

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GARDEN GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016030420

DECISION

Garden Grove Unified School District filed this due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on March 7, 2016, naming Student.

Administrative Law Judge Judith L. Pasewark heard this matter on April 5 and 6, 2016, in Garden Grove, California.

Alefia Mithaiwala, Attorney at Law, represented District. Lorraine Rae, Assistant Superintendent, attended the hearing on behalf of Garden Grove Unified School District.

Peter Attwood, non-attorney advocate, represented Student on April 5, 2016. After denial of Student's motion for dismissal of District's complaint, Mr. Attwood provided Student no further representation at hearing. Mother attended on April 5, 2016, to reiterate her revocation of Student's special education rights. After denial of Student's motion to dismiss the matter, Mother and her advocate refused to participate in hearing on behalf of Student. Both Mother and her advocate left the hearing. Student did not attend the hearing, and with Mr. Attwood's abandonment of the matter, Student remained unrepresented throughout the hearing.

Testimony was completed on April 6, 2016, and, at the request of District, the matter was continued to May 3, 2016, for receipt of a written closing brief. The record closed, and the matter submitted for decision on May 3, 2016.

STATEMENT OF PROCEDURE

On March 7, 2016 District filed this complaint. On March 11, 2016, Mr. Attwood filed a Notice of Representation with OAH, indicating he had been asked by Mother to represent her child, Student, in OAH Case No. 2016030420.

On March 24, 2016, Mr. Attwood filed a Prehearing Conference Statement on behalf of Student, listing 12 witnesses, one expert witness and five categories of documents to be presented at hearing. Student's brief also included information and witnesses indicating Student sought to obtain an independent educational evaluation on behalf of Student as part of District's filing. On March 28, 2016, Ms. Mithaiwala and Mr. Attwood participated in a telephonic Prehearing Conference with the undersigned ALJ. At that time, the ALJ informed Mr. Attwood that he could not seek affirmative relief, such as an independent assessment, as part of District's case. Further his reliance on an unfiled counterclaim would have limited relevance in the issues to be determined in District's case. At that time, Mr. Attwood made an oral request for continuance, which was opposed by District, and denied without prejudice, due to OAH unavailability on the mutually agreeable dates. Mr. Attwood also requested an open hearing on behalf of Student, which required District to obtain an alternate venue for hearing due to space constraints.

On March 30, 2016, OAH denied a joint request for continuance which requested the same dates as previously denied on March 28, 2016, and which were still unavailable with OAH. No alternative dates were suggested or agreed upon by the parties.

On April 1, 2016, Student filed a request for due process complaint to address his request for an independent assessment. Also on April 1, 2016, Student filed a motion for consolidation of both cases. On April 1, 2016, District filed an opposition to consolidation. On April 1, 2016, Student filed a response to District's opposition. On April 1, 2016, the undersigned ALJ denied consolidation.

On April 4, 2016, Student filed a motion to dismiss District's case, indicating Mother had revoked Student's special education rights on April 2, 2016. On April 4, 2016, District filed an opposition to Student's motion. Given the late filing of Student's motion, OAH notified the parties that the undersigned ALJ would hear oral argument and rule on Student's motion prior to commencement of the hearing.

On April 5, 2016, following oral argument, Student's motion to dismiss District's complaint was denied. The ALJ found that determination of District's issue, which arose during the 2015-2016 school year, was not rendered moot by Mother's subsequent revocation of consent. A separate order denying Student's motion was filed concurrently with this decision. District's case proceeded to hearing after a short recess.

Mr. Attwood was not prepared for hearing on April 5, 2016. Although he had filed a Prehearing Conference Statement on March 24, 2016, which identified witnesses and exhibits, and appeared at the PHC on March 28, 2016, he did not provide an exhibit book or

exhibits for hearing in the event his motion to dismiss was denied. Although Mr. Attwood's Notice of Representation filed on March 11, 2016, indicated he represented Student, he stated at hearing his client was Mother, and if Mother was not staying for the hearing, neither was he. The ALJ informed Mr. Attwood would be abandoning Student if he left the hearing. The ALJ inquired of Mother if it was her intent to leave the hearing. The ALJ also sought to establish Mother understood the ramifications of her revocation of consent to special education on behalf of Student. Mother insisted, several times, she understood her rights, and she would not participate or remain for the hearing.

Prior to Mother leaving the hearing, District called Mother as its first witness. Mother initially refused to testify, but after a short recess to discuss the matter further with her advocate, and consider the ALJ's directive to testify, Mother complied. Mr. Attwood indicated he was remaining at the hearing only to advise Mother as a witness. During Mother's testimony, Mr. Attwood made several evidentiary objections which constituted participation in the hearing on behalf of Student. At the completion of Mother's testimony, both he and Mother left the hearing and did not return.

ISSUES AND REMEDIES¹

The issues presented by the District's complaint are:

1. Whether District's offer of placement for the 2016-2017 school year in District's adult transition program (transition program) as contained in Student's February 9, 2016 individualized education program is appropriate; and
2. Whether District's offer of certificate of completion track, as contained in Student's February 9, 2016 IEP, is appropriate.

District is requesting a finding that both its 2016-2017 offer of placement in its adult transition program and offer of a certificate of completion track meet Student's unique needs and provide her with a free appropriate public education.²

¹ The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

² District's complaint also requested relief that its offer of placement for the 2016-2017 school year be implemented without parental consent. This remedy is moot as Mother revoked consent for special education and related services as of April 2, 2016.

SUMMARY OF DECISION

Student is 17 years old and attends the 12th grade on a high school campus. District's February 9, 2016 IEP offered Student a certificate of completion for high school and educational placement for the 2016-2017 school year in District's transition program. Mother did not consent to the IEP. Instead, Mother requested that Student be placed on the graduation diploma track and provided a fifth year of academics and cheerleading activities on the high school campus.

Based upon the testimony and documents provided at hearing, this decision holds that District's decision to maintain Student on a certificate of completion track was appropriate and placement in District's transition program provided Student a FAPE in the least restrictive environment.

FACTUAL FINDINGS

Background

1. Student is a 17-year old senior in high school, scheduled to complete the 12th grade at Garden Grove High School in June 2016. She resides with her parents within District. Student is eligible for special education and related services under the primary category of autism, and secondary category of speech and language impairment.

2. Prior to the 2014-2015 school year, District recommended a certificate of completion rather than diploma for Student; however, Student remained on diploma track at Mother's request. As of September 2014, Mother's priorities for Student changed, and she requested that Student's sixth period U.S. history class be replaced with a sixth period cheerleading elective.

3. On September 10, 2014, District sent a letter which succinctly reiterated District recommendations and ramifications of Mother's request to substitute cheerleading for U.S. history. Specifically, as had been explained at the September 3, 2014 IEP team meeting, Student needed U.S. history credits to qualify for graduation, and the only time available for Student to access U.S. history was during sixth period. Sixth period was also the only time allotted for cheerleading class. "District staff has been articulating, for the past several IEP meetings, that certificate of completion is the appropriate track for Student given how much her grades and coursework have been modified, and given that, with the implementation of the rigorous common core standards, modification at this level must necessarily continue for Student." Mother's desire for Student to take cheerleading in lieu of U.S. history was incongruent with her prior desire for Student to graduate with a diploma. Thusly, Mother opted for cheerleading, and consented to Student's placement on the certificate of completion track.

PSYCHOEDUCATIONAL ASSESSMENT

4. In January 2015, Perry Passaro, Ph.D.,³ a licensed educational psychologist, completed an independent educational assessment Student. In addition to assessing Student's cognitive, academic and developmental levels, the independent assessment specifically addressed the question of what instructional program was most appropriate for Student: diploma or certificate of completion. The independent assessment was extensive and thorough.

5. Based upon his independent assessment, Dr. Passaro determined Student's non-verbal functioning was in the average to below-average range; however her verbal abilities were in the deficit range. Student's adaptive ability fell in the borderline deficit range. Dr. Passaro also found an indication of executive dysfunction and attention deficit based upon prior findings of cognitive processing disorder of attention. Given Student's inconsistent cognitive scores, Dr. Passaro was hesitant to classify Student as intellectually disabled; however her overall scores remained below average.

6. Student exhibited a receptive and expressive language disorder that included deficits in all areas of phonological processing. Further, when compared to the scores earned by others her age, Student's overall level of achievement was very low. Test results indicated a significant discrepancy between Student's highest estimate of potential and achievement in reading, writing and mathematics. Student's scores were very low and her progress was limited.

7. Student's general adaptive functioning, consisting of socialization, communication and daily living skills, was low. Her functional communication abilities were far below predicted levels. Her level of adaptive social functioning for interpersonal relationships, leisure and coping skills were significant deficits that required targeted interventions in naturalistic environments. Dr. Passaro recommended that, in addition to participation in a social skills group, development of social skills beyond those addressed in group were also essential.

8. Student exhibited areas of need in her daily living skills. Her lack of functional independence in personal and community living required intervention. Environmental changes were also needed, to seek maximum growth and to minimize her dependency. Dr. Passaro suggested behavioral therapy for self-management and self-monitoring.

³ Dr. Passaro is a licensed psychologist, educational psychologist, and a credentialed school psychologist. He has testified in numerous special education hearings before OAH, and has been found highly qualified in his field. Dr. Passaro has worked in public education for over 20 years with students with a wide range of disabilities, including autism.

9. Based upon teachers' reports of Student's inattentive, anxious and depressive behaviors at school, a reduction in academic expectations was suggested as a means to reduce observed behaviors at school.

10. Dr. Passaro suggested the IEP team consider a hybrid program for Student that targeted basic academic skills (reading comprehension, consumer math, and basic written expression) in a special day class, with a functional skills curriculum, both at school and in the community, for her transition to an adulthood program.

SPEECH AND LANGUAGE

11. Also, in January 2015, Abby Rosenberg,⁴ a private speech and language pathologist, completed an independent assessment of Student to determine Student's level of language functioning and communication ability. Ms. Rosenberg's assessments were also extensive and thorough.

12. Student's scores suggested severely low functioning in both receptive and expressive language. Receptively, Student became overloaded with auditory information. Information needed to be broken down into smaller pieces to assist her in processing lengthy messages. Expressively, Student struggled to follow specific directions, and instead responded to key words of a related prompt or contextual cue. Student often reverted to familiar and over-rehearsed phrases to demonstrate her knowledge of the topic, without answering the question. Student also exhibited significant weaknesses with pragmatics and semantics.

13. Ms. Rosenberg determined Student was a verbal communicator. Therefore, the introduction of an additional alternative/augmentative communication system would complicate her processing and the fluidity of her verbal language production. While computer-based language learning might be beneficial for Student, as it was highly motivating and offered immediate reinforcement regarding performance, Ms. Rosenberg concluded it should not be considered as a system for communication. Adding technology to Student's communicative repertoire would not benefit her. To the contrary, adding technology would complicate and negatively impact Student's verbal conversational turn-taking skills.

ASSISTIVE TECHNOLOGY

14. In spite of Ms. Rosenberg's recommendations, Mother sought and obtained an independent assessment in the area of augmentative and alternative communication. This assessment, administered by Darlene Hanson, a speech and language pathologist, concurred

⁴ The ALJ also takes judicial notice of Ms. Rosenberg's extensive professional experience as a SLP. Ms. Rosenberg has previously testified in special education hearings before OAH. She is well qualified as an expert in her field and competent to provide students and school districts with independent assessments regarding speech and language.

with Ms. Rosenberg, and recommended that Student take support, redirection, and clarification orally from support staff, as technology could not meet the same levels needed. Technology, such as a computer, the Internet, and/or iPad could be used as supplemental to her education; however the use of technology should not replace the need for direct instruction.

February 9, 2016 IEP Team Meeting

ATTENDEES

15. On February 9, 2016, District held Student's annual IEP team meeting to determine Student's placement and services for the 2016-2017 school year. Fifteen people attended the IEP team meeting, including Mother, Student's advocate, and District's attorney. All statutorily required IEP team members were present, including a general education teacher, special education teacher, administrator, representative of the transition program, cheerleading advisor, speech and language pathologist, behavior specialist, school psychologist, computer essentials teacher, program supervisor, and Student's case manager.

PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

16. The IEP team reviewed Student's present academic achievement levels of performance. Many of Student's levels were based on Smarter Balanced Academic Competency exam and common core standards. Student scored below standards in all three math subtests. Student's pre-algebra grading was modified due to the necessity of adult assistance to participate in class. Student scored below standards on the reading, writing, research, and listening portions of the Competency exam. Student was receiving a "C" in English, based upon modified grading. Her reading program was heavily modified. Her teacher reported Student was able to read at the third grade level and write at approximately the second grade level. Student was receiving an "A" in the computer essentials class. Her grade, however, was modified to support her challenges in writing. Student's adaptive living skills were limited. As example, Student could visually identify coins and state their cent value, but she could not solve real world word problem, like making change or adding up coins to pay for things.

17. The IEP team discussed Student's progress on existing goals. Student did not meet or only partially met her language arts goals, due to her need for extensive prompting. Student met her math calculation goal with prompts; she partially met her math multi-step word problem goal with verbal promptings; she only partially met her geometry formulas goal due to the need for constant prompting; she met her math calculation goal with prompting; and she passed the math subset of the California High School Exit Examination with the exam being read to her. Student met her daily planner goal (vocational) with prompting. Student did not meet her transitional goal in culinary arts, as District was unable to teach Student kitchen safety. Student met her social skills, interaction with peers goal. However, it was noted her interactions were awkward due to her inability to truly listen and

answer in a relevant fashion. Student met her functional writing goal with the assistance of prompts and a copy of written information. Student met all three of her speech and language goals with prompting.

18. Mother expressed concern that Student had regressed. District disagreed. A discussion ensued regarding whether Student did not know answers, or did not understand questions. Additionally it was noted that Student required support in self-advocacy such as asking appropriate questions that are on topic to get clarification when confused. Student required as many as five verbal reminders per hour in the use of social etiquette. The IEP team discussed Student's prompt dependency and the need to develop a fade plan and consider visual cues to increase Student's accuracy.

19. To receive educational benefit, District determined Student required goals to address the following areas of need: (1) academics; (2) communication; (3) vocational/behavior; (4) transition; (5) speech and language; and (6) social skills. A total of ten goals were crafted by Student's special education class teacher, speech and language pathologist, and behavior interventionist.

GOALS

20. Student attended Chris Takach's, a mild/moderate special day class for the previous two years. Mr. Takach holds a master's degree in special education and a learning handicapped credential, as well as a single subject teaching credential in art. Mr. Takach drafted Student's transition/academic goals.

21. Transition Goal One addressed the areas of communication and transition. This goal was drafted to help Student develop structure and develop a beginning, middle, and end in her writing. The goal instructed Student, that when given a graphic organizer, she would independently write a four sentence formal communication paragraph maintaining a single topic utilizing email.

22. Transition Goal Two addressed the area of social skills in a community setting. Student's teachers agreed that this was an area of real struggle for Student. This goal was drafted to help Student learn to generalize social concepts outside of home and school. The goal instructed Student to use appropriate social interactions in a variety of environments, i.e., school, community, job site, and bus transit, with no more than one verbal prompt. Mother considered this goal as absurd, since she would not agree to allow Student to ride the bus.

23. Transition Goal Three addressed the area of daily living (cooking). Student's teachers noted Student had difficulty working in sequence and would just stop after the first step. The goal was crafted to teach Student to independently follow a three step cooking process in sequential order. Mother felt this goal obsolete and noted Student already fixed breakfast independently.

24. Transition Goal Four addressed functional academics and money math. Mr. Takach emphasized that Student had no concept of money in the real world. The goal sought to have Student correctly answer money value combination questions with 100 percent accuracy. This goal reinforced Student's need to learn to apply and generalize concepts in the community. The goal was very specific, and the baseline was an objective test of Student's knowledge. Mother felt Student had already mastered money, but when Mother quizzed Student at the IEP meeting, Student was unable to answer the baseline questions correctly.

25. Transition Goal Five addressed vocational and task completion areas. This was an important goal to Mr. Takach. Student needed to feel she could do something important. She needed to develop a sense of accomplishment. The goal provided that after teacher modeling, instruction, and visual support, Student would be able to complete a job as presented (i.e., labeling folders, sorting mail) in a structured environment with no more than one verbal prompt per hour. Mother opposed Goal Five, as she did not want Student doing menial work in the adult transition environment.

26. Transition Goal Six addressed the areas of recreation and leisure participation. Student's strengths lay in her ability to complete rote activities and routines. Her weaknesses lay in her inability to be flexible, and deal with changes or the unknown. The goal was drafted to have Student participate in an unfamiliar recreational activity, respond to others, and seek help if needed, with no more than one verbal reminder during a 55-minute group activity.

27. Wendie Wall, District's speech and language pathologist, has worked directly with Student since 2015. Ms. Wall has both a bachelor's and master's degree in communicative disorders. Ms. Wall holds a clear rehabilitative services credential and certificate of clinical competence. Ms. Wall drafted three speech and language goals for Student.

28. Speech and Language Goal One addressed the area of expressive language. Student makes rote statements, repeats herself and provides "usual" answers. She does not elaborate or know how to process and organize her thoughts into speech. The goal was designed to teach Student more functional language; when asked a question, Student would learn to respond with a declarative statement without adding a rote phrase, using appropriate intonation patterns.

29. Speech and Language Goal Two addressed social skills and behavior. Student can become agitated and overreacts to small things. The goal was developed to have Student determine whether a real-life/real-time situation is a "big deal" or a "small deal" and then learn, when asked, to verbally state an appropriate response to that situation.

30. Speech and Language Goal Three addressed the area of pragmatics. Student's safety is a big concern. Student does not understand with whom to share information. The goal was designed for Student to learn, that when asked to provide personal information by

an unfamiliar adult or peer, she will politely respond to the request by stating that she does not share this type of information with strangers.

31. Speech and Language Goal Four addressed the area of communication. Student needs to improve her peer interaction by developing an understanding of peer slang. The goal instructs Student, that when given a list of five common social slang phrases, she will explain and respond to the slang with no more than one visual or verbal prompt.

ACCOMMODATIONS

32. Accommodations were created to allow Student to sit at a desk near the teacher in the designated work area to allow Student the greatest level of attentive focus. Lesson expectations would be clearly expressed prior to the activity. Student would be allowed to use a calculator in all activities involving math. Staff would remind Student of self-calming techniques. Prompting would be faded to support independence. Student would be provided scripted responses or questions when engaged in role-playing and conversational activities. Student's grading would remain modified. Time management and organizational tools would be implemented.

TRANSITION PLAN

33. Student's individual transition plan was also discussed as part of the February 9, 2016 IEP team meeting. Student was invited and attended. Age-appropriate transition assessments were used, specifically the Explorer Career Interest Inventory, in which Student demonstrated an interest in the fields of science, engineering and medicine. Student was also interviewed by her case manager, where she emphatically expressed her desire to be an English teacher.

34. The transition plan contained a provision for Student's post-secondary training and education to enroll in a non-credit course working with children at a community college. To support this provision Student would (1) participate in classroom discussions regarding community college and adult education programs; (2) follow a schedule and maintain a calendar in class; and (3) be exposed to possible non-credit college course study with classroom materials, peer shared experiences, and college course catalogs.

35. The transition plan contained a provision for Student's post-secondary employment to obtain an entry level position of employment in an area of interest working in a paid, part-time position of 10-20 hours per week. To support this provision Student would (1) practice basic job skills on campus, such as following directions, completing tasks with minimum prompting; (2) advocate for herself and ask questions about possible job interests; (3) learn about agencies that could assist her in obtaining employment; (4) volunteer to gain experience; (5) participate in resume building and job application activities in class; (6) participate in community-based job experiences, as available; (7) use public transportation to access community sites; and (8) practice personal safety instruction and awareness.

36. The transition plan contained a provision for Student's post-secondary independent living to (1) allow her to utilize public transportation as a means of gaining independence while carrying personal information and bus pass. To support this provision Student would (1) participate in class discussions relating to accessing public transportation; (2) work in a small group to utilize Google maps and navigate bus routes; and (3) learn bus safety, social etiquette and problem solving.

37. The transition plan also contained a provision for Student to learn to ultimately live in a group home or with a roommate while maintaining a monthly budget of expenses. To support this provision Student would (1) learn and develop money management skills; (2) learn to cook for herself; (3) develop organization skills; and (4) maintain a clean work environment. Student would also learn to be responsible for contributing to the household by following a shopping list at the grocery store and purchasing weekly family groceries independently. This provision would be supported by Student (1) participating in class shopping activities which require her to purchase items from a list; and (2) locating items in a store. All of Student's transition goals were supported by the proposed IEP goals One through Six.

ADULT TRANSITION PROGRAM

38. After discussion of the proposed transition plan, Mother requested a short break in the IEP team meeting. When she returned, Mother's demeanor had changed. She became hostile, agitated and disengaged from the transition plan team discussion. Mother stood up and turned her back on the IEP team members while Chad Ouelette, the principal of the transition program, explained his program.⁵ Student's advocate listened on behalf of Mother. Mr. Ouelette, explained the transition program focused on daily living skills, such as money management, mobility training, job skills, and choices for recreation and leisure. The transition program students worked in volunteer positions with District to establish a resume. Students might take the bus to a job site with a job coach. The transition program supported post age-22 skills and opportunities.

39. Ryan Sullivan is an adult transition teacher in the transition program. Mr. Sullivan holds a special education credential, and instructs moderate/severe students. Mr. Sullivan described the transition program as designed to allow students to develop independent skills in natural settings. This involves class studies, group discussions and community based instruction to generalize concepts in the community. There are different levels of functioning in the transition program. Mr. Sullivan's students are generally high functioning and mobile. He reported that some students attend college programs; some may study to get a driver's license.

⁵ Mother stated in her testimony, that her behavior during the transition plan meeting did not represent her finest hour.

40. Mr. Sullivan reviewed the February 9, 2016 IEP, and opined that a certificate of completion was appropriate based upon Student's need for a high level of modification in her classes. Many of her required classes had been modified in excess of minimum curriculum standards for graduation. Although Student goals remained highly modified, but each of the goals could easily be implemented in the transition program.

MOTHER'S DISAGREEMENT WITH THE TRANSITION PROGRAM

41. Mother expressed her disagreement, and indicated that placement in a moderate/severe special day class was not going to happen. Further, placement in the transition program was not appropriate for Student. Mother did not believe Student needed job training. Student would go to college post-age 22, not get a job. Mother adamantly voiced her objection to the transition program, describing it as a babysitting program and a "dumping ground." Mother insisted Student needed socialization with students who already had social skills, and she needed more academics. Mother wanted Student to remain at Garden Grove High for a fifth year of high school; to complete the cooking class; have a double block of English; obtain her history credits; and continue socialization in cheerleading.

42. Steven Osborn, principal at Garden Grove High, sees Student everyday on campus and interacts with Mother often, sometimes daily. He noted that Mother has not been concerned about Student's academics since ninth grade. Her primary focus is on cheerleading. Mother wants Student to stay at Garden Grove High to remain a cheerleader. Mother informed him, "you are not getting rid of [Student] that easily; she is coming back for cheerleading and five periods of English."

43. At hearing Mother confirmed her distaste for the transition program.⁶ She would not allow Student to ride the bus, as it was not safe. Mother did not agree to community based instruction, as it would take Student out of the academic classroom; Student was already missing too much classroom time. Further, Garden Grove High, where Mother wanted Student to complete a fifth year of high school did not have a community bases instruction program. Mother felt the transition program "was being shoved down her throat." She described the transition program as "shameful." Student needed to focus on social communication, not learn to ride the bus.

44. Mother also expressed her disapproval of placement in a moderate/severe special day classroom, as she felt it was teaching Student below her level. Mother indicated Student already knew much of what would be taught. Student could already independently do laundry, cook and clean. Further, Mother wanted academics taught at school. Mother would take care of community based activities and living skills, outside of school.

⁶ Mother reluctantly testified as District's first witness. Upon completion of her testimony, Mother left the hearing and did not return.

GARDEN GROVE'S VIEW OF STUDENT'S NEEDS

45. Christine Rodriguez, Student's culinary I class teacher, testified to rebut Mother's testimony of Student's abilities. Student has been in Ms. Rodriguez's cooking class since February 4, 2016. Student has not been successful. The first two weeks of class involve basic safety and sanitation rules, which are learned through lectures, books and videos. Student was unable to pass the test without one-to-one assistance, even though the test was open book. Student was unable to generalize sanitation rules, i.e., she chewed on her fingers and then handled food without washing her hands. She needed to be prompted and could not understand steps in a recipe. She needed lots of redirection. Student's abilities have not improved in her class. Student cannot do a cooking project independently and would rather wash dishes instead.

46. Ms. Rodriguez also reported Student is afraid of the electric stove and will not pick up a knife. Ms. Rodriguez expressed her hesitance to allow Student to cook or use the gas stove. Student is unaware of dangers of high heat, smoking pans, and grease spatters. In Ms. Rodriguez's opinion, Student needs an additional two years of one-to-one skill training to learn to cook independently.

47. The transition program is structured for students to attend four years following their fourth year of high school and until they reach age 22. Mr. Ouelette explained that two or three years of transition programming would not give Student the opportunity to learn all of the daily functional skills. Four years in the transition program increases a student's chances for successful enrollment in day programs at age 22, and more adult day program options are available to students who have many life and job skills, and are less dependent on adult support. Student is highly dependent on aide prompts and adult support, and if she does not start learning functional life skills soon, she will be limited later in life.

48. Shannon James, a credentialed special education teacher and board certified behavior analyst, is District's intensive behavior intervention program director. She supervises Student's instructional aides and directly works with Student once a week. She explained the intervention clinic would help Student develop independence and decrease reliance on her aide. Further, the intervention clinic works on social skills. The program involves a two-to-one ratio with teachers modeling appropriate social skills. Other students who have attended this program have made huge gains in social skills. Student has been offered the intervention clinic in the past, but has not participated as the clinic is offered at the same time as cheerleading.

49. Mother, who had not seen the intervention clinic, indicated the program did not make sense to her, as she wanted Student to learn from typical peers, not from "those kids" (other disabled students). Ms. James disagreed. Student's social level is different than that of her typical peers, and she cannot access social skills from them; her interests are not the same, i.e., boys, the prom, etc. Student is on a third grade level socially and

conversationally. Her ability to initiate and join in conversation is not good. Instead, Student would benefit from participating in activities with “leveled groupings,” at the transition program.

50. Ms. James also agreed with Dr. Passaro and addressed the issue of fading the aide. Student is aide dependent and needs her aides to break down instructions when she does not understand teacher instructions. Student has trouble with English classes and writing, where she needs aide support. She has difficulty with art class and requires lots of verbal instruction. Student fares better in subjects where she can memorize information or find rote answers in a book, such as math or science. Although Student can take good notes, she has difficulty applying the information she documents, such as applying math concepts.

51. Ms. James created a four phase fading plan for Student, starting with Student’s science and cheerleading classes. Although Mother agreed to the fading plan in May 2015, she did not sign the IEP, and later decided to revoke her consent to the fading plan. Mother revoked her consent to fading based upon her perceived need of the aide “for protection,” which resulted from an incident where Student forgot her cheerleading pompoms for an event. By implementing Student’s last agreed upon IEP, Student still receives one-to-one aide support throughout the school day, with no implemented plans for fading support.

52. Ms. James believes the transition program is the appropriate placement for Student. Student will not benefit from more academics. Student needs to work on functional skills in small groups and community settings. Further, the transition program would develop skills and fade Student’s dependence on her aide, with the ultimate goal of terminating the aide completely.

53. Mr. Takach also supported Student’s placement in the transition program. He found the program to be perfect for Student. The six goals he created for Student went beyond academics and supported what Student needed in the real world. He recalled that the adult transition program had been consistently discussed at Student’s IEP team meetings for the prior two years and faced Mother’s objections. The four year track in the transition program is important for Student. She needs a full four years of consistent routines to establish her functional skills.

54. Ms. Wall concurred. As a speech and language pathologist, she found Student’s biggest deficits to be in audio comprehension. Student does not process what she hears. She cannot advocate for herself if she does not understand what she hears. As a result, Student cannot follow along with a lesson. Student requires small group instruction so she can repeat information, ask questions, and breakdown information. This cannot be accomplished in a large, general education classroom. As a result, it is not functional for Student to sit in a classroom and listen to a history lesson. Student needs to learn to apply her known skills in the community setting. Student needs all four years in the transition program. Student learns slowly and requires repetition. It will be easier for her to learn in a natural setting. Further, the transition program does not preclude community based instruction or classes on a community college campus.

55. Jennifer Morris, District's program specialist for special education, expressed that the transition plan does a lot with the students in their programs. They are different people at the end of four years; more independent; able to obtain employment or apply to community college. They have learned functional academics and problem solving for more independent living.

OFFER OF FAPE

56. District made the following offer of FAPE at the February 9, 2016 IEP team meeting as it pertains to the 2016-2017 school year:

- A. 1840 minutes per week of specialized academic instruction provided in the adult transition program;
- B. 30 minutes per week of individual speech and language therapy;
- C. 30 minutes per week of group speech and language therapy;
- D. 420 minutes per week of other transition services (one-to-one aide) to be provided in any location or setting; and
- E. 60 minutes per month of behavior intervention services consultation.

57. Approximately 57 percent of Student's time was designated outside of regular class, extracurricular and non-academic activities. Forty-three percent of Student's time was designated in regular class, extracurricular and non-academic activities, which would include community based instruction and activities. Student would not participate in the regular class or activities during math, English, science, health and speech and language therapy due to her identified areas of unique needs which require specialized academic instruction with supports to access the curriculum. Further, Student would continue to participate in the curriculum leading to a certificate of completion.

58. As indicated above, Mother did not agree to placement in a moderate/severe special day classroom or placement in the transition program at the adult facility. Mother also contended Student's auditory processing had not been addressed, and she needed more speech therapy, not less, in spite of Student reaching all of her speech goals. Mother provided no basis for her concerns.

CERTIFICATE OF COMPLETION

59. On March 15, 2016, Mother sent an email to District which purported to unilaterally place Student back on graduation track, with the intent of seeking a fifth year of high school. District provided prior written notice that Mother could not determine Student's track unilaterally, nor had the IEP team made such a recommendation. Although Student had earned some high school credits, her grading had been modified throughout, and she was not

on track to graduate, even with a fifth year of high school. District refused Mother's request to change Student to graduation track.

60. Mr. Osborne credibly testified regarding District requirements for graduation on diploma track. To receive a diploma, a student must complete 220 credits, and is required to take specific classes, such as math, English, U.S. history, algebra, economics, science and civics. It is possible for some special day class students to remain on diploma track, with their classes modified to allow access. However, classes which have been significantly modified to the extent the content is significantly lowered do not qualify as the necessary curriculum mandated by the State of California for graduation. In many of the classes Student completed, her grades were significantly modified. For Student to graduate with a diploma, she would need to retake those classes in which she received modified grades or incompletes. Student would not be successful with unmodified curriculum based on her low academic performance. Further, Student could not complete enough credits in a fifth year of high school to graduate with diploma.

61. Certificate of completion and placement in the transition program is a better fit for Student. Student needs exposure outside of the sheltered environment of a high school campus. District established that she is not prepared for adult life. The transition program would provide Student with access to education and provide her with needed functional skills not provided at Garden Grove High.

62. Mr. Takach indicated Mother was not being fair to Student. Student's post-high school education was about her future, not about cheerleading. Certificate of completion had been discussed as early as Student's sophomore year. Student is severely autistic. She was not demonstrating success on the diploma track. She was overwhelmed and needed additional support. She was successful in some areas due to support and aides. Further, Student had many more supports than was typical of other students in the mild/moderate special day class.

63. Ms. Morris also opined that the certificate of completion track was appropriate for Student. Student was provided massive aide and support while on diploma track. She was prompt dependent and developed behaviors if the work was too hard. Student's grades dropped when aide support was reduced. Student simply does not have the functional skills to obtain a diploma. It would be a disservice to Student to give her a diploma at the end of 12th grade and leave her to go out in the world. Ms. Morris was also troubled that Mother had expressed no concern about Student's academics or functional skills, but only focused on cheerleading.

64. District also informed Mother that if she was expressing a revocation of consent to her prior agreement to certificate of completion track, in any disagreement over placement or service, Student's stay put, based upon her last agreed upon IEP, obligated District to maintain Student on certificate of completion track. Further, stay put

contemplates a student's natural progression from grade to grade at the completion of the 2015-2016 school year. Student did not have a right to stay put in high school for an additional school year.

LEGAL CONCLUSIONS

*Introduction – Legal Framework under the IDEA*⁷

1. This special education administrative due process proceeding is brought under the authority of the Individuals with Disabilities Education Act, its regulations and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq; 34 C.F.R. §300.1 (2006)⁸ et seq.; Ed. Code, § 56000 et seq.; Cal Code Regs., tit. 5, § 3000 et seq.) The primary goal of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education or FAPE that emphasizes public education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” (20 U.S.C. § 1400(d)(1)(A); see *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947 (*Mercer Island*.)

2. The Supreme Court determined that, in enacting the IDEA, Congress established procedures to guarantee disabled children access and opportunities, not substantive outcomes. (*Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 192 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*.) If a school district acts in compliance with the procedures set forth in the IDEA, especially as regards the development of the disabled child's IEP, then the assumption is that the child's program is appropriate. (*Id.* at p. 206.) Accordingly, the Court determined that an educational agency must provide the disabled child with a “basic floor of opportunity.” (*Id.* at p. 200.) The Court further noted that an appropriate education under the Act does not mean a “potential-maximizing education.” (*Id.* at p. 197, fn. 21.) Stated otherwise, the educational agency must offer a program that “confers some educational benefit upon the handicapped child.” (*Id.* at p. 200.)

3. Additionally, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*Mercer Island, supra*, 592 F.3d at p. 947.) “First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?”

⁷ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁸ All citations to the Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

(*Rowley, supra*, 458 U.S. at pp. 206-207.) “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” (*Id.* at p. 207.)

4. 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. (*Mercer Island, supra* 592 F.3d 938 at p. 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.]) As the Ninth Circuit held in *Mercer Island, supra*, the phrases “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all refer to the *Rowley* standard.

Issue: Appropriateness of February 9, 2016 IEP Offer

5. The term “special education” means specially designed instruction that meets the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (2006); Ed. Code, § 56031, subd. (a).) “Specially designed instruction” means the adaptation, as appropriate to the needs of the disabled child, the content, methodology or delivery of instruction to address the unique needs of the child that result from the child’s disability. (34 C.F.R. § 300.39(b)(3)(2006).) In the context of the IDEA, “special education” refers to the highly individualized educational needs of the particular student. (*San Rafael Elementary v. California Educ. Hearing Office* (N.D. Cal. 2007) 482 F.Supp.2d 1152, 1160.) The term “related services” means transportation and developmental, corrective or other supportive services required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a) (2006).) In California, “related services” are called “designated instruction and services” or “DIS.” (Ed. Code, § 56363, subd. (a).)

6. In terms of special education law, a “related service” is one that is required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a) (2006); Ed. Code, § 56363, subd. (a).) An educational agency, in formulating a special education program for a disabled pupil, is not required to furnish every special service necessary to maximize the child’s potential. (*Rowley, supra*, 458 U.S. at p. 199.) Instead, an educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F.3d 1025, 1033 (*Park*).)

7. The focus must be on the placement of the school district, not the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*).) An educational agency need not prepare an IEP that offers a potential maximizing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 197, fn. 21.) Instead, “(T)he assistance that the IDEA mandates is limited in scope. The Act does not require that States do whatever is necessary to ensure that all students achieve a particular standardized level of ability and knowledge. Rather, it much more modestly calls for the

creation of individualized programs reasonably calculated to enable the student to make some progress towards the goals in that program.” (*Thompson R2-J School v. Luke P.* (10th Cir. 2008) 540 F.3d 1143, 1155.)

8. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is “a snapshot, not a retrospective.” (*Id.* at p. 1149.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

9. An IEP is a written document which details the student’s current levels of academic and functional performance, provides a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with non-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).)

ANALYSIS

10. The February 9, 2016 IEP contained all statutory elements. The IEP document included a description of Student’s current levels of academic and functional performance; provided ten measurable academic and functional goals; provided a statement of the special education and related services that were to be provided to Student; provided an explanation of the extent to which Student will not participate with non-disabled children in a regular class or other activities; and provided a lengthy list of accommodations necessary for Student’s academic achievement and functional performance.

11. An IEP team must include: (1) one or both of a student’s parents; (2) no less than one general education teacher; (3) no less than one special education teacher or, if appropriate, no less than one special education provider of the student; (4) a representative of the district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of resources of the district; (5) an individual(s) who can interpret the instructional implication of assessment results; (6) at the discretion of the parent(s) or district, any other individual who has knowledge or special expertise regarding the student, including related services personnel, as appropriate; and whenever appropriate, the student with exceptional needs. (Ed. Code, § 56341.)

12. The February 9, 2016 IEP team consisted of contained all statutorily required members. The team included Mother and Student, represented by Student’s non-attorney advocate, as well as a general education and a special education teacher, school psychologist, Student’s service providers, a school administrator, a representative of the transition program and Student’s cheerleading advisor.

13. When developing an IEP, the team must consider the strengths of the child; the concerns of the parents for enhancing their child's education; information about the child provided by or to the parents; the results of the most recent assessments; the academic, developmental, and functional needs of the child; and any lack of expected progress toward the annual goals. (20 U.S.C. § 1414(d)(3)(A), (d)(4)(A); 34 C.F.R. § 300.324(a), (b); Ed. Code, § 56341.1, subds. (a), (d).) An IEP must include a statement of measureable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability.

14. The February 9, 2016 IEP appropriately considered the strengths and weaknesses of Student. The IEP team considered the most recent assessments of Student, prepared by Dr. Passaro, Ms. Rosenberg, and Ms. Hanson. These independent assessments had been requested by Mother, and the findings and recommendations were utilized by District in determining Student's unique needs, strengths and weaknesses. The IEP team considered information from Student's teachers and service providers in determining Student's present levels of performance and in drafting goals relevant to Student's unique needs. While Mother objected to several of the proposed goals, she offered no valid or constructive comments to support her contentions at the IEP meeting.

15. For each student, beginning with the first IEP to be in effect when the student is 16, the IEP must include a statement of the transition service needs of the student. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) Transition services are defined as a coordinated set of activities that are designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation; is based on the student's needs, taking into consideration the student's strengths, preferences and interests; and includes instruction, related services community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocation evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

16. The February 9, 2016 IEP contained a written transition plan which met statutory requirements. The transition plan included assessment and Student interview to determine Student preferences. It contained specific areas of need for Student and goals for post-secondary education, employment training and independent living. Each of Student's transition goals were designed to allow Student to develop independent skills in natural settings. This involved a hybrid of strategies, including class studies, group discussions and community based instruction to generalize concepts in the community. Student's areas of need were further supported by the IEP goals designed for her academic and transition needs.

17. In addition to providing a FAPE, a school district must ensure that "To the maximum extent appropriate, children with disabilities. . . are educated with children who are not disabled." (20 U.S.C. § 1412(5)(A); see also 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) This "least restrictive environment provision reflects the preference by

Congress that an educational agency educate a child with a disability in a regular classroom with his or her typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403.) Under the LRE mandate, a school district must consider a continuum of alternative placements which proceed from “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.” (34 C.F.R. § 300.115(b); see also Ed. Code, § 56342, subd. (b).)

18. The IEP team appropriately considered a continuum of placements for Student. Student could not succeed in general education without significant modification of curriculum extensive prompting by her aide. At age 17, Student has reached the point where her need for life skills and functional academics supersedes Mother’s desire for a fifth year of high school and cheerleading. A fifth year of high school would not benefit Student, nor could she amass sufficient class credits to earn a diploma. As District argued, another year of algebra or biology would not serve Student’s significant vocational and daily living needs. Even assuming, in arguendo, a fifth year of high school was a viable option, it is undisputed that Student required a small, structured educational setting, with significant one-to-one teaching. All educational and expert recommendations were for blended program of moderate/severe special day class and functional skills training Garden Grove High does not have. Therefore, Student’s placement on another high school campus would negate Mother’s primary desire for Student’s continuing participation in cheerleading. District’s ultimate selection of placement in the transition program can provide Student with functional academics and functional life skill training, reinforced and generalized through community-based instruction. Further community-based instruction is also designed to provide Student with mainstreaming and interaction with peers, thus providing Student with education in the least restrictive environment based on her unique needs.

19. The IDEA’s requirement that parents participate in the IEP process ensures that the best interests of the child will be protected, and acknowledges that parents have a unique perspective on their child’s needs, since they generally observe their child in a variety of situations. (*Amanda J., supra*, 267 F.3d at p. 891.) A parent who has had 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 v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1036.) Stated another way, a parent has meaningfully participated in the development of an IEP when he/she is informed of his/her child’s problems, attends the IEP meeting, expresses his/her disagreement regarding the IEP team’s conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.)

20. Mother attended the February 9, 2016 IEP team meeting with Student’s non-attorney advocate. Throughout the IEP team meeting Mother was offered the opportunity to participate in a meaningful manner. On several occasions Mother voiced disagreement with District proposals. As example, Mother contested District’s determination of Student’s baseline math skills, and was given the opportunity to demonstrate Student’s abilities to the contrary. Mother’s contributions to the IEP team meeting were generally negative in nature, and she offered little to support her demand for a fifth year of high school. Unfortunately,

Mother elected to disengage from the IEP team meeting, as she did from this hearing. Nonetheless, Mother was offered the opportunity to participate in the IEP team meeting in a meaningful manner.

21. A school district has the right to select a program for a special education student, as long as the program is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D. Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F. Supp.2d 880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 503 F.Supp.2d 1206, 1216.) Nor must an IEP conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [The IDEA does not provide for an "education...designed according to the parent's desires," citing *Rowley, supra*, 458 U.S. at p. 207].) The focus is on the placement offered by the school district; not on the alternative preferred by the parents. (*Gregory K., supra*, 811 F.2d at p. 1314.)

22. District has acted in compliance with the procedures set forth in the IDEA, and therefore, pursuant to *Rowley*, it is presumed that Student's program is appropriate. Beyond this presumption, the IEP team developed Student's IEP for the 2016-2017 school year, based upon valid assessments and information regarding Student's cognitive abilities, functional skills, and present levels of performance in all areas relating to her education. The IEP goals comported with these needs, and the IEP was reasonably calculated to enable Student to receive educational benefit. Further, Student's IEP goals could easily be implemented in the transition program and they were coordinated in conjunction with Student's transition plan. There is little doubt that that Student's participation in four years of the transition program, with a focus on real life skills and a functional curriculum will better prepare Student for adult life than will continued participation in cheerleading. The February 9, 2016 IEP offers Student a free appropriate public education in the least restrictive environment.

23. The issue of whether an individual with exceptional needs will receive a regular high school diploma when he/she graduates from high school is not addressed by the IDEA. (Letter to Anonymous, 22 IDELR 456 (OSEP 1994). Nor does the IDEA establish standards for graduation as a general matter. (Letter to Richards, 17 IDELR 29.) The establishment of appropriate, substantive standards for graduation is entirely a matter of state law for both disabled and nondisabled students. (71 Fed. Reg. 46577 (2006); Letter to Anonymous, *supra*.)

24. In California, no diploma, certificate, or other document, except transcripts and letters of recommendation, shall be conferred on a pupil as evidence of completion of a prescribed course of study or training, or of satisfactory attendance, unless the pupil has met the standards of proficiency in basic skills prescribed by the governing board of the high school district or equivalent thereof. (Ed. Code, § 51412.)

25. When an individual with exceptional needs is not capable of meeting the requirements for a diploma, he/she may be placed on a track which leads to a certificate of completion. Specifically, a local educational agency may award an individual with exceptional needs a certificate or document of educational achievement or completion if the individual has (a) satisfactorily completed a prescribed alternative course of study approved by the school district; (b) met his/her IEP goals and objectives during high school as determined by the IEP team; or (c) has satisfactorily attended high school, participated in the instruction as prescribed by his/her IEP, and has met the objectives of the statement of transition services. (Ed. Code § 56390, subs (a-c).) However, it is not the intent of the Legislature to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the pupil has completed the prescribed course of study and has passed proficiency requirements with or without differential standards. (Ed. Code § 56392.)

26. OAH special education cases are replete with decisions upholding the placement of a special education student on the certificate of completion track. Although these Decisions are not precedential they can be used for guidance. Certificates of completion are awarded to students for a variety of reasons, such as those instances where cognitive ability precludes the ability to pass classes necessary for graduation, or where a student requires more functional skills rather than academics to become as independent as possible. (See e.g. *Student v. Fallbrook Union High School District* Cal.Offc.Admin.Hrngs. 2007090067 (2007); *San Dieguito Unified School District* Cal.Offc.Admin.Hrngs.2013080189 (2013); *Parents v. Los Angeles Unified School District* Cal.Offc.Admin.Hrngs. 2013050272 (2013).) Further, a regular high school diploma is inappropriate where a student is provided a highly modified curriculum in contravention to the unmodified curriculum. (*Parents v. Redondo Beach Unified School District and Redondo Beach Unified School District v. Parents*, Cal.Offc.Admin.Hrngs. 2010090344/2919979149 (2010).)

27. District had recommended Student be placed on the certificate of completion since her sophomore year of high school. Student's classes were highly modified and Student had limited success without continual prompting and supports. In 2015, to allow Student to participate in cheerleading as an elective, Mother requested Student be removed from the U.S. history class, required for graduation. At that time, Mother voluntarily consented to Student's placement on the certificate of completion track. Subsequently, Student's classes have continued to be significantly modified, and Student does not have, nor can she obtain the requisite number of class credits necessary to receive a diploma.

28. Mother's unilateral attempt to revoke Student's placement on the certificate of completion track is invalid. Mother has no rights under the IDEA or state law to determine high school curriculum or graduation requirements. Based upon Student's significantly modified curriculum and grading, her need for continual prompting, and her lack of functional skills, District's decision to retain Student on the certificate of completion track as part of the February 9, 2016 IEP was well reasoned and appropriate.

REMEDIES

1. District has prevailed on both issues presented at hearing. District requested a finding that District's offer of placement for the 2016-2017 school year, as contained in the February 9, 2016 IEP was appropriate and offered Student a FAPE in the least restrictive environment. District also requested a finding that its determination that Student remain on the certificate of completion track was appropriate. This decision makes such findings.

2. In its complaint, District also requested that the ALJ determine that District may implement the offer of placement in its adult transition program for the 2016-2017 school year, notwithstanding lack of parental consent. On April 2, 2016, Mother revoked consent for special education. Mother's removal of Student from special education was also confirmed on April 5, 2016, during Student's prehearing motion. Therefore, as of April 2, 2016, upon revocation of consent, OAH, at this time, has no further jurisdiction to require District to provide Student with special education and related services, or to allow District to implement the February 9, 2016 IEP with or without parental consent. The issue of implementation is now moot.

ORDER

District's requested relief is granted as follows:

1. District's offer of placement for the 2016-2017 school year in District's adult transition program as contained in Student's February 9, 2016 individualized education program is appropriate and offers Student a FAPE in the least restrictive environment.

2. District's offer of certificate of completion track is as contained in Student's February 9, 2016 IEP is appropriate.

PREVAILING PARTY

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

RIGHT TO APPEAL DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code § 56505, subd. (h).) The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a) (2006); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of this Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b); Ed. Code, § 56505, subd. (k).)

Dated: May 18, 2016

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings