

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL  
DISTRICT,

OAH Case No. 2015110595

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FOLSOM CORDOVA UNIFIED SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2015090251

**DECISION**

Folsom Cordova Unified School District filed a due process hearing request with the Office of Administrative Hearings State of California, on September 4, 2015, naming Student (District's case) as respondent. The matter was continued for good cause on September 16, 2015.

Student filed a due process hearing request with OAH on November 16, 2015, naming Folsom Cordova (Student's Case) as respondent. On November 20, 2015, OAH granted Student's Motion to Consolidate Student's case with Folsom Cordova's case, basing the timeline for issuing a decision on the filing date in Student's case.

On January 21, 2016, OAH granted Student's motion to amend his complaint. Student's case and District's case remained consolidated, basing the timeline for the issuance of the decision on the filing date in Student's case. On March 4, 2016, OAH granted a continuance.

Administrative Law Judge B. Andrea Miles heard this matter in Folsom, California, on March 29 and 30, 2016, and April 5, 6, 7, 11, 13, 19, and 20, 2016.

Allison Hyatt, Attorney at Law, represented Student. Student's mother and father attended the hearing.

Rebecca Feil, Attorney at Law, represented Folsom Cordova. Hunt Lin, Program Coordinator of Special Services, attended the hearing on behalf of Folsom Cordova.

A continuance was granted for the parties to file written closing arguments and the record remained open until May 16, 2016. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

## ISSUES<sup>1</sup>

### *Folsom Cordova's Issues*

1. Did Folsom Cordova's May 2014 academic and behavioral assessments of Student meet all legal requirements such that Student is not entitled to an academic and behavioral independent education evaluation at public expense?

2. Did the individualized education program dated April 9, 2015 offer Student a free appropriate public education for the 2015-2016 school year?

### *Student's Issues*

1. Did Folsom Cordova deny Student a FAPE during the 2014-2015 school year by preventing Parents from meaningfully participating in the IEP process by:

- a. Failing to respond to Parents' multiple requests regarding scheduling IEP team meetings during the 2014-2015 school year;
- b. Failing to provide protocols, teacher interview reports, and other supporting materials used by Folsom Cordova to prepare Student's triennial psycho-educational and behavioral assessments pursuant to Parents' request for Student records on:
  - i. August 22, 2014;
  - ii. August 26, 2014;
  - iii. September 5, 2014;

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<sup>1</sup> The issues have been reorganized for this Decision. These are the issues heard and decided. The ALJ has the authority to redefine a party's issues providing no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

- iv. September 8, 2014;
  - v. September 9, 2014;
  - vi. September 21, 2014;
  - vii. September 22, 2014;
  - viii. November 4, 2014;
- c. Being unprepared to discuss and develop new appropriate goals for Student during his October 23, 2014, December 4, 2014, and April 9, 2015 IEP team meetings by demonstrating a lack of knowledge of Student's progress reports and records regarding his progress towards academic goals, present levels of performance, and areas of need;
  - d. Preventing Parents from asking pertinent questions of Folsom Cordova IEP team members during the August 27, 2014 and April 9, 2015 IEP team meetings; and
  - e. Abruptly ending the April 9, 2015 IEP team meeting after Parents expressed their disagreement?

2. Did Folsom Cordova's refusal to grant Parents' July 26, 2015 request for independent educational evaluations in the areas of academic and behavioral functioning after the April 9, 2015 IEP meeting result in a denial of a FAPE for Student during the 2015-2016 school year?

#### SUMMARY OF DECISION

This decision holds that Folsom Cordova's April 9, 2015 IEP offered Student a FAPE for the 2015-2016 school year through April 8, 2016, including its offer of one-to-one aid support provided by Folsom Cordova. As a proposed remedy, Folsom Cordova requested an order allowing it to implement the IEP without parental consent. The decision declines to order that requested remedy as the April 9, 2015's IEP only offered goals and services through April 8, 2016. As this hearing concluded after April 8, 2016, OAH declines to make such an order.

This decision finds that Folsom Cordova's academic and behavior assessment met all legal requirements such that Student is not entitled to independent education evaluations in those areas at public expense.

Additionally, despite committing a procedural violation regarding providing Parents with a limited number of Student's records and delaying in providing those records, Folsom

Cordova did not prevent Parents from meaningfully participating in the IEP due process. On the contrary, Parents vigorously participated in the IEP process specifically regarding developing goals, accommodations, related services, placement, and extended school year services over four IEP team meetings and one goal development meeting.

Folsom Cordova prevailed on all issues plead by both Student and Folsom Cordova. As such, this decision does not award Student his requested relief.

## FACTUAL FINDINGS

### *Jurisdiction*

1. Student is a 13-year-old boy who resided with his mother, father, and older brother within the geographical boundaries of Folsom Cordova Unified School District at all times relevant to this case. English is the native language of Student and his parents. Student is eligible for special education under the category of autism. Student began receiving special education services from Folsom Cordova in 2006 when he was in preschool.

2. Student received a clinical diagnosis of autism when he was approximately two and half years old. From the time of his diagnosis, Parents have taken great pains to make sure that Student received the services necessary to help him become successful. The local regional center provided Student with in-home Applied Behavioral Analysis therapy<sup>2</sup>, speech and language therapy, and occupational therapy. Since entering the school district, Student has been fully included in general education with the support of a one-to-one aide throughout his school day.

### *May 7, 2008 IEP*

3. On May 7, 2008, Folsom Cordova held Student's annual IEP team meeting to address Student's transition into kindergarten in the 2008-2009 school year. The IEP offered placement in a general education kindergarten class at Oak Chan Elementary School for 100 percent of the school day with the support of a one-to-one aide from a nonpublic agency through Student's school day. The IEP designated the nonpublic agency, Bridges, as the agency that would provide a one-to-one aide and individuals to oversee that aide. At the time, Bridges was providing Student with in-home Applied Behavioral Analysis therapy services. The IEP also designated seven and a half hours per month for a supervisor from Bridges with a bachelor of arts degree and two and a half hours a month for a supervisor from Bridges with a masters of arts to provide services to Student.

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<sup>2</sup> Applied Behavior Analysis is a particular form of therapy used with children who are diagnosed with autism spectrum disorder.

4. To address Student's deficits in the areas of social communication, fine motor skills, social-emotional skills, and behavior, the IEP offered Student goals in each of those areas. To support Student with meeting those goals, the IEP offered Student with 60 minutes of occupational therapy services per week and 60 minutes a month of consultative services from a nonpublic agency to address Student's fine motor deficits and sensory issues. Additionally, the IEP offered Student 60 minutes of speech and language therapy two times a week from the nonpublic agency, American River Speech.

5. Parents consented to the IEP on May 29, 2008. As Parents have not consented to an IEP since May 2008, Folsom Cordova has continued to implement the placement and services outlined in Student's May 7, 2008 IEP, except for the occupational therapy services.<sup>3</sup> At some subsequent point in time, Parents and Folsom Cordova agreed to discontinue the occupational therapy direct and consult services contained in the IEP. Additionally, Student's one-on-one aide support changed from Bridges to the nonpublic agency, Pacific Autism Learning Services (PALS).

#### *2013-2014 School Year*

6. During the 2013-2014 school year, Student attended fifth grade at Oak Chan Elementary with Hallie Wallace as his classroom teacher. At Oak Chan, Student attended general education classes with the support of a one-to-one aide from PALS throughout his entire school day. During the school breaks and school holidays, PALS provided Student with therapy services designated in his IEP. PALS also provided Student with in-home services including applied behavior analysis therapy services outside of the IEP process.

7. Although it is unclear from the evidence exactly when Student began receiving services from PALS, it is clear that PALS has provided Student with services over a number of years. Student has become accustomed to the presence and assistance of those aides during his school day. During Student's fifth grade year through the date of the hearing, three aides alternated daily acting as Student's aide.

8. The aides "shadowed" Student throughout the school day. Instead of remaining by Student's side, the aides observed Student from a distance. The idea was that Student was supposed to be unaware that the aides were present to assist him. However, the evidence showed that Student was aware that the aides were assigned to assist him during school. The aides intervened only when they felt Student needed assistance. This process appropriately allowed Student to maintain his independence and prevented his peers singling him out for having an aide.

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<sup>3</sup> No issue was raised in this case regarding whether or not either party should have or was obligated to request a due process hearing earlier than sought in this case. Accordingly, that issue is not addressed in this decision.

9. Per the operative IEP, Student received two hours of speech and language therapy per week from a nonpublic agency. Ms. deGelleke provided Student with the speech and language therapy during non-school hours.

10. Student made academic progress during the 2013-2014 school year. Student showed many academic strengths during that school year. Student completed 100 percent of his classwork and homework assigned by his fifth grade teacher, Hallie Wallace. Student had strong math skills during timed testing. He also did well when the skill of memorization was required. However, Student had difficulty with open-ended essay writing and was resistant to correction.

11. Student required support with understanding instructions. Student particularly struggled with oral instructions. In order to address this need, Ms. Wallace would allow Student's aide to write out all of the instructions, which she delivered orally. At times, Student appeared to understand the provided instructions, but later it would be revealed that he had not understood. As such, it was important for the teacher or aide to confirm that Student understood the instructions.

12. When Student was off task during class, the PALS aides either indirectly or directly prompted Student to get him back on task. An example of an indirect prompt was when the aide would walk past Student. The mere presence of the aide would cause Student to get back on task. An example of a direct prompt was when the aide would tap on Student's desk while walking by. Although PALS assigned three aides to Student, the aides shadowed Student during different parts of his school day so only one aide was present at any time.

#### ASSESSMENT PLAN

13. On January 16, 2014, Folsom Cordova sent Parents a prior written notice indicating that it wanted to conduct a triennial assessment of Student. School districts are required to assess special education students at least once every three years. Included with the prior written notice was a copy of the proposed assessment plan and a copy of parental procedural rights under the Individuals with Disabilities Education Act and related state law.

14. The assessment plan indicated that Folsom Cordova proposed assessing Student in the areas of academic achievement, health, intellectual development, speech and language, and social-emotional. Mother contacted each of the assessors whom Folsom Cordova intended to conduct the assessments and discussed the methods of testing that they intended to utilize during their assessments.

15. Prior to providing consent for Folsom Cordova to initiate their assessment plan, Mother wrote the names of each of the assessors on the plan and the types of assessments that the assessors had indicated to her that they were going to utilize. On April 20, 2014, Parents provided their consent to the assessment plan, as modified by Mother.

## PSYCHOEDUCATIONAL ASSESSMENT

16. Gail Phinney, a school psychologist with Folsom Cordova, conducted the psychoeducational assessment of Student. Susan Woodman, a special education teacher with Folsom Cordova, completed most of the academic testing, which Ms. Phinney used to help support her findings. Ms. Woodman provided Ms. Phinney with her findings and Ms. Phinney included the results and findings in a written report.

### *ACADEMIC PORTION*

17. Ms. Woodman, a credentialed special education teacher since 1989, has conducted over 100 academic assessments of students. Although she has primarily taught students who receive special education services due to meeting the emotionally disturbed special education criteria, she has experience working with and assessing students with autism diagnoses in the school setting. Additionally, prior to working as a credentialed teacher, Ms. Woodman worked at a residential treatment facility for children with autism.

18. Ms. Woodman used the Wechsler Individual Achievement Test, 3rd Edition to assess Student's academic achievement. Ms. Woodman has considerable experience administering the Wechsler as she has administered it over 100 times. She tested Student over three separate sessions. Student was very cooperative during the assessment. The Wechsler is a standardized test, comprised of a series of subtests that are used to determine a student's basic reading level, written expression, mathematics, math fluency, and oral expression. The test compared Student's skills in those areas to scores obtained by other students in his same age group.

19. Ms. Woodman followed the testing protocols and scoring manual when administering the Wechsler. After completing the testing, she inputted the raw scores into the Wechsler computer program. Using the raw data, the computer program computed the standard scores and percentile rankings for each subtest and testing category.

20. Student's test scores in the areas of reading decoding and reading comprehension fell in the low average range, while Student's phonemic decoding skills, written language skills, listening comprehension skills, and oral expression skills fell into the average range. Student's math skills were an area of strength for Student. Student's math fluency skills scores were in the superior range and his math computation skills scores were in the high average range.

21. Student presented Lisa Lindsey as an expert witness in the area of assessments. Ms. Lindsey testified that the academic assessment was flawed for several reasons. Ms. Lindsey has a doctorate of philosophy in communication and social cognition psychometrics. Ms. Lindsey has experience measuring the validity and reliability of assessment tools. Since 2013, Ms. Lindsey has worked with students and parents reviewing assessments. Ms. Lindsey does not have experience working as an elementary, middle school, or high school teacher nor does she have experience administering the Wechsler.

22. Student argues that the academic assessment did not meet legal requirements because Ms. Woodman did not assess all of Student's academic skills since she did not administer all the Wechsler's subtests. In support of this theory, Ms. Lindsey testified that based on her review of Student's writing in the testing protocols, she would have administered the grammar and mechanics subtest part of the Essay Composition subtest. Furthermore, she testified that if she had been the assessor she would have asked Parents and teachers if grammar and mechanics were areas of concern and if indicated they were areas of concern she would have administered the grammar and mechanics subtest. However, Student's argument is flawed for several reasons. First, Ms. Woodman credibly testified that the grammar and mechanics is not a separate subtest of Essay Composition, but an optional scoring portion of the Essay Composition subtest. The same essay that Ms. Woodman evaluated for word count, theme and development, and text organization in the Essay Composition subtest could be used to develop a score for grammar and mechanics. Ms. Lindsey's failure to identify it as a scoring portion and not a separate subtest shows Ms. Lindsey lack of familiarity with the Wechsler's testing protocols and scoring process. As such, Ms. Lindsey's testimony regarding this issue was not given much weight.

23. Secondly, Ms. Woodman chose not to score the grammar and mechanics portion of the Essay Composition because the testing protocols and scoring manual specified that the scoring of this subsection is optional. Typically, she did not score the grammar and mechanics portions unless the student was at a lower functioning level than Student. Although Student's writing sample showed some mechanical defects, Student had the ability to construct a paragraph. Ms. Woodman's decision not to score the grammar and mechanics of the subtest did not affect the accuracy of Student's score on the Essay Composition portion of the Wechsler. Finally, Ms. Woodman did assess Student's grammar and mechanics skills by administering the Wechsler's Sentence Composition subtest, which showed Student's skills to be in the average range.

24. Student also argues that the assessment was defective because Ms. Woodman did not administer the oral fluency subtest of the Wechsler. Ms. Woodman did not administer that subtest because Student's classroom teacher had tested Student's oral fluency skills just prior to Ms. Woodman's administration of the Wechsler. Ms. Phinney included Student's scores on the Oral Reading Passage that Ms. Wallace administered in the written report. Student's score on that test was 167 words per minute with 98 percent accuracy and 100 percent comprehension. These test results indicated that Student did not require additional testing in this area as this was not an area of need for him. Ms. Woodman did administer the other two subtests in the Oral Language of the Wechsler. Student's oral expression skills and listening comprehension skills were both in the average range.

25. In his closing brief, Student argues for the first time that Ms. Woodman's testing results were not accurate because Ms. Woodman failed to compute the timed scores for the Pseudoword Decoding and the Word Reading subtests of the Wechsler. Student's counsel never questioned Ms. Woodman regarding whether she had scored the timed portion of those subtests or about the reason she had elected not to do so. No witness testified that

those scoring portions of the Wechsler were required or that the failure to score those portions would invalidate the testing results.

26. During her testimony, when asked, Ms. Woodman credibly explained all of the subtests she gave Student, the areas each subtest covered, reasons for not administering a subtest, scoring of the subtests, and Student's performance on each subtest. Ms. Woodman's testimony showed she was very familiar with Wechsler and its scoring process. Her testimony was matter of fact, consistent with the assessment she had performed, and she was able to explain testing results clearly. Ms. Woodman testified that she followed the testing protocols and scoring manual when administering the Wechsler. As such, Ms. Woodman's testimony was given great weight.

27. As part of the academic assessment, Ms. Phinney interviewed Student's classroom teacher about Student's academic strengths and weaknesses. She included a summary of that interview in the psychoeducational written report. The written report also included Student's prior scores on the Wechsler Individual Achievement Test, 2nd Edition that had been used to assess Student's academic achievement in 2006.

28. Ms. Woodman related her observations regarding the academic testing to Ms. Phinney, as well as providing her a copy of Student's test results. The psychoeducational report accurately reflected Ms. Woodman's observations during the academic testing.

#### *COGNITIVE PORTION*

29. Ms. Phinney's assessment consisted of standardized testing of Student, observation of Student, interview of Mother, interview of Student's classroom teacher, a review of Student's records including prior testing of Student, and analysis of the results of Ms. Woodman's testing. Ms. Phinney conducted her testing of Student over a three-day period. Student put forth good effort during the standardized testing portions. The test results were a valid measure of Student's functioning at the time of the assessment.

30. Ms. Phinney administered the Wechsler Intelligence Scale for Children, 4th Edition. The Wechsler IV, a standardized test, measured Student's general intellectual functioning by testing Student's verbal comprehension, perceptual reasoning, working memory, and processing speed, to determine Student's full-scale intelligence quotient. Student's full scale IQ was 116, which was in the high average range. The testing revealed that Student showed strength with his mental and grapho-motor processing speed. Student's working memory and verbal comprehension scores were in the average range, while Student's perceptual reasoning skills were in the high average range.

31. Ms. Phinney administered the Berry-Buktencia Developmental Test of Visual-Motor Integration, 5th Edition, a standardized test that measured Student's visual-motor integration. The test required Student to copy the images he was shown. Student demonstrated the typically developed skills of a child his age. During the test, Student

followed the directions in a very literal sense. He drew the images presented to him, by creating lines using shading, so that his lines mirrored the width of those shown in the pictures. Ms. Phinney informed Student that he did not need to mimic the width of the lines in the pictures. Despite Ms. Phinney's assurances, Student continued with that method for approximately half of that test. Student's behavior was an example of his tendency to take directions in a literal manner. With further encouragement from Ms. Phinney, Student was able to abandon his method of shading and simply draw the shapes as the test's designs became more complicated.

32. Ms. Phinney administered the Neuropsychological Development Assessment, 2nd Edition to Student. This standardized assessment was composed of a battery of tests designed to assess various complex subcomponents of Student's cognitive processing. Ms. Phinney only administered the portions of the assessment that measure social perception. The affect recognition subtest measures a student's ability to recognize another person's affect. Student scored at the expected level for this subtest. Although by nature Student had difficulty recognizing the meaning of other peoples' affect, PALS staff and Parents had spent time working with him on this issue. As a result, Student was better able to recognize the meaning of others' affect.

33. Despite testing at the expected level for the affect recognition subtest, Student tested at below and well below the expected level on the Theory of Mind portion of the Social Perception testing. Theory of Mind consisted of two tasks that are designed to assess the ability of the student to understand mental functions such as belief, intentions, deception, emotion, imagination, and pretending, as well as the ability to understand that others have their own thoughts, ideas, and feelings. In the Verbal section, Ms. Phinney read Student various scenarios or showed him pictures. She then asked Student questions that required him to have knowledge of another individual's point of view. Student showed relative weakness on this task.

34. In the second task, Ms. Phinney showed Student a picture depicting a social context and asked him to select a photograph from four options that depicted the appropriate affect of the person in the picture whose face was not shown in the picture. Student had significant difficulty with this task. The results of the Social Perception testing showed that Student could identify facial expression out of context, but he struggled significantly associating other's emotion in context. These results were consistent with the reports from Parents and teachers that Student had difficulty with perspective taking.

35. Parents completed the Childhood Autism Rating Scale-2 High Functioning as part of the assessment. The Autism Rating Scale is used to identify individuals with autism spectrum disorders and distinguish them from individuals with other types of disorders. The High Functioning Rating Scale is used with children who are verbally fluent and six years of age or older. In 14 out of the 15 areas, Student exhibited autistic-like behaviors at a level greater than his same-aged peers. Student's overall score placed him in the severe range for symptoms. Although Student's classroom teacher did not complete the Autism Rating Scale, the observations she provided to Ms. Phinney during the interview were consistent with

Parents' reporting. The Autism Rating Scale showed that social-emotional understanding was a challenge for Student. For many years, PALS worked with Student on this area of concern. However, Student continued to experience difficulty recognizing the feelings and perspectives of others. He missed many subtleties of language such as social cues and sarcasm.

36. Parents completed the Vineland Adaptive Behavior Scales, Parent/Caregiver Edition. The Vineland is helpful for determining areas of strength and weakness in the performance of the daily activities required for personal and social sufficiency. The results indicated that Student demonstrated significant weakness in the area of adaptive behavior. This significant weakness was in stark contrast to Student's well-developed intellectual functioning and demonstrated that he had difficulty generalizing his knowledge to real-life settings with socialization as his greatest challenge.

37. Ms. Phinney interviewed Mother as part of the assessment. Mother provided a great deal of insight into Student's struggles with communication and socialization. She reported that the unstructured time in school presented difficulties for Student. She explained that Student's difficulty with give and take during a conversation and his restricted areas of interest made it difficult for him to make friends. Mother expressed her concerns about Student's transition to middle school and that she would like Student to have the opportunity to socialize in a safe environment.

38. When Ms. Phinney interviewed Student's classroom teacher, Ms. Wallace, she made notes to help her remember the information accurately until she could transfer that information to her written report and she did not provide her notes to any other person. Ms. Wallace provided Ms. Phinney additional insight into Student's struggles during the school day. Ms. Wallace believed that Student needed the most support in understanding instructions, particularly with verbal instructions, and that he required frequent checking for understanding. She was concerned that during Student's transition to middle school, his teachers might think that Student understood instructions when in actuality he needed support.

39. Based on her assessment, Ms. Phinney found that Student fit the eligibility criteria for autistic-like behavior. She found that Student's deficits in areas of adaptive behavior, social interactions, and social communication impacted his involvement and progress in the general education curriculum.

#### BEHAVIOR ASSESSMENT

40. In May 2014, Christy Knowles, a behavior specialist with Folsom Cordova, conducted a behavior assessment of Student. Ms. Knowles is a Board Certified Behavior Analyst, with a master's of science degree in psychology with a concentration in Applied Behavior Analysis. In 2007, Ms. Knowles received her Autism Spectrum Disorder Certification from the University of California, Davis. Ms. Knowles had significant experience working with students with autism spectrum disorder.

41. Ms. Knowles has worked for Folsom Cordova as a behavior specialist for approximately six years. Since becoming a Board Certified Behavior Analyst, Ms. Knowles has conducted approximately 60 behavior assessments, approximately 45 of which have been of students with autism. Her work required her to develop and implement behavior intervention plans and behavior support plans for students. She consulted with teachers about students who were experiencing behavior challenges in school.

42. Her assessment consisted of a review of Student's records, classroom observations, data collection, and an interview of Student's teacher. Ms. Knowles's review of records included review of Student's prior IEP's, Student's goals, and the progress reports from PALS. Ms. Knowles did not conduct any standardized testing of Student during her assessment because standardized testing options not available for behavior assessments.

43. From her review of Student's records, Ms. Knowles found that Student's prior behavioral concerns included scripting, raising his voice and arguing with peers, pushing peers, not following directions, and not responding to prompts. Scripting is the repetition of words or phrases either aloud or silently. Student scripted the lines from Scooby Doo cartoons.

44. Prior to conducting her observations, Ms. Knowles had Ms. Wallace complete the Functional Assessment Checklist. The results of the checklist indicated that Student was "somewhat likely" to engage in problem behaviors such as raising his voice, arguing with peers and pushing peers, during lunch time and recess and unlikely to engage in problem behaviors during all other times of the school day. When Ms. Knowles conducted her observation of Student, she looked specifically at the behaviors described by Ms. Wallace and those listed in his records.

45. During her three observations of Student at school, Ms. Knowles used momentary time<sup>4</sup> sampling to determine the rate of on-task behavior and off-task behavior. Ms. Knowles categorized on-task behaviors as when Student was academically engaged and off-task behaviors as when Student was engaged in an activity other than the current academic task. Ms. Knowles also recorded occurrences of disruptive behavior, negative social interactions, and appropriate social interactions. Ms. Knowles scheduled her observations at varying times of the school day in order to collect data of Student while he engaged in a variety of academic and non-academic activities at school.

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<sup>4</sup> Momentary time sampling involves observing whether a behavior occurs or does not occur during a specified time period. Once the length of an observation session is identified, the time is broken down into smaller intervals that are all equal in length. Once the length of an observation session is determined, the observer breaks down the time into smaller intervals that are all equal in length. The observer looks up and records whether a behavior occurs or does not occur at the end of the interval.

46. The first observation took place from 8:30 a.m. to 9:30 a.m. on May 8, 2014. During that time, Ms. Knowles observed Student arrive in the classroom, work on computers in the library, and participate in homework check-in and classroom jobs. During the observation, Student was not off task, he did not exhibit any disruptive behaviors, and did not engage in any negative social interactions. Ms. Knowles also observed Student engage in appropriate social interaction during that observation.

47. The second observation occurred on May 13, 2014, from 10:30 a.m. to 12:30 p.m. During that observation, Student's class watched an orchestra concert in the school's multipurpose room and performed independent class work. Student was on task the entire observation period and did not exhibit any disruptive or negative social behaviors.

48. Ms. Knowles conducted her third observation of Student on May 15, 2014 from 12:30 p.m. to 2:30 p.m. She observed Student in his class during teacher lecturing, independent work, and small group work. During that time, Student was only off task one percent of the time. Student did not exhibit disruptive behavior or engage in any negative social interactions. During the observation session, a peer conflict arose during small group work and was resolved when Student initiated getting help from the classroom teacher. Student's response to the peer conflict was appropriate and so was included in the data as an appropriate social interaction.

49. Ms. Knowles also evaluated Student's ability to follow instructions from all three sessions. The classroom teacher delivered 86 percent of the instructions. Student complied with teacher delivered instructions, which were provided to the entire class in 91 percent of the opportunities without prompting. After one additional verbal or gestural prompt from the teacher, Student complied with the instruction. When the teacher delivered instructions directly to Student, he complied in 93 percent of opportunities without prompting. After one verbal prompt, Student complied with the original instruction.

50. When combining the results from all three of the observations, Student was on task 99 percent of the time. During all three of the observation periods, Ms. Knowles did not observe Student to exhibit any disruptive behavior or negative social interactions. Nor did Ms. Knowles see Student engage in scripting.

51. Ms. Knowles noted that Ms. Wallace used positive behavior support interventions in the classroom. Those interventions included descriptive verbal praise, proximity and eye contact, preferential seating, verbal warnings prior to transitions and changes in the schedule, visual schedules, and verbal and gestural prompting. As the observation occurred towards the end of the school year, the teacher and Student had established a rapport and routine.

52. Ms. Knowles summarized her findings in a written report. On August 15, 2014, Ms. Knowles provided Parents with a copy of her draft report via email. After reviewing the report, Parents sent Ms. Knowles an email requesting clarifying information regarding her report. Parents inquired about the times of observations, Ms. Knowles's arrival

and departure times during observations, how she chose the times for observation, the types of activities occurring during observation, and the identity of the staff members she interviewed.

53. To address Parents' inquiries, Ms. Knowles revised her report to include the information requested by Parents. On August 21, 2014, Ms. Knowles sent Parents a copy of her revised report by email. In that email, she invited Parents to contact her in the event that they had any additional questions. Parents did not contact Ms. Knowles with any additional questions. However, when she presented her assessment at the October 23, 2014 IEP team meeting, Parents did ask her questions regarding her methodology and her findings.

54. In her report, Ms. Knowles included the data from each of the three observations in the form of charts. These charts were problematic for several reasons. Ms. Knowles failed to label the Y-axis of the charts, thus making them difficult to understand. Additionally, the amount of minutes listed on the Y-axis for the first and second observation appeared inconsistent with length of the observation. Furthermore, Ms. Knowles included the data results for Student's disruptive behaviors, negative social interactions, and appropriate social interactions on the same charts with the data for when Student was academically engaged (on-task) and off task. This method of reporting the data was inaccurate, as the behaviors were not measured in the same manner.

55. During the hearing, Ms. Knowles acknowledged that she should have separated out academically engaged and off task data from the rest of the data to avoid confusion. However, in the body of her report, Ms. Knowles explained her findings except for listing the number of times Student engaged in appropriate social interactions. That information was contained in the raw data that Ms. Knowles collected. Including the charts did not invalidate the results of Ms. Knowles's assessment because of Ms. Knowles's explanation of her findings in the body of her report.

56. In her report, Ms. Knowles also presented a series of recommendations that she reviewed with the IEP team at the October 23, 2014 meeting. She recommended that Student's social communication skills deficits continue to be addressed through his speech and language goals. She also recommended that positive behavior strategies, such as use of a visual schedule, preferential seating, and warnings prior to changes in schedule continue to be implemented.

#### SPEECH AND LANGUAGE ASSESSMENT

57. In May 2014, Jane deGelleke, a licensed speech and language pathologist, who worked for American River Speech, conducted a speech and language assessment of Student. Ms. deGelleke was very familiar with Student as she had provided Student with speech and language therapy for a number of years.

58. Ms. deGelleke's assessment consisted of the administration of the Comprehensive Assessment of Spoken Language, the Expressive One-Word Picture

Vocabulary Test, the Pragmatic Language Criterion Checklist, and clinical observations. She evaluated Student over a two-hour period during two separate sessions. Student willingly participated in the assessment. The results of the assessment were a valid representation of Student's speech and language skills.

59. Ms. deGelleke found that Student experienced a deficit with his pragmatic language skills and social communication skills and that the deficit contributed negatively to his interactions with adults and peers. Pragmatic language skills allow a person to use language appropriately in relation to the situation and the ability to modify language appropriately to the situation.

60. Even though Student scored well on the Comprehensive Assessment of Spoken Language's Pragmatic Judgement subtest, Student still exhibited a deficit with his pragmatic language skills. It is not uncommon for a child to score well on the Pragmatic Judgement subtest, but not be able to access those pragmatic language skills during a real conversation. Student was able to engage appropriately in taking turns during a conversation, but he fixated on his own personal interests, such as the Food Network or Scooby Doo, and did not show interest in the information the other person was sharing, unless it directly related to his own interests. When engaging in a conversation not of Student's choosing, Student's motivation to continue the conversation markedly decreased. During a conversation, Student rarely asked the other person any questions.

61. Student also had difficulty with social communication. Student showed great difficulty understanding other's emotions and thoughts. Student often overreacted to minor problems and social situations with extreme emotions, which inappropriately reflected the true size of the problem. Along the same line, Student had difficulty understanding the meaning of his own tone of voice when speaking and difficulty understanding his own nonverbal communication. These deficits lead to Student having difficulty interacting appropriately with peers.

62. Ms. deGelleke found that Student exhibited dysfluencies or stutter in the mild to severe range depending on the communication situation. Student's atypical stutter manifested in final syllable repetition, final word repetition, breaks within words, initial syllable repetition, and whole word repetition. Student was aware of his stutter. In the therapy setting, he was able to pause, gather his thoughts, and deliver the message without the stutter. Student's disfluency increased decidedly, when he engaged in communication activities that required thought, were less familiar to him, were not routine social situations, and in situations he perceived as a problem. This type of disfluency is found generally in children who have an autism spectrum diagnosis. Student's disfluency negatively impacted his ability to access the curriculum.

63. During the assessment, Student did not exhibit deficits in the areas of articulation, listening comprehension, and oral expression skill. Additionally, testing indicated that Student's vocabulary skills were one of Student's strengths. Based on her assessment, Ms. deGelleke recommended that Student continue receiving 60 minutes of

special education speech and language services two times a week to address his fluency, pragmatic language, and social communication deficits.

*2014-2015 School Year*

64. At the beginning of the 2014-2015 school year, Student matriculated into the sixth grade at Folsom Middle School. At Folsom Middle, Student attended eight classes with a different teacher for each of his classes. The PALS aides continued to shadow Student throughout his school day.

65. Throughout the school year, Ms. deGelleke provided Student with two hours of speech and language services outside of the school day. During that time, she worked with Student on the goals that she had developed for him. Student continued to make progress with his speech fluency and his social communication skills.

66. In class, Student required very little redirection or prompting to stay on task. Generally, Student's teachers were able to use direct or indirect prompting to get Student back on task. At times, the PALS aides would use proximity, indirect, or direct prompting to get Student back on task.

PARENT'S REQUEST FOR RECORDS

*AUGUST 22, 2014 AND AUGUST 26, 2014 REQUESTS*

67. On Friday, August 22, 2014, in an email directed to Ms. Phinney, Parents requested that Ms. Phinney provide them with the testing protocol, raw scores, subtest scores, teacher questionnaires, and all of Student's answer sheets regarding Ms. Phinney's assessment. Parents also asked some specific questions about Ms. Phinney's assessment procedures. Parents felt that the requested information would allow them "to better understand" what the assessment was "trying to convey." In this email, Parents did not request documentation for any other assessment.

68. On the second business day after Parents' request, Ms. Phinney sent a response email to Parents. She answered Parents' questions and explained that she only completed formal questionnaires with Parents and that the information provided by Student's teacher was included in her assessment report. She indicated that she would work on gathering the requested information and contact Parents by email that afternoon.

69. That same day, Parents sent a response email. Parents then indicated that they were looking for Ms. Phinney to act as the "point person" for getting all the reports and being "in charge." Parents indicated that on the assessment plan that Ms. Phinney had "assigned" teacher interviews to herself and Ms. Knowles and that they were requesting those documents. However, Parents' email was very confusing and Parents appeared to be referencing their prior email correspondence in which they requested teacher interviews from

Ms. Phinney. The weight of the evidence indicates that this was not a request for records for Ms. Knowles's assessment.

70. In that same email, Parents clarified that they are asking for "sub tests, scores, etc." from Ms. Woodman's assessment. Parents further requested "teacher emails or questionnaires" regarding Student and they wanted the "proper" information to be able to understand the reports and participate at the IEP which was scheduled for the following day. In a subsequent conversation, Ms. Phinney explained that she was not in charge and that she could only provide the documents she had in her possession

71. Ms. Phinney responded on the same day she received Parents' email that she had copies of her testing protocols to give Parent and that Ms. Woodman was printing out the requested information for Parents. She reiterated that she only had her personal notes of the teacher interview.

72. Later in the day, Ms. Phinney provided Mother with a copy of the testing protocols for the tests she administered, Student' testing answer sheets and booklets, and Parents' questionnaire. At the time Mother picked up those items, she spoke to Ms. Phinney and Ms. Woodman. Ms. Woodman explained she did not have the testing protocols and answer booklet in her possession because she had provided it to "the powers that be." Ms. Phinney also explained to Mother that Hunt Lin, one of Folsom Cordova's secondary program specialists, was the person in charge of the information and that she could only provide the documents that were in her possession.

*SEPTEMBER 5, 2014, SEPTEMBER 8, 2014, SEPTEMBER 9, 2014 REQUESTS*

73. On Friday, September 5, 2014, Parents sent Mr. Lin an email reiterating Parents' request for records. In the email, Parents specified that they were requesting "teacher documents" of the interviews Ms. Phinney and Ms. Knowles conducted as part of their assessments. This email constituted Parent's first request for documentation of Ms. Knowles's teacher interviews. Ms. Phinney had already informed Parents that she did not have Student's teacher fill out an interview questionnaire, but instead took notes while interviewing Student's teacher. As part of her assessment, Ms. Knowles had Student's classroom teacher complete a questionnaire regarding Student's behaviors. Ms. Knowles provided that document to Parents at the December 4, 2014 IEP team meeting.

74. On September 8, 2014, Ms. Phinney sent Parents an email with some informational materials regarding understanding test scores and statistics to assist Parents in their understanding of the meaning of the test scores. In addition, she offered to meet with Parents to discuss the testing. On that same day, in a separate email, Ms. Phinney informed Parents that she had located Ms. Woodman's testing protocols and answer booklet. Ms. Phinney had forgotten that Ms. Woodman had given her those documents earlier.

75. On September 8, 2014, Parents sent Mr. Lin an email indicating that although Ms. Phinney promised to provide Parents with Ms. Woodman's testing protocols and answer

booklet on September 9, 2014, that Parents still had not received the “rest of the documentation” they requested. The email never identified what documents Parents believed that they had requested but not received.

76. On September 9, 2014, after picking up copies of Ms. Woodman’s testing protocols and Student’s answer booklet, Parents sent Ms. Phinney another email indicating that they were still missing the other items they requested. Ms. Phinney responded that she did not understand what other documents Parents were requesting and recommended that Parents contact Mr. Lin.

77. On September 16, 2014, Mr. Lin sent an email to Parents asking for clarification of the type of the documents Parents had requested but had not yet received. He also renewed the offer for the school psychologist and the special education teacher to review the testing protocols with Parents. As of that time, Folsom Cordova provided Parents with the records they had requested.

*SEPTEMBER 21, 2014 AND SEPTEMBER 22, 2014 REQUESTS*

78. Parents sent Mr. Lin an email that directed Mr. Lin to see prior emails for the identity of the previously requested documents Parents were waiting for Folsom Cordova to provide them. Parents also indicated that they would not meet with Ms. Woodman, Ms. Phinney, and Ms. Marjerison about the testing, as offered at the August 28, 2014 IEP team meeting, because it would not be productive until Parents have received all of the requested documentation.

79. At the time of Parents’ email, Ms. Phinney already had provided Parents with her testing protocols, Parent questionnaires, the testing booklets, Ms. Woodman’s testing protocols, and Student’s answer booklet. The only documents that Folsom Cordova had not provided per Parents’ record request were teacher interview documents for Ms. Phinney’s and Ms. Knowles’s assessment.

80. The evidence shows that Parents did not make a records request to Folsom Cordova on September 22, 2014. Neither party presented any emails from Parents directed to Folsom Cordova with that date. On September 22, 2014, Ms. Phinney sent Parents an email indicating that she believed that she had provided all of the documentation that they requested from her. She also specified that the only other information requested by Parents was contained in her personal notes and she had destroyed them after she memorialized that information in her assessment report. During the course of the hearing, Student did not present any evidence showing that Ms. Phinney had failed to transcribe her notes accurately into her report.

81. On September 23, 2014, Mr. Lin sent an email to Parents asking them to inform him if they were missing any other requested documentation. Parents did not respond to Mr. Lin’s inquiry.

*NOVEMBER 4, 2014 REQUEST*

82. On November 4, 2014, Parents sent Mr. Lin an email. In the email, Parents indicated that they had previously requested all teacher reports and teacher emails related to the triennial assessment of Student, and that they had not received those documents. Parents also specified that they had specifically requested that Ms. Knowles provide a copy of the Functional Assessment Checklist for Teachers and Staff, which Ms. Wallace completed.

*AUGUST 27, 2014 IEP TEAM MEETING*

83. On August 27, 2014, Folsom Cordova convened an IEP team meeting to review the triennial assessments of Student. The IEP team consisted of Parents; Kara Meador, one of Student's general education teachers; John Bliss, the principal at Folsom Middle School; Mr. Lin; Ms. Phinney; Richard Pinnell, a school psychologist at Folsom Middle School; Ms. deGelleke; Alex Stewart, a speech and language pathologist with Folsom Cordova; Nancy Fellmeth, a family friend of Parents and president of Families for Early Autism Treatment; Karen Brizedine, a special education teacher and Student's case manager; Beth Costello, a behaviorist with Folsom Cordova; Mary Ann Delleney, a school nurse with Folsom Cordova; Nicole Helmick from PALS; and Martin Mahoney from PALS.

84. Mr. Lin facilitated the IEP team meeting and the subsequent three meetings. Mr. Lin made it clear to the IEP team members that this was only the first part of the IEP team meeting and that a subsequent meeting or meetings would be necessary to complete Student's IEP. Folsom Cordova scheduled the IEP team meeting for a two-hour period. Parents had requested the meeting to be scheduled for a longer period. The time limitation placed on the meeting did not restrict Parents' participation in the meeting, because Folsom Cordova intended on holding a subsequent meeting or meetings to complete Student's IEP.

85. At the beginning of the meeting, Mr. Lin tried to establish some ground rules, such as allowing others to finish speaking before beginning speaking, to help facilitate the meeting. Additionally, during the meeting, Mr. Lin asked that everyone hold their questions until presenting assessors completed their oral presentations. At one point, one of the district members of the team interrupted a presenting member and Mr. Lin asked that person to hold their questions until the presenting member had finished.

*HEALTH ASSESSMENT*

86. Ms. Delleney presented the health assessment that the school nurse at Oak Chan conducted. Prior to the meeting, Ms. Phinney provided Parents with a copy of the health assessment report. Mother indicated that she agreed with the information contained in the report. None of the IEP team members had any questions about the report. The assessment report did not identify any needs that needed to be addressed in Student's IEP.

### *SPEECH ASSESSMENT*

87. Ms. deGelleke reviewed her assessment and Student's progress. Ms. deGelleke explained Student's deficits revolved around pragmatic language. She explained to the team that Student's difficulty with cognitive perspective taking which prevented him from dealing with anger and disappointment appropriately. Student would allow a very small disappointment to ruin his entire day. He had difficulty measuring the importance of a disappointing event. She provided the example, that Student would have the same level of anger or disappointment over choosing the wrong game piece during a game, as he would over getting an "F" on a test.

88. Ms. deGelleke also explained Student's fluency deficit. She explained that when giving an oral report on an unfamiliar subject, he would exhibit dysfluency. In his speech and language therapy session, Ms. deGelleke had been working with Student on oral presentations.

### *ACADEMIC ACHIEVEMENT TESTING*

89. Ms. Woodman presented her portion of the academic assessment. Her role was limited to administering the Wechsler to Student and interpreting the results. Mother continually interrupted Ms. Woodman during the presentation. Many of Mother's questions focused on the method in which Ms. Woodman conducted the testing and whether she followed the testing protocols. As Folsom Cordova had not been provided the testing protocols prior to the IEP team meeting, an offer was made for a separate meeting to be held outside of the IEP team meetings so that Mother would have the opportunity to review the protocols and Mother's questions regarding the protocols could be answered. Mother declined the offer because she felt that the entire team should hear her questions and Ms. Woodman's responses.

90. Ms. Woodman identified that reading comprehension was an area of weakness for Student. Although Student tested in the average range, his score was at the low end of the average range. As such, Ms. Woodman recommended that the IEP team develop a goal in the area of reading comprehension.

91. At no point during the meeting was Mother told that she could not ask questions of Ms. Woodman or other team members; rather, Mr. Lin asked to hold her questions so that the presentations could be completed. After Mr. Lin's request, Mother still asked questions and shared information. Parents fully participated as IEP team members by asking questions, challenging the findings of assessments, and providing input.

92. At the end of the meeting, Mr. Lin inquired of Parents whether they required the staff members from Oak Chan to be present at the next meeting. Parents specified that Ms. Woodman did not need to attend the next IEP team meeting, but that Ms. Phinney needed to continue attending the IEP team meetings.

### *ELIGIBILITY*

93. After a brief discussion, the IEP team found Student eligible for special education services under the category of autism. Parents were in agreement with the district members of the IEP team about Student's eligibility.

#### OCTOBER 23, 2014 IEP TEAM MEETING

94. On October 23, 2014, Student's IEP team met to review the remaining assessments, discuss Student's present levels of performance, IEP goals, accommodations, statewide assessments, and placement. The IEP team members at the meeting included Parents, Mr. Lin, Ms. Marjerison, Mr. Bliss, Mr. Pinnell, Ms. Meador, Ms. Stewart, Mr. Mahoney, Ms. Helmick, Ms. deGelleke, Ms. Brizendine, Ms. Knowles, and Ms. Fellmeth. Both Parents and Folsom Cordova recorded the meeting. The meeting spanned approximately a two-hour period. As the IEP team was unable to cover all of the issues on the agenda, a third IEP team meeting was scheduled.

95. Throughout the meeting, Parents fully participated as IEP team members by asking questions and providing input. At no point did any district member of the IEP team prevent Parents from participating in the meeting.

### *PALS'S REPORT AND RECOMMENDATIONS*

96. During the meeting, Mr. Mahoney, the director of PALS and a Board Certified Behavior Analyst, provided the IEP team with information about the services PALS provided Student, Student's progress since the beginning of the school year, and recommended goals for Student.<sup>5</sup> Along with Ms. Helmick, who is not a Board Certified Behavior Analyst, Mr. Mahoney supervised the PALS behavior aides who worked with Student.

97. Two to three days a week, the PALS aides collected behavioral data on Student, unless additional data was required to monitor Student's progress on a particular goal. The data collection focused on Student's needs and progress. PALS staff looked at the data to determine Student's areas of need and created programs to address those needs. The created programs were implemented as a part of Student's in-home program and during school breaks and shortened days. After PALS implemented a program, the aides monitored Student to see if Student was generalizing those new skills at school.

98. PALS staff used behavior mapping to address Student's inappropriate behaviors. The PALS staff mapped out the reason for the inappropriate behavior, others' perception of the behavior, and the reward for Student utilizing the replacement behavior.

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<sup>5</sup> Mr. Mahoney transferred to the PALS office that supported Student in the spring or summer of 2014. Prior to Mr. Mahoney's arrival, another Board Certified Behavior Analyst was in charge of Student's case.

This process could help Student better understand his own behaviors and the effect of his behavior.

99. PALS had put into place systems to reinforce when Student demonstrated a set of skills that he had been working on with PALS. As a reward for demonstrating his skill in a generalized setting, Parents allowed Student a preferred activity at home. The PALS aides communicated regularly with Parents about Student's progress during the school day.

100. Social stories had also been an effective tool to help Student navigate difficult social situations. Mr. Mahoney created a script written in first person perspective. The stories allowed Student to learn various ways of dealing with the social situations described in the stories. Generally, it took Student several days to understand the social stories.

101. PALS produced monthly progress reports for Student that it sent to Folsom Cordova. PALS staff determined Student's progress by interpreting the behavioral data collected by the aides and through their own observations of Student. Mr. Mahoney reviewed the reports before PALS sent them to Folsom Cordova. Approximately one time a month, Mr. Mahoney observed Student in school.

102. Many of Student's inappropriate behaviors were difficult to see. When Student was scripting in his head he attempted to look as if he was not scripting, thus making it difficult to know that he was off-task. In addition, Student's self-stimulating behaviors, such as rubbing the tag on his shirt, were difficult to see unless the observer was aware of the behavior. The PALS aides had become accustomed to Student's behavior so they were able to recognize his off-task behaviors and redirect Student through either direct or indirect prompting.

103. One of the areas of need that PALS staff had addressed with Student was the recording of homework. Student had difficulty recording homework, so the PALS staff had been working with Student on learning to record his homework correctly. Until Student mastered the task, PALS aides would continue to record Student's homework assignments for him every day.

104. At Oak Chan, Student had experienced some teasing and bullying. Mr. Mahoney indicated that by maintaining the PALS aides as support for Student, the PALS aides would be able to address the situation if they observed bullying. However, the PALS aides were unaware that another student was bullying Student in the locker room when he was changing for physical education class. Student did not report the behavior to the aides, but reported it to Parents.

105. Mr. Mahoney opined that behavior aides provided by Folsom Cordova would not be able to perform the functions of the PALS aides because the district aides would not be properly trained. Mr. Mahoney and Ms. Helmick prepared a consultation report dated August 27, 2014. Mr. Mahoney presented the findings of that report during the IEP team

meeting. He answered the questions posed to him by the IEP team meetings regarding his report, recommendations, and PALS's role in providing support to Student.

106. Mr. Mahoney recommended that Student's program should include the support of a one-to-one aide. He believed the aide should be trained in effective behavior management techniques and behavioral data collection. He also believed that the aide needed to collaborate with home caregivers and school personnel to provide a cohesive reward system, and that the aides needed to be supervised by a professional trained in behavior intervention including school integration, peer socialization, and behavior management. Mr. Mahoney believed that Student's program required supervision of the aides by a clinic director five hours a month, and supervision of a clinic supervisor for 10 hours a month. PALS intention was to continue assigning the same three aides to support Student; however, PALS could not guarantee that those aides would continue working for PALS.

107. In addition, Mr. Mahoney recommended that Folsom Cordova provide Student with PALS support services throughout the entire calendar year. Mr. Mahoney's recommendations assumed that PALS would be continuing as the provider of Student's behavior support. However, an example of the services that PALS provided over a recent holiday when school was not in session was not about helping Student retain the skills he had learned during the school year. Instead, the focus of the support was on learning the new skill of how to purchase lunch at school. Student had wanted to purchase hot lunch, but was worried that he did not know how to do so and that it would disrupt the lunchtime routine that he had developed for himself. The PALS staff created a social story about purchasing lunch so that Student could be comfortable doing it.

108. After Mr. Mahoney completed his presentation, the team engaged in a vigorous discussion about Student's progress, the services PALS was providing, and the services PALS was recommending. Most of the team had not reviewed the monthly progress reports from PALS, which PALS sent Folsom Cordova. Mother felt that the IEP team's failure to review the reports and failure to bring the reports to the meeting demonstrated a lack of knowledge of Student's progress reports. However, the team members asked questions of Mr. Mahoney during the meeting to gain clarity about Student's progress and the services that PALS had been providing. The evidence showed that the presentations by the IEP team members during the meeting allowed the other team members to have a better understanding of Student's present levels of performance.

109. PALS's proposed goals were not discussed at the October 23, 2014 IEP team meeting because the IEP team ran out of time. Mr. Mahoney presented the goals at the April 9, 2015 IEP team meeting.

*MS. KNOWLES'S PRESENTATION*

110. Ms. Knowles presented the findings of her assessment during the IEP team meeting. Ms. Knowles explained her data collection procedures and the types of behavior

that she was looking for during her observations. Ms. Knowles explained to the team that she provided Student's teacher with the checklist prior to her observations so that she could have information about Student's behaviors that were of concern.

111. During the meeting, Mother questioned Ms. Knowles on her findings. Ms. Knowles answered Mother's questions. Ms. Knowles indicated that the data she had taken was in a single class setting with one teacher and that now Student was attending multiple classes with multiple teachers the data collection in his current class setting might look different. However, she explained the data was still viable because it showed Student's ability to generalize proximity prompts with not just the aides but also other district staff members.

112. Throughout Ms. Knowles's presentation, Parents questioned her extensively about her findings and recommendations. Additionally, Parents voiced their disagreement with those findings and recommendations.

113. At the meeting, Ms. Knowles learned that Parents wanted a copy of the teacher questionnaire that Ms. Wallace completed. Ms. Knowles still had the questionnaire in her possession and she told Parents she would provide them with a copy of it.

#### *TEACHER REPORTS ON STUDENT'S PRESENT LEVELS OF PERFORMANCE*

114. Ms. Meador, Student's current social studies teacher, provided some insight into Student's present levels of performance. She indicated that academically Student's skills were "very strong." Student periodically needed a prompt or proximity reminder to get back on task, but that was no different from his peers. At the time of the meeting, Student had a high "A" in social studies.

115. Ms. Meador indicated that Student "slightly" struggled with group interactions depending on the group. Ms. Meador structured her class into groups of three so that each group members had a task to perform. She changed her grouping of students every couple of weeks, so that the students would have the opportunity to work with different group members. Ms. Meador shared with the team that Student's communication skills in class had improved since the beginning of the school year. During class time in Ms. Meador's class, Student remained focused and quiet.

116. After Ms. Meador shared her observations on Student's progress, Ms. Brizendine presented the reports from Student's teachers who were not present at the meeting. Student had the most difficulty in math class and was receiving a "D" at that time. Student had difficulty staying on task in class without an adult remaining in proximity of him. The prompting from the aide helped Student stay on task.

117. Student's other teachers reported that Student was performing well in class and was not exhibiting behavioral problems. Student was receiving a "B" in English and a

“B+” in science. The teachers were using positive behavioral supports, such as prompting, to help keep Student on-task.

#### *SPEECH AND LANGUAGE GOALS*

118. Ms. deGelleke reviewed her proposed annual speech and language goals for Student. The first speech goal addressed Student’s atypical dysfluency. Ms. deGelleke explained the purpose of the goal and its direct relationship to Student’s fluency deficit. The second speech and language goal supported the first goal. The second goal addressed Student’s dysfluency by teaching Student to use a variety of graphic organizers to organize his thoughts.

119. The third and fourth goals addressed Student’s social communication deficits. Ms. deGelleke developed the third goal with input from Parents. The goal revolved around addressing Student’s deficit in the area of cognitive perspective taking. When presenting the goal, Ms. deGelleke explained the method in which she had been addressing this area of need during Student’s therapy. The fourth goal focused on developing Student’s difficulty understanding the emotions that tones of voice represent.

120. Ms. deGelleke did not have the opportunity to present the fifth goal because she had to leave the meeting. Parents indicated that they were in agreement with the four goals as presented, but they were not comfortable providing any written consent until the goals had been included in a finalized IEP.

121. The four speech and language goals presented at the IEP team meeting addressed Student’s speech and language deficits. They each contained a description of the manner in which Student’s progress on the goal would be measured and identified the parties responsible for supporting the goal.

122. The IEP team adjourned the meeting, once it reached the time scheduled for the meeting to conclude. Mr. Lin indicated that he would be notifying the IEP team members, including Parents, of the next meeting date.

#### DECEMBER 4, 2015 IEP TEAM MEETING

123. On December 4, 2015, the IEP team met to complete Student’s IEP. The following members were present: Parents, Mr. Lin, Ms. Marjerison, Mr. Bliss, Mr. Pinnel, Ms. Meador, Ms. Stewart, Mr. Mahoney, Ms. Helmick, Ms. deGelleke, Ms. Brizendine, Ms. Knowles, and Ms. Fellmeth. Mr. Lin continued in his role as facilitator during the meeting. The meeting took place over approximately a two-hour period.

124. The team reviewed IEP goals one through 12. Ms. deGelleke presented the fifth speech and language goal. The goal focused on Student understanding the perspectives of others in relationship to Student’s actions. Mother voiced her concerns over the goal.

Mother only wanted the speech and language goals to be worked on during Student's speech and language therapy sessions.

125. Mother also shared her concerns about goals six through 12 with the other IEP team members. She did not feel that the goals were derived from meaningful data. Goal number nine was developed to address Student's difficulty recording the homework assignments. Mother thought it was inappropriate to use the PALS data as the baseline for the goal. Despite Mother's concerns, it was appropriate to use the PALS data as a baseline for goals.

126. Mother requested the opportunity to meet with Student's general education teachers to develop IEP goals. Mr. Lin and Mr. Bliss agreed to schedule a time so Parents could meet with Student's general education teachers to work on developing draft goals.

#### JANUARY 2015 MEETING TO ADDRESS GOALS

127. Due to the winter break, Folsom Cordova held the goal meeting in January 2015. Parents proposed three dates for the end of January. Folsom Cordova held the goal meeting on January 28, 2015, one of Parents' suggested dates.

128. On that day, Parents met with Student's science teacher, math teacher, English teacher, physical education teacher, Ms. Meador, Student's history teacher, and Ms. Knowles to discuss his present levels of performance and potential IEP goals. The goal meeting was held outside of the IEP process and was designed to allow Parents and Ms. Brizendine the opportunity to work on proposed IEP goals with the assistance of Student's teachers. Parents met with each of the teachers separately for approximately one-hour sessions.

129. The meeting took approximately six hours. Ms. Brizendine attended the entire meeting and Mr. Bliss and Ms. Knowles attended a portion of the meeting. Mr. Mahoney also participated in the meeting. Ms. Brizendine used the information from the meeting to construct proposed IEP goals for Student. She presented those IEP goals at the April 9, 2015 IEP team meeting.

130. Parents did not feel that enough work was accomplished during the goal meeting so they requested an additional goal meeting. Parents believed that all of the teachers should have been present at the same time during the meeting and that the goals should have been drafted at that time. However, this meeting was not designed to finalize goals, but to gather additional information from Student's teachers to assist in the drafting of goals.

131. Subsequently, Folsom Cordova attempted to set a final IEP team meeting so that the IEP team could complete Student's IEP. However, Parents declined because they felt that Folsom Cordova needed to hold another goal meeting with them prior to convening an IEP team meeting. No further meetings of this type were necessary because Ms. Brizendine was able to draft proposed goals based on the information she obtained from the goal meeting. As such, Folsom Cordova declined to hold another goal meeting and

eventually Parents agreed to meet for an IEP team meeting. On March 2, 2015, in an email to Mr. Lin, Mother proposed setting an IEP team meeting for April 9, 2015.

#### APRIL 9, 2015 IEP TEAM MEETING

132. On April 9, 2015, the IEP team met to complete Student's IEP process. The following members of IEP team were present for the meeting: Parents, Mr. Lin, Ms. Marjerison, Mr. Bliss, Mr. Pinnell, Ms. Meador, Ms. Stewart, Mr. Mahoney, Ms. Helmick, Ms. deGelleke, Ms. Brizendine, Ms. Knowles, and Ms. Fellmeth. At the meeting, Mr. Lin continued in his role as the meeting facilitator.

133. During the meeting, Mr. Mahoney reviewed Student's progress and presented PALS's draft goals. He explained some of the areas of need that PALS had been addressing during the holidays and breaks as part of the extended school year services. Student continued to have the same types of social communication, behavioral needs, and difficulty following oral directions as outlined previously. Part of the focus of the goals was to address Student's social isolation. PALS had been working with Student to develop his knowledge of sports to help him relate to his peers. PALS had been working with Student to develop a "friend file." Student would gather information about the peers with whom he was spending his time. He would then record that information in his "friend file" so that he could access it as a way to develop conversation and a rapport with his peers.

134. Approximately the first two hours of meeting was devoted to Mr. Mahoney's presentation of Student's progress and the goals proposed by PALS. PALS proposed seven goals for Student. Many of the proposed goals focused on academics and not behavior. The IEP team, including Parents, participated in the discussion regarding the PALS goals. The team decided to break one of the goals down into two separate goals.

135. Prior to the meeting, Folsom Cordova provided Parents with a copy of the proposed goals. Ms. Brizendine began presenting the academic IEP goals that she had drafted. Mother and the rest of the team engaged in a vagarious discussion about the first goal. Mother continued to reiterate that more time was needed outside of the IEP process to develop the goals. The team spent approximately 40 minutes on the first purposed academic goal. Eventually the team, including Parents, reached a consensus on the goal.

136. As the meeting was nearing the three-hour mark, Mr. Lin began talking about running short on time. Mother indicated that another meeting was going to be necessary to discuss the goal and complete the IEP. Mr. Lin expressed his concern that it was already April and Student did not have an IEP in place. At one point, Mother indicated that Parents disagreed with all of the proposed goals and that they needed to rewrite all of them. District members asked to be able to present all of the goals to Parents. Mother explained that all of goals could have been worked out if Folsom Cordova had just agreed to another goal meeting, but because it had not agreed, "they had to pay the piper now."

137. At one point, Mother began complaining about Ms. Meador and a comment that Ms. Meador made during the goal meeting in January. Mr. Lin tried to redirect the meeting and prevent Mother from verbally attacking Ms. Meador, but Mother would not be dissuaded. Mother became more irate and Mr. Lin suggested taking a break. Mother refused to take a break while the other members took a break. Later in the meeting, the rest of the proposed goals were presented to Parents. Parents expressed their disagreement with proposed goals.

138. Ms. Brizendine presented the proposed accommodations. Mr. Lin invited Parents' input on the accommodations. Parents provided their input regarding the proposed accommodations. The IEP team modified some of the accommodations to address Parents' concerns.

139. After discussing accommodations, the IEP team moved on to discuss the issues of services and placement. Ms. deGelleke recommended that Student continue receiving two hours of speech and language services per week, outside of the school setting. Ms. Stewart, a speech and language pathologist with Folsom Cordova, proposed having Student participate in a social skills group with other students for 30 minutes weekly, during the school day, to work on Student's social communication skills. Parents were admittedly opposed to Student being away from class for any amount of time, even though Folsom Cordova could schedule the social skills class during Student's elective class time.

140. PALS recommended that the IEP provide Student with 35 hours of one-to-one aide support per week even though the school week was 33 hours long. Mr. Mahoney felt that Student should be provided services before the beginning of school and after school ended. He continued to recommend the same amount of consultative and supervisor hours as recommended at the October 23, 2014 IEP team meeting.

141. Ms. Knowles indicated that Folsom Cordova could provide Student with the same level of one-to-one aide support as Student was currently receiving. She would train the behavioral aides to shadow Student and collect data. Allowing Folsom Cordova to provide the aide support would further communication between teachers and the aides, which was a concern expressed by Parents, teachers, and Mr. Mahoney. Folsom Cordova would facilitate communication between Student's in-home program and behavioral aides so that Student's in-home program could continue to work on issues that might arise at school and so the aides could monitor issues or behaviors that were identified by Student's in-home program.

142. Folsom Cordova did not abruptly end the IEP team meeting. After approximately four hours of discussion at that IEP meeting and the approximately six hours of discussion at the three prior IEP meetings, Folsom Cordova completed its presentation of the IEP offer. Parents declined to consent to the IEP.

## IEP OFFER

143. The IEP's provision of related services began on April 9, 2015 and ended on April 8, 2016. The IEP did not contemplate any period of time beyond April 8, 2016.

### *PRESENT LEVELS OF PERFORMANCE AND GOALS*

144. The IEP contained accurate present levels of performance, which were based on the information provided by teachers, PALS, assessors, and Parents. Throughout the four meetings, PALS and Ms. deGelleke provided repeated updates on Student's progress and performance levels. The team relied and focused more on the information provided by PALS about Student's behavioral needs than those identified in Ms. Knowles's assessment that was conducted at the end of Student's 2013-2014 school year.

145. The IEP offered Student five measurable speech and language goals designed to address Student's fluency needs and social communication needs. The goals identified the person or people responsible for supporting the goal.

146. The IEP offered Student a goal that addressed his executive processing needs. Student was unable to accurately record homework and assignments to his planner. This goal incorporated Student's present level of performance and needs that PALS identified.

147. Folsom Cordova proposed three academic goals to address the areas in which Student was having difficulty. The goals address Student's difficulties with reading comprehension, written expression, and mathematical reasoning.

148. Folsom Cordova proposed two goals that addressed Student's social communication skills deficits. The design of the goals was to address Student's difficulties working in small groups and his self-isolation behaviors. The later goal was designed using PALS data.

149. The IEP incorporated the seven behavior goals proposed by PALS. The IEP team slightly modified some of the language written in several of those goals. The seven goals were contained on two separate pages and were attached to Student's IEP.

150. All of the goals contained in the IEP were designed to meet Student's needs that result from his disabilities. The goals enabled Student to be involved in and make progress in the general education curriculum. Each goal defined a method to measure Student's progress on the goal. Additionally, the goals identified the person or people responsible for supporting the goals.

### *ACCOMMODATIONS*

151. The proposed accommodations were designed to address Student's needs and help Student progress in the general education environment. The IEP did not contain any

modifications of the general education curriculum for Student. There was no evidence that Student required modifications to the curriculum in order to access his education and make meaningful progress.

#### *RELATED SERVICES*

152. The IEP offered Student one-to-one aide support throughout his school day at all times. Per the IEP, the aide would maintain visual contact with Student during Student's lunchtime. Folsom Cordova would train and provide the aides, not a nonpublic agency previously provided by Student's IEP. The designated aide support would allow Student to retain his independence while still supporting his behavioral needs. Student argued that aide support provided by PALS or another nonpublic agency was necessary for Student to receive a FAPE. However, the evidence did not support a finding that Folsom Cordova was unable to provide Student with the aide support necessary for him access his educational services.

153. Student required a low level of support from the PALS aides to remain on-task during the school day. The PALS aides were able to easily redirect Student through direct or indirect prompting. The mere proximity of an aide was generally sufficient to redirect Student. Parents argue that the PALS aides are highly trained and so are able to recognize Student's subtle off-task behaviors. However, Student did not present any evidence that Folsom Cordova could not train its aides to recognize the subtleties of Student's off-task behaviors.

154. Although Student has become accustomed to the presence and prompting of the PALS aides, the original goal was to minimize Student's dependency on the aides and minimize the potential social stigma of having the support of the aide. At the beginning of the 2014-2015 school year, Parents specifically requested that each of Student's teachers not allow Student or anyone else to know that the aides were present to assist Student. As such, the transition from the PALS aides to district provided aides would not cause difficulty for Student as he has minimal contact with the PALS aides.

155. Parents argue that the support of the PALS aides is necessary to help Student socialize with other students. However, the evidence showed that Student had limited social interactions with other students even with the support of the PALS aides. The social stories and other forms of training in social skills was not provided by the PALS aides during school, but by the PALS staff during the extended school year and during the in-home program.

156. The IEP offered Student the behavior intervention services of 30 minutes monthly of consultative services from the district's Board Certified Behavior Analyst to consult and collaborate with school staff, as well as consultative services for 30 minutes monthly by PALS's supervisor to collaborate with Folsom Cordova's behaviorist. Further, it offered 30 minutes monthly of consultative services for collaboration and communication between Student's in-home behavior therapy program and Student's school-based behavior therapy program. The consultative services would allow a smoother transition from the

nonpublic agency aides to the Folsom Cordova aides, as well as providing Student with the behavioral support to help meet Student's needs.

157. The IEP offered Student with the speech and language services recommended by Ms. deGelleke that would occur outside of the regular school day. In addition, the IEP offered Student 30 minutes per week of group therapy with Folsom Cordova's speech and language therapist. As referenced in the IEP notes, that time would be used for Student to generalize the social skills he was learning in a group setting at school. The group therapy would take place during Student's school day. Student's removal from his classes for 30 minutes per week would deny Student an educational benefit. Instead, participation in the social skills group would directly address some of Student's social communication needs and allow Student to progress in meeting his social communication goals.

158. Student's IEP team considered whether or not transportation was a necessary related service. The IEP offered Student transportation from home to school and from school to home because he would not be able to access the regular bus or walk to school independently.

#### *PLACEMENT*

159. The offered placement continued to be in the general education setting with the oversight of a special education teacher. In order to support the placement, Student's case manager, who was a special education teacher, would consult with Student's general education teachers four times a week for 15 minutes

#### *EXTENDED SCHOOL YEAR SERVICES*

160. Parents requested that Student continue to receive all services, including those therapy services provided by PALS, throughout the entire calendar year. The district IEP team agreed that Student required extended school year services, but they disagreed about the quantity of behavioral services Student needed during extended school year. The IEP offered Student 60 minutes, four times daily of individualized behavior intervention services from a nonpublic agency. The start date for the services was June 5, 2015, and the end date of the services was July 31, 2015, which was several weeks longer than Folsom Cordova's standard extended school year.

161. The IEP also offered Student 60 minutes, two times a week of individualized speech and language services with a nonpublic agency beginning June 5, 2015 and ending July 31, 2015. This period was several weeks longer than Folsom Cordova's standard extended school year.

162. The evidence supports a finding that the extended school year services offered by Folsom Cordova were sufficient to help prevent regression of Student's skills during the summer break. Student did not present sufficient evidence to show that failure to provide Student with extended school year services through the calendar year was likely to cause

Student to demonstrate significant regression in skills and that the educational benefit he derived during the regular school year would be significantly jeopardized if he did not receive extended school year programming. In the past, the focus of PALS's program during those periods was to work with Student on developing new skills not on retaining skills.

#### *CLARITY OF OFFER*

163. The IEP specified that Student sometimes used inappropriate behaviors when interacting with peers and that supports were in place to address those behaviors. The IEP indicated that "PALS: goals update in attached report was presented. See behavior plan from PALS attached to this report." Student argues that this statement creates a lack of clarity of the offer because a behavior plan was not attached to the IEP.

164. Although a specific behavior plan had not been created for Student, the IEP provided behavioral supports to address Student's behaviors. A copy of the seven behavior goals designed by PALS was attached to the IEP. The box on the IEP indicating that a behavior intervention plan was attached was not checked. Instead, the box indicating that a behavior goal is part of the IEP was checked. The evidence supports the finding that it was a clerical error identifying the behavior goals as a behavior plan. That error did not create a lack of clarity or create confusion regarding the offer. The IEP team spent a considerable amount of time discussing behavior goals and behavior supports for Student. The behavior goals and behavior supports, including one-to-one aide supports sufficiently met Student's behavior needs. Student did not present evidence to indicate that Student required a behavior intervention plan.

#### *Parent's Request for Independent Education Evaluations*

165. On July 26, 2015, Parents sent Mr. Lin an email requesting that Folsom Cordova fund independent education evaluations in the areas of behavior and academics because they disagreed with Ms. Knowles and Ms. Brizendine's reports. At that time, Parents mistakenly believed that Ms. Brizendine had completed the academic assessments.

166. On August 12, 2015, Mr. Lin sent Parents a Prior Written Notice, which indicated that Folsom Cordova was declining to fund the requested independent education evaluations and provided an explanation for the denial. In the Prior Written Notice, Mr. Lin explained that although Folsom Cordova was denying Parents' request, Parents were entitled to obtain independent education evaluations at their own expense and that the results of those assessments would be considered at an IEP team meeting. Along with the Prior Written Notice, Mr. Lin included a list of local assessors, Folsom Cordova's criteria for independent education evaluations, and a copy of the procedural safeguards. On September 4, 2015, Folsom Cordova filed a timely request for due process hearing with OAH to show that its behavioral and academic assessments were appropriate.

167. During the 2015-2016 school year, Student attended seventh grade at Folsom Middle School. Because Parents had not agreed to the proposed IEP, Folsom Cordova continued to implement Student's 2008 IEP. As such, Folsom Cordova provided Student with a one-to-one aide throughout his entire school day and during holidays and school breaks. PALS continued to provide those services for Student both at school and at home.

## LEGAL CONCLUSIONS

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

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)<sup>7</sup> et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (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 individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also 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 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

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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 subsequent references to the Code of Federal Regulations are to the 2006 version.

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. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (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. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) As both parties filed due process complaints each party had the burden of proving by a preponderance of the evidence the essential elements of their claims.

#### *Folsom Cordova’s Issue 1: Folsom Cordova’s Academic and Behavioral Assessments Met All Legal Requirements*

5. Folsom Cordova contends that its academic and behavior assessments met all legal requirements such that Student is not entitled to academic and behavior independent education evaluations at public expense. Student argues that Folsom Cordova’s academic

and behavior assessments are legally deficient and so he should be entitled to independent education evaluations funded by Folsom Cordova.

6. Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) Thereafter, a special education student must be reassessed at least once every three years, or more frequently if conditions warrant, or if a parent or teacher requests an assessment. (Ed. Code, § 56381, subd. (a).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).) Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).)

#### NOTICE OF THE ASSESSMENTS

7. To obtain parental consent for an assessment, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. § 1414(b)(1); 20 U.S.C. § 1415(b)(3),(c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).)

8. Folsom Cordova provided Parents the assessment plan, which included the academic and behavioral assessment and a copy of the procedural rights at the same time. The assessment plan was in language easily understood by the general public, was provided in Parents' native language of English, explained the types of assessments to be conducted, and indicated that no educational placement or services would result from the assessment without the consent of the parent. Here, Folsom Cordova met all statutory notice requirements and the assessment plan complied with the applicable statutes.

#### ADMINISTRATION OF THE ASSESSMENTS AND WRITTEN REPORTS

9. No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).) Assessments must be conducted by individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).)

10. Tests and assessment materials must be validated for the specific purpose for which they are used; administered in accordance with any instruction provide by the

producer of the assessment; selected and administered so as not to be racially, culturally, or sexually discriminatory; and provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. §§ 1414(a)(3)(A)(i)-(iii) & (b)(3)(A)(v); Ed. Code, § 56320, subd. (a).)

11. An assessor must produce a written report of each assessment that includes whether the student may need special education and related services, and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

#### *ACADEMIC ASSESSMENT*

12. Student argues that Folsom Cordova's academic assessment does not meet legal requirements because Ms. Woodman did not use a variety of assessment tools to gather relevant academic information and that she failed to administer the assessment in accordance with the instructions provided by the producer of the assessment. Folsom Cordova argues that the academic assessment was comprehensive and met all legal requirements. Folsom Cordova was more persuasive on this point.

13. The assessor, Ms. Woodman, had the knowledge and training required to administer academic testing. Ms. Woodman had extensive experience administering the Wechsler during her lengthy career as a special education teacher. The academic testing was selected and administered so as not to be racially, culturally, or sexually discriminatory. The Wechsler is designed to measure a student's academic skills as compared to his peers, which was the purpose for which Ms. Woodman used the Wechsler to assess Student.

14. Student's argument that the academic assessment was not legally compliant because it did not use a variety of assessment tools is not compelling. The Wechsler tested Student in the areas of basic reading, written expression, mathematics, math fluency, and oral expression by using as multiple subtests in each area to determine Student's academic skill level. Additionally, Ms. Woodman's academic testing was only a portion of the psychoeducation assessment. In addition to the testing, Ms. Phinney interviewed Student's classroom teacher about his academic skills, reviewed Student's records, and interpreted the Student's scores on the Wechsler in conjunction with the other testing Ms. Phinney conducted.

15. Student alleges that Ms. Woodman failed to administer the academic testing properly. However, the weight of the evidence shows that Ms. Woodman administered the Wechsler to Student in accordance with the instructions provide by the producer of the assessment.

16. The academic testing scores and findings were included in Ms. Phinney's psychoeducational written report. She included in the psychoeducational report that Student required special education and related services, and the basis for making that determination. For this reason and those referenced above, Folsom Cordova's academic assessment met all legal requirements.

## *BEHAVIOR ASSESSMENT*

17. Student contends that Folsom Cordova's behavior assessment does not meet all legal requirements because Folsom Cordova failed to use a variety of assessment tools and strategies to gather relevant information regarding Student's behavioral needs, failed to gather additional behavioral data, and because the written report was flawed. Folsom Cordova contends that the behavioral assessment met all legal requirements.

18. Ms. Knowles possessed the knowledge and training required to conduct a behavior assessment. She was a licensed Board Certified Behavior Analyst with over six years of experiencing conducting behavior assessments. Ms. Knowles conducted her assessment in a manner in which was not racially, culturally, or sexually discriminatory. Ms. Knowles assessment methods were validated for the purpose in which they were used.

19. Ms. Knowles used a variety of assessment tools to conduct her behavior assessment of Student including a review of student's records, observations of Student during structured and unstructured times of the school day, data collection, and the Functional Assessment Checklist. Ms. Knowles used momentary time sampling data collection to determine the rate of Student's on-task behavior and off task behavior during her three formal observations of Student. She also recorded occurrences of disruptive behavior, negative social interactions, and appropriate social interactions. Ms. Knowles scheduled her observations at varying times of the school day in order to collect data of Student engaging in a variety of tasks and/or academic activities.

20. Ms. Knowles did not conduct any standardized testing of Student during her assessment because standardized testing options are not available for behavior assessments. As such, the requirement that she conduct the assessment in accordance with the instructions provided by the producer of the assessment is not applicable.

21. Ms. Knowles summarized her findings in a written report. While it is true that Ms. Knowles's written report had some flaws, those flaws were not significant enough to invalidate the results of her assessment. Her charts were not a requirement of either the assessment process or of a written assessment report. Although the three behavior charts were confusing, Ms. Knowles's explanation of her findings in the body of her report clarified the data and behavior information she obtained and clarified any confusion created by the inclusion of the charts. Therefore, Folsom Cordova's behavior report met all legal requirements.

22. Under certain conditions, a student is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56506, subd. (c) [parent has the right to an independent educational evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent educational evaluation].) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency

responsible for the education of the child in question.” (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

23. When a student requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or ensure that an independent education evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

24. Folsom Cordova promptly filed to defend the validity of its assessments within approximately a month after receiving Parents’ requests for independent evaluations, which did not constitute an unnecessary delay. At hearing, Folsom Cordova met its burden of persuasion that its academic and behavior assessments met all legal requirements. Student is therefore not entitled to academic and behavior independent education evaluations at public expense.

*Folsom Cordova’s Issue 2: The April 9, 2015 IEP Offered Student a FAPE for the 2015-2016 School Year*

25. There are two parts to the legal analysis of a school district’s IEP offer complied with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child’s unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

#### PROCEDURAL COMPLIANCE FOR IEP TEAM MEETINGS AND OFFER

26. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Id.* at 205-206.) However, a procedural error does not automatically result in a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child’s right to a FAPE, significantly impedes the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents’ child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

#### NECESSARY TEAM MEMBERS

27. An IEP team must include the following: at least one parent; a representative of the local educational agency; a regular education teacher of the child if the child is, or may be, participating in the regular education environment; a special education teacher or provider of the child; an individual who can interpret the instructional implications of assessment results; and other individuals who have knowledge or special expertise regarding

the pupil, as invited at the discretion of the district; and when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

28. A member of the team shall not be required to attend the meeting, in whole or in part, if the parent and school district agree, in writing, that the attendance of the member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the meeting. (Ed. Code, § 56341, subd. (f).) A member of the team whose area of curriculum or related services is being modified or discussed may also be excused by written parental consent if the excused member submits a written report to the IEP team in advance. (Ed. Code, § 56341, subd. (g)(1), (2).)

29. All necessary IEP team members were present over the course of the four continuing IEP team meetings. After presenting the academic testing, Ms. Woodman was excused from the subsequent meetings with the permission of Parents. However, Ms. Brizendine, a certified special education teacher, was present at each of the four IEP meetings, thus satisfying the Education Codes requirement to have a special education teacher present.

#### *CLARITY OF PLACEMENT OFFER*

30. Clarity is a necessary component of determining if the offer constitutes an offer of FAPE. Student argues that the April 9, 2015 IEP offer lacked clarity and therefore denied Parents the opportunity to participate meaningfully in the IEP process. Folsom Cordova argues that its IEP offer was not unclear.

31. In *Union School Dist. v. Smith* ((1994) 15 F.3d 1519, cert. den., 513 U.S. 965 (*Union*)), the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand. The Court emphasized the need for rigorous compliance with this requirement:

We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school District will greatly assist parents in “present[ing] complaints with respect to any matter relating to the ... educational placement of the child.” 20 U.S.C. § 1415(b)(1)(E). (*Union*, *supra*, 15 F.3d at p. 1526; see also *J.W. v. Fresno Unified School Dist.* (E.D. Cal. 2009) 626 F.3d 431, 459-461; *Redding Elementary School Dist. v. Goyne* (E.D.Cal.,

March 6, 2001 (No. Civ. S001174)) 2001 WL 34098658, pp. 4-5.)

32. *Union* involved a district's failure to produce any formal written offer. However, numerous judicial decisions invalidate IEP's that, though offered, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 769; *Bend LaPine School Dist. v. K.H.* (D.Ore., June 2, 2005, No. 04-1468) 2005 WL 1587241, p. 10; *Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108; *Mill Valley Elem. School Dist. v. Eastin* (N.D.Cal., Oct. 1, 1999, No. 98-03812) 32 IDELR 140, 32 LRP 6047; see also *Marcus I. v. Department of Educ.* (D. Hawai'i, May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 1, 7-8.)

33. Student argues that the IEP lacked clarity because the IEP indicated that "PALS: goals update in attached report was presented. See behavior plan from PALS attached to this report" but there was not a behavior plan attached to the IEP. A copy of the seven behavior goals designed by PALS was attached to the IEP. The box on the IEP indicating that a behavior intervention plan was attached was not checked, instead, the box was checked indicating that a behavior goal is part of the IEP. Identifying the behavior goals was merely a clerical error and did not create a lack of clarity or create confusion on the part of Parents. Additionally, should Student's placement have changed, the IEP was comprehensive on its face for an implementing IEP team to understand this minor clerical error and implement the behavior goals as offered by Folsom Cordova. The IEP team spent a considerable amount of time discussing behavior goals and behavior supports for Student. The behavior goals and behavior supports, including one-to-one aide supports sufficiently met Student's behavior needs. Student did not present evidence to indicate that Student required a behavior intervention plan.

34. Folsom Cordova established that it complied with the procedural requirements of the IDEA regarding Student's April 9, 2015 IEP offer.

#### SUBSTANTIVE APPROPRIATENESS OF THE IEP OFFER

35. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) An IEP is a written statement that includes a statement of the present performance of the student, a statement of measurable annual goals designed to meet the student's needs that result from the disability, a description of the manner in which progress of the student 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); Ed. Code, § 56345, subds. (a)(2), (3).) The IEP shall also include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

36. The IEP is the “modus operandi” of the IDEA; it is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” (*School Comm. of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

37. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

#### *NEEDS AND PRESENT LEVELS OF PERFORMANCE*

38. Student has autism and pragmatic language and social communication deficits. This manifests in a constellation of academic, social, behavioral, and communicative needs. The IEP addressed all of Student’s needs. The present levels were developed based on parental input, a psychoeducational assessment, a speech and language evaluation, PALS’s behavior progress reports and recommendations, a behavioral assessment, and teacher and service provider reports of Student’s progress. Student’s April 9, 2015 IEP accurately and completely listed Student’s present levels of performance.

#### *GOALS*

39. Student’s IEP includes 18 measurable annual goals designed to meet each of Student’s identified areas of need. The goals addressed Student’s needs in the areas of pragmatic language, social communication, academic, executive processing, and behavior. The IEP included a detailed description of the manner in which Student’s progress toward meeting the annual goals would be measured. The goals were appropriate and met all statutory requirements.

### *RELATED SERVICES*

40. “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).)

41. To meet Student’s behavioral needs, the IEP offered Student one-to-one aide support throughout the entire school day. Student contends that aides needed to be provided by PALS or another nonpublic agency to be able to meet Student’s unique needs. However, Student failed to establish that aide support provided by Folsom Cordova would not be able to appropriately support Student. Student required a minimal amount of redirection and prompting during the day. Folsom Cordova’s aides could provide that level of support during the day with training from Ms. Knowles.

42. Besides the aide support, the IEP offered behavior intervention in the form of consultative services. The IEP provided 30 minutes monthly of consultative services from Folsom Cordova’s behavior therapist to promote communication between Student’s in-home therapy program and Student’s school based program. The IEP also offered 30 minutes monthly of consultative services from PALS to the Folsom Cordova’s behavioral therapist. Folsom Cordova’s behaviorist would provide 30 minutes of consultative and collaborative services per month to district staff. One of the goals of providing the consultative services was to create positive transition from Student being supported by PALS aides to Student being supported by Folsom Cordova’s aides. The second was to promote communication between Student’s teachers, Student’s aides, and Student’s in-home behavior program. The offered consultative services were appropriate to meet Student’s needs.

43. Folsom Cordova offered Student two hours a week of individualized speech and language services by a nonpublic agency to address Student’s dysfluency, social communication needs, and pragmatic language needs. In order to allow Student the opportunity to generalize the skills Student develops during individualized therapy, Folsom Cordova offered Student 30 minutes weekly of group speech and language therapy by a district speech and language pathologist during school hours. Student does not take issue with the amount or duration of the individualized speech and language therapy. The Student’s takes issue with the offer of group speech and language therapy. Student argues that Folsom Cordova should not provide the offered group therapy during Student’s school day because it takes time away from Student’s academics. Student failed to present sufficient evidence to support this claim. Group social skills training would address Student’s significant social communication issues and allow him the opportunity to generalize his learned social communication skills with peers. The evidence showed that Folsom Cordova’s offer of individual and group speech and language services were appropriate to meet Student’s needs.

44. The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) travel in and around school buildings; and (iii) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide

transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).) The IDEA does not explicitly define transportation as door-to-door services. Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46576 (August 14, 2006).) Here, the IEP offered Student transportation services from home to school and from school to home. No evidence presented established that the offered transportation services were appropriate to meet Student's needs.

45. The evidence established that the offer of the related services discussed above were an amount, frequency, duration, and configuration necessary for Student to benefit from his special education. The evidence did not establish that Student exclusively required aide support from a nonpublic agency to receive educational benefit. The IEP included the specific services to be provided and the projected start date for services. Additionally, Student's IEP contained goals for academics, speech and language, behavior, and social communication that included the instructional objectives to be achieved utilizing the related services. Folsom Cordova established that the offered related services were appropriate and would enable Student to benefit from his special education.

#### *ACCOMMODATIONS*

46. An IEP must contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the regular education curriculum, and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subs. (a)(4), (6)(A).)

47. The accommodations contained in Student's IEP are substantively appropriate and would enable him to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum. Student's IEP did not contain any program modifications and there was no evidence Student needed any.

#### *PLACEMENT IN LEAST RESTRICTIVE ENVIRONMENT*

48. Both federal and state laws require a special education child to be educated in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with non-disabled peers "to the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (2006); Ed. Code, § 56040.1.) The least restrictive environment doctrine requires a school district, in making placement decisions, to offer a placement "as close as possible to the child's home." (34 C.F.R. § 300.116(b)(3) (2006); see 71 Fed.Reg. 46588 (Aug. 14, 2006) ["The Department has consistently maintained that a child with a disability should be educated in a school as close to the child's home as possible, unless the services identified in the child's IEP require a different location."].)

49. In *Sacramento City Unified School District v. Rachel H.* ((9th Cir. 1994) 14 F.3d 1398, 1400-1402), the Ninth Circuit held that the determination of whether a particular placement is the “least restrictive environment” for a particular child involves an analysis of four factors, including: (1) the educational benefits to the child of placement fulltime in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district’s proposed setting. However, the Supreme Court has noted that IDEA’s use of the word “appropriate” reflects Congressional recognition “that some settings simply are not suitable environments for the participation of some handicapped children.” (*Rowley, supra*, 458 U.S. at p. 197.)

50. The IEP offered Student placement in general education classes with the support of a one-to-one aide. Folsom Cordova established that the full inclusion general education classes at Folsom Middle School, with the robust offer of related services including a full time one-to-one aide, is the least restrictive environment to Student’s unique needs.

#### *EXTENDED SCHOOL YEAR*

51. Extended school year services must be offered if the IEP team determines, on an individual basis, that the services are necessary for a child to receive a FAPE. (34 C.F.R. § 300.106 (2006); Ed. Code, § 56345, subd. (b)(3).) California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for each individual with unique and exceptional needs who requires special education and related services in excess of the regular academic year. Pupils to whom extended school year services must be offered under section 3043 “. . . shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil’s educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.” (See also 34 C.F.R. § 300.106 (2006); Ed. Code, § 56345, subd. (b)(3).)

52. The IEP offered Student extended school year services consisting of two hours per week of speech and language services through a nonpublic agency and 240 minutes of behavior intervention services from a nonpublic agency from June 5, 2016 through July 31, 2016. Student argues that in order to receive a FAPE, Folsom Cordova must provide him with extended school year services throughout the calendar year, including holidays and all school breaks. Student failed to establish that he required extended school year services throughout the entire school year.

53. The IEP offered Student extended year services during the majority of Folsom Cordova’s summer break. It is unlikely that Student would experience such a regression of skills during other shorter breaks and holidays that he would experience limited recoupment of skills once school resumed. Instead, the evidence showed that the provision of the offered

extended school year services was appropriate to prevent Student's skills from regressing to the point that with he would experience limited recoupment of his skills thus, rendering it impossible or unlikely that Student would attain the level of self-sufficiency.

54. Folsom Cordova established that Student's April 9, 2015 IEP was both procedurally and substantively appropriate. The IEP was designed to meet Student's unique needs and was reasonably calculated to provide some educational benefit.

*Student's Issue 1: Parents Fully Participated in Student's IEP Process During the 2014-2015 School Year*

55. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9<sup>th</sup> Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a).) A parent 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* (6<sup>th</sup> Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3<sup>d</sup> Cir. 1993) 993 F.2d 1031, 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].)

56. Where a procedural violation is found to have significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9<sup>th</sup> Cir. 2001) 267 F. 3d 877, 892-895 [school's failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents right to participate in the IEP process, resulting in compensatory education award].)

A. PARENTS' REQUESTS REGARDING THE SCHEDULING OF IEP TEAM MEETINGS

57. An IEP team meeting requested by a parent shall be held within 30 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent's written request. (Ed. Code, §56343.5.)

58. In Student's complaint he alleges that Folsom Cordova failed to respond to Parents' multiple requests to schedule IEP team meetings during the 2014-2015 school year. In Student's closing brief, he failed to address this issue. The evidence does not support Student's contention. To the contrary, Folsom Cordova scheduled four separate IEP team meetings and one goal drafting meeting in order to complete Student's IEP. On each of those occasions, Folsom Cordova asked Parents to provide the dates they were available to

meet. Each time, Folsom Cordova scheduled the IEP team meeting on a date proposed by Parents. Therefore, Student failed to meet his burden of proving that Folsom Cordova denied Parents meaningful participation in the IEP process by failing to respond to Parents' request regarding scheduling IEP team meetings.

#### B. PARENTS' REQUESTS FOR STUDENT RECORDS

59. Parents contend that Folsom Cordova prevented them from meaningfully participating in the IEP process by failing to provide them with protocols, teacher interview reports, and other supporting materials used by Folsom Cordova to prepare Student's psychoeducational and behavior assessments pursuant to Parents' request on August 22, 2014, August 26, 2014, September 5, 2014, September 8, 2014, September 9, 2014, September 21, 2014, September 22, 2014, and November 4, 2014. Folsom Cordova contends that it provided Parents all existing student records in response to Parents' requests. It further argues that Student did not make a request for Student records on September 22, 2014.

60. Education Code section 56504 states in relevant part that, "[t]he parent shall have the right and opportunity to examine all school records of his or her child and to receive copies...within five business days after the request is made by the parent, either orally or in writing." Education Code section 49061(b) states that a "pupil record means any item of information directly related to an identifiable pupil, other than directory information, that is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm, or other means."

61. The right to inspect and review education records under this section includes: (1) the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) the right to have a representative of the parent inspect and review the records. (See 34 C.F.R. §300.613(b).) All parents have the right to receive copies of all school records within five business days after parents make a request. (Ed. Code, §56504.)

62. Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA). (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Education records include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b).) Pupil or education records maintained by a school district employee in the performance of his or her duties include those "recorded by handwriting, print, tapes, film, microfilm or other means." (Ed. Code, §§ 49061, 56504.)

63. The United States Supreme Court in *Owasso Ind. School Dist. v. Falvo* (2002) 534 U.S. 426 [122 S. Ct. 934, 151 L.Ed.2d 896] (*Falvo*), after conducting an analysis of FERPA provisions related to education records, determined that not every record relating to a student satisfies the FERPA definition of “education records.” Specifically, the Supreme Court examined the FERPA provision that requires educational institutions to “maintain a record, kept with the education records of each student” (i.e., 20 U.S.C. § 1232g(b)(4)(A)), that “list[s] those who have requested access to a student’s education records and their reasons for doing so.” (*Falvo, supra*, 534 U.S. at p. 434.) The Court concluded that because this single record must be kept with the education records, “Congress contemplated that education records would be kept in one place with a single record of access.” (*Id.*) The Court further concluded that “[b]y describing a ‘school official’ and ‘his assistants’ as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar...” (*Id.* at pp. 434-435.) The Court then found that individual assignments handled by many student graders in their separate classrooms were not student records. (*Id.*)

64. Education records do not include records “which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.” (20 U.S.C. § 1232g(a)(4)(b)(i); Ed. Code, § 49061, subd. (b).) Federal regulations further clarify that for a record to be excluded from the definition of an educational record pursuant to the “sole possession of the maker” exclusion, that record must be used only as a personal memory aid. (34 C.F.R. § 99.3(b)(1).)

65. Test protocols such as test questions, student answers, evaluator calculation or scoring sheets, and administration instructions, to the extent these are personally identifiable to the student, are educational records that must be provided to parents if requested. (*Newport-Mesa Unified School Dist. v. State of Cal. Dept. of Educ.* (C.D.Cal. 2005) 371 F.Supp.2d 1170 at pp. 1175, 1179 [providing parents copies of their children’s test protocols constitutes a permissible “fair use” pursuant to federal copyright law]; *Letter to Price* (OSEP Oct. 13, 2010) 57 IDELR 50 [test protocols with a student’s personally identifiable information are education records and if copyright law conflicts with IDEA’s requirement to provide educational records, districts should seek ways to facilitate inspection including contacting the copyright holder].) Parents have the right to inspect instructional materials and assessments including teacher’s manuals. (Ed. Code, § 49091.10, subd. (a).)

66. Folsom Cordova provided Parents with all of the requested documentation except for teacher emails, Ms. Phinney’s notes on her interview with Student’s classroom teacher, and Ms. Knowles’ notes from her observations of Student. However, Folsom Cordova delayed in providing a portion of the requested student records to Parents.

*MS. PHINNEY’S NOTES AND TEACHER EMAILS WERE NOT STUDENT RECORDS*

67. The notes that Ms. Phinney took when interviewing Ms. Wallace, did not constitute a student record. Her notes remained in her sole possession, were not accessible to another person, and were created as a personal memory aide. (20 U.S.C. § 1232g(a)(4)(b)(i);

Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3(b)(1).) As such, the failure to provide Ms. Phinney's notes of the teacher interview does not constitute a procedural violation.

68. Parents requested that Folsom Cordova provide any "teacher emails related to" Student's "triennial assessment." Student failed to establish that any emails of that nature existed. Even if those emails had existed, if they had not been contained in Student's permanent file, then they would not be considered student records under *S.A. ex rel. L.A. v. Tulare County Office of Education* (N.D. Cal. Sept. 24, 2009) 2009 WL 3126322, *affd. S.A. v. Tulare County Office of Education* (N.D. Cal. October 6, 2009) 2009 WL 3296653. In that case, the district court found that school district e-mails concerning or personally identifying a student that had not been placed in his permanent file were not educational records as defined under FERPA. The court, citing *Falvo*, found that Congress contemplated that educational records would be kept in one place with a single record of access to those records. Because the e-mails in question had not been placed in the student's permanent file and were not "maintained" by the school district, they were considered Student records. Therefore, even had the emails existed, the school district was not required to produce them under a request for student records.

#### *MS. KNOWLES'S OBSERVATION NOTES WERE STUDENT RECORDS*

69. The Family Policy Compliance Office within the United States Department of Education, in finding that a district had violated FERPA, determined that this exception was not intended to exclude detailed notes that record direct observations or evaluations of student behavior. (*Letter to Baker*<sup>18</sup> (Office of Innovation and Improvement, Complaint No. 1251, December 28, 2005 [comprehensive notes of observations and evaluations by a speech therapist, though kept in the sole possession of the maker, were not used solely as a memory aid and therefore were educational records subject to disclosure].)

70. In this case, Ms. Knowles's notes from her observations of Student constituted a student record because they were comprehensive notes of her direct observations of Student's behavior. However, until Parent's November 4, 2014 records request, Folsom Cordova was not on notice that Parents were requesting those notes. Once Folsom Cordova was on notice, under Education Code section 56504, Folsom Cordova should have provided Parents those notes within five business days. However, as of the date of the hearing, Folsom Cordova had not provided Student with those records. This failure to provide student records constitutes a procedural violation.

#### *DELAY IN PROVIDING PROTOCOLS, ANSWER BOOKLETS, AND QUESTIONNAIRES*

71. Folsom Cordova provided Parents with the protocols and answer booklet from the academic testing and the questionnaires from the behavior assessment more than the five business days after the request. This delay was due in part to Parents' confusing and overly broad requests for student records. Additionally, Folsom Cordova had difficulty locating the academic protocols and answer booklets. The delay in providing the student records constitutes a procedural violation under Education Code section 56504.

*NO DENIAL OF FAPE RESULTED FROM THE PROCEDURAL VIOLATIONS*

72. There are two parts to the legal analysis of whether a school district offered a student a FAPE, whether the educational agency has complied with the procedures set forth in the IDEA, and whether the IEP developed through those procedures was substantively appropriate, meaning it was “reasonably calculated to enable the child to receive educational benefits.” (*Rowley, supra*, 458 U.S. at pp. 206-207.) Procedural flaws do not automatically result in a denial of a FAPE. (*W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).

73. A procedural violation of the IDEA results in a denial of a FAPE only if the violation: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2) & (j); *Target Range, supra*, 960 F.2d at p. 1484.)

74. Courts allow a district to cure procedural defects with a subsequent IEP team meeting. (*Vashon Island, supra*, 337 F.3d at p. 1136; *S.J. v. Issaquah School Dist. No. 411* (9th Cir. 2009) 326 Fed.Appx. 423, p. 3 [nonpub. opn.]; *J.W. v. Fresno Unified School Dist.* (E.D.Cal. 2009) 611 F.Supp.2d 1097, 1127-1128, *affd.* (9th Cir. 2010) 626 F.3d 431.)

75. Student alleges that he was denied a FAPE because Folsom Cordova committed the procedural violation of failing to comply with Education Code section 56504. However, a procedural violation only results in a denial of FAPE when it impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the IEP process, or caused a deprivation of educational benefit. In this case, Student has specifically alleged that the failure to comply with Parent’s student records requests significantly impeded Parents’ opportunity to participate in IEP process.

76. In this case, Folsom Cordova attempted to cure the procedural defect of the delay in providing Parents with the academic protocols and Student booklets by scheduling a meeting with Parents so that Ms. Woodman, Ms. Phinney, and Ms. Marjerison could review the testing process with Parents in detail. However, Parents declined to participate in such a meeting. Additionally, once Parents received the protocols and answer booklet for the Wechsler that Ms. Woodman administered, Parents could have requested that Ms. Woodman attend any of the continuing IEP team meetings so that they could address the information contained in the protocols or answer booklet. However, Parents never made that request. The delay in providing Parents the protocols and answer booklet did not prevent Parents from participating in the IEP process. As the evidence has shown, Parents vigorously participated in the IEP process during each of the four IEP meetings. Therefore, Student did not meet his burden of proving that the procedural violation impeded Parents from meaningfully participating in the IEP process.

77. Folsom Cordova's failure to provide Parents with a copy of Ms. Knowles's observation notes did not prevent Parents from meaningfully participating in the IEP process. Due to the timing of Ms. Knowles observation, the IEP team did not rely on her behavioral observations as much as they relied on the more current progress reports from PALS and the teachers' observations of Student's behavior. Despite not being provided Ms. Knowles behavior observation notes, Parents actively participated in the IEP process by voicing their opinions, concerns, and disagreement throughout all four IEP team meetings. Thus, Student did not meet his burden of proving that the procedural violation impeded Parents from meaningfully participating in the IEP process.

#### C, D, & E. PREVENTING PARENTS FROM MEANINGFULLY PARTICIPATING

78. Student alleges that Folsom Cordova denied Parents meaningful participation in the IEP process by being unprepared to discuss and develop new appropriate goals for Student during the October 23, 2014, December 4, 2014, and April 9, 2015 IEP team meetings by demonstrating a lack of knowledge of Student's progress reports and records regarding his progress towards his academic goals, present levels of performance, and areas of need.

79. Student further alleges that Folsom Cordova prevented Parents from meaningfully participating in the IEP process by preventing Parents from asking IEP team members questions during the August 27, 2014 and April 9, 2015 IEP team meetings and by abruptly ending the April 9, 2015 IEP team meeting.

80. A parent has meaningfully participated in the development of an IEP when the parent is informed of the child's problems, attends the IEP team meeting, expresses his or her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693.) A 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. (*Fuhrmann, supra*, 993 F.2d at p. 1036.)

81. A preponderance of the evidence supports that Parents vigorously participated in all four IEP team meetings by discussing the proposed IEP and voicing their concerns about the proposed IEP. The approximately 16 hours of time the IEP team spent discussing and developing Student's IEP both during IEP team meetings and during the goal drafting meeting is evidence that Parents had ample opportunity to participate meaningfully in the IEP process. Parents asked questions, were given answers to their questions, proposed goals and goal modifications that were adopted by Folsom Cordova, and provided information on Student's present levels of performance. Contrary to Student's contentions, Parents were active and vociferous participants in the IEP process. Therefore, Student failed to prove that he was denied a FAPE during the 2014-2015 school year because Folsom Cordova prevented Parents from meaningfully participating in the IEP process.

*Student Issue 2: Refusal to Provide Independent Educational Evaluations Did Not Deny Student a FAPE*

82. As detailed above, this decision finds that Student is not entitled to academic and behavior independent education evaluations at public expense. As such, Folsom Cordova did not deny Student a FAPE by refusing to grant Parents' July 26, 2015 request for independent education evaluations in the areas of academics and behavioral functioning at public expense.

## REMEDIES

1. Folsom Cordova prevailed on all issues. As a remedy for Folsom Cordova's Issue 1, it requests a finding that the April 9, 2015 IEP offered Student a FAPE for the 2015-2016 school year and requests an order allowing it to implement the April 9, 2015 IEP absent parental consent. This Decision finds that the April 9, 2015 IEP offered Student a FAPE during the 2015-2016 school year through April 8, 2016. Due to this finding, Folsom Cordova's request to implement the April 9, 2015 IEP prospectively will not be granted.

2. The April 9, 2015 IEP designated that the offer began April 9, 2015 and ended April 8, 2016 and this case was not heard until after the time period contemplated in the April 9, 2015 IEP offer. The IEP was designed to address Student's needs during the time period designated within the IEP. Since the finding is limited to the aforementioned time period, this decision cannot order that Folsom Cordova may implement the April 9, 2015 IEP without parental consent during any subsequent period. Therefore, Folsom Cordova's request to have OAH order that it may implement the April 9, 2015 IEP absent parental consent is denied.

## ORDER

1. All relief sought by Student is denied.
2. Folsom Cordova's April 9, 2015 IEP offered Student a free appropriate public education in the least restrictive environment during the 2015-2016 school year through April 8, 2016.
3. This decision makes no ruling regarding whether Folsom Cordova may implement the April 9, 2015 IEP without parental consent.

