learning happened out in the community, where the students were taught how to handle themselves around strangers. All of the students in the post-secondary program had a problem with "over sharing" information, and were taught a curriculum for individuals with moderate to severe disabilities that included personal safety instruction by categorizing people by level (for example: strangers, police and emergency personnel, acquaintances, family members, doctors). The amount of personal information shared or the level of physical contact permitted was determined by level. This curriculum was taught in the community as situations arose because that was the best way to teach personal safety. At hearing, District's vocational expert and post-secondary teacher Veronica Greunke thought that the safety curriculum might be too low for Student, but noted that students with autism tended to like black and white thinking, and therefore Student might have felt comfortable with that curriculum.

69. An important component of the post-secondary program was travel training, or teaching students to use public transportation, as most of the Workability students and all of the direct hire students took the bus to their jobs independently. Post-secondary students learned the mechanics of taking public transportation in steps: first becoming familiar with bus routes, then taking the bus with an aide next to them; taking the bus with an aide

elsewhere on the bus; taking the bus with an aide following in a car; taking the bus with an aide meeting them at the end of the ride; and eventually taking the bus independently. The post-secondary students who took classes at Mission College were accompanied by an aide on the bus or met at the college, depending on their level of independence.

70. Each post-secondary student had a job site in the community, and each year one or two of the students with lesser challenges were hired directly by the employers. At the job sites, constant efforts were made to fade support, because when students leave special education programs at 22 years of age their environment is no longer as supported, and learning to function without aide support was considered critical to becoming as independent as possible. The post-secondary teacher met with the aides who acted as job coaches once each month for two and a half hours of training on teaching strategies, fading support, and behavior supports. That teacher also met with staff for an hour each week to discuss one-on-one teaching strategies for particular students. Job coaches were trained on how to make a job challenging, and perhaps model a skill, but the job coach did not work next to the student. Once the student had learned to do one job, they could move on to something more challenging. Workability students typically worked one to four hours per week and received minimum wage. The students loved receiving and spending their paychecks, and the post-secondary program included lessons on setting up a bank account, setting up a budget, how to use an ATM machine, how to manage cash in pocket, and how to use a debit card in the store.

71. The classes in the post-secondary program at Wilson High were very individualized, and classes were mixed and matched with independent study periods for students to learn at their own pace. Students worked at their job site according to the employer's hours. Some students needed one-on-one aide assistance or a small group to learn job skills, travel training, or other lessons. The teacher scheduled classes around the students' schedules. The post-secondary program took place across different settings, and as students were constantly coming and going from the job site, Mission College or the community, it was rare that all of the students were together at one time. Multiple settings promoted the program's goal of working towards generalization of skills. The post-secondary program could be adapted for Student to attend a few hours each day and still receive the benefit of the post-secondary curriculum and job training.

72. Parents had not yet observed the post-secondary program, but expressed an interest in doing so as they wanted Student in a functional skills and vocational program.

73. The District team members believed, on the information gathered over four meetings, that Student could earn a high school diploma or its equivalent. The team considered placement at Wilcox High School, where Student could receive specialized academic instruction, referred to as study skills, and general education classes with pushed-in resource specialist support. Student could take up to three classes as general education independent study. General education classes at Wilcox High School included areas of

interest for Student, such as cooking. These classes would give Student exposure to same-aged peers. Wilcox High School was on a block schedule that did not require Student to attend school every day, and Student could work on coursework and homework at home, during study skills or during independent study.

74. The District IEP team members adopted the proposed annual goals, transition goals, and individual transition plan. District offered placement for the 2014-2015 school year at Wilcox High School and the post-secondary program at Wilson High School, for 15 hours per week in each location. At Wilcox High School, Student would receive specialized academic instruction for 4 hours per week, and take two general education electives, cooking and independent study, with push-in specialist support. At the post-secondary vocational program at Wilson High School, Student would receive job coaching for 60 minutes per week, career awareness for 90 minutes per week, work experience education for 90 minutes per week and travel training for 60 minutes per day. Student would be accompanied by a District one-on-one behavior aide throughout the 6-hour school day and across settings, with 90 minutes per week of behavior intervention services, also known as behavior intervention supervision, by a nonpublic agency. Travel training would provide Student with transportation by public bus to and from Wilcox to Wilson, and to and from Wilson to the job site. Speech and language services at Wilcox high School were offered for 2 hours per week, with 1 hour of individual therapy by a nonpublic agency and 1 hour of small group therapy by a District speech pathologist to work on pragmatic language and social skills. To assist Student in her transition to school and community based programs, District offered to fund 30 minutes per month for the nonpublic agency speech provider, who could be Ms. Ward, to collaborate with the District speech pathologist. The IEP also offered to fund consultation services by Ms. Wilkerson for 10 hours per month for three months as a transitional service. Student would also be given a public transportation bus pass.

75. The District members of the team envisioned that Student would take a short course on “college survival” at Mission College in October 2014, and could transition more of her class time to Mission College (through Middle College or direct enrollment) depending upon her comfort level and performance in college-level courses.

76. District reiterated that it would conduct assistive technology and adaptive behavior assessments when the assessment plan was signed and returned.

77. Parents did not consent to the IEP, and the meeting was adjourned.

78. On August 27, 2014, District responded to Parents’ August 5, 2014 letter. District declined to reimburse Parents for costs of the home program going forward. District reiterated the special education and related services offered in the August 14, 2014 IEP, which District contended had offered Student a FAPE. There was a typographical error in the August 27, 2014 letter, which incorrectly stated that the August 14, 2014 IEP offered 90 minutes per week of behavior intervention supervision, when the actual offer was 120

minutes per week. District offered to arrange for Parents to visit the programs discussed at the IEP team meeting, and to schedule an IEP team meeting after the observations at Parents' request. Another copy of the assessment plan for assistive technology and adaptive behavior assessments was included with the letter.

### *Classroom Observations*

79. Between August 2014 and February 2015, Mother, Ms. Rahimi, and Ms. Ward observed the programs offered in the August 2014 IEP. They observed three classes at Wilcox High School, including a cooking skills class with 35 students, who Mother thought looked like freshmen or sophomores. Mother thought that the teacher lacked a dynamic teaching style and had poor classroom control. Mother did not see the teacher's classroom assistant doing much. She noticed an aide in the back of the room who would occasionally assist one young man, and disliked it being so obvious that the student had a one-to-one aide. She concluded that Student would not benefit from such a chaotic environment, and would not want to be seen in a class with younger students. Mother did not know if any of the students had IEP's, if the students had needed help from the classroom assistant, whether the classroom assistant had been instructed to let the students work during that period of time without assistance, or whether the classroom assistant was fading assistance to one or more student during the observation. The August 2014 IEP team did not have Mother's opinion that Student would not want to be associated with younger students, which conflicted with the reports the team did have that Student preferred to socialize with younger people. Ms. Wilkerson testified at hearing that Student had attended a Geometry camp in 2013 with younger students and Student had enjoyed herself.

80. Mother, Ms. Rahimi, and Ms. Ward also observed an independent study class at Wilson High School. The class had 10 or more students, and was run by Ms. Scott and a classroom aide. The students were using computers to access online classes for credit recovery. Credit recovery programs were typically for students who took a class but failed, and Mother did not think such programs would be appropriate for Student, who had never had high school lessons. Mother also found the lesson content for one student, which involved a young woman's date constantly looking at his cell phone, distasteful and too literal for Student. Despite two adults in the room, Mother saw students accessing social media. Mother did not know what assignments the other students had, whether the other students were actually on social media, had permission to access social media sites, or whether the students' assignments required access to social media. Mother lacked the experience and training to determine if Student could obtain educational benefit from Ms. Scott's class with the other supports offered in the Student's IEP. Ms. Scott testified that the online programs accessible to her students were not limited to credit recovery, but included programs for students to gain high school credits at an accelerated rate if they were capable of doing so. Mother's testimony about her observation of Ms. Scott's classroom was anecdotal, speculative, and unpersuasive.

81. Mother and Ms. Rahimi observed a study hall at Wilson High School, where students could go for extra help and instruction. Mother noticed one boy tapping his foot while reading a book, but she did not see him turn any pages. She was very unimpressed with an adult aide who let a young woman drink her water in a sloppy manner. Mother's testimony concerning this observation was also anecdotal, speculative, and unpersuasive. Ms. Rahimi agreed with Mother that the Wilcox classes were inappropriate for Student, but did not state the reason for that opinion, which was accorded little weight.

82. Mother, Ms. Rahimi, and Ms. Ward observed a Middle College class in expository writing. Although all 40 students seemed to know what they were doing, Mother thought the class was rather chaotic and took an undue amount of time to settle down. The class lesson was an analysis of the lyrics of a popular song, the Beatles' *Eleanor Rigby*, which Mother felt was beyond Student's ability. Mother read the class syllabus and saw that a 7-10 page paper was required, which she opined Student could not accomplish. Mother also observed a social studies classroom of seniors, which was much smaller and quieter. The teacher was doing an excellent job of facilitating a mature discussion on how to honor other people's cultures without offense. Mother thought the class was amazing, but that the discussion was too fast for Student to track and beyond the comprehension of someone like Student who was unaware of her own offensive conduct. Mother thought the Middle College program was extraordinary, but not a fit for someone with as many deficits as Student. Ms. Rahimi and Ms. Ward agreed. Mother, Ms. Rahimi, and Ms. Ward were unfamiliar with the Middle College program or the expertise of the teachers in accommodating preferences and disabilities, and modifying curriculum to address a student's unique needs. Ms. Rahimi never assessed Student's academic progress, was unaware that Student had high average intelligence, and could not identify Student's academic levels. Ms. Rahimi's opinion on Student's inability to do the work in the expository writing class was given very little weight, as her knowledge of Student's academic ability limits appeared unfounded and tentative, despite her years of working with Student for several hours a week. Ms. Ward's testimony that Student was incapable of processing conversation rapidly enough to keep up with the class was in direct conflict with Student's strong processing and language skills on standardized assessments conducted by Ms. Ward in August 2013. At hearing, Student did not exhibit any difficulty in keeping up with, or contemporaneously understanding, questions from District's counsel. This raised a reasonable inference that, when taken with Student's strong language processing scores, Ms. Ward was prone to exaggerating Student's levels of deficit in this area, and her opinion regarding Student's ability to understand lectures was considered with caution.

83. Mother, Ms. Rahimi, and Ms. Ward did not observe the post-secondary (vocational) program located on the Wilson High School campus, but Mother and Ms. Rahimi spoke with one of the teachers. Mother thought that the teacher was knowledgeable in teaching job skills, but that the Workability program had too few hours to get Student where she needed to be by age 22. Mother noted that the students in the program were very low functioning, and that it would not be appropriate for Student to be in a

program with them as Student was sensitive to being perceived as disabled and would not be comfortable with low functioning peers. However, Ms. Miller testified that Parents had recently hired her to attempt to place Student in a vocational program of equally low functioning Students, which testimony adversely affected Mother's credibility when opining that she believed Student could not benefit from a program with low functioning students. Ms. Rahimi believed that Student could receive some benefit from the post-secondary program, but that it had too few Workability hours.

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84. On October 14, 2014, District sent Parents a letter stating that Student's educational rights had not been validly assigned to Parents. District also requested that Student personally observe the programs discussed offered in the August 14, 2014 IEP and participate in IEP team meetings.

85. On November 14, 2014, District sent Student a copy of its August 27, 2014 letter, revised slightly to address Student rather than Parents, to correct a calculation error clarifying that the correct number of behavior intervention services offered was 120 minutes, not 90 minutes, per week. Father asked Ms. Ward to review the letter with Student. When asked her understanding of the letter, Student responded to Ms. Ward that District was not giving Parents what they requested and offering only those services listed in the IEP, an accurate and succinct summation.

86. On November 19, 2014, Student's attorney wrote to District disputing that District should be sending correspondence to Student directly, as Student had assigned her educational rights to Parents. Student's attorney included undated samples of Student's work with the letter.

87. On December 13, 2014, Student turned 19 years old.

88. On February 24, 2015, in anticipation of Student's upcoming annual IEP review, Student's attorney sent District's counsel a list of Parents' disagreements with the IEP, and a proposed 21-page transition plan drafted by Parents.

89. Parents asserted that District had failed to draft goals that addressed Student's areas of need in functional academics, critical thinking, motivation/self-regulation, vocational, and safety. Parents also disagreed with the offered placement because it provided Student the opportunity to earn a high school diploma. Parents felt that Student needed one-on-one instruction in critical thinking, job training, functional academics, and social/pragmatic support, not a high school curriculum. Parents considered Middle College class sizes too large; Middle College class content too difficult for Student; Wilcox High School and Middle College lacking in sufficient supervision; and the post-secondary

vocational program lacking in content, structure, and support. Parents added that Student lacked the social skills to navigate a high school campus, the vocational program was of insufficient duration, and it was unsafe for Student to undertake travel training.

90. Parents' transition plan proposed a list of 22 goals in the areas of: (1) social thinking and social skills, (2) communication, (3) higher level thinking and self-efficacy, (4) self-regulation, and (5) safety. Parents described how the home program addressed those goals. Quotes by Student were interspersed throughout the proposed plan. In a section on training and education, Student stated that she wanted to become a deeper learner and work towards a diploma, wanted to obtain a diploma by the time she was 22 years old, and wanted to have mature conversations where she could add something to what was discussed. Student characterized her employment plans as "dreams," with the goal of earning a living. She candidly admitted that she needed help to research job opportunities and training programs, and needed help finding and keeping a job. Student's current employment goals were described as to have a real job (paid or as an intern), and to function in a real job with a job coach giving direct and indirect support. In the area of independent living, Student wanted to live away from her parents, with friends or a boyfriend, and learn to care for her own health and finances.

91. In February or March 2015, tensions in Student's home were very high. Parents attributed the tension to District's attempts to engage Student in the IEP process. Parents permitted Student to prepare a PowerPoint slide for her annual IEP review in March 2015. Student prepared the presentation herself, although she reviewed it with Ms. Ward.

92. On March 16, 2015, Ms. Wilkerson prepared a draft progress report. Student's home program was essentially the same, except that she had increased her volunteer services to 16-20 hours per week and was receiving career readiness training for four hours per week.<sup>5</sup> Student had made minimal progress in vocational skills as she avoided work, had unrealistic ideas about work hours, required a job coach in close proximity, and needed direct supervision to follow directions. On the other hand, Ms. Wilkerson also reported that Student had developed realistic ideas about possible jobs, was researching job prerequisites, and was able to talk about her future realistically "with guided questions and direct prompting." Ms. Wilkerson had prepared a "Community Based Skills Assessment" taken from observations by Parent, Ms. Rahimi, and Marie that rated Student as less than completely independent in broad areas, such as home living skills, leisure/recreation, peer relationships, health and safety, transportation, and career. Ms. Wilkerson concluded that despite Student's gains in the home program, her needs were the same as identified in her previous progress report of May 16, 2014.

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<sup>5</sup> No details on where, when, or from whom Student was taking career readiness training in March 2015 was given in the report, or at hearing.

93. Ms. Wilkerson reported that she was beginning to take baseline data on Student's inappropriate behaviors during volunteer service, which she identified as chatting with other volunteers instead of doing a task, refusing to do a task, or being rude. Student had improved her ability to cope with problems and was rarely explosive, but she still exhibited inappropriate behaviors including crying, swearing, hostile language, saying she was a victim, rude body language, and ignoring others trying to interact with her. Ms. Wilkerson reported that Student made significant progress in peer relationships and social communication, and had a better understanding of the perspective of others and the rules of conduct. However, Student did not always think a situation through, became defensive when redirected, and required moderate to extensive prompting to act as socially expected in community settings and social conversations.

94. Ms. Wilkerson had seen growth in Student's self-advocacy skills, and Student was demonstrating effort, persistence, and an attitude that she could do anything she put her mind to. Student was spending less time fantasizing and more time focusing on the skills she needed to obtain and keep a job. Student was discussing her disability and talking about her strengths and weaknesses. Ms. Wilkerson reported that Student exercised more caution when crossing the street and navigating a parking lot, and was learning safety in the kitchen and when to speak to strangers. In the area of independence, Student could shop with an ATM card, although she still needed extensive prompting to plan a healthy meal and balance her bank account. Student was participating in extracurricular activities in the community without direct support, such as being a cast and chorus member of a local theatre's production of *Les Misérables*. In academics, Student could read short passages with relative independence and answer simple questions about a story. She could write simple answers to a story, but needed maximum adult support in prewriting and evaluating short essays. She had made good progress in functional math, and incremental progress in history that enabled her to begin participating in conversations about current events.

95. Ms. Wilkerson, who was neither a board certified behavior analyst nor credentialed vocational teacher, concluded that Student was thriving in the behavioral and vocational program that she had designed for Student. Ms. Wilkerson also stressed that Student should be at the center of decisions regarding her program, and involved to the maximum extent possible, although programming should be in collaboration with her adult service providers.

96. On March 16, 2015, Ms. Ward drafted a progress report on Student's speech goals. Student was finding it difficult to take down more than 60-70 percent of information correctly when listening to a presentation, which Ms. Ward interpreted to demonstrate that Student had poor self-monitoring skills and was a slow processor of language. Student continued to have difficulty understanding the perspectives of others, and making appropriate inferences and predictions. Student's speech and writing had grammatical and tense errors. Ms. Ward reported that Student's problem solving skills were poor in novel situations, and

Student needed adult assistance to make good choices. Student's pragmatic skills were poor and stylized, and too often taken from television or movies without the realization that the language or gestures were stereotyped. Student used figurative language and idioms with 80 percent accuracy, but needed to do better. Ms. Ward concluded that Student had made steady progress and would likely meet her home program language goals before the beginning of the 2015-2016 school year.

97. On March 18, 2015, Parents provided copies of the reports by Ms. Wilkerson and Ms. Ward to District.

*March 19, 2015 IEP Team Meeting*

98. On March 19, 2015, District convened an annual IEP review team meeting. The meeting lasted for five hours. Present were Parents, Student's attorney, Student (morning), Ms. Rahimi (afternoon), Ms. Wilkerson (afternoon, by videoconference), Ms. Welply, Dr. Hess, Ms. Williams, Ms. Adams, Ms. Jolliff, District vocational specialist Delores Melin, and District's attorney.

