

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012010705

DECISION

Administrative Law Judge (ALJ) Gary A. Geren, Office of Administrative Hearings (OAH), State of California, heard this matter on April 10 through 13, and April 24, 2012, in Fresno, California.

Student was represented by her mother (Mother) and advocate Sandra Hammond. Mother and Ms. Hammond attended all five days of hearing.

Attorneys Sang-Jin Nam and Melody A. Hawkins, of McCormick Barstow LLP, represented Fresno Unified School District (District). Debi Clark Fleming attended the hearing as a representative of the District.

Student filed her due process request on January 24, 2012 (Complaint). On March 8, 2012, the hearing was continued for good cause until April 10, 2012. At the conclusion of the hearing on April 24, 2012, the parties requested and were granted, a continuance until May 14, 2012, to prepare closing arguments. On May 7, 2012, the parties were informed ALJ Geren had become unavailable. The parties asked that the matter remain assigned to ALJ Green, requested a continuance, and agreed to extend the time to issue a decision. The request for a continuance was granted with the decision to issue on or before June 22, 2012. At Student's request, the parties were also granted a further continuance to file closing arguments by May 29, 2012. The parties timely filed closing arguments and the record was closed.

On June 4, 2012, the parties were informed ALJ Geren remained unavailable. At the request of the parties a further continuance was granted and the time for decision was extended until August 3, 2012. On July 2, 2012, ALJ Geren remained unavailable and Student moved to continue the matter further. The District opposed any further continuance. On July 3, 2011, OAH denied Student's motion, and

reassigned the matter with a decision to be rendered by August 3, 2012. As of the date of the decision, ALJ Geren remained unavailable.

The matter was reassigned to ALJ Alexa J. Hohensee, who listened to the audio recordings of the five days of hearing and considered all admitted evidence before rendering this decision.

ISSUES

1. Did the District predetermine Student's placement prior to the December 12, 2011 individualized education program (IEP) team meeting?
2. Did the District prevent Mother from actively participating in the IEP process by not considering parental input in the following areas:
 - a. Student's placement;
 - b. Student's academic and social progress;
 - c. Student's goals and objectives; and
 - d. By failing to provide Mother with necessary information?¹

FACTUAL FINDINGS

Jurisdiction and Background Information

1. Student was 20 years of age at the time of the hearing. Student lives with Mother in the jurisdictional boundaries of the District. As a toddler, Student experienced life-threatening seizures that left her with mild to moderate intellectual impairment, and she is eligible for special education services as a student with an intellectual disability (ID). Student has received special education services in the District since 1996, and continues to have a seizure disorder.

2. Mother is the holder of Student's educational rights.

3. As of the dates of hearing, Student was in a stay-put placement with dual attendance at Fresno City College (FCC) and Duncan Polytechnical High School (Duncan). Student was attending FCC in the mornings for reading and writing intervention classes for disabled adults, with one-on-one tutoring sessions, and

¹ The issues for hearing in Student's complaint were verified with Mother at a pre-hearing conference (PHC), and are as set forth in the April 3, 2012 PHC order.

Duncan in the afternoons for a half-day general education regional occupation program (ROP) class in agriculture. The District provided transportation for Student from FCC to Duncan.

4. In June 2010, student received a certificate of attendance in lieu of a regular high school diploma. The 2010-2011 school year was Student's fifth year of full-time attendance at Duncan, during which she experienced a series of seizures, resulting in headaches, memory loss, and multiple absences. The 2011-2012 school year marks her sixth year at Duncan, in ROP classes limited by Duncan to high school juniors and seniors. Student has taken multiple ROP classes at Duncan, including floral design, forestry, agriculture, and small animal management, and by all accounts is a pleasant and happy student.

5. Student's most recent comprehensive psychoeducational evaluation was performed in April 2002. Student's most recent academic assessment was performed in June 2008.

6. On December 15, 2008, the District filed a due process hearing request on whether it had offered a free and appropriate public education (FAPE) to Student in an IEP dated September 25, 2008. The District could have, but did not, seek the right to conduct a comprehensive psychoeducational assessment of Student at that time.²

May 25, 2011 IEP team meeting

7. In April 2011, the District sent Student notice of an annual IEP team meeting scheduled for May 23, 2012, and informed Student that she would not be attending Duncan the following year. On April 7, 2011, Mother emailed the District to demand that placement decisions for the 2011-2012 school year be made at an IEP team meeting.

8. In early May 2011, Mother began emailing the District with an offer to meet to develop draft goals and objectives for Student's annual IEP. Mother had seen Student make significant academic progress in reading, writing and math over the past two years, and wanted goals and objectives to focus on increasing her daughter's academic skills.

9. At the District's request, prior to the May IEP team meeting, Mother visited the FCC adult transition program (FCC-ATP), guided by Susan Kalpakoff, the supervisor of the FCC-ATP program. The FCC-ATP program has two parts: a

² *Fresno Unified School Dist. v. Student*, OAH Case No. 2008120492. That matter involved a proposed change of placement for Student from mainstreamed classes at Duncan to a special day class (SDC) at another high school. Student prevailed at hearing.

morning program originally developed to serve adult students with autism intending to go to college or work,³ and an afternoon disabled persons programs and services (DSPS) class run by the Fresno County Office of Education (FCOE) for adult students with an IQ below 50. The District scheduled the visit for the afternoon, so Mother saw only the afternoon DSPS class, which she felt served only students who were severely disabled. In contrast to the students in DSPS class, Mother perceived her daughter to be mildly disabled, typical in her social interactions and better behaved than many non-disabled students.

10. On May 13, 2011, the District emailed Mother a series of proposed functional living goals, developed without Mother's input. The areas of need designated by these goals were (1) navigating campus, (2) use of an agenda to record events and responsibilities, (3) arriving at school, completing homework and submitting assignments on time, and (4) participation in vocational training. Mother replied on May 14, 2011 that Student was able to navigate by herself on the Duncan campus, was familiar with the municipal bus system from taking it with her sister, could not take the bus unaccompanied due to her seizure disorder, and needed to work on academics rather than mobility training.

11. On May 16, 2011, District administrator Cheryle Anderson emailed to Mother that "[a]cademic goals cannot be developed at this time because program and placement for next year has not been determined....So next year's goals will be developed after appropriate placement and program has been decided at the IEP."

12. On May 17, 2011, the District sent Mother a letter stating that no further assessment was needed to determine Student's continued special education eligibility at the upcoming May 2011 IEP team meeting.

13. The District convened an annual IEP team meeting on May 23, 2011, which was attended by Mother, Student's advocate Ms. Hammond, a Central Valley Regional Center (Regional Center)⁴ counselor Varduhi Rosie Kardotyan, District case manager Sharon Richards, District administrators Cheryle Anderson and Jonie Difillipo, Student's ROP teacher Anna Demaree, the school psychologist, and a school counselor.

14. The District's meeting agenda had two items: (i) Student's 2011-2012 placement and (ii) fading of Student's one-on-one aide at Duncan. With regard to Student's present levels of performance (PLOP's), the District wrote Student's scores from a 2008 "WIAT-II" academic ability test into the IEP, with undated reports that Student was working on upper first grade math skills and first to second grade reading

³ Not all, but a majority, of students in the FCC-ATP have a diagnosis of autism.

⁴ The Central Valley Regional Center is funded by the State to advocate for, and provide services to, persons with developmental disabilities.

and writing skills. Also included was a report from Student's art teacher that Student completed art projects with support, and from Student's forestry teacher that Student does most of what she is asked. Ms. Demaree, Student's floral design teacher, attended the meeting, and reported that Student identified flowers and did the classwork with modification. The proposed PLOP's stated that Student had good communication skills, good gross and fine motor skills, was friendly, polite, willing to do her work, and able to take care of her personal needs at school and advocate for herself. The PLOP's noted that Student's many absences, headaches, and leaving class early had impacted her interaction with her peers.

15. The District had allotted one hour total for the IEP team meeting, and Ms. Anderson interrupted the discussion of PLOP's to steer the discussion to placement.

16. The District presented three adult transition programs as placement options for Student: (i) FCC-ATP, (ii) the Fresno Adult School (César Chavez) program, which focused on job training, and (iii) the Instructional Media Center (IMC) program, which focused on independent living skills. Mother wanted a program that focused on academics and socialization, and requested that the team consider another year of placement at Duncan. In order to give Mother time to view the IMC and César Chavez adult programs, the IEP team meeting was continued to another day.

The IMC and Cesar Chavez Placements

17. The IMC program serves adult students with moderate to severe intellectual disabilities with IQs of 50 to 65, teaching functional skills for survival in society, such as reading a menu and taking a bus, with some vocational training. Mother observed the IMC program, and felt that it was a bad fit for Student, as in Mother's opinion Student is mildly to moderately, not moderately to severely, disabled, Student can already read, and Student cannot take a bus independently due to her seizure disorder. Mother was also concerned that the IMC program did not offer more than simple, functional academics.

18. The César Chavez program serves mild to moderately disabled adult SDC students who are not diploma bound, but want to focus on intensive language arts and math, and pursue vocational training. Its vocational training program is not designed for students with intellectual disabilities. Mother observed César Chavez, and was disturbed by the behavioral and emotional issues displayed by the students, particularly cussing in the classroom. She also spoke to the administrator at César Chavez, who recommended against placing Student in that program.

June 10, 2011 IEP team meeting

19. The District reconvened Student's May 23, 2011 IEP team meeting on June 10, 2011. The meeting was attended by Mother, Student's Regional Center case manager Felicia Puente, District administrator Ms. Difillipo, District case manager Ms. Anderson, a school psychologist and a counselor.

20. The draft of the IEP presented at the June 10, 2011 meeting differed from the draft discussed at the May 23, 2011 IEP team meeting, in that Student's school of attendance was listed as "Fresno Adult," a reference to the District's adult transition programs, rather than Duncan.

21. The June 10, 2011 IEP team re-addressed Student's PLOP's, noting that Student had made steady progress on her 2010-2011 annual goals in written expression (Student will compose a five sentence paragraph), basic reading (Student will read at the second grade level with grade appropriate pacing, intonation and expression), and met her reading comprehension goal (when reading at "her level," Student will be able to retell the beginning, middle and end of a story).

22. However, despite the insistence of Mother and Student's advocate Ms. Hammond, the District members of the IEP team refused to develop new goals for Student, instead documenting that "New goals for 2011-2012 have not been developed because district has not been allowed to assess" and "[Ms. Anderson] explain[ed] that goals are written on assessment and the district has not been allowed to assess [Student]." No request to assess Student was made by the District members of the IEP team.

23. The June 10, 2011 IEP team considered three programs for Student: (i) the IMC functional skills program, (ii) the César Chavez job skills program and (iii) the FCC-ATP program with its DSPS class. The team did not consider a sixth year at Duncan, although Mother pointed out that at Duncan, Student had made good progress in her academics, had friends and socialized when she wasn't suffering seizure related symptoms, and was mainstreamed with nondisabled peers. Mother expressed her concern that Student would be educated with only disabled students in the adult transition programs, and would no longer progress in academics and the general education curriculum. The District members of the IEP team offered Student placement in the IMC program, with goals for the 2011-2012 school year to be developed at IMC after 30 days of attendance.

24. Mother did not consent to the June 10, 2011 IEP, and wrote "IEP is incomplete. We have not covered and addressed my concerns due to time limits....We also have been unable to address and work on goals." The District took the position that the June 10, 2011 IEP was a complete document encompassing an offer of FAPE, and that any future meetings would constitute new meetings, and not reconvened meetings to finish the June 10, 2011 IEP.

25. On June 20, 2011, the District sent a prior written notice (PWN) letter to Mother, stating that the District proposed to stop providing Student with a one-on-one classroom support assistant because Student would not need one in the adult transition program, where she would be placed. The District's letter stated its position that Student had "graduated" from Duncan in June 2010 with a certificate of completion and 230 high school credits. The PWN letter noted that Student had not had a comprehensive psychoeducational assessment since 2002, that Student's PLOP's might not be accurate or reflective of her current adaptive skills and/or ability levels, and that "[Student] is 19 ½ years old and is appropriate [sic] and capable of participating in an adult transition program with age appropriate peers to support her in becoming a functioning adult." The PWN letter concluded that the appropriate and least restrictive environment (LRE) was the functional skills program at IMC "with age appropriate peers."

26. Near the end of the spring 2011 semester, the District assigned Susan Kalpakoff, who supervised the FCC-ATP program, as Student's case manager. This was unusual, as the District typically assigned each special education student a case manager from the school site attended by that student.

Fall semester of the 2011-2012 school year

27. On August 12, 2011, the principal of Duncan called Mother to inform her that Student had been disenrolled from Duncan. Mother sent emails to, and met with, District administrators to discuss the disenrollment. Mother was upset that her daughter's placement had been changed without a signed IEP, but the District took the position that Student had been offered a FAPE at IMC in the June 20, 2011 PWN letter. Student was not permitted to return to school at Duncan in fall 2011.

28. On September 19, 2011, Mother observed the morning classes of the FCC-ATP program. The students were taking exams, so Mother spoke with the teacher and viewed the classroom briefly. Mother was troubled that there were only male, and only disabled, students in the class.

29. Also on September 19, 2011, Ms. Kalpakoff sent Mother a letter agreeing to schedule an IEP team meeting "with the ultimate outcome of getting [Student] in an ATP placement." The letter also noted that fall placement in the FCC-ATP program was not an option because the FCC registration date for the fall semester had passed.

30. The FCC-ATP program has very different morning and afternoon classes. The FCC-ATP program is part of a collaborative arrangement between the District and FCC to provide an adult transition program to serve the District's special education students aged 18 to 22 years. The FCC-ATP program serves disabled adult students, most with a diagnosis of autism, and offers a menu of classes consisting of (i) intervention classes in reading and writing in the morning, taught by a District

teacher (District intervention classes), (ii) a DSPTS class in the afternoon run by FCOE for students with an IQ under 50, (iii) college courses at FCC, and (iv) one-on-one tutoring with a District teacher or paraeducator on the FCC campus at any time that the District's students are not in one of these classes between the hours of 8:00 a.m. and 3:30 p.m. Registration with FCC is required for enrollment in the DSPTS class and college courses. Registration with FCC is not required for the District's intervention classes or tutoring sessions, which are not administered by FCC.

31. Mother retained counsel for Student, Dria Fearn, who wrote to the District on October 4, 2011, and demanded Student's re-enrollment at Duncan, as well as development of goals prior to transition planning. District's counsel, Mr. Nam, responded that the District refused to re-enroll Student at Duncan, and provided information on the FCC-ATP and IMC adult transition programs. An IEP team meeting was scheduled for October 25, 2011.

The October 25, 2011 IEP team meeting

32. The District convened an IEP team meeting on October 25, 2011, attended by Mother, Student's attorney Ms. Fearn, advocate Ms. Hammond, Regional Center case manager Felicia Puente, Area VIII Board⁵ advocate Dawn Joest, District administrator Ms. Kalpakoff, District's attorneys Sang-Jin Nam and Emily Fulmer, and a District staff member to act as the scribe for the meeting.

33. The October 25, 2011 draft IEP carried forward the PLOP's from the June 10, 2011 IEP, adding additional "baselines." For reading, the PLOP read that "[Student] was progressing in developing 2nd grade fluency/pacing, intonation and expression....However, all goals were based on last assessment of 4/25/02, which was last assessment that parent consented for the District to conduct." The independent living baseline merely stated "Goal will be developed by IEP team upon enrollment in ATP through observation and informal assessment," and the math baseline stated that the "[n]ew goal for math will be developed by IEP team after assessment upon enrollment in ATP." These baselines lacked substance on Student's academic achievement or functional performance in reading, independent living or math.

34. As new goals had not been developed at Student's June 10, 2011 IEP team meeting, the District proposed using Student's 2010-2011 written expression and reading comprehension goals with 2011-2012 dates inserted. These goals continued to reference Student's 2009-2010 abilities, and the reading goal had already been met. A new functional reading goal was proposed that Student would demonstrate understanding of "reading material at her level," as well as a new math goal that Student would "solve problems involving multiplication of multi-digit

⁵ The Area VII Board is part of the State Council on Developmental Disabilities, and advocates on behalf of persons with developmental and intellectual disabilities.

numbers by multi-digit numbers.” The independent living goal merely stated “Goal will be developed by IEP team upon completion of assessment.” These goals were not developed taking into account Student’s then-current academic achievement or functional performance, and failed to identify Student’s unique educational needs, including her social and emotional needs. Mother disagreed that Student’s annual goals could simply remain the same or undeveloped until new assessments were conducted, but District staff was unresponsive and wrote on the IEP “[a]gree on goals and objectives that were presented.”

35. Three placement options were considered: (i) the job training program at César Chavez, (ii) the functional skills program at IMC, and (iii) the FCC-ATP program. Ms. Kalpakoff told Mother that because she had not registered Student with FCC for fall 2011, Student could not be enrolled in the FCC-ATP program until spring 2012. Mother again raised Duncan as a placement. The District team members refused to consider Duncan as a placement, but proposed placement in the FCC-ATP program for District intervention classes and one-on-one tutoring in the morning, with “specialized academic instruction” to take place in an ROP class at Duncan in the afternoons for 140-minutes per day (three class periods), for the remainder of the fall 2011 semester from October 26 through December 23, 2011.

36. The District members of the October 25, 2011 IEP team presented Mother with an assessment plan for a comprehensive triennial assessment of Student in the areas of academic achievement, intellectual development, social/emotional development, adaptive behavior, post-secondary transition and assistive technology. The District proposed that the assessment take place within six weeks, and an IEP team meeting be held on December 12, 2011 to review the assessment results and develop Student’s goals and objectives. Mother requested that a neutral evaluator be retained to conduct the assessment, but District refused. Mother requested 24 hours to consider the assessment plan.

37. Mother wanted the offered dual attendance program to last through the end of the 2011-2012 school year. She consented to the IEP except for “‘Offer of FAPE’ end date of 12/23/11 for attendance at Duncan Polytechnical High School; FCC spring 2012 class schedule,” which was written onto the IEP.

38. Ms. Kalpakoff testified repeatedly that Mother “agreed” to the comprehensive triennial assessment at the October 25, 2011 IEP team meeting, and “agreed” to the District’s offer of placement and services. Her testimony is in conflict with the testimony of Mother, Ms. Hammond, Ms. Puente, Ms. Joest, Mother’s written disagreement with the offer of FAPE, and the lack of a signed assessment plan. Ms. Kalpakoff also repeatedly referred to the “certified and attested” version of the IEP document, although no certification or attestation was attached to any copy of the IEP document submitted into evidence. Ms. Kalpakoff’s testimony was unpersuasive, and exhibited a tendency to inconsistency, inaccuracy and exaggeration, which adversely affected her credibility in general, and resulted in less

weight being given to her testimony regarding the events that occurred in the IEP team meetings she attended than to that of other witnesses.

39. Mother, Ms. Hammond, Ms. Puente and Ms. Joest testified persuasively regarding the events surrounding the IEP team meetings they attended, with detailed recall and consistent with each other and the documentary evidence. Although these witnesses were not educators, Mother had attended many IEP team meetings over the years regarding her daughter's program, and the others had attended numerous IEP team meetings as advocates, and were familiar with the purposes and procedures of IEP team meetings in general. The opinions of Ms. Hammond, Ms. Puente and Ms. Joest regarding which educational placements should have been offered were given no weight. However, their percipient testimony concerning what occurred at the IEP team meetings was given greater weight than that of Ms. Kalpakoff.

40. Mother did not sign the assessment plan presented at the October 25, 2011 IEP team meeting.

41. For most of Student's attendance at Duncan during fall 2011, the District excluded her from any school-wide extracurricular activities, as well as extracurricular activities offered to the agricultural ROP students, including Future Farmers of America (FFA) functions. District's position was that student was not placed at Duncan, but merely receiving 700 minutes per week of specialized instruction within the ROP class.

42. Student began her ROP class at Duncan on October 26, 2011, and a few days later, Mother informed Ms. Kalpakoff that Student would eat lunch at Duncan with her friends and non-disabled students, as she was transported to Duncan well before her ROP class began and enjoyed the socialization. In response, the District changed the transportation schedule so that Student would remain later at FCC, and told Mother that if Student's parents drove Student from FCC to Duncan, Student would have to wait in the office until 15 minutes before her class began. The District also arranged to send a pre-packaged sandwich to FCC each day for Student's lunch. Again, District took the position that Student was not placed at Duncan, and entitled to be there only for specialized instruction within the ROP class.

43. On November 2, 2011, six days after Student began the ROP class and concurrent with the transportation schedule change, the District replaced Student's contract aide, on assignment from October 26 to December 23, 2011, with a full-time District employee. The new aide already worked with Student at FCC, but began to follow the bus to Duncan, to escort Student on Duncan's campus (directly to Student's ROP class and to transportation home at the end of the day), and to assist Student in her ROP class. Ms. Kalpakoff told Mother that the aide change had occurred because the original aide had asked to be released from working with

Student.⁶ However, the original aide, Monique Addison, testified that she had called in on November 2nd with a one-day family emergency, and was shocked that her assignment was terminated, as usual District procedure would have been to provide a substitute aide for that day. Ms. Addison testified that she enjoyed working with Student, and had not requested release from her assignment. Ms. Addison's testimony was sincere, made under oath, and as a current District substitute aide she had no apparent motive for misstating the facts. Ms. Addison's testimony was in direct conflict with Ms. Kalpakoff's statements to Mother, and those conflicting statements reflected adversely upon Ms. Kalpakoff's credibility.

44. Between October 26 and December 12, 2011, Mother and District communicated by letter and email concerning the change in transportation schedule, where Student should eat lunch, Student's discomfort with the new aide, Student's participation in extracurricular activities at Duncan and District's request to assess Student. The District's communication consisted generally of Ms. Kalpakoff stating District's interpretation of the terms of the October 25, 2011 IEP, that terminating academic instruction did not constitute a change of placement, and that District had the right to make unilateral personnel decisions and to assess Student. Mother continued to insist on neutral assessors. No agreement was reached on these issues, except that Student was permitted to participate in extracurricular activities with her ROP class at Duncan.

The December 12, 2011, IEP team meeting

45. The District convened an IEP team meeting on December 12, 2011, attended by Mother, advocate Ms. Hammond, Regional Center case manager Ms. Puente, Area VIII Board advocate Ms. Joest, District administrator Ms. Kalpakoff, FCC case manager Kimberly Olson, meeting scribe Nicole Evangelinos, and Student's ROP teacher Anna Demaree. The District had pre-prepared an agenda for the meeting, listing as an item Mother's concerns as stated in her communications with the District.

46. Ms. Olson presented Student's progress on the goals attached to the October 25, 2011 IEP, as told to her by Student's teacher and paraeducator at FCC. Ms. Olson reported that in functional reading, Student understood reading materials at her level, although she could not identify the grade level of the curriculum that Student was reading. She reported that in reading comprehension, Student could retell the beginning, middle, and end of a story at her reading level, with adult prompting for redirection and focus.⁷ Ms. Olson reported that Student was not working on the math goal regarding multiplication of multi-digit numbers, but instead

⁶ Ms. Kalpakoff made these statements to Mother at the December 12, 2011 IEP, an audio recording of which was admitted into evidence.

⁷ This goal had already been met by Student during the 2010-2011 school year.

was working on “touch money” math, and had difficulty with addition and subtraction of money. Student’s teacher, Howard Landis, had provided work samples, but Ms. Olson could not say when they were taken. Ms. Demaree, Student’s ROP teacher at Duncan, reported that Student was happy to be in class, and did all the work as modified. Student was not interacting with the class as much as in the past, perhaps because it took Student time to “warm up” to new students, and she tended to interact with students she knew. Ms. Demaree concluded that overall, Student was doing fine in the ROP class.

47. District team members requested that Mother sign the October 25, 2011 assessment plan. Mother responded that she wanted a “neutral” party to conduct the assessments, and declined to execute the assessment plan.

48. The team discussed spring 2012 registration for the FCC-ATP program. Ms. Kalpakoff explained that Student had to register at FCC to be eligible for the DSPS portion of the FCC-ATP program, and to participate in FCC extracurricular activities. Ms. Kalpakoff stressed that the last day to register at FCC was January 6, 2012, and offered to assist Mother with registration.

49. Ms. Kalpakoff stated that attendance at FCC in spring 2012 required registration “100 percent.” She stated that Student would not be permitted to attend the FCC-ATP program for a half-day again, and that if Student did not register at FCC, only the District’s job training program at César Chavez or functional skills program at IMC would be available. Mother protested that the morning District intervention classes and tutoring sessions were run exclusively by the District, and that FCC had informed Mother that Student did not need to register with FCC for that part of the FCC-ATP program. Ms. Kalpakoff responded that the full FCC-ATP program offered to Student consisted of both the District-run and DSPS classes, and that Student “needs to be in an adult program.”

50. Mother asked the IEP team to discuss Student’s continued dual attendance at FCC and Duncan for the remainder of the 2011-2012 school year, because Student was reported to be doing well in the dual program, had an opportunity to mainstream with friends, other young women, and non-disabled students at Duncan, and required more time to transition to a large public college campus. Ms. Kalpakoff refused to let the IEP team discuss continued placement at Duncan, stating “Duncan is not an offering.” She insisted that Student “needs to be in an adult transition program,” and “[o]ur adults should be in an adult program.”

51. Ms. Hammond requested a comparison of services and mainstreaming opportunities at Duncan and the FCC-ATP program, but Ms. Kalpakoff refused to have the IEP team entertain further attendance at Duncan, stating that the “offer is what it is” and that Student’s attendance at Duncan was ending with the fall semester of the 2011-2012 school year. Mother inquired if the District was planning to unilaterally disenroll Student from Duncan again, to which Ms. Kalpakoff replied that

Student was placed in the FCC-ATP program, and was only entitled to academic instruction at Duncan through December 23, 2011. Mother made a third attempt to discuss extension of dual attendance through the end of the 2011-2012 school year, but Ms. Kalpakoff cut her off, stating that that Student could choose to attend any District adult program in spring, but not Duncan.

52. Ms. Kalpakoff closed the meeting by reminding Mother that if Student wasn't registered at FCC in time, "[the functional skills class at] IMC is the offer." Mother did not consent to the December 12, 2011 IEP. Mother perceived the offer of full-time placement in the FCC-ATP program for spring 2012 as a "take it or leave it" offer that the District refused to review or modify.

53. At hearing, Ms. Kalpakoff testified that the December 12, 2011 IEP team considered dual attendance at Duncan/FCC and full-time enrollment at FCC-ATP as placement options for Student in spring 2012, but that the following factors weighed against offering Duncan: (1) at 20 years of age Student belonged in an adult program for 18-22 year olds, (2) Ms. Demaree reported to the IEP team that Student sat in the back of the room, did not participate unless encouraged, and that her modified work did not even relate to the class, (3) the majority of Student's peers had moved on from Duncan and the FCC-ATP program offered the same level of social interaction, and (4) Duncan did not offer Student appropriate access to transition curriculum. Ms. Kalpakoff's testimony was not supported by the audio recording of the December 12, 2011 IEP team meeting, which evidenced that Ms. Demaree did not make such a report, and that Ms. Kalpakoff refused to allow discussion of Duncan's curriculum, social opportunities or mainstreaming opportunities. Her misstatement of what was discussed at the December 12, 2011 IEP team meeting adversely affected her credibility.

54. Ms. Kalpakoff testified that an assessment was a "crucial piece" for placement, and that she "would not have taken other [placement] alternatives from [Mother] without that being part of the picture."

The FCC-ATP program and Student's stay put placement for spring 2012

55. Ms. Kalpakoff testified that the FCC-ATP program offered many activities and clubs at lunch at which the District's adult students could interact with typical peers, including an anime club, and that the FCC-ATP provided support to attend those activities. However, her testimony was contradicted by FCC-ATP teacher Howard Landis, who testified that very few club activities were available to FCC-ATP students, and that disabled students from the FCC-ATP program sat with each other at lunch and did not interact with non-disabled students. Ms. Kalpakoff admitted in later testimony that she directed Mr. Landis to speak to Student about forming a new anime club at lunch, of which Student would be the president. Ms. Kalpakoff then testified that the club offerings at FCC were only for "full-day students." Ms. Kalpakoff's testimony that the FCC-ATP program offered Student

many activities and clubs during lunch to interact with typical peers was internally inconsistent, contrary to the testimony of Mr. Landis who ate lunch with the FCC-ATP students, and neither credible nor persuasive.

56. District did not permit Student to attend Duncan beyond December 23, 2011. Mother filed a due process hearing request on January 24, 2012, and on February 1, 2012, the OAH issued a stay-put order requiring the District to continue Student's dual attendance at FCC and Duncan pending the decision in this proceeding.

57. Melissa Marie Esqueda, a District teacher, testified concerning Student's performance in one-on-one tutoring sessions at FCC in spring 2012 two mornings per week in reading, writing and math. Ms. Esqueda worked with the Edmark language curriculum by chunking information so that Student did not become frustrated during the 50-minute sessions. Ms. Esqueda supplemented Student's sessions with a functional skills curriculum. The Edmark curriculum has levels A, B and C. Ms. Esqueda started Student on the highest level, level C, which involved lots of writing, spelling and sight words. Although Student could get 90 percent of the work correct, it was a very slow process, so she moved Student down to level A. Ms. Esqueda does not know the grade level that corresponds to Edmark's levels A (or B or C), but Student was beginning to write about ideas, supporting them with sentences, and appeared to have a comprehension level of at least the first grade. Student loved reading books at a higher reading level, such as the Twilight and the Vampire's Kiss series, but Ms. Esqueda suspected that Student was skimming pages rather than actually reading, although Student could answer questions about the stories. Ms. Esqueda worked with Student on "touch money" math, using coins and counting by fives. She opined that counting money and change was very difficult for Student, and that Student had recently learned to recognize a quarter.

58. Ms. Esqueda worked continuously on academics with Student on a one-on-one basis in the FCC library, and walked Student directly to FCC's "packed" cafeteria at lunch. Student had no opportunity to socialize with non-disabled students while she was with Ms. Esqueda.

59. Howard Landis, a District teacher, testified about Student's participation in the District intervention classes taught by him in the FCC-ATP program three mornings per week during the fall and spring semesters of the 2011-2012 school year. The District intervention classes contained seven disabled male students and Student. Student was working on Edmark A or B level books in fall 2011, but in spring 2012 was working at the level of his other students in the C book, at the third or fourth grade level. Students in the FCC-ATP program do not begin vocational and independent living classes until their second year, so Mr. Landis had not worked with Student on functional skills at the time of hearing.

60. FCC-ATP students and staff ate lunch in the cafeteria together, and although the disabled students were not required to sit together, they did. Mr. Landis and his staff would not let a disabled student interact with a non-disabled student that they saw as a threat to the disabled student's safety. The one time Student approached a non-disabled male in the cafeteria, she was told by Mr. Landis that she could not socialize with him because it was unsafe. Mr. Landis had perceived the male Student to be "prowling" around female students. Student was the only student who received a pre-packaged lunch from the District, which Ms. Landis believed singled her out, as the other students brought their own lunches or purchased them from the cafeteria like the rest of the college students. Student was always with the disabled students on the FCC campus, in class and in the cafeteria, and she was escorted from the cafeteria to the bus for transportation to Duncan. The only club that Mr. Landis knew of that met during the FCC-ATP lunch was a Pokémon club.

61. Anna Demaree, Student's agriculture ROP class teacher for the 2011-2012 school year, has had Student in her classes at Duncan since 2009, including ROP classes in agricultural science, floral design, and small animal care and management. Ms. Demaree supervises her students' agricultural projects and their care of livestock on the school farm, which is an ROP "job site." Ms. Demaree modified classwork for Student, for instance, having Student answer only six of 40 questions on a test. Student was happy in Ms. Demaree's classes, and loved working with animals on the farm. She disliked the same unpleasant tasks that many non-disabled students did, such as dirty tasks and giving shots to animals. Although Student was reluctant to participate in farm chores she didn't like, with encouragement she stuck with them. Ms. Demaree observed that during the spring of 2012 Student had not been as sociable as she has been in previous years, but Student had recently participated in presenting a group project, whereas in previous years she had been too shy to get in front of the class. Ms. Demaree credited the other students in Student's group with encouraging and convincing Student to participate in the classroom presentation. There were more girls than boys in Ms. Demaree's ROP classes, and Ms. Demaree opined that Student was "doing fine."

LEGAL CONCLUSIONS

1. Student first contends she was procedurally denied a FAPE because, prior to the December 12, 2011 IEP team meeting, the District predetermined that full-time placement in the FCC-ATP program would be offered without consideration of placement at Duncan or continuation of the dual attendance transition plan (Issue 1). In support of this assertion, Student presented evidence that the District offered full-time placement in the FTC-ATP program for spring 2012 without permitting discussion of Duncan as a placement option, without first considering Student's unique needs and developing an IEP, and as a "take it or leave it" inflexible offer. In Student's second issue, Student contends she was denied a FAPE because District denied Mother's right to actively participate in the IEP process by not considering

Mother's input about Student's placement, academic and social progress, goals and objectives, and by failing to provide Mother with necessary information (Issue 2(a)-(d)). Student submitted evidence in support of this contention that, in addition to the evidence mentioned above, District repeatedly disenrolled Student from Duncan without a signed IEP, failed to assess Student, failed to develop annual goals and objectives, and by all these actions deprived Mother of the information necessary to meaningfully participate in developing Student's educational program.

2. District contends that (i) Student is barred from challenging an offer of placement in the FCC-ATP program due to District's lack of assessment information because Mother failed to consent to the assessment plan prepared at the October 25, 2011 IEP team meeting, (ii) Mother predetermined placement, not the District, and (iii) Mother actively participated in the IEP process. The District presented evidence of Mother's failure to consent to the proffered assessment plan, her pre-meeting opinions that District's adult transition programs were inappropriate, and District's inclusion of academic instruction at Duncan in the October 25, 2011 IEP at Mother's request.

Applicable Law

3. As the petitioning party, Student has the burden of persuasion on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

4. California special education law and the Individuals with Disabilities Education Act (IDEA) provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) A FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9); Ed. Code § 56031; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability...." (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

5. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (*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. (*Id.* at p. 201.) *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.) *Rowley* also made clear that the IDEA does not provide for an “education...designed according to the parent’s desires.” (*Id.* at p. 207.) 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.)

6. A procedural violation results in a denial of a FAPE if it (i) impeded the child’s right to a FAPE, (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or (iii) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*).) Once a procedural violation is found to have significantly impeded the parents’ opportunity to participate in the IEP process, the analysis does not further consider whether the student ultimately received a FAPE. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892-895 (*Amanda J.*); *Target Range, supra*, 960 F.2d at pp. 1485-1487.)

7. When developing each pupil's individualized education program, the individualized education program team shall consider the following: (1) the strengths of the pupil, (2) the concerns of the parents or guardians for enhancing the education of the pupil, (3) the results of the initial assessment or most recent assessment of the pupil, and (4) the academic, developmental, and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).) In order to determine the components of a FAPE, the IEP should also establish measurable annual goals, address the services and accommodations to be provided to the child and whether the child will attend mainstream classes, and specify the measurement tools and periodic reports that will be used to evaluate the child’s progress. (20 U.S.C. § 1414(d)(1)(A), 34 C.F.R. § 300.320⁸, Ed. Code, § 56345, subd. (a).)

8. In determining placement, school districts must ensure, to the maximum extent appropriate: (1) that children with disabilities are educated with non-disabled peers; and (2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the

⁸ All subsequent references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. 300.114 (a); Ed. Code, § 56031.)

9. The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b) (2006); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) “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.” (*Amanda J.*, *supra*, 267 F.3d at p. 882.) 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* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d 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].)

10. An education agency’s predetermination of an IEP seriously infringes on parental participation in the IEP process, and constitutes a procedural denial of a FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858; *Target Range*, *supra*, 960 F.2d at pp. 1485-1487.) Predetermination occurs “when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.” (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342 [2007 WL 1989594 [107 LRP 37880, 48 IDELR 31].) A school district predetermines the child’s program when it does not consider the parents’ requests with an open mind, thereby denying their right to participate in the IEP process. (*Deal*, *supra*, 392 F.3d at p. 858.) School officials and staff can meet to review and discuss a child's evaluation and programming in advance of an IEP team meeting, and may arrive at an IEP team meeting with a pre-written offer, but may not take a “take it or leave it” position. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801 (*J.G.*), fn. 10, citing *Ms. S v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) The IDEA does not require a school district to accept parents’ choice of program, but it must consider suitable alternatives. (See *Blackmon v. Springfield R-XII Sch. Dist.* (8th Cir. 1999) 198 F.3d 648, 658.)

11. Placement determinations must be “based on the child’s IEP.” (34 C.F.R. 300.116(b)(2) (2007).) Only after an IEP has been developed to meet the unique needs of the student does the school district have a basis for determining where the student’s needs can be served, and reversing that process creates a danger of denying the student a FAPE by developing an IEP to meet a predetermined setting. (*Spielberg v. Henrico County Pub. Sch.* (4th Cir. 1988) 853 F.2d 256, 259 (*Spielberg*).) After the fact parental involvement to justify, or excuse, a predetermined placement is not enough. (*Spielberg*, *supra*, 853 F.2d at p. 259.)

12. Although development of an IEP is a team decision, if the team members do not agree, it is the school district that is ultimately responsible for ensuring that a student is offered a FAPE. (*Letter to Richards*, 55 IDELR 107 (OSEP 2010). It is the school district that has an affirmative duty to review and revise, at least annually, an eligible child's IEP. (*Anchorage School District v. M.P.* (9th Cir. 2012) _ F.3d _ [2012 WL 2927758 at p. 5] (*Anchorage*); 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).) Similarly, the school district must conduct a reassessment of the pupil if it determines that the educational or related services needs of the pupil, including improved academic achievement and functional performance, warrant a reassessment. (Ed. Code, § 56381, subd. (a)(1).) Nothing in the IDEA makes these duties contingent upon parental cooperation with, or acquiescence in, the district's preferred course of action. (*Anchorage, supra*, 2012 WL 2927758 at p. 5.) For example, if the parent does not consent to a reassessment, the school district may file a request for a due process hearing to override the lack of consent and obtain an order requiring assessments. (Ed. Code, § 56381, subd. (f)(3).) School districts "cannot excuse their failure to satisfy the IDEA's procedural requirements by blaming the parents." (*Anchorage, supra*, 2012 WL 2927758 at p.5, citing *Target Range, supra*, 960 F.2d at p. 1485.)

Analysis of Issue 1 – Predetermination of Placement

13. Here, Student demonstrated by a preponderance of the evidence that the District had predetermined the placement offered to her in the December 12, 2011 IEP. The evidence that at the December 12, 2011, IEP team meeting Ms. Kalpakoff informed Mother that Student needed to be in an adult program, stated that the full-time FCC-ATP program was the sole offer, and cut off all attempts by Mother to discuss an extension of Student's dual attendance at FCC and Duncan, demonstrates that the District had predetermined Student's placement prior to that IEP team meeting. Ms. Kalpakoff also refused to consider any alternative offered by Mother unless Mother consented to District assessment. The District was aware at the beginning of the December meeting that Mother did not agree with full-time adult program placement, yet was unwilling to consider other alternatives. Further showing predetermination, the District had unilaterally disenrolled Student from Duncan at the beginning of the fall 2011 semester. In addition, at the October 25, 2011, and December 12, 2011 IEP team meetings, the District insisted that Student's attendance at Duncan constituted "academic instruction" rather than "placement," in an effort to shift Student's placement exclusively to the FCC-ATP program. The District also took this position in communications with Mother, maintaining that termination of academic instruction at Duncan did not constitute a change of placement. (Factual Findings 27, 31, 35, 37, 41, 44, 45-54, and Legal Conclusions 3-12.)

14. Further demonstrating predetermination was the fact that the District offered full-time placement in the FCC-ATP program without developing an IEP in conjunction with that placement. At the time of the IEP team meetings in October and December, the IEP team members could not have had a meaningful discussion

about the appropriate placement for Student to receive the special education and related services she needed to make progress on her annual goals, because no PLOP's identifying Student's levels of academic achievement or functional performance had been obtained, no recent assessments had been performed, and no annual goals and objectives had been developed. Rather than first examining Student's needs, developing goals, determining services and choosing an appropriate placement, District offered its preferred placement, and only after it had achieved it, would it consider fully developing an IEP. Specifically, District was offering its placement choice with inapplicable goals, written in 2009-1010 and one of which had already been met, with baselines "based on last assessment of 4/25/02," and to be developed after placement and "upon enrollment in ATP." (Factual Findings 7-61 and Legal Conclusions 3-12.)

15. District's predetermination of full-time enrollment in the FCC-ATP program in spring 2012, without consideration of Student's unique needs or meaningful discussion of other placement options, was further demonstrated by its "take it or leave it" offer. District has four disparate adult transition programs, (i) the FCC-ATP program designed to enable autistic adults to go to college independently, (ii) the DSPS program for students with IQs under 50, (iii) the IMC functional skills program for students with IQs of 50-65, and (iv) the César Chavez work experience program for mild to moderate SDC students. These programs are not interchangeable, yet Ms. Kalpakoff told Mother at the December 12, 2011 IEP team meeting that only FCC-ATP's "spring schedule 100%" was offered, and if Mother did not timely register Student for the full FCC-ATP program, including DSPS classes, Student would not be permitted to continue in the District-administered portion of the FCC-ATP program or at Duncan, and would be placed at IMC, a program that had not even been discussed at the December meeting. District's evidence that it developed an agenda for the December 12, 2011 IEP team meeting that included a section on parental concerns, and held a series of four IEP team meetings attended by Mother and Student's advocates and attorney, does not demonstrate that Mother's concerns were actually considered by the IEP team, given the totality of the other evidence showing that the District predetermined Student's placement prior to the December 12, 2011 IEP team meeting. District's presentation of full-time placement in the FCC-ATP program for spring 2012 as an inflexible package, with consequences for failure to accept it, constituted a violation of the procedural requirements of the IDEA and related regulations requiring parental participation in developing an IEP and determining placement. (Factual Findings 9, 17, 18, 28, 30, 32-54 and Legal Conclusions 3-12.)

16. The District's contention that Mother's refusal to consent to assessment defeats her challenge to denial of meaningful participation in the placement process is unavailing. It is the District's obligation under the IDEA to assess Student whether or not Mother cooperates. Mother's failure to consent to assessment of her daughter does not excuse District from its procedural obligation to reassess Student as needed to develop an educational program to meet Student's unique needs, or to develop an

IEP to determine appropriate placement. District had an affirmative obligation to assess Student and offer a FAPE, even by requesting a due process hearing if necessary. District cannot lay blame at Mother's feet for its failure to meet its obligation to reassess Student for purposes of developing an IEP with current PLOP's and annual goals as a basis for determining placement. (Factual Findings 34, 36, 40, 44, 47, 54 and Legal Conclusions 3-15.)

17. For the same reasons, District's contention that Mother had "predetermined" Student's placement in the FCC-ATP program and Duncan for the spring semester of the 2011-2012 school year is meritless. The IDEA expressly provides that a procedural violation results in a denial of FAPE if it significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child. The District cannot shield itself from its obligation to obtain parent input by arguing that Mother was inflexible or incorrect about her preferences for her child's education. It is irrelevant whether Mother had preconceived notions concerning the placement for Student in her own mind. District's counter-arguments are not supported by the evidence or the provisions of the IDEA. (Factual Findings 45-54 and Legal Conclusions 3-12).

18. In sum, Mother demonstrated by a preponderance of the evidence that Student was procedurally denied a FAPE based on predetermination of the offer of full-time placement in the FCC-ATP program prior to the December 12, 2012 IEP team meeting. The remedy for this violation is discussed separately, below. (Factual Findings 5-61 and Legal Conclusions 3-17.)

Analysis of Issue 2(a) -- Parental Input Regarding Placement

19. In Issue 2(a), Mother contends that the District prevented her from actively participating in the IEP process by not considering her input in determining Student's placement, in particular, by refusing to discuss and consider continued dual attendance in the FCC-ATP morning program and a Duncan afternoon ROP class. The District contends that it "engaged in considerable communication with Parent regarding Student's placement" by letter and email, and that Mother's failure to consent to assessment of her daughter defeats her claim that the District excluded her from participating in the placement decision.

20. Legal Conclusions 3 through 18, above, are incorporated by reference.

21. The IDEA requires that parents be part of any group that makes placement decisions. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524-525 [127 S.Ct. 1994, 2000-2001; 167 L.Ed. 2d 904]. The school district has a duty to conduct a meaningful IEP meeting with parents. (*Target Range, supra*, 960 F.3d. at p. 1485; *Fuhrmann, supra*, 993 F.2d at p. 1036.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP

team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036.)

22. As set forth at Legal Conclusions 13 through 18, the District denied Mother an opportunity to meaningfully participate in the IEP team's determination of the offer of placement to Student. The offer of full-time placement in the FCC-ATP program for the spring semester of the 2011-2012 school year was predetermined, Mother was not provided with meaningful or accurate PLOP's for Student, a complete IEP was not developed as a basis for determining placement, and Mother and her advocate were not permitted to discuss the reasons for their disagreement with full-time placement in the FCC-ATP program over continued dual attendance at FCC and Duncan. (Factual Findings 7-54 and Legal Conclusions 3-18, 21.)

23. The District's contention that the email exchange between the District and Mother sufficed to provide Mother with meaningful participation in the placement decision fails. Mother's emails raised concerns regarding implementation of the October 26 2011 IEP, and not with the appropriateness of placement, which she believed to be dual attendance at the morning FCC-ATP program and Duncan and to which she had consented. The District's communications perfunctorily dismissed Mother's concerns, and did not rise to the level of providing Mother with an opportunity to actively participate in the IEP process as contemplated by the IDEA. The weight of the evidence established that the District prevented Mother from actively participating in the IEP process by not considering her input in determining Student's placement, either within, or outside of, the IEP team meetings of October 25 and December 12, 2011. Thus, the District procedurally denied Student a FAPE. (Factual Findings 32-54 and Legal Conclusions 3-18, 21, 22.) Like the finding of predetermination in Issue 1, Student's remedy will be discussed separately, below.

Analysis of Issue 2(b) -- Parental Input Regarding Academic and Social Progress

24. In Issue 2(b), Mother contends that the District prevented her from actively participating in the IEP process by not considering her input in determining Student's academic and social progress, in particular, failing to present meaningful or current PLOP's. The District contends that Mother's failure to consent to assessment of her daughter defeats any claim of procedural violation based upon lack of information on Student's academic or social progress.

25. Legal Conclusions 3 through 18 and 21 through 23, above, are incorporated by reference.

26. As set forth at Legal Conclusions 3 through 12 and 14 through 16, the District had an obligation under the IDEA to develop an IEP for Student considering Student's strengths and her academic, functional and developmental needs, but failed to acquire or present that information to the May, June, October or December IEP

teams. The evidence demonstrated that Mother repeatedly sought further information on her daughter's PLOP's for purposes of determining Student's progress and current needs, but was stymied by the District's reliance on 2008 academic testing, two-year old goal baselines, notice to Mother that no assessment was required for the May meeting, a vague report from Ms. Demaree that Student was "doing fine" in the ROP class, and a second-hand report from Ms. Olson on Student's fall 2011 performance in the FCC-ATP program with reference to unspecified levels and undated work samples. The weight of the evidence established that the District's failure to provide accurate or meaningful PLOP's interfered with Mother's ability to provide parental input on Student's academic and social progress, such that it constituted a procedural denial of a FAPE. (Factual Findings 7, 8, 12, 14, 15, 21, 22, 24, 25, 33, 34, 36, 46, 45, 50 and Legal Conclusions 3-12, 14-16.)

27. As set forth at Legal Conclusions 14 through 16, Mother's failure to consent to assessment of her daughter does not excuse the District's procedural violation of the IDEA of failing to provide meaningful and current PLOP's at the IEP team meetings so that Mother could have parental input on Student's academic and social progress. (Factual Findings 7, 8, 12, 14, 15, 21, 22, 24, 25, 33, 34, 36, 46, 45, 50 and Legal Conclusions 3-12, 14-16, 26.) To the extent Student is entitled to a remedy, it will be discussed separately below.

Analysis of Issue 2(c) -- Parental Input on Goals and Objectives

28. In Issue 2(c), Mother contends that the District prevented Mother from actively participating in the IEP process by not considering her input in determining Student's goals and objectives, in particular, by refusing to develop measurable annual goals. The District again contends that Mother's failure to consent to assessment of Student defeats her claim of a procedural violation.

29. Legal Conclusions 3 through 18, and 21 through 23, above, are incorporated by reference.

30. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

31. As set forth at Legal Conclusions 14 and 15, the District failed in its procedural obligation under the IDEA to develop annual goals to meet Student's needs resulting from her disability to enable Student to be involved in and progress in

the general curriculum. The weight of the evidence established that the District did little more than change dates on Students 2010-2011 goals (one of which had been met), add generic “transition goals,” and contrary to the express mandate of the IDEA, put off development of measurable annual goals until after Student had been placed. The evidence showed that by the December 12, 2011 IEP team meeting, District was not providing Mother with useable information about Student’s levels and what her goals should be, and was only willing to discuss goals if Mother consented to District’s placement, at which time, in District’s view, goals would be developed. The District utterly failed to fulfill its procedural obligations under the IDEA to develop an IEP with measurable annual goals for the 2011-2012 school year, and to provide Mother with the opportunity to participate in the development of those goals. (Factual Findings 7, 8, 10, 11, 22, 24, 33, 34, 36, 46, 54, 55-61 and Legal Conclusions 14, 15, 22, 23, 26, 30.)

32. The District incorrectly contends that Mother’s refusal to consent to her daughter’s assessment excuses the District’s failure to develop measurable annual goals, but even without current assessment information, the District presented no evidence to explain its failure to develop annual goals from the information that was available, including Student’s academic and social performance at Duncan during the 2010-2011 school year, and at FCC-ATP program and Duncan during the fall 2011. The District’s failure to develop goals and objectives for Student with parental input was a procedural violation of the IDEA that deprived Mother of an opportunity to participate in the development of her daughter’s goals for the 2011-2012 school year. (Factual Findings 34, 36, 40, 44, 47, 54 and Legal Conclusions 14, 15, 16, 27, 30, 31.) To the extent Student is entitled to a remedy, it will be discussed below.

Analysis of Issue 2(d) -- Not Providing Mother with Necessary Information

33. In Issue 2(d), Mother contends that the District prevented her from actively participating in the IEP process by failing to provide her with necessary information to meaningfully contribute to the development of Student’s IEP. The District disagrees, once again contending that any lack of information was due solely to the fault of Mother’s refusal to allow a comprehensive assessment of Student.

34. Legal Conclusions 3 through 18, 21 through 23, 26, 27, and 31 through 32, above, are incorporated by reference.

35. This issue is essentially a repeat and combination of Issues 2(a), 2(b) and 2(c). As set forth at Legal Conclusions 3 through 18, 21 through 23, 26, 27, and 31 through 32, the weight of the evidence established that the District prevented Mother from meaningfully participating in the IEP process by failing to provide her with accurate and meaningful PLOP’s, and failing to develop measurable annual goals and objectives based on those PLOP’s and Mother’s input. Absent useable information about Student’s academic levels, which constituted the information necessary for Mother to make informed decisions about the development of her

daughter's educational program, Mother was deprived of an opportunity to participate in the decision-making process. To the extent the District attempts to shift blame to Mother for its inability to develop an appropriate IEP with accurate PLOP's and sufficient goals, the District's argument fails. The evidence showed that at the December 12, 2011 IEP team meeting, District's own personnel were unable to describe Student's academic achievement in grade level terms, and otherwise reported that at Duncan's non-academic ROP class, Student was doing "fine." As discussed in detail above, Mother's failure to consent to assessment did not excuse District from its duty of providing Mother with the information needed to make informed decisions, and an opportunity to provide her input. In light of the legal conclusions in Issues 2(a), 2(b), 2(c), and this issue, that Student was denied a FAPE because of a denial of parental participation in the IEP process, this Decision need not reach the issue of whether the District's offer was substantively appropriate. Student's remedy is discussed below. (Factual Findings 5-61 and Legal Conclusions 3-18, 21-23, 26, 27, 31, 32, 35.)

Remedy

36. The District lacks information on Student's academic levels or functional performance, and has demonstrated an inability or disinterest in presenting such information in light of its predetermination that Student be placed in one of its adult transition programs, resulting in a procedural violation of Mother's right to meaningfully participate in the IEP process. In the meantime, Student is a young adult at risk of being placed for the 2012-2013 school year in a transition program that is available, rather than appropriate. (Factual Findings 5-61 and Legal Conclusions 3-18, 21-23, 26, 27, 31, 32, 35.)

37. Where a person brings an action alleging a violation of the IDEA, the court, or an administrative law judge, is empowered to "grant such relief as [it] determines is appropriate." (See 20 U.S.C. § 1415(i)(2)(C)(iii).) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

38. Student established that as late as the December 12, 2011 IEP team meeting, the District failed to provide the Student's IEP team, including Mother, with the information necessary to develop an educational program for Student. Instead,

Student's IEP team was left to rely on baselines dating from 2002 through the 2009-2010 school year, academic testing from 2008, and reports from District staff at FCC on reading goals at unspecified levels and math ("touch math") other than as specified in Student's math goal. The December 12, 2011 IEP states that Student is at a second grade academic level, but at hearing, Ms. Esqueda testified that Student was reading and comprehending at the first grade level, while Mr. Landis testified that Student was reading and writing at the third and fourth grade level. For 10 years, the District failed to comprehensively assess Student, and its presentation of an assessment plan to Mother six weeks before the December 12, 2011 IEP team meeting is not sufficient to shift responsibility for the ignorance of the IEP team to Mother, particularly as the assessment plan was created after the May and June IEP team meetings where the inaccurate PLOP's were presented, then incorporated into the October 25, 2011 IEP. (Factual Findings 5-61 and Legal Conclusions 3-18, 21-23, 26, 27, 31, 32, 35.)

39. In light of the totality of the evidence showing District's procedural violations of the IDEA in an attempt to force Student into a predetermined adult transition program, Student is entitled to the equitable relief of an independent educational evaluation (IEE) at District's expense to determine her abilities and educational needs. In light of the seriousness of the District's conduct in predetermining Student's placement and depriving Mother of the information necessary to meaningfully participate in developing an IEP for her daughter, the District has an equitable obligation to ensure that the independent assessor, at District's cost, attends the IEP team meeting to review and explain the results of assessment to the entire IEP team, including Mother. In addition, the District has an equitable obligation to ensure that all of Student's teachers, rather than case managers who do not teach Student, attend the IEP team meeting to review the assessment and provide accurate and meaningful information regarding Student's academic achievement and functional performance in the classroom. (Factual Findings 5-61 and Legal Conclusions 3-18, 21-23, 26, 27, 31, 32, 35.)

ORDER

1. Within 60 days of the date of this Order, District shall arrange for, fund, and complete a comprehensive assessment of Student in all areas designated on the October 25, 2011 assessment plan, by an independent provider who is not a full-time District employee. The provider or providers of the IEE shall be selected by District from the District or Special Education Local Plan Area (SELPA) list of approved independent assessors who would typically be used to provide IEE's at parent request. If no assessor is available from those lists, District may select and contract with qualified assessors, so long as they also meet the criteria of not being full-time District employees.

2. Mother shall make Student reasonably available for assessment by the independent assessor(s).

3. Within 60 days of the date of this order, the District shall convene an IEP team meeting at which the independent assessment(s) will be presented and discussed.

4. At the IEP team meeting in Order 3, above, the independent assessor(s) shall attend at District's expense, and all of Student's teachers from the classes she is attending in her then-current placement shall be in attendance if employed by District at the time of the IEP team meeting. The District shall use its best efforts to ensure that all of Student's teachers not in the employ of the District at the time of the IEP also attend.

PREVAILING PARTY

Pursuant to 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, Student prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: August 3, 2012

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