99. The meeting began with 37-slide PowerPoint presentation by Student of what she wanted in a transition plan. She had prepared it herself and it was well organized. Student listed three goals she wanted to achieve by age 22: (1) earn a high school diploma; (2) get a job as a waitress and live independently; and (3) enjoy a social life including community theatre and musical performances (playing an instrument in concert or singing at an open mic). Student wanted to improve her social skills and be safe.

100. She summarized her volunteer services and the academics she was working on, including online courses in 6th grade English language arts, 9th grade U.S. History and consumer math, and work assigned by Ms. Ward. Student felt she was better able to interact in social situations, contribute to conversations, take the perspective of others, and could attend social events without someone to guide her. Recent community activities included a paid position in the make-up crew for a local opera production in October 2014, acting and singing in a local production of *Les Misérables* from October 2014 through March 2015, fiddle lessons, and Irish Music sessions. As a leisure activity, she liked to read.

101. Student told the IEP team that she wanted Parents to act on her behalf at IEP team meetings because meetings made her nervous and her Parents knew her needs and had a better understanding of how District worked. Student essentially read the text of the slides, but she appeared happy to be talking about herself, and was amenable to answering a few questions after the presentation as her attorney permitted. When asked what part she played in *Les Misérables*, she said she played several small parts, including a prostitute, and joked that her parents were "surprisingly fine with that." Student then left the meeting.

102. The team reviewed Student's present levels of performance, based upon the 2014 assessments and observations, the current reports from Ms. Wilkerson and Ms. Ward, and Student's presentation. The team discussed a proposed transition plan drafted by Ms. Adams with three measurable post-secondary goals and supporting activities for Student: (1) to attend a vocational education program, with activities to define her areas of focus, and research the costs, locations, accommodations, and available certificate/degree programs and tour those programs; (2) to obtain a direct hire job, with activities of participating in Workability and other volunteer activities with a job coach to acquire job skills, and meeting with a vocational specialist to work on skills such as interviewing, resume development, and job research; and (3) to live independently in an apartment with friends, with supporting activities of learning to develop a realistic budget and projected expense report, obtaining CPR certification if appropriate, opening a personal checking account, and acquiring government issued identification. Ms. Adams proposed CPR training, because the CPR course also covered many safety and first aid basics.

103. The proposed transition plan indicated that Student would earn her high school diploma, which was a prerequisite to enrollment in many vocational programs and sought by many employers. District had invited Jennifer Jolliff, a co-founder of the Middle College program who presented at the August 14, 2014 IEP team meeting, to describe her program again for the benefit of the March 19, 2015 IEP team members. Ms. Jolliff is not a credentialed special education teacher, but she is a very highly qualified credentialed teacher of a diverse population of high school students, and her testimony was very compelling and persuasive.

104. Middle College was a District program located on the local Mission College campus. The students who attended Middle College were high school students enrolled in District, not college students. They attended high school classes for high school credit, and college-level classes at Mission College to earn both high school and college credits pursuant to an agreement between District and Mission College. Middle College students were not enrolled at Mission College, and did not receive any college services beyond classroom instruction. District was responsible for all educational supports required by Middle College students in their Mission College classes.

105. Middle College served a diverse population of 80 students who wanted to go to college but had not been successful in a regular high school program. The typical Middle College student was either: (i) not achieving to his or her maximum potential, i.e. not doing homework or "tuned out;" (ii) needing a "do over," to get away from labels placed on them by peers; (iii) uncomfortable due to cultural or religious differences and needing a more controlled environment, (iv) needing a change and a jump start on college credits to save on college tuition; or (v) another type of student who did not fit the other profiles. Middle College built a community of learners from all walks of life. The cognitive ability of the students was also diverse, with IQ's that ranged from 74 to 160, and included students with IEP's or general education accommodation plans, generally known as "504 plans". Some of

the Middle School students had autism, with deficits in reading comprehension and social deficits, and appreciated being in an individualized program without the label of special education. Approximately half of the students were juniors, and half seniors, although there were some seniors who took an additional year to graduate. The age range of students was 15 to 19 years old. Ms. Jolliff had reviewed Student's educational records and assessments, had been a member of Student's August 14, 2015 and March 19, 2015 IEP's, and seen Student's PowerPoint presentation. It was her opinion that Middle College would be a great fit for Student, particularly in light of the great degree of individualized instruction given to every Middle College student and the other supports ultimately offered by the IEP team.

106. Middle College students attended mandatory high school classes in English and history and college classes of interest, with the remainder of the school day spent in elective Middle College classes, independent study, or individualized instruction. Middle College classes usually began with group instruction, and then broke into small groups of five for discussion and more individualized instruction. The Middle College teachers tried to create a place where the students felt safe, and could interact with each other and get the support they needed to be successful. Assistance was available whenever the students needed it. Middle College teachers had professional relationships with the faculty at Mission College that enabled them to place students in classes where teachers were accommodating and where former Middle College students had experienced successful learning. Students could also take online courses, which were more intense and had stricter rules, but provided students with flexibility. The schedule of classes was very flexible, and forty percent of Middle College students had part-time jobs.

107. Ms. Smith and Ms. Jolliff were both very knowledgeable about academic supports, and had an arsenal of accommodations and modifications used to support their students. The students had electronic books, allowing books and assignments to be modified for each student. Software programs allowed the teachers to pre-load lesson information onto the students' electronic books, and they could direct students to take notes for other students or record the lectures. For example, although Ms. Smith's history classes used college-level history textbooks, she had electronic books with the same information at easier reading levels and could electronically send those books to students who had difficulty with the textbook. Only that student would be aware of the modification. Ms. Smith and Ms. Jolliff could modify tests for each student without other students being aware of the differences in the tests. Middle College had a bank of 18 computers for use by students who needed them. Ms. Smith and Ms. Jolliff worked very closely with their students, regularly tested student levels, and devoted extra time and attention to the students who needed it.

108. As another example of individualization, some students were uncomfortable with chosen subjects or texts, such as the disturbing historical situations in John Updike's *The Jungle*, or the offensive dialogue in Mark Twain's *Huckleberry Finn*. Ms. Jolliff's literature classes were designed to introduce students to writers and writing styles in fiction and nonfiction works that covered the same period as Ms. Smith's history classes, and

reinforce the history lessons. When a work was controversial, Ms. Jolliff asked the class to discuss and decide if they wanted to read it. If one student was bothered by the content, she could assign that student alternate works covering the literature concepts and historic period. Ms. Jolliff opined that if Student was uncomfortable reading a book in any of the Middle College classes, Ms. Jolliff or Ms. Smith would be able to find acceptable alternate material to provide Student with the same instructional information.

109. The Middle College program involved extensive peer interaction, and the students often worked together to get ahead. Ms. Smith and Ms. Jolliff facilitated social interaction, and taught an elective course on how to deal with situations in the community. Students were encouraged to take a Mission College class on college survival that taught students how to approach college, take notes, have conversations with instructors, study for tests, use math and English labs, and access services from the Department of Social Services, if needed. Ms. Jolliff persuasively opined that Student would greatly benefit from social interaction with her peers at Middle College, which provided a safe, secure and non-threatening learning environment. Student would be with juniors and seniors who were just a year or two younger than her, and with seniors her age who were taking an extra year to graduate. Middle College was an age-appropriate place for Student to finish her high school credits while exploring the college environment and learning about vocational certificate programs. Middle College had a restaurant industry vocational program, and there was a strong performing arts program at a related local community college.

110. Parents were critical of the Middle College program for Student because Ms. Smith and Ms. Jolliff were not credentialed special education teachers. Ms. Jolliff explained that Middle College worked with a District program specialist who was a credentialed special education teacher if a student had an IEP.

111. Ms. Jolliff was excused from the meeting, and team members took a break. When they reconvened, Ms. Rahimi joined the IEP team, as did Ms. Wilkerson, by videoconference.

112. Ms. Wilkerson presented her draft progress report. Because the report did not include Student's academic levels, District team members inquired about them. Ms. Wilkerson did not know Student's academic levels, became defensive, and eventually ventured that Student was at a 4.3 grade level in independent reading and an early high school level in functional math. Ms. Wilkerson characterized the questions as in disregard of her recommendation that Student receive a program focused on thinking and vocational skills, not academics. Ms. Adams wanted to know if Student had academic goals in her home program, and Ms. Wilkerson replied that academics were a "small part" of Student's home program, and that she would get back to the team with baseline academic information. Student's counsel mentioned that District had received work samples, but the team explained that isolated work samples alone did not indicate ability and needed to be viewed in the

context of whether or not Student could do more difficult work, or compared to earlier work to demonstrate progress. The team asked Ms. Wilkerson about the level of the books Student had said she read in her presentation (*Divergent*, *Hunger Games*), and Ms. Wilkerson responded that Student only understood those books because she had seen the movies. Mother told the team that she had read *Divergent* with Student, and it had been difficult for Student to answer questions about the story, and Mother felt that Student seemed to have missed much of the story's intent.

113. The team discussed a vocational component for Student's program, such as the post-secondary vocational program at Wilson High. Ms. Wilkerson identified Student's biggest deficit for employability to be her lack of focus on non-preferred activities, although Ms. Wilkerson was vague in responding to questions about whether Student had input on the vocational tasks she was given. Ms. Rahimi, who assigned Student volunteer work such as cleaning and organizing shelves at Ms. Rahimi's preschool, added that Student was ready to move on to more rigorous job tasks. Ms. Wilkerson stated that Student had low stamina and could sustain focus and attention only for three hours, which District team members believed was a long period of sustained attention. The District team members felt that the post-secondary vocational program at Wilson High School would introduce Student to potential Workability employers in a variety of fields that might interest her, vocational counseling and job coaching to learn the skills necessary to get and keep a job, and safety curriculum and travel training to enable her to be safe and independent in the community. Parents, Ms. Rahimi, and Ms. Wilkerson wanted Student to increase the number of volunteer hours in her home program instead.

114. The team discussed an academic component of an educational program. Ms. Wilkerson told the team that Student needed one-to-one instruction because she had minimal ability to function in a group learning environment. However, when queried about Student's performance in group learning at Geometry Camp in 2013, Ms. Wilkerson admitted that Student had done well, albeit with younger students. Mother told the team that Student participated in an after-school tutoring/youth group and loved being with friends. Ms. Wilkerson opined that Student could not learn in a group setting of more than 10 students because her ability to generalize skills was limited and Student needed direct teacher support. The District team members noted that the Middle College classes were often taught in small groups of five students and provided many opportunities for individualized instruction.

115. The team reviewed proposed annual goals drafted by Ms. Adams and Ms. Williams, based upon Student's present levels of performance as reported by Ms. Wilkerson and Ms. Ward and written into the IEP.

116. The reading goal addressed Student's relative weakness in reading comprehension, and took into account Student's academic achievement scores in reading in the high average and at the 12th grade level. The goal was for Student to analyze 11th grade informational text and cite explicit and implicit evidence in text to support the analysis.

117. The self-help goal was based on Ms. Wilkerson's progress report that described Student's difficulties with self-regulation, such as hostile language, rude body gestures, and ignoring others. It provided that Student would demonstrate appropriate self-regulation strategies in an age and situationally appropriate manner by deep breathing, taking a break, or asking for help.

118. The goal for secondary transition was based on Ms. Wilkerson's report that Student required close supervision, had difficulty following multi-step directions, and required a job coach to comply with job expectations. It required Student to acquire skills to transition to vocational training program by researching available programs and developing strategies to independently seek assistance when needed.

119. Also based on Ms. Wilkerson's report was a vocational goal, which provided for Student to complete a series of activities at a job; and Workability or vocational training, to prepare for transition to competitive employment by defining short and long-term job planning vocational goals, developing a personal resume, and demonstrating vocational skill development.

120. In light of Student's presentation identifying her interactions with strangers as a safety issue, a concern echoed by Ms. Wilkerson and Parents, the IEP team adopted a safety goal. It required Student to engage in appropriate interactions with strangers by maintaining personal boundaries, such as not getting into a car with a stranger, going somewhere with a stranger, or giving out too much personal information, in the community or at school.

121. Ms. Williams proposed an annual social skills goal based upon Ms. Ward's report and the speech and language testing in spring 2014. The team developed a goal that addressed Student's reported deficit in taking the perspective of others and difficulty identifying and understanding inferences. It required that Student identify or express perspectives of at least two others within a small peer group.

122. Ms. Williams proposed a social skills goal to address the results of the formal speech assessment that had indicated Student had difficulty interpreting tone of voice. The goal provided that Student would interpret and differentiate vocal tones, differences in voice or speech to interpret how a person is feeling (joking or serious, sincere or sarcastic) in an age appropriate conversation.

123. In light of reports that Student was unable to interpret sarcasm, particularly as it related to irony, another proposed social skills annual goal provided that, in role play with a small group of peers, Student would identify and describe a conversation breakdown such as providing too much personal information, ignoring nonverbal cues, needing to seek clarification, or a topic shift.

124. Each of the annual goals proposed by Ms. Adams or Ms. Williams was designed to meet Student's educational needs, and included a description of the manner in which Student's progress on those goals would be measured.

125. The District members of the IEP team believed that the proposed annual goals addressed all Student's areas of educational need: reading comprehension, post-secondary skill acquisition, vocational skill acquisition, social skills, and safety. Many of the goals addressed more than one area of need, for example, learning to interpret tone of voice and identify conversational breakdowns helped Student in acquiring important vocational skills and would serve her well in being safe in the community and at school. Parents wanted to adopt the goals drafted by Ms. Wilkerson and presented in Parents' February 2015 proposed transition plan, but District team members disagreed, pointing out that, except for the self-help goal, Ms. Wilkerson's goals were built around the home program, rather than Student's identified educational needs. For example, many of Ms. Wilkerson's goals focused on a specified number of feet from which Student required prompting. The District members of the IEP team adopted the annual goals drafted by Ms. Adams and Ms. Williams.

126. The team went over the placement information presented in the morning by Ms. Jolliff, which Ms. Rahimi and Ms. Wilkerson had missed. Ms. Rahimi and Ms. Wilkerson were insistent that Student would be unable to attend any part of a program at Middle College, because Student would be unable to process information presented in lecture and class discussion quickly enough, and would be unable to meet the written demands of homework and essays. Ms. Wilkerson opined that Student could not work at the academic level required in Middle College courses. She told the team that a high school diploma and college credits were of no benefit to Student, and demanded that the IEP be revised to offer Student a strictly vocational program in which Student could gain stamina and practice hard and soft vocational skills and eventually acquire a paid position for 20 hours per week.

127. District offered Student the program in the August 14, 2014 IEP for the remainder of the 2014-2015 regular school year and 2015 extended school year, in order for Student to have a more natural transition to Middle College at the start of the 2015-2016 school year.

128. For the 2015-2016 regular school year, District offered Student the following: (1) specialized academic instruction for two hours twice a week at Middle College, with three hours of specialized academic instruction as "push in" support for either Mission College classes or online classes; (2) Student's remaining school week would be in Wilson High School's post-secondary vocational program, with vocational counseling two times per week for 60 minutes, vocational counseling for 60 minutes twice a week, job coaching for 60 minutes twice a week, and travel training for 60 minutes per day during which time Student could travel between Middle College and Wilson High School, her Workability site, and into the community; (3) intensive individualized services of a one-on-one aide for six

hours per day, five days per week; (4) behavior intervention services or aide supervision by a nonpublic agency for 60 minutes two times per week; (5) speech therapy for two hours per week, one hour individual and one hour group; and (6) a resource specialist who would meet with Student and her teachers for 60 minutes once a week. If Student did not start the District's offered program during the 2014-2015 school year, Student could access the three months of transition consultation services for 10 hours per month beginning with the start of the 2015-2016 school year instead. For each service, the IEP specified the projected initiation date and anticipated duration. It also included a statement of the program modifications or supports for school personnel that would be provided to Student to allow her to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, to participate in extracurricular activities and other nonacademic activities, and to be educated and participate in activities with other students with disabilities and nondisabled students.

129. The IEP team meeting ended without Student or Parents consenting to District's offer. District sent a final draft of the IEP to Student a few days later. Student did not consent to March 19, 2015 IEP.

130. After the March 19, 2015 IEP team meeting, Student terminated the services of Ms. Wilkerson, Ms. Rahimi, and Marie. That evening, Father had a firm discussion with Student, and the next day she agreed to work with Ms. Wilkerson, Ms. Rahimi, and Marie again.

131. After the March IEP team meeting, Student became depressed about her home program. Although she continued to volunteer services at the local farm and Ms. Rahimi's preschool, she refused to work on new material. At the time of the hearing, Ms. Wilkerson, Ms. Rahimi, and Ms. Ward had been trying to maintain Student's skill levels for four months, but Student had regressed.

132. Prior to the hearing, Student and Mother had a disagreement. Student packed up her things while Mother was in the back yard, left the house and walked to a family friend's home, and spent the night. Mother brought Student home the next day, and cited this event as an example of inappropriate behavior, that is, Student was beginning to forcefully challenge adults, to be impulsive and to act on her own agenda.

133. On April 2, 2015, District sent Student a letter re-stating the offer in the March 19, 2015 IEP, and reiterating that District would not reimburse Parents for the home program.

134. On April 7, 2015, Student's attorney sent District's counsel a letter with a statement by Student that she would not agree to attend a school setting three days a week and instead wanted to work in a job training program to reach a goal of working up to

20 hours per week. The letter also listed Parents' disagreement with each component of the March 19, 2015 IEP, essentially because they did not align with Ms. Wilkerson's proposed goals and recommended program and services.

*Testimony and Credibility of Student's Experts and Student*

LIA WILKERSON

135. Ms. Wilkerson was Student's home program designer and a behavior consultant who had counseled Student with guided questions on a weekly basis for several years. Ms. Wilkerson is not a psychologist. She has never held a California teaching credential or a California special education credential. Ms. Wilkerson is not a board certified behavior analyst. Her teaching credential in Massachusetts is only 24 months old, there was no testimony on the requirements of this out-of-state credential, and it is unknown if the Massachusetts curriculum was aligned with California's academic standards. Ms. Wilkerson's years of experience working with credentialed teachers and board certified behavior analysts in California middle schools is not the type of experience to lend weight to Ms. Wilkerson's opinions in this matter, both because she herself lacked those credentials and because that experience was not in high school, post-secondary, or vocational programs. At hearing, Ms. Wilkerson often appeared uncomfortable and out of her depth, and her answers were often confused, poorly explained, and without examples. Ms. Wilkerson was very defensive when questioned about her opinions. In the audio recording of the March 19, 2015 IEP team meeting, which was admitted into evidence, Ms. Wilkerson was uninformed regarding Student's academic levels, despite having prepared a progress report in the days prior to the meeting, and having reviewed Student's self-monitored academic work for the past five years. Ms. Wilkerson testified that she had never conducted formal or standardized testing on Student, and that she did not grade the work performed by Student. She did not identify, in her reports or testimony, any curriculum utilized in her weekly consultations with Student. Ms. Wilkerson was unaware that Student had applied for a job on her own recently, demonstrating a lack of supervision over Student's vocational programming and raising questions about how Student was learning vocational skills with an intermittent home-based program and no clear vocational curriculum. Her credibility was adversely impacted by misleading statements on her resume; she admitted that she did not have one of the credentials listed, and her resume prominently states that she was a special education teacher in California for 10 years, although she never possessed a California special education teaching credential. Ms. Wilkerson also represented herself as a behavior specialist, but testified that her behavior intervention training pre-dated California's board certified behavior analyst program and that she had not obtained certification when it became available, demonstrating stale training rather than specialization. Her failure to finalize her draft progress reports from either May 2014 or March 2015 raised a reasonable inference that her opinions were insufficiently supported and tentative. Finally, Ms. Wilkerson's contact with Student since 2007 has been almost exclusively through videoconferences, and her

information on Student's social skills, interaction, and emotional state was primarily dependent upon third-party reports. Yet, in the last five years she made no effort to collect formal data on the frequency and duration of behaviors she contended to address.

Ms. Wilkerson appeared to be promoting her own agenda and that of Parents in perpetuating a home program utilizing her services, demonstrating bias against District programs. For all of the above reasons, Ms. Wilkerson's opinions on Student's cognitive development, academic abilities, social/emotional functioning, adaptive functioning, and educational program needs, in her reports and her testimony, were given little weight.

#### NANCY RAHIMI

136. Nancy Rahimi was Student's tutor for six years, attended IEP team meetings, and gave her opinion to the IEP teams as set forth above. Ms. Rahimi has an associate's degree in early childhood education, and has taken courses in the education of young children and behavior therapy. Ms. Rahimi was credentialed to teach adults in the subjects of human development, family management, and parent education, and is the director of a preschool. She is not a credentialed special education teacher. Ms. Rahimi's experience is in teaching preschool, running parenting groups, and as a private consultant in life skills, education, and behavior therapy. She has tutored Student for six years, for two to six hours per week, and should reasonably have known Student and her abilities well. However, Ms. Rahimi's opinions on Student's academic abilities were not persuasive for a number of reasons. Ms. Rahimi took direction on weekly subject matter and materials from Parents and Ms. Wilkerson without question, seriously undermining her testimony on Student's grade level abilities. Ms. Rahimi was not, and had never been, a credentialed high school teacher or special education teacher, raising considerable doubt about her ability to teach or tutor a student with the learning differences of autism, and whether any conclusions that can be drawn from Student's inability to perform academic work under Ms. Rahimi's inexpert guidance. Ms. Rahimi's experience in teaching preschool children and parenting skills was not the type of experience to lend credibility to her testimony on the educational needs of a young adult in high school, post-secondary, or vocational programs. At hearing, and in the audio recording of the March 19, 2015 IEP team meeting, Ms. Rahimi seemed eager to support statements by Parents and Ms. Wilkerson, and frequently advocated for Parents. Ms. Rahimi was the only witness who opined that Student was severely disabled. Ms. Rahimi's failure to assess Student's abilities at any time over six years, her failure to read any of the assessments of Student's abilities, her ignorance of Student's high average intelligence, and her inability to testify to something as basic as Student's reading level, rendered her opinions regarding Student's academic abilities uninformed and unpersuasive.

#### NATALIE WARD

137. Natalie Ward provided one-on-one speech therapy to Student at her office. She has been a licensed speech and language pathologist since 1993. Much of her early experience was with preschool children, but she now works with all ages from 16 through 22, in homes, hospitals, schools and her own office. She has worked with over 100 students with autism.

138. Ms. Ward testified at hearing about Student's speech and language needs. Ms. Ward described Student as "morally immature," meaning that she was attracted to popular culture like so many young people her age but, due to the deficits in pragmatic skills and judgment, did not perceive exaggeration in television and movies. In her opinion, Student had difficulty interpreting the ironic language that fills teenage speech, lacked the same information as her peers, and was not aware of what was happening in the world. Ms. Ward believed that it was important to be aware of cultural information, and found that Student understood information on current events when they went over it with scaffolding, that is, when they broke a chunk of information into smaller pieces. Ms. Ward agreed with the IEP team's recommendations of two hours of speech services per week. She also recommended that Student begin learning pragmatic language skills outside of a therapy room or small groups, ideally with a speech therapist accompanying her in the workplace and community for real time speech lessons. Ms. Ward cautioned that Student had difficulty generalizing what she learned to real life situations. Ms. Ward identified Student's primary speech and language deficits as social skills and pragmatics. She emphasized that Student was socially isolated and needed to spend time with neurotypical peers, although she had changed her earlier opinion that a community college would provide excellent opportunities to interact with peers because Student had reached puberty and Ms. Ward had concerns about Student navigating a college campus safely. Ms. Ward testified that Student was aware that all of her friends had left home for college or started jobs, but told her that she did not want to be in programs where she was identified as disabled.

139. Ms. Ward was critical of the August 14, 2014 social language goals because Student liked to define and discuss how communication worked, but needed goals that required her to actually demonstrate the use of idioms, sarcasm, nonverbal gestures, and other parts of social language. Ms. Ward liked the social skill goal of self-monitoring the impression Student was making, and actually adapted the goal herself for work with Student. Ms. Ward was critical of the March 19, 2015 goals for the same reasons, and warned that Student was very routine and script dependent. Ms. Ward endorsed all the goals in the proposed transition plan by Ms. Wilkerson because, although they were not speech goals, a speech pathologist could work with Student on all of them.

140. Ms. Ward reviewed materials from Ms. Jolliff's film literature and media literacy courses, and opined that Student would have difficulty accessing the materials because they used complex language and Student would likely miss inferences. She conceded that Student would love working on the topic of films, but opined that the level of analysis required, such as understanding character motivation, would be beyond Student, even with support. Ms. Ward did not have a teaching credential, but noted that she had worked for many years around special education teachers. She concluded that Middle College was not an appropriate placement for Student because Student could not process language at the speed Ms. Ward had observed, or in such a noisy environment, and the instruction was beyond Student's comprehension level.

141. Ms. Ward was a highly qualified speech pathologist, had provided Student with twice weekly speech services for many years, and her observations of, and opinions on, Student's language skills were generally accorded significant weight. However, Ms. Ward had not worked with Student outside of the clinic setting and had not observed Student interacting at her volunteer jobs or in the community. Ms. Ward's opinions of Student's social skills were given less weight and cautiously considered as they were heavily reliant on third-party reports, and conflicted with reported observations of Student in social settings. Ms. Ward's opinions regarding the appropriateness of transition and annual goals outside the area of speech and language were given little weight. She observed classes at Wilcox High School and Middle College, but her lack of teaching credentials and her lack of observations of Student in a group learning setting rendered her opinions concerning whether Student could function in those classrooms uninformative and unpersuasive.

JUDITH WELLS-WALBERG

142. Ms. Wells-Walberg was a retired District speech pathologist. She was retained by District to report to the team on the components of Student's home program in 2013-2014, which she did. This was a fact-finding assignment. Ms. Wells-Walberg was not a credentialed teacher or special education teacher, and her testimony beyond her program observations and her area of expertise, particularly regarding the appropriateness of program components such as travel training, were given little weight. It is important to note that Ms. Wells-Walberg reported information gathered from Ms. Wilkerson, Ms. Rahimi, and Ms. Ward; her report simply repeats, and is not corroboration of, their opinions on the needs addressed by the home program or Student's levels of functioning. Ms. Wells-Walberg's testimony on her personal observations of Student was given great weight, but her opinions based on the reports of the home program providers was given very little weight.

GINA MILLER

143. On May 23, 2015, well after the March 19, 2015 IEP team meeting and IEP offer, Parents retained Gina Miller as a vocational consultant and expert. Ms. Miller met with Student and Parents for one and a half hours. Student was friendly and sociable, and showed Ms. Miller the PowerPoint slide show she had presented to the IEP team.

144. Ms. Miller has a bachelor's degree in child development, and credentials in teaching students with moderate to severe disabilities and administration. She taught students with moderate to severe disabilities for five years, and then worked as an inclusion facilitator modifying curriculum for students included in general education classes. She coordinated Workability and elementary and middle school "bridge" programs. As an administrator, she worked for three years in programs for students 18-22 years old who had completed their education without earning diplomas and needed to work on independent living skills, half of whom had severe autism and half of whom had intellectual disabilities.

She directed job coaches to teach a student how to do a job, but never to do the job for the student or with the student, which evidence indicated Ms. Wilkerson had improperly direct Marie to work side-by-side with Student. Ms. Miller also taught her adult students how to facilitate and lead their own IEP team meetings, because it was important for students to have a say in their IEP. All of her students attended their IEP team meetings, with parental support if needed, to express themselves. The IEP's were scripted and planned with the students, the students knew the agenda, and practiced what they would say. The IEP teams adjusted for the student's cognitive ability and worked hard to ensure that the process was not overwhelming.

145. On June 10, 2015, three days before her testimony, Ms. Miller observed Student for a little over an hour during Student's volunteer service at a local farm. Student was laying weed cover with a young man, and she was giving him direction and encouragement. It was hard work, but Student appeared happy. A farm employee directed Student to remove flowers from designated plants. Contrary to earlier observations by multiple witnesses, Marie worked at a distance from Student and stood next to Student only when Student needed to be redirected. Student then gave Ms. Miller a tour of the farm, explaining each step of the order fulfillment process. Student's interaction with employees was appropriate, she listened well to instructions, answered all questions appropriately and was able to repeat instructions to the other volunteer and Ms. Miller. Ms. Miller was impressed, and believed that Student displayed good leadership skills when she directed and reinforced the other volunteer. Ms. Miller did not see Student stop and complain, did not observe any safety concerns, and did not see Student ignoring other adults.

146. Ms. Miller also observed Student at home for two hours. Student made lunch, failed to clean up after herself even with a reminder from Marie, and did a homework assignment of planning a shopping trip for the ingredients in a Cobb salad. At 1:00 p.m., Student had a video conference with Ms. Wilkerson, who went over the steps for making a meal with Student. Ms. Wilkerson also had Student break down a newspaper article about passports paragraph by paragraph, and then explain the story as a whole. Ms. Miller did not understand everything that Ms. Wilkerson was working on with Student, but they discussed perspective taking and being more organized. When Student became distracted, Ms. Wilkerson was able to redirect her with a verbal prompt. These areas were the same ones Ms. Miller had seen worked on in Workability programs.

147. Based on her five hours of observing Student, conversations and records review, Ms. Miller opined that Student was high in some skills, low in others. Student was sociable, had a good work ethic, and reported to have lower processing and inferential skills. Ms. Miller opined that Student was at the higher functioning end of the autism spectrum, but it was unknown if she could generalize her skills across settings. Ms. Miller did not observe that Student was dependent upon behavioral support.

148. Ms. Miller opined that Student needed a program like those for adults with moderate to severe disabilities, with only one to two hours per day of vocational and function skills instruction, and the remainder of the day out doing a job. Parents had requested that she place Student in such a program. She opined that the program did not need a curriculum, just a focus on acquiring job skills. Based in the reports of social deficits and impulsivity, she felt Student would also need behavior support to facilitate appropriate interaction at the job site and to make sure Student was doing the job correctly. Ms. Miller was aware that Student was uncomfortable being identified as a student with a disability, but believed that Student could tolerate attending a class with severely disabled students for one or two hours per day, because she would be working the rest of the time in a job setting with typical peers, for instance, filing records or cleaning. Ms. Miller was of the opinion that students with autism who could earn a diploma should not, because they often moved on to community college and failed because they had not learned sufficient adaptive functioning skills.

149. She did not believe that Student should attend Wilcox High School with an aide, as having an adult beside her would isolate her from her peers. Ms. Miller opined from Parent and home provider reports that, whether at Wilcox High School or Middle College, Student would pretend that she understood the academics, would not ask for help, and would fall behind. Middle College had an independent study period to work on executive functioning skills, but Ms. Miller did not think this was sufficient for Student to acquire independent living skills. Ms. Miller opined that goals in the areas of functional academics, critical thinking, safety, self-regulation, and social pragmatics were appropriate for Student, but she could not envision Student working on those at Wilcox High School or Middle College.

150. Ms. Miller did not have an opinion on the post-secondary vocational program at Wilson High School, which she had not observed. She believed that, in general, vocational programs were geared to students who would earn diplomas, and Workability programs provide more flexibility for students who will not. She also opined that Student should keep her current educational consultants, as she was familiar with them and they understood her unique quirks

151. Ms. Miller had limited information on Student and had not attended any of Student's IEP team meetings. Her opinions had never been expressed to District, and could not have been considered by the IEP teams. Although Ms. Miller had been a program administrator for many years, she had never received vocational training, did not have credentials in vocational counseling or teaching students with mild to moderate disabilities, and had little experience with high-functioning diploma-bound students. Therefore, her opinions on Student's educational needs, particularly in vocational training, were unpersuasive. Her opinions were given much less weight than those of District's credentialed high school, post-secondary and vocational educators, several of whom had attended IEP team meetings that discussed Student's educational needs and the appropriateness of specific District academic, post-secondary and vocational programs in

detail, including Ms. Greunke, Ms. Adams, Ms. Jolliff, and Ms. Melin. However, Ms. Miller's testimony on her years of personal experience in bringing disabled adult students into the IEP team process was relevant, powerful, and very persuasive. Ms. Miller's testimony regarding her observations of Student in various settings were given significant weight, albeit in the context of having occurred after the IEP offers at issue.

#### STUDENT'S TESTIMONY

152. Student testified at hearing. The hearing took place in a large, formal boardroom at District's offices. Student was calm, alert, and interested in the proceedings, and did not use the notepad provided during questioning. Student was sincere and thoughtful, and was expansive in responding to all questions. She readily stated and spelled her name at the judge's request, and did not have any difficulty switching between direct examination, cross-examination, or the judge's questions. Student exhibited poise for the entire hour she was on the witness stand, she readily understood the vast majority of the questions posed, and asked for clarification when she did not (as all witnesses in the proceeding were instructed to do). She did not turn to her parents or her counsel, who sat at another table, for guidance or approval. Student was polite and engaging, and her responses were intelligent and often complex.

153. The length and nature of the questioning was such that Student could not have been on script. The only apparently rote responses were typically side comments. For example, Student stated in a rote manner that she reads books for younger children because her reading skills are poor, but then went on to passionately state that she loves to read, sometimes cannot put a book down, and vividly described the plots and themes of several books she had enjoyed. She commented that she had stopped reading the second book of the popular *Divergent* series because it dealt with dark issues, such as being excluded from society, which unnerved her. Student described her love of typical young adult things, such as shopping, learning to use make-up, and music.

154. Student testified with detail and complexity that she was learning a lot from her online English course, and found that the patterns she had learned about poetry were similar to the lyric and beat patterns she had observed in songs. She wanted to write a musical, and knew that she needed to create a storyboard and write the theme and plot, but wanted to refresh her skills first. In pursuit of this, she took it upon herself to find a book on musical composition in the library, and read each chapter and complete the exercises listed at the end of each chapter. So far, she had reviewed music theory, harmonics, chords, advanced melodies, and structuring a piece by range. She enjoyed being in a chorus and being a cast member in a local production of *Les Misérables*, and hoped to audition for a role in the upcoming production of *Into the Woods*. When asked to describe the plot of *Into the Woods* by District's counsel, because counsel said she was not familiar with the story, Student provided an interesting and detailed summary. Student added that the two main characters

discovered that what they had sought as “happy ever after” was not necessarily the happy ending they envisioned. When asked why not, Student declined to tell counsel because it would ruin the ending of the musical for her if she ever saw it, demonstrating an easy and natural taking of the perspective of another.

155. Student testified that she had changed her mind since March 19, 2015, and no longer wanted to get a high school diploma. She did not want to take travel training and she did not want to work with any people other than her current team. She explained that she was no longer fighting her home program, and wanted to get a real job. She had even applied for a paying job recently but had not yet heard back. She admitted that the application asked if she had a high school diploma, and she had written that she had completed the middle school curriculum.

156. Student explained that a real job, with a regular paycheck, was necessary for her to live independently. She wanted to focus on getting a good job rather than a good education, because a job was a way to be independent. She understood that at a new job she would have a new boss, which could be stressful, but she thought she could handle that. She wanted to live independently and be able to go places without someone else having to drive her. She wanted a driver’s license, although she admitted that she did not know anything about how to get one.

157. Student testified that her same-aged friends had all moved on to college or jobs, and that she planned to go back to college to earn her diploma after she had worked for a while. Student had never been on a college campus, and she believed that the average age of a college student was around 40 years old. Student thought that her reading and writing skills were getting stronger. When asked about writing a 7 to 10 page paper for a college class, she commented that she wouldn’t want to do that, although she would probably be capable of doing so if she liked the topic. If she had not chosen the topic, Student thought that she would need an aide to assist her and the teacher to break the assignment down into steps in order to complete it. Parents had told Student that the program at Middle College was excellent, but too hard for her.

### *Testimony and Credibility of District’s Experts*

#### DR. KETCH HESS

158. Dr. Hess has a bachelor’s degree in psychology, a master’s degree in education, and a doctorate degree in educational psychology. She has been a credentialed school psychologist for eight years, with the majority of her experience in high school settings. She has assessed around 90 high school students each year, most in the 18 to 19-year-old range. She has assessed both students with mild to moderate disabilities, who are usually diploma bound, and students with moderate to severe disabilities who are exiting high school for post-secondary programs. Dr. Hess has assessed high school students with

disabilities for post-secondary and vocational programs, and it is her opinion that a high school diploma can be critical in helping a person with disabilities secure a job, and that if a student is capable of earning a high school diploma, they should do so. Dr. Hess was the only witness who had conducted psychoeducational testing on Student. She had spoken to Student casually before the assessments; observed Student during cognitive testing, during and after recess, during the March 19, 2015 PowerPoint presentation, and the question session; and thereby gained some familiarity with Student's social interaction and language skills compared to typical peers in those settings. Dr. Hess had the education, training, and experience to interpret the results of psychological assessments by Dr. Grandison and Dr. Hess, which Ms. Wilkerson did not. Dr. Hess also had extensive experience working in a school setting with high school students, which Ms. Wilkerson did not. Dr. Hess' opinions regarding Student's cognitive development, processing skills, academic abilities, and educational needs were given far greater weight than those of Ms. Wilkerson, Ms. Ward (outside of the area of speech and language), Ms. Rahimi, Ms. Miller, or Parents. During assessment, Dr. Hess formed the opinion that Student did not qualify for special education. Dr. Hess' opinion that Student did not qualify for special education under the IDEA, based on Student's ability to access her education without special education or related services, was irrelevant to this proceeding, as District did find Student eligible for special education and offered Student an IEP. Dr. Hess is not an attorney, and her opinion on how the law applied to Student did not adversely affect her credibility or the weight accorded her opinions on Student's cognitive ability, processing skills, social/emotional functioning, adaptive functioning, or academic achievement. Dr. Hess also made clear during her testimony that her opinions on appropriate programs and supports were based upon the IEP team's decisions regarding Student's needs, as reflected in the annual goals and individual transition plans. Her opinions on the appropriateness of the offered programs and services in light of the IEP teams' identification of Student's educational needs carried significant weight.

#### KIMBERLY SCOTT

159. Kimberly Scott, the resource specialist at Wilcox High School who assessed Student's academic achievement and administered an aptitude and interests inventory to Student, was a very well qualified and experienced teacher of teenagers and young adults. Ms. Scott earned credentials in resource specialist, specially designed instruction, learning handicapped, and single subject teaching (social science) prior to 1997. Ms. Scott was a behavior intervention and analysis certificate through a local special education local plan area, and was credentialed as a No Child Left Behind Core Academic Subject Highly Qualified Teacher in 2006. Ms. Scott earned an Autism Spectrum Disorder Added Authorization credential in 2011. She has taught high school students with mild to moderate disabilities and emotional disturbance at Wilcox High School since 1998. Ms. Scott regularly performed academic assessments and attends IEP team meetings for students on her caseload. She observed Student during assessment, in the community at a local farm, and at swim practice. Her opinions concerning Student's academic ability and her reports to the IEP team were given significant weight. Although Ms. Scott did not know Student as well as

Ms. Wilkerson, Ms. Rahimi, Ms. Ward, or Parents, she had experience, training, and education in educating young adults that those witnesses did not. Ms. Scott's opinions regarding Student's abilities and educational needs; the appropriateness of annual goals, transition goals, and transition plans; and the services and placement that would meet Student's educational needs, were given significantly more weight than that of Ms. Wilkerson, Ms. Rahimi, Ms. Ward, or Parents.

#### CHRISTINE WILLIAMS

160. Christine Williams was a highly qualified speech pathologist. She has bachelor's and master's degrees in speech pathology. She received her California license as a speech and language pathologist in 1984, and has worked with over 1,000 students, of which fifty percent were on the autism spectrum. She has provided school-based speech services since 1992, and has worked with high school students since 2009, with the bulk of experience with high school students. Ms. Williams was a team member at Student's March 19, 2015 IEP team presentation, and found the presentation to be excellent and Student to be poised and articulate. Student paraphrased the text on the slide screens, made a humorous and entertaining comment about her cat, and answered the team's questions afterwards. Ms. Williams did not read too much into this one observation, but opined that Student was clearly a competent young woman. Ms. Williams had prepared Student's proposed speech goals for the March 19, 2015 IEP team meeting after reading the private and District assessments in Student's file and the reports of Wilkerson and Ward on Student's progress. She opined that the speech goals in both the August 14, 2014 and March 19, 2015 IEP's, and the speech services offered in those IEP's to address those needs, were appropriate based upon Student's identified language needs. Ms. Williams explained that autism is a neurological and developmental disorder that causes difficulty in predicting situations, and opined that it was important for Student to interact with typical peers her age to model appropriate language skills and generalize learned skills across settings. Ms. Williams had more experience with young adults, and more experience in the school setting, than Ms. Ward, and her opinions regarding Student's educational program needs were given slightly more weight than Ms. Ward's programming opinions.

#### KATE ADAMS

161. Ms. Adams was a member of Student's August 14, 2014 IEP team, and drafted the individual transition plan and transition goals for Student's March 19, 2015 IEP. Ms. Adams earned a master's degree in special education and an education specialist credential to teach students with mild to moderate disabilities in 2004. She earned an education specialist credential in 2010, and an Autism Added Authorization credential in 2011. From 2005-2013 she taught District high school students with mild to moderate disabilities, including emotional disturbance, autism, and learning disabilities, and worked with general education teachers on differentiating instruction and implementing effective accommodations for students with disabilities in general education classes. During that time,

she also worked with students with mild to moderate disabilities on developing their own academic goals and transition plans and coordinated services with outside agencies. Since 2013, she has been a program specialist and facilitated IEP team meetings, coordinated special education services, provided staff training, and consulted on individual student programs. Ms. Adams estimated that one-third of her students were on the autism spectrum. In her experience, the common challenges of students with mild to moderate autism were the need for support in group projects, organization, difficulty initiating assignments, developing plans to complete an assignment, flexible thinking, and changes in routine. Ms. Adams developed strategies such as discussions to understand and break down assignments, designing individualized supports for inclusion in general education, providing a quiet place for students to do work and get help, and letting students decompress after direct instruction. Ninety-eight percent of Ms. Adams' students obtained diplomas, even if it took them an additional year or two in high school. Some of her students went to four-year universities, vocational programs at community colleges, or a technical school, work, or just hung out at home, but the majority went on to community college.

162. Ms. Adams's testimony on young disabled adults' transition needs in general, and Student's transition needs in particular, was detailed, thoughtful, informative, and enlightening. She had prepared well for both IEP team meetings by reviewing Student's records, including assessments and progress reports. Her testimony explaining the relationship between transition needs identified in Student's assessments or reports and the transition goals and the transition activities offered to support those goals was very persuasive and included detailed references to the Student's assessments and Ms. Wilkerson's progress reports. Her opinions regarding Student's transition needs were given greater weight than those of Ms. Miller, and much greater weight than those of Ms. Wilkerson, in light of Ms. Adams' greater education, training, experience and credentials in the area of transitioning young disabled adults to careers and independent living.

DIANA KINSEY

163. Kinsey, the District behavior specialist who performed a behavior records review and prepared a report for the IEP team in June 2014, earned a bachelor's degree in psychology in 2005. She had been a board certified behavior assistant behavior analyst since 2012. She had completed the coursework for board certified behavior analyst certification, and was currently conducting the hours of supervised behavior analysis required to earn that certificate. From 2004 through 2006, Ms. Kinsey worked for a nonpublic agency in a supported living program for adults with moderate to severe disabilities providing direct service as an independent living skills coach, and then as a program coordinator and manager. She worked for two years with emotionally disturbed middle school children and, since 2010, has been a program specialist for District. As a program specialist, she assessed students, collected data on student behavior that is impeding learning, developed behavior plans for students to access their curriculum, including students with autism, and attended

40 to 50 IEP team meetings each year. She had assessed high school students and students over 18 years old, and has written behavior plans for five young adults. Her testimony on Student's behavior needs, and the level of services and supports necessary to support those needs in order for Student to receive educational benefit, was well informed and persuasive.

VERONICA GREUNKE

164. Ms. Greunke, District's post-secondary teacher at Wilson High School, earned a bachelor's degree in psychology in 2000, and her special education credential (moderate/severe) in 2008. She has been a teacher of Wilson's post-secondary program since 2008, and since 2011 has also worked in a skill-based program that teaches students with moderate to severe disabilities to develop friendships, independence, self-esteem, and life skills through participation in professional performing arts workshops. From 2001 to 2004, she was a paraeducator. Her responses to questions at hearing were thoughtful, detailed, clear and informative, and she demonstrated a sincerity and passion for improving the quality of the lives of her students. Ms. Greunke spoke with familiarity and authority on the obstacles encountered by post-secondary students with moderate and severe disabilities in learning to be as independent as possible, including interacting with friends and strangers, traveling in their communities, learning job skills and living independently, and the supports needed by her students to learn these skills. She testified with obvious pride in her students, many of whom had obtained jobs, used public transportation to access their community, and lived independent of their parents. Ms. Greunke had read Student's assessment reports, Ms. Wilkerson's progress report and Student's IEP's, including present levels of performance, and her opinions on Student's need for a vocational program for students with moderate to severe disabilities and the appropriateness of District's post-secondary IEP components to meet Student's post-secondary educational needs were given significant weight.

165. Ms. Greunke attended 10 to 20 IEP team meetings each year and, in her experience, the students who attended IEP team meetings to discuss their challenges and participate in developing their own goals tended to reach their goals faster. She understood that it was difficult for anyone to sit and hear someone talk about them, but she made her students more comfortable with the IEP process by discussing things beforehand, having them watch videos of students discussing goals, and speaking with parents. Generally, at IEP meetings, Ms. Greunke had team members speak at the student's own level, avoid jargon, and explain things in normal language. Her students routinely told her that the meeting was a positive experience and not as bad as they had anticipated.

166. Ms. Greunke found that parents trusted her program once they saw it in action, and that students enjoyed learning to be independent. Ms. Greunke was very persuasive when she stated that her students were vulnerable and needed support to go out in the community, but with the right supports from her program the experience was great for them. In light of her greater education, training, experience, and credentials, and her familiarity

with Student's records, her opinions regarding the special education and related services to address Student's identified post-secondary educational needs, including safety skills and travel training, were given far greater weight than those of Ms. Wilkerson, Ms. Rahimi, Ms. Ward, Ms. Miller, or Parents.

DELORES MELIN

167. Ms. Melin, a vocational specialist with the District, supported the post-secondary program at Wilson High School. She worked under a grant from the Department of Rehabilitation to assist disabled high school students to get a job by teaching them job readiness skills, including preparation, self-advocacy, job searching skills, interview skills, application preparation, hygiene, and grooming. She also trained the aides who support students with autism in the Workability program. Ms. Melin has a master's degree in learning disabilities, as well as an educational specialist credential to teach students with communication and learning handicaps. She has an administrative services credential, an autism authorization certificate, and a resource specialist competency certificate. She has been a vocational specialist for the District for more than 10 years. Ms. Melin's testimony in response to Student's contention that she needs to work and cannot devote time to academics was particularly powerful and persuasive. Ms. Melin eloquently explained that a high school diploma and a vocational program are not mutually exclusive, and that a high school diploma was required by many employers in a competitive job market. A high school diploma demonstrates not just proficiency in academic subjects, but the type of perseverance and commitment valued by employers. A high school diploma is a prerequisite to some vocational programs, and to many college and university programs. Student's expressed interest in obtaining a paying job would be furthered, not hindered, by a program offering Student a high school diploma or its equivalent. In light of her education, training, experience, and credentials, her testimony regarding Student's educational needs in the area of learning the vocational skills to get and keep a job were accorded far greater weight than Ms. Wilkerson, Ms. Rahimi, Ms. Ward, or Ms. Miller.

JENNIFER JOLLIFF

168. Ms. Jolliff, a Middle College teacher and member of Student's August 14, 2014 and March 19, 2015 IEP teams, has a bachelor's degree in English literature, and earned a single subject (English) teaching credential in 1991. She earned her crosscultural, language, and academic development certificate from Stanford University in 2004, and a master's degree in educational leadership and an administrative credential in 2008. She co-founded the Middle College program with Ms. Smith, to assist at-risk youth in completing high school while also earning units at the college level, and had taught there for 14 years. At hearing, she was justifiably proud of the program's 86-91% success rate, which had resulted in 300 students over the past 10 years transferring to colleges and universities.

169. Ms. Jolliff's testimony, which is set forth in the factual findings regarding the Middle College program, was very persuasive. Ms. Jolliff was a compelling witness, and demonstrated a strong desire to help young adults be successful in reaching their academic goals, whatever those might be. Although she is not a credentialed special education teacher, Ms. Jolliff established that she is very familiar with making accommodations and modifications to assist students having difficulty comprehending high school and college-level materials. Her testimony regarding the ability of Middle College teachers to implement sufficient accommodations and modifications for Student to succeed in the Middle College programs was persuasive, and accorded much greater weight than the speculative testimony in this area by Mother, Ms. Wilkerson, Ms. Ward, and Ms. Rahimi.

## LEGAL CONCLUSIONS

### *Introduction: Legal Framework under the IDEA<sup>6</sup>*

1. This hearing was held under the Individuals with Disabilities Education Act, 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.<sup>7</sup>; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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

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<sup>6</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>7</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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. 950, fn. 10.)

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

#### *Issues 1 and 3(a): Assignment of Educational Rights*

5. Student contends that, from April 1, 2014, through March 19, 2015, Parents were deprived of meaningful participation in the IEP decision-making process because District did not honor Student’s assignment to Parents of educational decision-making

authority under Education Code section 56041.5. Student further contends District's direct contact with Student was inappropriate, forcing Parents to expend time and resources explaining the District's offers to Student and helping Student articulate her desire for educational programming to the IEP team. District contends that Parents were afforded every opportunity to participate as integral members of Student's IEP team, regardless of the validity of the assignment of rights, and that it correctly addressed its offers to Student as holder of her own educational rights, rather than Parents.

6. When a student with exceptional needs is a minor, his or her parents hold the educational rights for the student. Once the student reaches the age of majority at 18 years of age, the educational rights transfer to the student, with the exception of a student who has been determined to be incompetent. (Ed. Code, § 56041.5.) However, this statute does not prohibit a non-conserved adult from assigning educational decision making authority back to his or her parents, or another representative, after the non-conserved adult is deemed to possess those rights. Student could, and did, transfer her educational decision making authority to Parents on March 31, 2014.

7. In light of this transfer, District committed procedural errors when it: (i) directed the November 14, 2014 letter clarifying an error in the August 27, 2014 letter to Student, (ii) required Student's consent to the IEP of August 14, 2014, and (iii) required Student's consent to the March 19, 2015 IEP. However, as discussed below, these procedural errors did not result in a substantive denial of a FAPE to Student.

8. The IDEA requires that a due process decision be based upon substantive grounds when determining whether a child has received a FAPE, unless a procedural violation impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f)(2)); *Rowley, supra*, 458 U.S. at pp. 206-207.)

9. Procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of parents' (or by analogy an adult student's) opportunity to participate in the IEP process are insufficient to support a finding that a student has been denied a FAPE. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).

10. The weight of the evidence established District's errors did not impede Student's right to a FAPE or cause a deprivation of educational benefits. Parents contemporaneously expressed to District that they had no intention of consenting to the IEP's of August 14, 2014 or March 19, 2015. Parents' letter of August 5, 2014, rejected the IEP offer embodied in the June 5, 2014 IEP and demanded reimbursement for a home program for the 2014-2015 school year. The letter from Student's counsel dated November 19, 2014, confirmed Student's assignment to Parents, and provided work samples intended to dispute

the performance level information upon with District based its August 14, 2014 IEP offer. Another letter from Student's counsel on February 24, 2015, reiterated Parent's rejection of the August 14, 2014 IEP, and enclosed a detailed statement of the reasons Parents rejected the IEP and their own proposed annual goals and transition plan. On April 7, 2015, Student's counsel forwarded statements from both Student and Parents disagreeing with the March 19, 2015 IEP offer. Parents had no intention of consenting to either the August 14, 2014 or the March 19, 2015 IEP at any time, and District's misdirected requests for consent did not impede Student's right to a FAPE under these IEP's, or result in a loss of educational opportunity.

11. The weight of the evidence did not establish that District's procedural errors significantly impeded Parents' opportunity to participate in the decision making process regarding the provision of a FAPE to Student. Although District disputed whether the transfer of educational rights to Parents was valid, it nonetheless attempted at every step to accommodate Student's desire to have Parents act as her representative. Parents attended the August 14, 2014 and March 19, 2015 IEP's on behalf of Student, and for the express purpose of providing input and promoting Student's educational interests. Parent's input was considered at both IEP teams, and the March 19, 2015 IEP team included two goals from Parent's proposed transition plan into the IEP offer. As discussed at Issues 3(b) and 3(c), the March 19, 2015 IEP team provided Parents with an opportunity to meaningfully participate in the IEP process.

12. As District's procedural errors did not result in a substantive denial of FAPE to Student, Parents are not entitled to reimbursement of expenses incurred in explaining the District's offers to Student or helping Student articulate her vision for an educational program to the March 19, 2015 IEP team.

13. Parents' contention that District improperly insisted that Student personally participate in the IEP process after the assignment of educational rights was not supported by the evidence. Student's own expert, Ms. Miller, testified that it was important for a non-conserved disabled adult to participate in IEP team meetings, and that in her 14 years of attending IEP team meetings for moderate to severely disabled adults, all non-conserved students had attended the meetings, had been members of their IEP teams, and had participated in developing their educational programs. Both Ms. Miller and District's Ms. Greunke testified in detail about how adult students can be prepared for participation in their IEP team meetings, and the team can accommodate the student's disabilities, to make the meeting less stressful for the student. Multiple witnesses testified that adult students with disabilities are more successful in their educational program when they participate in its development. An assignment of educational rights would not make this any less so. Even Ms. Wilkerson recommended that Student be involved in her program planning to the maximum extent possible, and Parents did not explain why they chose to disregard that piece

of advice from a trusted advisor. District could have, and would have, worked with Parents and Student to make Student as comfortable as possible with the IEP decision-making process had she chosen to participate more fully.

14. Parents are not entitled to reimbursement for the expense of having Ms. Ward explain the November 11, 2014 letter to Student and review Student's input into the proposed transition plan. As Student's assigned representatives, the least of Parents' obligations was to explain the services and placement offered in the IEP's to Student, and to help her articulate her concerns to the March 19, 2015 IEP team. District was not obligated to pay Parents for fulfilling a responsibility voluntarily undertaken, particularly where that responsibility was as simple as sitting down with their intelligent adult daughter and reviewing the components of a proposed program. Parents' delegation of their duties to a third person who had not attended the IEP team meetings was not an imposition created by District for which Parents should be compensated. The evidence did not demonstrate that Student required a speech pathologist to understand the IEP components. Student possessed documented above average ability to comprehend technical information, and she discussed the various program elements of the proposed programs with ease during her testimony at hearing. Student prepared and presented a 37-page PowerPoint presentation on the topic of her educational program, and it is a reasonable inference that she could have understood, and participated in the development of, the District's program offer.

15. Parents' contention that Student became depressed by District's insistence that Student participate in the IEP process, and lost educational benefit due to her subsequent lack of motivation, was unsupported by the evidence. Student had an opportunity to testify directly on this issue, and did not. The testimony by Parents and Student's service providers that Student's malaise was likely the result of the IEP process was speculative and unconvincing. Witnesses who saw Student's PowerPoint presentation testified consistently that Student had enjoyed giving a presentation on her ideas about an educational program and answering questions afterwards. Student's testimony that she would not have understood the fast pace of discussion at a full IEP team meeting, or would have been stressed by the discussion, was based upon Parent report and without knowledge of how the IEP team could have accommodated her participation in the decision-making process. If Student had attended the IEP team meetings, it is likely that she would have had each component of the program and the reason it was proposed explained to her in such a way that she understood the process.

16. In summary, although District committed a procedural error in disregarding the assignment of educational decision-making authority by Student to Parents, that violation did not impede Student's right to a FAPE, significantly impede Parents' opportunity to participate in the decision making process regarding the provision of a FAPE to Student, or deprive Student of educational benefits. Accordingly, Student did not meet her burden of persuasion that she was denied a FAPE because District disregarded her assignment of rights, and is not entitled to reimbursement therefor.

*Issue 2: Did District Deny Student a FAPE in the August 2, 2014 IEP?*

ISSUE 2(a): APPROPRIATENESS OF GOALS

17. Student contends that she was denied a FAPE in the August 14, 2014 IEP<sup>8</sup> because goals in the August 14, 2014 IEP were not developed in the areas of (i) motivation, (ii) self-regulation, (iii) basic vocational skills, (iv) social language, (v) social skills, (vi) functional academics, (vii) critical thinking, and (viii) safety. District contends that annual goals were appropriately written to address Student's primary deficits as identified by the assessments and progress reports.

18. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum; and (2) meet each of the student's other educational needs that result from the student's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

19. District developed measurable annual goals in Student's areas of need resulting from her autism spectrum disorder to enable Student to be involved, and make progress, in the general curriculum. Student's academic Goal 1 in reading sought to improve Student's comprehension of written material, and Goals 6 and 7 in expressive language addressed Student's difficulties in the understanding and use of idioms, sarcasm, and figurative and literal language, and in inferring verbal and nonverbal meaning from information presented visually. Both private and District assessments had identified reading comprehension as a relative weakness among Student's otherwise strong academic skills, and Ms. Wilkerson had reported that Student had difficulty understanding textual information, particularly fiction. Improved reading skills would enable Student to make progress in the general curriculum. Improved understanding of figurative language and inferences would similarly enable Student to make progress in accessing written and visual curriculum materials. These goals were appropriate.

20. District also developed measurable annual goals to address Student's other areas of need, including Goal 2 in vocational and self-advocacy skills; Goal 3 in the area of self-monitoring impressions and understanding the emotional states of others; Goal 4 in the area of understanding the reactions and perspectives of others; and Goal 5 in behavior modification through self-awareness, self-control, and self-monitoring. These nonacademic

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<sup>8</sup> For purposes of this Decision, unless otherwise specified, the August 14, 2014 IEP, as corrected by the November 14, 2014 letter, will be referred to simply as the August 14, 2014 IEP.

goals addressed Ms. Wilkerson's assertion that to be successful Student needed to be aware of her disability and be able to advocate for accommodations across settings, as well as the social deficits identified by Ms. Ward, including weakness in perspective taking, inference, pragmatic judgment, making inferences, interpreting social language, and problem solving. Multiple goals often addressed a particular skill deficit. For example, Student would make progress on taking the perspective of others by working on Goal 3 to monitor the impression she was making on others, Goal 4 to describe her own reaction and perspective towards events, Goal 5 to describe behaviors needed to be modified for self-awareness and self-control, Goal 6 to learn the difference between figurative and nonfigurative language, and Goal 7 to infer meaning from video clips. These goals were designed to be worked on across settings, including school, the workplace, and the community, and were appropriate.

21. The evidence did not demonstrate that District failed to identify any areas of educational need that required goals to be written to enable Student to access the general curriculum or to be successful in vocational and social endeavors. In particular, as discussed below, the evidence did not show that Student required additional goals in the areas of motivation, self-regulation, basic vocational skills, social language, social skills, functional academics, critical thinking, or safety to obtain benefit from her education.

22. Student relies primarily on the testimony and draft reports of Ms. Wilkerson to establish that Student had different areas of need than those identified in standardized assessments and that District's proposed educational goals are inappropriate. However, as discussed above, Ms. Wilkerson was uniquely unqualified to recommend a program based on cognitive development and vocational training, or an educational program for a young adult. Ms. Wilkerson attended the August 14, 2014 IEP team meeting by telephone, but was unfamiliar with Student's academic levels, and relied on third party reports without any form of formal testing of academic levels or scientific data collection on inappropriate behaviors. Ms. Wilkerson had not personally observed Student outside of the in-home teleconference consultations, and her opinions concerning academic, behavioral, social, adaptive functioning, or other educational needs was not persuasive. In contrast, District's credentialed educational professionals based their recommendations on formal assessments and standardized tests, personal observations, and quantifiable information. District IEP team members also took the opinions of Student, Parent, and Student's providers into consideration, as when Ms. Critelli recommended speech services based upon the reports of Parents and Ms. Ward. The District's team members' opinions regarding Student's educational needs had the evidentiary support that Ms. Wilkerson's did not, and were accorded more weight than those of Ms. Wilkerson.

*ISSUE 2(a)(i): MOTIVATION GOAL*

23. The evidence did not demonstrate that Student required a motivation goal to derive educational benefit. There was substantial evidence that motivation was not a significant issue for Student. During the observations of Student's home program by District staff in March and April 2014, Student was fully engaged, both at the local farm and during

competitive swim practice. Without exception, each assessor noted that Student wanted to do well and applied effort to assessment tasks. Ms. Scott reported that Student was nervous but eager to do well. Ms. Critelli reported that Student completed all tasks to the best of her ability. Ms. Ward reported that Student stayed focused, asked for breaks, and thought ahead to bring her own energy snack. Dr. Grandison, in August 2013, characterized Student as fully participatory, with good motivation, excellent effort, and focus on tasks. Dr. Hess characterized Student as over-vigilant in her eagerness to do well on psychoeducational testing, the polar opposite of a student lacking motivation. Ms. Wells-Walberg's May 2014 observations included multiple examples of good effort by Student. At hearing, Student revealed that she was teaching herself about musical composition in order to write a musical, despite lack of support in this endeavor from Parents or her home program providers. All of this conduct is indicative of good motivation.

24. On the other hand, the testimony of Parents and Student's providers that Student appeared to lack motivation in particular circumstances was anecdotal and speculative. During the 2013-2014 school year, Student did not have much of an educational program to access, motivated or otherwise. She had no curriculum, other than a self-monitored online math course. Fifteen to seventeen hours of her school week were spent alone with Marie in the home, or with Marie on shopping trips or community outings. The remaining hours were spent in self-evaluation sessions with Ms. Wilkerson, individual speech therapy with Ms. Ward, working on a mix of elementary and middle school-level assignments with Ms. Rahimi, or doing solitary volunteer work side-by-side with Marie. In this context, Student's September 2013 comments to Dr. Grandison that she found it hard to stay busy during the day are as likely founded in the lack of an educational program as in a lack of motivation. In sum, Student did not carry her burden of persuasion that she was denied a FAPE because she required a motivational goal in order to obtain educational benefit.

*ISSUE 2(a)(ii): SELF-REGULATION GOAL*

25. The weight of the evidence did not establish that Student had unaddressed self-regulation issues. Ms. Wilkerson stated in her May 2014 draft progress report that Student exhibited the atypical "self-system" seen in persons with moderate autism spectrum disorder, and opined that Student needed adult assistance to set realistic goals, additional time and practice to execute most tasks, and adult facilitation to act appropriately. However, Ms. Wilkerson also noted that Student's ability to think about and regulate her own thinking had increased dramatically. Student shared in evaluating her own participation and work, identified errors, and changed course with guided questions and structured intervention. Annual Goal 2 directly addressed Ms. Wilkerson's concerns about adult guidance in setting goals, by having Student learn about her disability and the accommodations she needed to be successful across settings. Social skills Goal 3 had Student self-monitor the impression she was making, and Goal 5 required Student to describe behaviors she needed to modify to reach her goals using concepts of self-awareness, self-control, and self-monitoring. These annual goals sufficiently addressed Student's need to develop an accurate concept of self and self-monitoring skills. An additional self-regulation goal was not required.

26. Student had also been extremely isolated from society, and was reliant on television and movies for role models, putting into question whether Student's atypical self-system was a manifestation of her disability or a natural result of her lack of exposure to the real world. In conclusion, Student did not prove by a preponderance of the evidence that she was denied a FAPE by virtue of lacking a self-regulation goal in her August 14, 2014 IEP.

*ISSUE 2(a)(iii): BASIC VOCATIONAL GOAL*

27. The weight of the evidence did not establish that a vocational goals for "soft skills" of developing a growth mindset and higher thinking level skills, and for "hard skills" of improved ability to execute physical tasks in the workplace, were required. The August 14, 2014 IEP's vocational Goal 2, for Student to learn about her disability and the accommodations she needed to be successful in the workplace, already addressed Student's acquisition of the vocational skills necessary to transition into a vocational program. The goals and supporting activities in the IEP's transition plan also addressed vocational skills. Ms. Greunke testified convincingly that students in the post-secondary program at Wilson High School acquired skills necessary to become employable, with the highest functioning Workability students often getting hired. The skill development Ms. Wilkerson described was already embedded in the post-secondary curriculum offered. Ms. Wilkerson's opinions regarding vocational program goals were not persuasive, as she lacked education, training, and experience in this area. The opinions of credentialed vocational specialists, Ms. Greunke and Ms. Melin, that the post-secondary vocational program had embedded components that would address Student's identified transition and vocational needs were persuasive and given great weight. Student did not carry her burden of persuasion that she was denied a FAPE because she required a basic vocational goal be written in order to obtain educational benefit.

*ISSUES 2(a)(iv) AND 2(a)(v): SOCIAL LANGUAGE AND SOCIAL SKILLS GOALS*

28. The weight of the evidence did not establish that a social language or social skills goal was required in order to offer Student a FAPE in the August 14, 2014 IEP. Student's needs in the areas of social language were addressed by the two expressive language goals in that IEP. Expressive language Goal 6 required Student to define and use idioms and explain the difference between figurative and literal language. Expressive language Goal 7 had Student watch video clips and read magazines to infer meaning from verbal and nonverbal cues. Each of these goals addressed the social language deficits identified by Ms. Ward, that is, that Student had difficulty understanding the perspective of others, reading expressions and tone of voice, and understanding nonverbal signals given by herself and others. These goals also appropriately addressed Student's deficits in social language as documented by standardized assessments and which were typical of persons with her disability.

29. Student's identified social skills deficits were addressed by three social skills goals. Annual social skills Goal 3, which Ms. Ward liked and adopted into her own practice, required Student to monitor the impression she was making and accurately determine the

emotional state of others in a small group setting. Annual social skills Goal 4 required Student to describe the reactions/perspectives of herself and others. Social skills Goal 5 required Student to identify her own behavior modification needs through concepts of self-awareness, self-control and self-monitoring. The weight of the evidence did not demonstrate that Student required an additional social skills goal to directly address her tendency to copy inappropriate behaviors from the media. Student's home program isolated her from typical peers and real life role models, and copying the behavior of young adults in the media was not a "deficit" in Student's social skills, but a deficit in the home program. The offered placement at Wilcox High School, and Middle College in October 2014, provided Student with multiple opportunities to interact with typical peers throughout the school day, and provided the role models needed by Student to learn age-appropriate and situationally appropriate behavior. Post-secondary program job coaching addressed social skills in the workplace, and travel training included an embedded social skills component. The IEP also offered a District one-on-one aide to accompany Student throughout the day to assist Student in acting in an age and situationally appropriate manner and to generalize her emerging social skills across settings. It was noteworthy that Student did not exhibit inappropriate social skills during any observations in community settings. Ms. Wells-Walberg observed Student at the senior center using excellent interpersonal skills, making appropriate on-task comments and asking appropriate questions, and at the park learning to greet strangers appropriately. Ms. Scott observed Student engaging in typical lane chatter during competitive swim practice. Student was polite and well-mannered in the hearing room, without sign of any of the exaggerated or socially inappropriate behavior described by Parents and Student's service providers. Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because she required additional goals in social language and social skills in order to obtain educational benefit.

*ISSUE 2(a)(vi): FUNCTIONAL ACADEMICS GOAL*

30. The weight of the evidence did not demonstrate that Student required a functional academics goal. Standardized testing showed Student had strong cognitive and processing skills with high academic achievement. In spring 2014, Student was progressing rapidly through a very academic online math course with little expenditure of effort or time and, according to Student's PowerPoint presentation in March 2015, she had blasted through nine years of math courses in the previous four years. By spring 2015, halfway through the 2014-2015 school year, Student was taking an online course in ninth grade history. Multiple witnesses testified persuasively that Student possessed the cognitive ability and academic knowledge to earn a high school diploma. Ms. Jolliff persuasively testified that reading and comprehension of informational texts at the ninth grade level would be sufficient for Student to be successful at Middle College with available program supports. Ms. Wilkerson's contrary opinions that Student required functional academics well below her grade level, were unpersuasive and unsupported. Ms. Wilkerson's March 2014 draft report that Student was working on elementary and middle school level academic work fell far short of establishing that such a low level of academics was all Student was capable of performing.

Student's testimony, although not available to the team in August 2014, was indicative of an intelligent young woman with the foundational knowledge and ability to understand complex academic subjects, such as the structure of poetry and the mechanics of musical composition. Student failed to carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because she required a functional academics goal be written in order to obtain educational benefit.

*ISSUE 2(a)(vii): CRITICAL THINKING GOAL*

31. The weight of the evidence did not support the need for a separate critical thinking goal. Each one of Student's seven annual goals already required Student to use flexible thinking and practice problem solving skills, and no additional goal was needed in this area. Ms. Wilkerson contemporaneously reported to the 2014 IEP team that Student demonstrated the ability to think through and understand potential outcomes of choices with adult facilitation and was sneaky or manipulative in pursuit of items of interest. This evidence suggested that Student engaged in critical thinking when she wanted to, or with support. Student was also engaging and articulate while answering questions at hearing, demonstrating good critical thinking skills via her testimony.

32. Ms. Wilkerson's opinion, that Student had difficulty utilizing knowledge in a non-scripted or non-role manner, and had extremely impaired ability to problem solve, contradicted her own report and was unpersuasive. Even if Student did exhibit problem-solving impairment, manifested as script dependency, such impairment was likely another effect of Student's isolated home program, rather than an unaddressed need. Student's opportunities in the home program to interact with others were almost entirely adult facilitated or scripted. The deficits targeted by Parents' proposed critical thinking goal would be addressed by the placement and services offered in the August 14, 2014 IEP, including opportunities at school and in the community to engage in non-scripted and non-role exchanges, with the support of small group speech sessions, and an aide with two hours per week of behavior intervention supervision. Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because she required a critical thinking goal written in order to obtain educational benefit.

*ISSUE 2(a)(viii): SAFETY GOAL*

33. The weight of the evidence did not demonstrate that a safety goal was required. District identified judgment and safety as areas of need for Student, and although an express goal was not written, the August 14, 2014 IEP addressed this area of need in two ways. First, Student was offered a one-on-one aide for the entire school day, which would protect Student from victimization and provide supervision across settings. Second, the post-secondary program included a very structured safety curriculum that taught students how to interact with strangers, including how to make safe decisions and protect personal information. The post-secondary program also included travel training, which had its own embedded safety training component for interactions with strangers while using public

transportation. Ms. Greunke had reviewed Student's assessments and IEP's, and convincingly opined that the post-secondary program had safely and effectively taught safety curriculum and public transportation skills to students with lesser cognitive ability and greater reasoning impairments than Student, and that Student would receive educational benefit in the area of safety skills from travel training. Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because she required that a safety goal be written in order to obtain educational benefit.

#### ISSUE 2(b): INDIVIDUAL TRANSITION PLAN

34. Student contends that the individual transition plan in her August 14, 2014 IEP was inappropriate. Specifically, Student contends the plan was required to, but did not, have as its primary goal that Student become employed. Student also contends that the transition goals of (i) acquiring skills to transition to college, (ii) defining career, education, and independent living plans, and (iii) demonstrating self-advocacy skills, were inappropriate. District contends that its transition plan addressed Student's needs, strengths, preferences, and interests based on information available at that time, and that the transition goals were appropriate.

35. Legal Conclusions 8 and 9 are incorporated herein by reference.

36. Beginning at age 16 or younger, the IEP must include a statement of needed transition services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect when a student reaches 16 years of age must include appropriate, measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A); *Board of Education of Township High School District No. 211 v. Ross, et al.* (7th Cir. May 11, 2007) 47 IDELR 241, 107 LRP 26543.)

37. Transition services are a coordinated set of activities that are (1) designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation; (2) based on the student's individual needs, taking into consideration the student's strengths, preferences and interests; and (3) include instruction, related services community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocation evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

38. The adequacy of transition services must be viewed in aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.* (1st Cir. 2008) 518 F.3d 18, 28-30.)

39. School districts are not required to ensure that students are successful in achieving all of their transition goals. The IDEA was meant to create opportunities for disabled children, and not to guarantee a specific result, such as acceptance into college. (*High v. Exeter Township Sch. Dist.* (U.S. Dist. Ct., E.D.Pa., Feb. 1, 2010, Civ. A. No. 09-2202 2010) 2010 WL 363832, \*4, 54 IDELR 17 (*Exeter*), citing *Rowley, supra*, 458 U.S. at 192.) The court in *Exeter* compared a transition plan with an IEP, and noted that the statutory requirements for transition plans contain no progress monitoring requirement. An IEP must include a method to measure a child's progress; however, a transition plan must only be updated annually and include measurable postsecondary goals and corresponding services. (*Exeter, supra*, at \*6.)

40. When a transition plan fails to comply with the procedural requirements, but the individual transition plan or IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Educ.* (U.S. Dist. Ct, D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, \*10.) A transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE. (*Ibid.*)

41. The August 14, 2014 IEP included an individualized transition plan, with measurable post-secondary goals based upon Student's age-appropriate assessments by Dr. Grandison, Ms. Ward, Dr. Hess, Ms. Scott, and Ms. Adams and related to training, education, employment, and independent living skills. The post-secondary goals included (i) acquiring the skills to successfully transition to college; (ii) defining her own transition goals related to employment, post-secondary education and training, independent living, and community participation; and (iii) demonstrating self-advocacy skills to communicate her learning style and academic and behavioral needs. The transition goals were appropriately based on Student's individual needs, taking into consideration the strengths reflected in the recent assessments and Student's expressed preferences and interests in going to college, getting a job, and living away from home. The transition goals were linked to Student's annual goals to utilize and reinforce skill acquisition in Student's areas of educational needs. The first transition goal was linked to, or also addressed by, a measurable annual IEP reading goal, and the other two transition goals were linked to Student's measurable annual IEP vocational goal.

42. The transition plan in the August 14, 2014 IEP identified activities to support those goals. The first transition goal, to support a transition to college, included taking a course in college survival, touring Mission College, and meeting with the college advisor for

disabled students. The second transition goal, to support transition into a career, incorporated activities of joining a job club and researching post-secondary vocational programs, as well as participation in Workability and post-secondary program volunteer activities. The third transition goal, to support transition to both college and career, incorporated activities of reviewing the accommodations in Student's IEP, communicating the strengths and weaknesses of Student's learning style, and meeting with the adviser of disabled students at Mission College to learn about accommodations available in the college setting. A credentialed special education teacher, such as Ms. Adams, was designated to be responsible for assisting Student in obtaining such instruction, services and experiences. These transition services were designed to be outcome-oriented, and focused on improving Student's academic and functional achievement to facilitate her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, independent living, and community participation. They included instruction, related services community experiences, the development of employment and other post-school adult living objectives.

43. The transition goal of acquiring skills to transition to college was appropriate. Student expressed to Dr. Hess and Ms. Scott that she wanted to go to college. Ms. Ward's August 2013 report recommended that Student prepare for enrollment in community college with support. Standardized testing showed Student had the ability, as well as the desire, to attend college. A college transition goal in line with Student's stated objective was reasonably calculated to provide Student with educational benefit. Ms. Wilkerson's assertion that Student's actual academic skills were low was not supported by formal or standardized testing. Ms. Wilkerson's elementary and middle school-level assignments to Student did not establish, and reasonably did not convince the IEP team, that such work was the upper limit of Student's academic skills.

44. The transition plan goal of defining career, education, and independent living plans was appropriate. This proposed transition goal required Student to visit local colleges and vocational programs, research career opportunities and requirements, and obtain the information Student needed to develop her own goals in light of her interests, skills, and the requirements and availability of such programs. Student's need in this area was dramatically demonstrated at hearing when Student testified that she thought the average age of a college student was 40 years old. Student similarly seemed unaware that a college degree or vocational certificate was commonly required to get a well-paying job that would provide her with the level of independence she sought. Guided tours of local colleges and vocational programs would give Student a real life context in which to make education, career, and independent living plans. This transition goal was reasonably calculated to provide Student with educational benefit.

45. The transition goal to demonstrate self-advocacy skills was appropriate. There was little evidence that Student had learned to self-advocate by summer 2014. Student did not like to be identified as a student with a disability, or to be associated with students with disabilities. The transition plan called for Student to learn to identify the supports she

actually needed in school, the workplace and the community, and how to ask for those supports in a comfortable and natural way. This transition goal was reasonably calculated to provide Student with educational benefit.

46. In sum, a preponderance of the evidence established that District drafted a procedurally complete and substantively appropriate transition plan for Student's IEP of August 14, 2014. It contained appropriate goals and services designed to improve knowledge and skills for Student's movement from special education to college and a career, based on Student's individual needs, taking her interests into account, and including instruction, activities, and experiences to support that transition. Accordingly, Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because the District failed to draft an appropriate transition plan.

ISSUE 2(c): WHETHER THE AUGUST 14, 2014 IEP WAS REASONABLY  
CALCULATED TO PROVIDE EDUCATIONAL BENEFIT

47. Student contends that offer in the August 14, 2014 IEP was not reasonably calculated to confer educational benefit to Student because: (i) the academic component was too large a portion of Student's program and interfered with vocational training; (ii) the behavior services offered were insufficient; and (iii) Student needed a functional skills program to provide on-the-job training and address her social and language skills, lack of motivation, and inappropriate behaviors. District contends that its offer of a hybrid program, consisting of academics at Wilcox High School and independent living skills and vocational training at Wilson High School's post-secondary program, was specifically designed to address Student's unique educational needs.

48. Legal Conclusions 1 through 4 are incorporated herein by reference.

49. As discussed at Issues 2(a) and 2(b), District sufficiently identified Student's unique educational needs and drafted a transition plan and annual goals to address those needs. The weight of the evidence demonstrated that District offered educational services and a placement reasonably calculated to provide Student with educational benefit.

*ACADEMICS AND VOCATIONAL TRAINING*

50. The academic component of the hybrid program offered to Student in the August 14, 2014 IEP provided Student with educational benefit, and did not interfere with vocational training. The half day of specialized academic instruction at Wilcox High School gave Student the opportunity to earn high school credits, with the flexibility of attending general education classes in her areas of interest, and taking online courses that could be worked on at home as well as during independent study periods. Student would receive instruction and support from a credentialed special education teacher, both in a study skills class where she could get individualized attention and in general education electives

(including independent study) with push-in support. Student would earn high school credits towards a regular diploma, while enjoying interaction with same-aged typical peers. In October 2014, Student could take a college survival course at Mission College, in preparation for the transition to college. Student contends that the classes at Wilcox High School were not appropriate for her because they would be too difficult. However, by summer 2014 Student had demonstrated success in an eighth grade-level academic online course. In light of her strong academic ability scores, it was reasonable for the IEP team to conclude that Student could be successful in the Wilcox High School program for three hours per day, with credentialed teacher support and a one-on-one aide for focus and attention. The opinions of Mother, Ms. Wilkerson, Ms. Rahimi, and Ms. Ward that Student could not comprehend the lectures or discussions in a classroom of 20-25 students was unpersuasive, particularly as they had not seen Student perform in a classroom of 20-25 students in several years, or with the support of a trained behavior aide and a credentialed special education teacher. The academic component of the August 14, 2014 IEP was reasonably calculated to provide Student with educational benefit under the *Rowley* standard.

51. The evidence established that earning a high school diploma or its equivalent dramatically increased the likelihood of finding a job in a competitive market, but Student contends that because of her need for functional on-the-job training, it was inappropriate for her to devote significant time to academics. However, as Ms. Melin eloquently stated, a high school diploma and a vocational program are not mutually exclusive. Ms. Melin persuasively testified that a high school diploma was required by many employers in a competitive job market; it demonstrates not just proficiency in academic subjects, but the type of perseverance and commitment valued by employers. A high school diploma is a prerequisite to some vocational programs, and to many college and university programs. Student's expressed interest in obtaining a paying job would be furthered by pursuit of a high school diploma, and this desire did not render the August 14, 2014 IEP's offer of a hybrid program with both academic and vocational component inappropriate. Ms. Miller testified that students like Student, with high and low skills, needed the best of both worlds, with both academic and vocational programs. The opinion of Ms. Wilkerson that the proper method of making Student employable was to devote all or most of Student's week to working at various job sites was unpersuasive, particularly in light of her lack of education, training, experience, or credentials in this area. The opinions of Ms. Greunke, Ms. Melin, and Ms. Adams that a half-day post-secondary vocational program including career awareness, job coaching, a safety curriculum, and travel training was appropriate to prepare Student to transition to paid employment, and provided Student with sufficient on-the-job training opportunities, were more persuasive and given great weight.

52. The vocational component of the August 14, 2014 IEP was designed to teach Student about available vocational certificate programs and provide her with opportunities to learn and practice functional job skills in the workplace while earning a paycheck through Workability. The career awareness and job coaching services added a layer of support, and directly addressed Student's need to understand the job application process and practice the

skills necessary to obtain a job, as well as keep it. The post-secondary vocational program at Wilson High School was highly individualized, and the testimony of Ms. Greunke, Ms. Melin, and Ms. Adams that the program could be adapted to include Student in Workability, on-the-job training, job coaching, and the safety skills curriculum in three hours per day, an hour of which would be travel training, was credible and persuasive. Multiple employers worked with District in the post-secondary program, and Student would have had the opportunity to work with one or more businesses, and one or more departments in some of the businesses, to learn which jobs and types of businesses would interest her as a career path in the future. The credentialed post-secondary teachers, credentialed vocational education specialists, and the aides trained by them, would provide Student with direct training and aide supervision. The post-secondary vocational component of the August 14, 2014 IEP was reasonably calculated to provide Student with educational benefit under the *Rowley* standard.

53. Parents, who represented Student at the 2014 IEP team meetings, preferred that Student be in a full-time vocational program, with up to twenty hours per week of on-the-job employment or internship. However, although the IDEA mandates parental (or adult student) participation in placement decisions, it does not specify the weight school districts should give that preference. (See 34 C.F.R. 300.116(a)(1).) Because no one factor can be determinative in placement, parental preference can be neither the sole nor predominant factor in placement decisions. (See, e.g., *Letter to Burton*, 17 IDELR 1182 (OSERS 1991); *Letter to Anonymous*, 21 IDELR 674 (OSEP) 1994); *Letter to Bina*, 18 IDELR 582 (OSERS 1991).) The Ninth Circuit has held that while the school district must allow for meaningful parental participation, the parent does not have a veto power over any provision of the IEP. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) *Rowley* also made clear that the IDEA does not provide for an “education...designed according to the parent’s desires.” (*Id.* at p. 207.) Here, the August 14, 2014 IEP team members included a large vocational component in Student’s educational program at the request of Parents, but reasonably calculated that a hybrid program with an academic component would better meet Student’s unique educational needs and provide her with educational benefit. Accordingly, the District was not required to offer the parentally preferred program. Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because she required that an educational program with fewer academic hours.

#### *SUFFICIENCY OF BEHAVIORAL SERVICES*

54. The August 14, 2014 IEP offer of a one-on-one aide to accompany Student throughout her school day addressed Student’s need for assistance in socially appropriate behavior while working on expressive language and social skills. An aide to accompany Student at all times also addressed Student’s lack of information about the real world and safety concerns.

55. The IEP offered intensive intervention services of a behavior aide trained by District to support Student in both age appropriate and situationally appropriate social communication and behavior. The aide would be trained by District, and receive two hours per week of behavior intervention supervision to address Student's unique behavior and communication needs, and in fading support as appropriate. Post-secondary teachers would also provide weekly training to the aide on how to support Student's particular educational needs in the workplace and community. Although Student preferred to work with Marie because Marie was a familiar face and knew Student well, a District aide would provide an opportunity for Student to generalize her skills to another person. Student was aware that she would work with new people in new jobs, and thought she could do so. Weekly behavior intervention supervision would ensure that the District aide became familiar with Student's unique needs and how to appropriately provide social, behavior, attention, and safety support. As long as a school district provides a FAPE, methodology is left to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) Parents, and adult students, generally have no right to compel an assignment of particular teachers or other educational personnel to implement the IEP. These decisions are normally within the discretion of the school district. (*Moreno Valley Unified School District* (OAH 2009) 109 LRP 50610, citing *Letter to Hall*, 21 IDELR 58 (OSEP 1994), and *Rowley, supra*, 458 U.S. at pp. 207-208.)

56. There was no evidence that Marie, an aide who reportedly supported Student successfully for the past four years, possessed any education, experience, or training beyond sitting in on videoconference sessions with Ms. Wilkerson and speech sessions with Ms. Ward. The opinions of credentialed teachers Ms. Scott, Ms. Adams, Ms. Melin, and Ms. Greunke, and board certified assistant behavior analyst Ms. Kinsey, that a District trained aide and the offered program would provide sufficient support for Student in her academic, post-secondary, and vocational programs, were persuasive. Those opinions were given much greater weight than the contrary opinion of Ms. Wells-Walberg, a speech pathologist. Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because the educational program offered did not address her inappropriate behaviors.

#### *FUNCTIONAL SKILLS PROGRAM*

57. The weight of the evidence did not establish that Student needed an exclusively functional skills program to provide on-the-job training and address her social and language skills, lack of motivation, and inappropriate behaviors.

58. As discussed above, the August 14, 2014 IEP appropriately offered Student a hybrid educational program with an academic, as well as post-secondary vocational, component. The half-day post-secondary vocational program at Wilson High School provided Student with sufficient on-the-job training to obtain educational benefit. As discussed above and at Issue 2(a)(iii), the half-day program also provided a safety curriculum and travel training to address Student's need for a functional safety program and the skills to

travel to school or work independently. Student's lack of desire to take public transportation between Wilcox High School and Wilson High School, or between Wilson High School and a job site, did not establish that she would not receive educational benefit from learning this important skill, including how to interact with strangers in public places, or that she required a full-day program at one location. The half-day hybrid program offered in the August 14, 2014 IEP was reasonably calculated to provide Student with educational benefit under the *Rowley* standard. Accordingly, Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because she required an exclusively functional skills program at one location.

59. As discussed at Issue 2(a), and in particular at 2(a)(iv), (v), and (vii), the August 14, 2014 IEP included goals that appropriately addressed Student's deficits in social skills, social language, critical thinking, and behavior. The classes at Wilcox High School would provide Student with much needed exposure to typical peers, both in class and during breaks. The post-secondary vocational program would provide Student with exposure to typical peers during breaks, training on social skills in the workplace, a safety curriculum for interacting with strangers and acquaintances, and training on how to interact appropriately with strangers on public transportation and in the community. A District aide would be with Student at all times to assist her in socially appropriate communication and behavior, and to address concerns about Student's safety on a large high school campus and in the community. The August 14, 2014 IEP offered the same level of speech services recommended by Ms. Ward, and included both individual and small group sessions to address Student's need for individualized language instruction, as well as her need to practice social language with same aged peers. The aide accompanying Student would reinforce appropriate social communication and provide Student with continuity of program throughout the day. The supervision of Student's program, both by a District behaviorist and Ms. Wilkerson for a period of transition, would also benefit Student by ensuring coordination and collaboration among service providers on lessons and opportunities to practice social skills, social language, and critical thinking. The August 14, 2014 IEP was reasonably calculated to address Student's unique social skills, social language, and critical thinking needs. Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because the program did not address her social skills, social language and critical thinking needs.

60. As discussed at Issue (2)(a)(i), the weight of the evidence did not demonstrate that Student lacked motivation. However, to the extent that Student might exhibit lack of motivation inattention, frustration, resistance, or other inappropriate behavior, the August 14, 2014 IEP offered Student a full-time dedicated aide to support her in academic and post-secondary vocational activities. In addition, the aide would receive two hours per week of behavior intervention supervision and regular training by the credentialed post-secondary vocational staff. The IEP team also offered to conduct an IEP 30 days into the program to address any issues that arose, and for Ms. Wilkerson to provide up to 10 hours of consultation for the first three months of Student's enrollment in District's program to

promote a smooth transition. The August 14, 2014 IEP was reasonably calculated to provide Student with educational benefit under the *Rowley* standard, and included an offer of a dedicated trained aide services to assist her with issues such as lack of motivation, inattention, frustration, resistance, or other inappropriate behaviors. Student did not carry her burden of persuasion that she was denied a FAPE in the August 14, 2014 IEP because it did not address her lack of motivation or inappropriate behaviors.

*AUGUST 27, 2014 THROUGH NOVEMBER 14, 2014*

61. On August 27, 2014, District sent a prior written notice letter to Parents incorrectly stating that the August 14, 2014 IEP offered 90 minutes per week of behavior intervention supervision services, when the IEP clearly stated an offer of 120 minutes of behavior intervention services. This error was not discovered until after the beginning of the 2014-2015 school year, and was corrected in the District's prior written notice letter to Student dated November 14, 2014.

62. This error did not result in a denial of FAPE to Student. In the event of a procedural violation, a denial of FAPE may only be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).)

63. Here, the weight of the evidence established that District's error in the August 27, 2014 prior written notice letter did not significantly impede Student's opportunity to participate in the decision making process regarding the provision of a FAPE. As discussed at Issue 1, Student had meaningfully participated in the creation of the August 14, 2014 IEP over four IEP team meetings, through her Parents as her representatives.

64. The weight of the evidence established that the error in the prior written notice letter, misstating the contents of an unconsented to and unimplemented IEP offer, did not result in any impediment to Student's right to a FAPE, nor the loss of educational benefit to Student. The August 14, 2014 IEP itself clearly stated the correct offer of 120 minutes per week of behavior intervention services by a nonpublic agency beginning August 18, 2014, both in the "Notes" section and in the "Offer of FAPE" section. If Student had timely consented to the IEP, that document would have controlled, and been the document from which the nonpublic agency services would have been contracted, resulting in implementation of the IEP at 120 minutes per week.

65. In summary, the weight of the evidence established that the August 14, 2015 IEP was reasonably calculated to meet Student's unique needs and provide her with educational benefit under the *Rowley* standard. Accordingly, Student failed to meet her burden of proving that she was denied a FAPE for failure of District to offer special education and services reasonably calculated to confer educational benefit.

*Issues 3(b) and (c): Predetermination, and Consideration of Parent Concerns*

66. Student contends that Parents were deprived of meaningful participation in the March 19, 2015 IEP decision-making process because: District made recommendations and offered services that were predetermined; and the March 19, 2015 IEP team did not take Parents' concerns into account, essentially because District largely ignored Ms. Wilkerson's input and did not adopt her recommendations. District contends that its offer was not predetermined; and that its offer of a FAPE incorporated goals, placement, and services that resulted from active collaboration by all IEP team members, including Parents and Student's service providers.

67. Legal Conclusions 8 and 9 are incorporated herein by reference.

68. Until a student reaches the age of 18 years, federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) Accordingly, at the IEP team meeting parents have the right to present information in person or through a representative. (Ed. Code, § 56341.1.) A parent, and by analogy a young adult with disabilities, has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693 (*N.L.*); *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

69. The weight of the evidence did not establish that the March 19, 2015 IEP offer of program and services was predetermined. No evidence was offered that District team members met before the March 19, 2015 meeting to do more than discuss proposed recommendations, and whether a hybrid program would be feasible if offered. District assessors, teachers, and service providers met informally to discuss Student's progress and home program in 2014-2015, as documented in the reports of Ms. Wilkerson and Ms. Ward, but went into the March 19, 2015 team meeting with open minds. It is permissible for school district personnel to meet informally and engage in conversations on issues such as teaching methodology, lesson plans, coordination of service provision, or potential services or placement, so long as they come to an IEP team meeting with an open mind. (See, e.g., *Busar v. Corpus Christi Independent School Dist.* (1995 5th Cir.) 51 F.3d 490, 494, fn. 7, *cert. denied* 516 U.S. 916 (1995); *R.S. and S.L. v. Miami-Dade County School Bd.* (2014 11th Cir.) 757 F.3d 1173, 1188-1189.)

70. District's offer of services and placement other than in Parent's preferred home program, did not demonstrate a "take it or leave it" attitude by the District members of the IEP team. As discussed at Issue 3(f), District offered a program reasonably calculated to provide Student with educational benefit under the *Rowley* standard. District's refusal to

adopt Parents' preferred program was evidence of a disagreement among team members, and not that the minds of District team members were closed. Although development of the IEP is a team decision, if all team members do not agree it is ultimately the school district's responsibility to ensure that the student is offered a FAPE in the least restrictive environment. (*Letter to Richards* (OSEP 2010) 55 IDELR 107.) While the school district must allow for meaningful parental participation, the parent does not have a veto power over any provision of the IEP. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

71. Student did not meet her burden of persuasion that the March 19, 2015 IEP denied her a FAPE because its offer was predetermined.

72. The weight of the evidence did not establish that Parents were deprived of a meaningful opportunity to participate in the decision making process. Parents attended the March 19, 2015 team meeting as the holders of Student's educational decision-making authority and meaningfully participated in the development of the March 19, 2015 IEP. The meeting lasted over four hours. Parents were accompanied by Student's counsel for the entire meeting, and by Ms. Rahimi and Ms. Wilkerson in the afternoon. Student herself attended the morning session and presented her PowerPoint to the team, and Ms. Wilkerson and Ms. Ward presented their reports on Student's present levels of performance, strengths, and challenges as seen over the past year. Over the course of the meeting, District team members presented proposed goals, services, and placement, some of which were modified in light of Student's presentation and team discussion. Student's attorney was vocal and articulate about how and why Parents and Student disagreed with the District team members. Ms. Wilkerson spoke for almost two hours, and Ms. Ward and Ms. Rahimi were insistent that the IEP offer be revised. Therefore, Parents attended the March 19, 2015 IEP team meeting, were informed of Student's problems, expressed disagreement regarding the IEP team's conclusions, and requested revisions in the IEP, and per *N.L.* and *Fuhrmann*, meaningfully participated in the development of that IEP.

73. Student argues that because Ms. Wilkerson knew Student and her educational needs better than any other member of the team, District was therefore obligated to follow Ms. Wilkerson's recommendation to develop a vocational program with functional academics and to adopt her proposed goals. Ms. Wilkerson's knowledge of Student's job performance was based on third-party reports, and as of March 19, 2015, she had never observed Student in a vocational setting. Ms. Wilkerson lacked the credentials or experience to design a post-secondary vocational program or to draft vocational, behavior, or cognitive development goals. Ms. Wilkerson lacked personal knowledge of Student's community interactions, had failed to collect data on Student's behaviors, and was unable to respond to team inquiries regarding Student's academic levels. The audio recording of Ms. Wilkerson's attempts at the March 19, 2015 IEP team meeting to deflect questions that demonstrated her lack of depth of information did not reflect well on Ms. Wilkerson. Nonetheless, the District members of the IEP team adopted Ms. Wilkerson's proposed self-regulation goal when they

determined that Student had self-regulation needs based upon reports by Parent, Ms. Wilkerson, and Ms. Rahimi. Evidence that Ms. Wilkerson, a non-credentialed behavior consultant, did not persuade the highly qualified adult and post-secondary program teachers and professionals on the District's IEP team to defer to her in making program decisions falls far short of establishing that the team did not listen to what Ms. Wilkerson had to say.

74. The weight of the evidence established that Parents, as representatives of Student in attendance at the March 19, 2015 IEP team meeting, were afforded an opportunity to, and did, meaningfully participate in the development of Student's IEP. Student did not meet her burden of persuasion that she was denied a FAPE because District interfered with Parents' opportunity to participate in development of Student's March 19, 2015 IEP by failing to take concerns of Parents and Student's program providers into consideration.

#### ISSUE 3(d): DEVELOPMENT OF APPROPRIATE ANNUAL GOALS

75. Student contends that she was denied a FAPE because the goals in the March 19, 2015 IEP were not appropriate and, specifically, because goals were not developed in the areas of (i) motivation, (ii) self-regulation, (iii) basic vocational skills, (iv) social language, (v) social skills, (vi) functional academics, (vii) critical thinking, and (viii) safety. District contends that the annual goals were appropriately written to address Student's primary deficits as identified by the assessments and progress reports.

76. Legal Conclusions 8, 9, and 18 are incorporated herein by reference.

77. The March 19, 2015 IEP team developed measurable annual goals in Student's academic areas of need to enable Student to be involved in and make progress in the general academic curriculum. Goal 1 sought to improve Student's reading and critical thinking skills by having her extract express and inferential support from an 11<sup>th</sup> grade test to support an analysis of that text. Goal 3 addressed Student's academic and vocational needs by having her research vocational programs and develop strategies for seeking assistance, as did Goal 4 by having Student to complete activities, such as vocational training, developing a resume or demonstrating vocational skill development, both of which targeted Student's need to prepare for transition to competitive employment.

78. Student argues that annual Goal 1, to read and analyze an 11th grade text, was too high above Student's level of functioning. However, Goal 1 was reasonably calculated to be achievable within one year, as private and District academic assessments from 2013 and 2014 indicated that Student had academic skills at the 10th grade or 11th grade level. Student stated in her presentation to the March 19, 2015 IEP team that she was working online on a ninth grade history course, demonstrating that Student had strong emerging reading comprehension skills. Ms. Jolliff testified persuasively that 9th or 10th grade reading skills would give Student access to the high school and college curriculum materials, and enable her to earn the diploma she told the team she wanted.

79. Student argues that annual Goals 3 and 4 were not appropriate because Student had already achieved those goals, and because they called for Student to plan, rather than practice, a skill. Goal 3, that Student research available vocational programs and develop strategies for seeking assistance, addressed Ms. Wilkerson's report that Student had difficulty following multi-step directions and creating realistic job expectations. Researching vocational programs in her areas of interest, including available accommodations in those programs, and developing strategies for seeking assistance when needed, were activities reasonably calculated to enable Student to progress in both of those areas of difficulty. Goal 4 required Student to complete worksite activities and demonstrate vocational skill development, which targeted the development of skills necessary for Student to find and keep a job, and her desire to enter the employment market. The evidence did not show that these goals were written below Student's current levels of performance, but rather that they addressed identified areas of need.

80. The weight of the evidence established that academic and vocational Goals 1, 3, and 4 addressed identified areas of need and were reasonably calculated to confer educational benefit under the *Rowley* standard to Student. Accordingly, Goals 1, 3, and 4 of the March 19, 2015 IEP were appropriate.

81. District also developed measurable annual goals to address Student's nonacademic areas of need. Self-help Goal 2 addressed self-regulation by focusing on strategies such as deep breathing to help Student respond to stress in an age and situationally appropriate manner. Goals 5, 6, and 7 addressed social skills and social language by having Student identify the perspectives of multiple people in a small group, interpret and differentiate vocal tones and differences in voice or speech, and recognize and repair conversational breakdowns. Each of these goals also directly addressed social language deficits identified by Ms. Ward in her 2015 progress report. Safety Goal 8 directly addressed Student's inappropriate interactions with strangers by having her maintain personal boundaries. These nonacademic goals addressed the needs identified in Student's presentation, and by Ms. Wilkerson and Ms. Ward in their progress reports, to learn appropriate behavior, the social language skills to engage in appropriate conversational exchanges, and the judgment and awareness necessary to address her reported tendency to over-share personal information. Nonacademic skill deficits resulting from Student's disability were often addressed by more than one goal, for instance, Student would make progress on appropriate conversational skills in working on self-regulation Goal 2 and safety Goal 8, as well as social skills Goals 5, 6, and 7. These goals were designed to be worked on across settings, including school, the workplace and the community.

82. Student argues that annual social skills Goals 5, 6, and 7 were not appropriate because they relied on scripts and role-play, which Student was already adept at using. That is, Ms. Ward opined that Student was already very script and routine dependent, and it would be too easy for Student to fake progress on goals that called for her to demonstrate social skill development in a small group. Goals 5, 6, and 7 specifically targeted Student's low functioning in understanding inferences, interpreting tone of voice and interpreting sarcasm

and the use of irony. As discussed at Issue 2(a)(iv) and (v), Student was exhibiting script dependency in part because her program isolated her from engaging in conversational exchanges in new situations across multiple settings. Ms. Ward's opinion that Student would not benefit from working on these goals in a small group was unpersuasive, in part because she had not observed Student working on language skills in a small group setting, and because it assumed that a speech pathologist would not be able to recognize, and take steps to avoid, script dependency. Although District's pathologist Ms. Williams had not seen Student participating in a small group, she had delivered speech services to high school students in a group setting, and her opinion that these goals addressed areas of deficit for Student and could reasonably be achieved in a small group setting was more persuasive than that of Ms. Ward.

83. The weight of the evidence established that Goals 2, 5, 6, 7, and 8 addressed identified areas of need and were reasonably calculated to confer educational benefit under the *Rowley* standard to Student. Accordingly, Goals 2, 5, 6, 7, and 8 were appropriate.

84. The evidence did not demonstrate that District failed to identify areas of need resulting from Student's disability that required goals to be written into the March 19, 2015 IEP to enable Student to access the general curriculum or to be successful in vocational and social endeavors. In particular, the evidence did not show that Student required additional goals in the areas of motivation, self-regulation, basic vocational skills, social language, social skills, functional academics, critical thinking or safety to obtain benefit from her education.

*ISSUE 3(d)(i): MOTIVATION GOAL*

85. The weight of the evidence did not establish that Student required a motivation goal in March 2015. As discussed at Issue 2(a)(i), the evidence did not establish that Student had motivation issues that required that an additional motivation goal be written, and Student did not identify any new evidence provided to the March 19, 2015 IEP team between August 2014 and March 2015 that should have prompted the team to draft a motivation goal. Ms. Wilkerson did not include a motivation section in her March 16, 2015 draft progress report. However, Ms. Wilkerson did report that, in the area of self-determination and self-advocacy, Student was demonstrating effective effort and persistence when she wanted to accomplish something. She commented that Student had developed a sense that there was a lot she could do if she put her mind to it. Student did not carry her burden of persuasion that she was denied a FAPE in the March 19, 2015 IEP because she required a motivation goal in order to obtain educational benefit.

*ISSUE 3(d)(ii): SELF-REGULATION GOAL*

86. The weight of the evidence did not show that the March 19, 2015 IEP team failed to write an appropriate self-regulation goal. Goal 2 addressed self-regulation by having Student learn and practice strategies, such as deep breathing, to help Student respond to stress in an age and situationally appropriate manner. This goal was reasonably calculated

to provide Student with educational benefit, and was adopted from Parent's proposed transition plan on Ms. Wilkerson's recommendation that Student had a need for self-regulation. Student did not carry her burden of persuasion by proving that she was denied a FAPE by because the March 19, 2015 IEP lacked a self-regulation goal.

*ISSUE 3(d)(iii): BASIC VOCATIONAL GOAL*

87. The weight of the evidence established that the March 19, 2015 IEP team adopted goals to address Student's vocational needs. Goal 3 addressed Student's vocational needs by having her research vocational programs and develop strategies for seeking assistance, as did Goal 4 by having Student complete activities such as vocational training, developing a resume, or demonstrating vocational skill development. Both of these vocational goals targeted Student's need to prepare for transition to competitive employment. Student failed to carry her burden of persuasion that the March 19, 2015 IEP denied her a FAPE because a basic vocational goal was not developed.

*ISSUES 3(d)(iv) AND (v): SOCIAL LANGUAGE AND SOCIAL SKILLS GOALS*

88. The evidence established that the March 19, 2015 IEP contained appropriate goals to address Student's deficits in social skills and social language. Goals 5, 6, and 7, addressed social skills by requiring Student to identify the perspectives of multiple people in a small group, interpret and differentiate vocal tones and differences in voice or speech, and recognize and repair conversational breakdowns. Each of these goals also directly addressed social language deficits identified by Ms. Ward in her 2015 progress report, including lack of social knowledge and deficits in processing longer segments of language, effective listening and conversational skills. These goals addressed the needs identified by Student, Ms. Wilkerson, and Ms. Ward, to learn appropriate social behavior and the social language skills to engage in appropriate conversational exchanges. In sum, Student failed to meet her burden of persuasion that the March 19, 2015 denied her a FAPE because it failed to include social skills and social language goals.

*ISSUE 3(d)(vi): FUNCTIONAL ACADEMICS GOAL*

89. The weight of the evidence did not establish that the March 19, 2015 IEP team should have developed a functional academics goal because Student could not access grade level curriculum. Ms. Wilkerson stated in her March 16, 2015 draft progress report that Student was using 6th to 8th grade rubrics to evaluate what she read, but there was substantial evidence that Student had much higher academic skills. The year before, in her May 16, 2014 draft progress report, Ms. Wilkerson had reported that Student was reading texts at the early high school level. Student's PowerPoint presentation indicated that Student was currently enjoying a high school-level online program in history. Ms. Wilkerson and Ms. Rahimi had not formally assessed Student's reading skills, and as discussed earlier, Ms. Wilkerson's opinions regarding Student's academic abilities were not persuasive. Dr. Grandison's September 2013 assessment reported Student's academic achievement scores to be at the 12th grade level, with the exception of reading comprehension at the

10<sup>th</sup> grade level. Ms. Scott found that Student had average reading comprehension in April 2014. Per Ms. Jolliff, an IEP team member, a reading level of 9th or 10th grade would be sufficient to access high school and college curriculum. The May 19, 2015 IEP team had ample information on which to reasonably determine that, with the program and services offered in support, Student would be able to read and analyze text at an 11th grade level. Student did not prove by a preponderance of the evidence that she was unable to access grade level curriculum with supports and that the March 19, 2015 IEP denied her a FAPE because it lacked a functional academics goal.

*ISSUE 3(d)(vii): CRITICAL THINKING GOAL*

90. The weight of the evidence did not demonstrate that Student required a critical thinking goal in the March 19, 2015 IEP. Critical thinking was no longer identified as an area of need in Ms. Wilkerson's March 16, 2015 progress report. Critical thinking in an academic context was addressed by Goals 1, 3, and 4, which required analysis of textual information. Student's nonacademic goals also addressed critical thinking skills: Goal 2 required Student to learn when and how to use self-regulation strategies, Goal 5 required Student to identify the perspective of others, and Goal 7 required Student to recognize and repair conversational breakdowns. Ms. Wilkerson reported to the IEP team that when Student was asked to describe the consequences of a considered action, she recognized the natural and logical consequences of an action, and acted appropriately 80% accuracy. On this evidence, Student failed to carry her burden of persuasion that the March 19, 2015 IEP denied her a FAPE because it lacked a critical thinking goal.

*ISSUE 3(d)(viii): SAFETY GOAL*

91. The weight of the evidence did not establish that Student required an additional safety goal in the IEP of March 19, 2015. The March 19, 2015 IEP contained safety Goal 8, that in the community and at school Student would engage in appropriate interactions with strangers by maintaining personal boundaries, such as not going with a stranger or giving out personal information. This goal addressed Parents' concerns about Student on a college campus and on public transportation. Ms. Wilkerson reported concerns that Student lacked safety skills in navigating streets and parking lots, and in home safety. As discussed at Issue 2(a)(viii), safety skills for navigating the community were embedded in the travel training program offered, and the March 19, 2015 IEP offered 60 minutes per day of travel training, to sufficiently address those concerns. The transition plan in the March 19, 2015 IEP included the community experience of acquiring CPR certification, which Ms. Adams explained to the IEP team included basic safety and first aid training, and the post-secondary program addressed independent living skills, which appropriately addressed home safety concerns. Student did not meet her burden of establishing by a preponderance of the evidence that the March 19, 2015 IEP denied her a FAPE because it did not include another safety goal.

92. The weight of the evidence established that District had appropriately identified and addressed all Student's areas of educational need, both through the annual goals and the program components in the March 19, 2015 IEP. Student did not meet her burden of proving by a preponderance of the evidence that additional goals in the areas of motivation, self-regulation, basic vocational skills, social language, social skills, functional academics, critical thinking, and safety were required.

ISSUE 3(e): INDIVIDUALIZED TRANSITION PLAN IN MARCH 19, 2015 IEP

93. Student contends that the individual transition plan in her March 19, 2015 IEP was not appropriate. District contends that its transition plan addressed Student's needs, strengths, preferences, and interests based on information available at that time.

94. Legal Conclusions 36 through 40 are incorporated herein by reference.

95. The March 19, 2015 IEP included an individualized transition plan, with measurable postsecondary goals based upon Student's age appropriate transition assessments by Dr. Grandison, Ms. Ward, Dr. Hess, Ms. Scott, and Ms. Adams related to training, education, employment, and independent living skills. Those goals included (i) attending a vocational education program, (ii) acquiring a direct hire job, and (iii) living independently in an apartment with friends. The first transition goal was linked to a measurable annual goal in the area of secondary transition, and the other transition goals were linked to Student's measurable annual vocational goal.

96. The transition plan in the March 19, 2015 IEP identified activities to support the transition goals. The first transition goal, to attend a vocational education program, included defining an area of focus and researching the costs, locations, accommodations, and degrees available, as well as touring vocational training programs. The second transition goal, to acquire a direct hire job, incorporated activities of meeting with a vocational specialist to work on vocational skills and participating in Workability or other on-the-job activities with job coaching. The third transition goal, to live independently in an apartment with friends, incorporated activities of preparing a budget and projecting expenses for independent living, acquiring CPR certification, opening a personal checking account, and obtaining identification documents. A credentialed special education teacher, such as Ms. Adams, was designated to be responsible for assisting Student in coordinating these activities. The transition activities, in addition to the services offered in support of the annual goals linked to each transition goal, complied with the procedural requirement that the March 19, 2015 IEP contain transition services to assist Student in reaching her transition goals.

97. Student contends that transition Goal 1 was too generic, and that annual Goal 3 (to successfully transition to a vocational program by researching available programs and develop strategies for seeking assistance) was an insufficient plan to support entry into a vocational program; rather, Student required more hours of employment activities. The weight of the evidence demonstrated that transition Goal 1 sufficiently addressed Student's

stated interest in having a career, possibly in culinary arts, performing arts, or hospitality. Student could not pursue a vocation until she identified the vocational programs available, and then determined if those programs would offer the accommodations Student needed to be a successful graduate. Accordingly, transition Goal 1 was appropriate.

98. Student contends that transition Goal 2, to acquire a direct hire job, had insufficient support, as Student had already created the resume called for in annual Goal 4. However, annual Goal 4 called for more than creating a resume; it required Student to complete a series of activities, including on-the-job tasks with a job coach, to prepare Student to transition into competitive employment, as well as defining her short term and long term vocational goals, developing a resume, and demonstrating vocational skill development. The activities and supports for this goal were in line with Student's stated objective of acquiring a direct hire job, and were reasonably calculated to provide Student with educational benefit and appropriate.

99. Student contends transition Goal 3, to live independently with friends, was not supported by annual Goal 4. Annual Goal 4 was employment focused, but incorporated activities that were very similar to those already being worked on with Ms. Wilkerson in the home program. Student disagreed that she should be taking CPR training, but Ms. Adams persuasively testified that the first aid and safety training included in CPR courses would give Student important skills for living independently. These skills included how to react in an emergency, how to get emergency assistance, and other health, safety and life skills that supported independent living. Accordingly, that transition goal was reasonably calculated to provide Student with educational benefit and was appropriate.

100. In summary, the weight of the evidence established that the transition services listed in the March 19, 2015 IEP were a coordinated set of activities (1) designed within an outcome-oriented process focused on improving the academic and functional achievement of Student to facilitate movement from school to post-school activities; (2) based on Student's individual needs, taking into consideration her strengths, preferences, and interests; and (3) included instruction, related services community experiences, the development of employment and other post-school adult living objectives.

101. Accordingly, Student failed to meet her burden of establishing by a preponderance of the evidence that the March 19, 2015 IEP denied her a FAPE because it lacked a procedurally complete and substantively appropriate transition plan.

ISSUE 3(f): WHETHER THE MARCH 19, 2015 IEP WAS REASONABLY  
CALCULATED TO PROVIDE EDUCATIONAL BENEFIT

102. Student contends that the March 19, 2015 IEP was not reasonably calculated to confer educational benefit because it included academics and was not exclusively a vocational program. District contends that a hybrid program of academics and vocational training was appropriate for Student.

103. Legal Conclusions 8, 9, 53, and 55 are incorporated herein by reference.

104. As discussed at Issues 3(d) and 3(e), District sufficiently identified Student's unique educational needs in the IEP of March 19, 2015 and drafted a transition plan and annual goals to address those needs. The weight of the evidence demonstrated that District offered educational services and placement to meet Student's unique educational needs.

105. The hybrid program offered to Student, including half of her time in the Middle College academic program and half of her time in a post-secondary vocational program, was reasonably calculated to provide Student with educational benefit. The offer of Middle College, addressed Student's statement in Parents' proposed transition plan that she would be uncomfortable as an older student on a high school campus. A program on a college campus offered Student the opportunity to engage with same-aged typical peers while earning high school and college credits. The specialized academic instruction at Middle College allowed Student to earn high school and college credits, with the flexibility of attending general education classes in her areas of interest, such as music, film and cooking. Online courses could be worked on at home, as well as during independent study periods, and maximized schedule flexibility to accommodate work hours. The course materials could be individualized according to Student's academic levels and personal preferences, by a credentialed teacher with the support of a credentialed special education teacher. District witnesses testified persuasively that the frequency and duration of services offered in the Middle College portion of Student's program, including specialized academic instruction and college awareness/preparation, would enable Student to make reasonable progress on her transition and annual goals. The vocational component of her educational program was designed to teach Student valuable on-the-job skills to prepare her for the transition to paid employment. The career awareness and job coaching services added a layer of support, and directly addressed Student's need to acquire and practice the skills necessary to obtain a job, as well as keep it. The testimony was persuasive that the frequency and duration of participation in Workability, career awareness services and job coaching would enable Student to make reasonable progress on her transition and annual goals. Further, by earning a high school diploma or its equivalent, Student would dramatically increase the likelihood of finding a job in a competitive market and achieving her transition goal of independent living.

106. As discussed at Issue 2(c), the offer of a one-on-one aide to accompany Student throughout her school day addressed Student's need for assistance in engaging socially and behaving appropriately while working on expressive language and social skills. The aide accompanying Student would provide her with continuity of program throughout the day. The supervision of Student's program by a District behaviorist would also benefit Student by ensuring coordination and collaboration among service providers. Travel training addressed Student's need for safety training, as well as provided her with a means of getting to school or work independently. The individual and small group speech services addressed Student's need to practice social language one-on-one with a speech therapist, and in a setting with same aged peers. These speech services were offered with the frequency and duration recommended by Student's expert, Ms. Ward, and the group speech sessions

addressed Ms. Ward's concern that Student needed to get out of the one-on-one setting of the therapy room. The speech services enabled Student to make progress on her transition and annual goals, and were appropriate.

107. The weight of the evidence did not establish that Student required a vocational program to the exclusion of academics. On the morning of March 19, 2015, Student made a presentation to the IEP team in which she stated that she wanted to move ahead with vocational *and* academic goals, and that by age 22 she wanted to have finished high school and earned a diploma. The opinions of Ms. Wilkerson, Ms. Rahimi, and Ms. Ward regarding Student's low ability levels were ventured without any attempt at collecting quantifiable data (and in the case of Ms. Rahimi, without knowledge of formal assessment scores), and frequently in areas for which they had little or no experience, training, or expertise, and no credentials or certificates. Student's testimony about efforts to teach herself musical composition skills was intelligent, articulate, and demonstrated that Student was capable of comprehending and mastering complex information. Multiple District witnesses testified very persuasively, and from experience working with high school students and young adults, that Student's academic skill levels, and the supports available in the Middle College program and provided in her IEP, were sufficient for Student to succeed in the Middle College program and earn a high school diploma or its equivalent. Student may have changed her mind about attending academic classes after the IEP team meeting, and decided that she did not want to go to Middle College, but a school district's determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively reasonable...at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann, supra*, 993 F.2d at p. 1041.)

108. The weight of the evidence established that the March 19, 2015 IEP offered Student special education and services to meet her needs and make reasonable progress on her transition and annual goals, and were reasonably calculated to provide educational benefit under the *Rowley* standard. Accordingly, Student failed to meet her burden of persuasion that she was denied a FAPE for failure of the March 19, 2015 IEP to offer special education and services designed to confer educational benefit.

#### *District's Issue*

*Issue 4: Did The August 14, 2014 IEP, as Clarified by the November 14, 2014 Prior Written Notice, Offer Student a FAPE in the Least Restrictive Environment?*

109. District contends that its August 14, 2014 IEP, as clarified by District's letter of November 14, 2014, offered Student a FAPE in the least restrictive environment. Student contends that the August 14, 2014 IEP was insufficient and inappropriate, primarily because it offered a program with emphasis on academics.

110. Legal Conclusions 1 through 4 are incorporated herein by reference.

111. In a District filed case, the District has the burden of proof to establish by a preponderance of evidence that it complied with the IDEA and California law. First, the District must prove that it has complied with the procedures set forth in special education law. (*Rowley, supra*, 458 U.S. at p. 176.) Second, the District must prove that the IEP developed through such procedures addressed the student's unique needs and was reasonably calculated to enable the student to receive some educational benefit in the least restrictive environment. (*Id.* at p. 201; *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031; *Mercer Island, supra*, 575 F.3d at p. 1034.)

#### PROCEDURAL REQUIREMENTS

112. To comply with the procedural requirements of the IDEA and state law in the development of the pupil's IEP, school districts must include parents in the development of the IEP. (20 U.S.C. § 1414 (d)(1)(B)(i); 34 C.F.R. § 300.322; Ed. Code, §§ 56341, subd. (b)(1), 56342.5.) Parents, or in this case the adult student, must be given advance notification of the meeting, including the purpose, time, location, and who will be in attendance, early enough to ensure an opportunity to attend. (34 C.F.R. § 300.322 (2006); Ed. Code, § 56341.5.) The adult student must be provided procedural safeguards. (Ed. Code, § 56500.1.) School district IEP teams are required to include the student; a regular education teacher if a pupil is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about the available resources; a person who can interpret the instructional implication of assessment results; and other individuals, including the person with special needs, where appropriate. (34 C.F.R. §§ 300.321(a)(5),(6) (2006); Ed. Code, § 56341, subd. (b).)

113. In developing the IEP, the IEP team shall consider the strengths of the student, the student's concerns for enhancing his or her education, the results of the initial evaluation or most recent evaluation of the student, and the academic, functional and developmental needs of the student. (20 U.S.C. § 1414(d)(3)(A).) The IEP must include a statement of the present performance of the pupil, a statement of measurable annual goals designed to meet the pupil's needs that result from the disability, a description of the manner in which progress of the pupil towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved. (20 U.S.C. § 1414 (d)(1)(A)(i),(ii); 34 C.F.R. § 300.320(a)(2),(3) (2006); Ed. Code, § 56345, subs. (a)(2), (3).) The IEP also must include a statement of the program modifications or supports for school personnel that will be provided to the pupil to allow the pupil to advance appropriately toward attaining the annual goals; be involved and make progress in the general education curriculum and to participate in extracurricular activities and other nonacademic activities; and be educated and participate in activities with other children with disabilities and nondisabled children.

(34 C.F.R. § 300.320(a)(4)(i), (ii), (iii) (2006); Ed. Code, § 56345, subds. (a)(4)(A), (B).) Only the information set forth in 20 United States Code section 1414(d)(1)(A)(i) must be included in the IEP and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d) (2006); Ed. Code, § 56345, subds. (h) & (i).)

114. The weight of the evidence established that District complied with all procedural requirements for the conduct and development of the August 14, 2014 IEP.

115. Student, and Parents as her representatives, were given advance notification of the April 1, May 20, June 5, and August 14, 2014 IEP team meetings, including the purpose, time, location and who would attend, early enough to ensure an opportunity for Parents to attend with Student's service providers. Parents were provided a copy of procedural safeguards as Student's representatives at the 2014 IEP team meetings. All required District personnel were in attendance, including credentialed teachers and service providers, and the persons who conducted the triennial assessments to interpret assessment results.

116. The August 14, 2014 IEP team considered Student's strengths, Student and Parents' concerns for enhancing Student's education, the results of the triennial assessments, and Student's academic, functional, and developmental needs. The August 14, 2014 IEP included a statement of Student's present levels of performance; measurable annual goals designed to meet Student's needs; a description of the manner in which Student's progress on those goals would be measured; the specific services to be provided; the extent to which the Student could participate in regular educational programs; the projected initiation date and anticipated duration; and the procedures for determining whether the instructional objectives were achieved. The August 14, 2014 IEP also included a statement of the program modifications or supports for school personnel that would be provided to Student to allow her to advance appropriately toward attaining the annual goals; be involved and make progress in the general education curriculum and to participate in extracurricular activities and other nonacademic activities; and be educated and participate in activities with other students with disabilities and nondisabled students. As discussed at issue 2(c), a small error in calculation of the behavior intervention services (aide supervision) in the August 26, 2014 letter to Parents was corrected in District's letter of November 14, 2014 to Student, and did not result in a substantive denial of FAPE.

117. The weight of the evidence established that District complied with the procedural requirements of the IDEA for development of the August 14, 2015 IEP.

#### SUBSTANTIVE REQUIREMENTS

118. As discussed at Issues 2(a), 2(b), and 2(c), the weight of the evidence established that District identified all of Student's areas of educational need in August 2014 and wrote appropriate goals to address those needs. It also developed a complete and appropriate transition plan, and offered Student special education and services reasonably calculated to provide her with meaningful educational benefit under the *Rowley* standard.

119. District members of the August 14, 2014 IEP team each testified within their area of expertise that the goals developed in the August 14, 2014 IEP were appropriate to meet and address the full range of Student's unique educational needs. They also testified persuasively that the August 14, 2014 IEP was reasonably calculated to enable Student to make progress on her goals. District witnesses testified persuasively that the transition plan incorporated in the IEP appropriately addressed Student's transition needs. Therefore, the goals and services developed at the August 14, 2014 IEP team meeting were reasonably calculated to enable Student to receive educational benefit as required by *Rowley*, and therefore were appropriate.

120. The IEP of August 14, 2014 was developed over a series of four IEP team meetings, with the April 1, May 20, June 5, 2014 IEP's adjourned to reconvene after District gathered additional information about Student's present levels of performance and educational needs. In addition to District's psychoeducational, academic functioning, speech and language and career inventory assessments, the IEP team had information from additional assessments in reading comprehension, speech and language skills; a records review; observations across a variety of community settings; and reports from Dr. Grandison, Ms. Ward, Ms. Wilkerson, and Ms. Wells-Walberg. The members of the August 14, 2014 IEP team were knowledgeable about Student, the meaning of the evaluation data, and the placement options, and took into account the requirement that Student be educated in the least restrictive environment.

121. The weight of the evidence established that District complied with the substantive requirements of the IDEA and that the August 14, 2014 IEP offered Student a FAPE with annual goals, an individual transition plan, and special education and services reasonably calculated to provide Student with educational benefit under the *Rowley* standard.

#### LEAST RESTRICTIVE ENVIRONMENT

122. 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, 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.)

123. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that (1) children with disabilities are educated with non-disabled peers; and that (2) 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); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals 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 has 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 Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of general education was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].)

124. If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options.<sup>9</sup> (*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 in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

125. Here, applying the *Rachel H.* factors to the facts, shows that in August 2014, Student could not have been satisfactorily educated solely in a regular education environment. Student had spent four years in a home program without earning any high school credits, had not been exposed to the high school curriculum, and required special education and supports to work towards those credits. Student had social language, social skills, self-regulation, and judgment/safety deficits that required a dedicated behavioral aide, who also provided consistency over a hybrid program with instruction in a variety of settings. Student required individual and small group speech therapy, and vocational instruction in a post-secondary program with various vocational supports. Although Student could arguably have received non-academic benefit in a regular high school classroom from exposure to language modeling by typical peers, the evidence established that Student had communication deficits that might have interfered with her ability to absorb lectures and classroom discussions without the specialized academic instruction offered. Student did not exhibit behaviors that would have adversely impacted Student's teacher and classmates, although she was adult dependent as a result of her home program. There was no evidence that cost was a factor in the IEP team's decision that Student could not have been

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<sup>9</sup> "Mainstreaming" is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

satisfactorily educated in a regular classroom, and District offered Student a rich and varied program with extensive supports without regard to cost. In conclusion, two of the four *Rachel H.* factors weighed in favor of a placement outside of the regular classroom.

126. Once it has been determined that education in the regular classroom cannot be achieved satisfactorily, the inquiry turns to whether the student has been mainstreamed to the maximum extent appropriate. (*Daniel R.R.*, *supra*, 874 F.2d at p. 1050.) Here, the evidence demonstrated that the IEP team had considered the full continuum of placement options, including: general education classes at Wilcox High School, Middle College, and Mission College; group specialized instruction at Wilcox High School and in the post-secondary vocational program; small group and individualized instruction, as a push-in service at Wilcox High School, Middle College, and in the community as part of the post-secondary program; and isolated home instruction. The evidence demonstrated that the August 19, 2014 IEP offer of a hybrid program to Student with half of her time in specialized academic instruction, and half of her time in a post-secondary vocational program, with supported inclusion in high school or college electives of interest, was the least restrictive environment for Student.

127. The evidence established that Student would receive educational benefit from placement in the hybrid program offered in the August 14, 2014 IEP, which offered her the opportunity to earn high school and college credits, information on available vocational programs, and also afforded her opportunities to interact with typically developing peers in general education elective classes at Wilcox High School or Middle College.

128. The evidence demonstrated that Student would receive non-academic benefit from the offered placement. Student would learn vocational skills necessary to find and transition to paid employment, have the support of the one-on-one aide to ensure her safety and provide behavioral support, learn to protect personal information and be safe when interacting with strangers and learn public transportation skills that would enable her to be independent. There was abundant evidence that this hybrid program provided Student with the level of individualized instruction needed to meet her goals, but also provided exposure to typical peers on the Wilson High School and Mission College campuses and in the community.

129. In conclusion, Student's placement in this hybrid program was the least restrictive environment in which Student could be satisfactorily educated. Accordingly, the weight of the evidence established that the placement offered in the August 14, 2014 IEP was the least restrictive environment for Student.

130. In sum, District met its burden of proving on a preponderance of the evidence that it followed all required procedures, and that the August 14, 2014 IEP, as clarified in the November 14, 2014 letter, as a whole offered Student a FAPE in the least restrictive environment.

ORDER

All of Student's requests for remedies are denied.

PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

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: August 24, 2015

/s/  
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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings