BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN JUAN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018020299

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on February 6, 2018, naming San Juan Unified School District. OAH granted the parties' joint request for continuance on March 22, 2018.

Administrative Law Judge Rebecca Freie heard this matter in Carmichael, California on May 22, 23, and 24, 2018.

Brian D. McFarlin, Attorney at Law, represented Student.[1] Mother was present throughout the hearing. Student did not attend.

Linda C. T. Simlick, Attorney at Law, represented San Juan. Dayle Cantrall, Program Manager for the Special Education Department attended the hearing as San Juan's representative.

At the parties' request, a continuance was granted to June 13, 2018, to allow them to file written closing briefs. Student and San Juan timely filed written closing arguments. The record was closed and the matter was submitted for decision on June 13, 2018.

[1] F. Richard Ruderman, Attorney at Law, observed the hearing during the morning of April 22, 2018, and Christian Knox, Attorney at Law, observed the hearing during part of the afternoon of April 22, 2018.

ISSUES[2]

1) Did San Juan deny Student a free appropriate education for the 2017-2018 school year, including extended school year by:

a. failing to offer him an initial[3] placement and services comparable to that contained in his last agreed-to and implemented individualized education program, dated June 6, 2017, when he enrolled on November 6, 2018;

b. failing to make a clear written offer of initial placement; and

c. failing to offer him:

1. a one-to-one aide;

2. appropriate speech and language services; and

3. transportation services?

2) Did San Juan deny Student a FAPE for the 2017-2018 school year, including extended school year, by failing to convene an IEP team meeting:

a. to discuss a change in placement after Student enrolled;

b. within 30 days after Student enrolled; and

c. after Mother requested an IEP team meeting?

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[2] Student's complaint contained a single issue with several sub-issues, as did the order following the prehearing conference. The sub-issues have been renumbered and rearranged, and slightly reworded for clarity. The ALJ has authority to redefine a party's issue so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist*. (9th Cir 2010) 626 F.3d 431, 442-443.) In his closing brief, Student contends San Juan failed to make a written offer of placement following an OAH order granting in part and denying in part a motion for stay put. The stay put order was issued on February 23, 2018, 17 days after Student filed his complaint. Student did not file an amended complaint, nor was there any discussion during the PHC or hearing during which San Juan agreed to the addition of this issue. Accordingly, it will not be discussed in this Decision.

[3] In this Decision, for clarity, the placement and services a school district offers a Student when he first transfers into the district from another school district shall be referred to as the offer of initial placement and services. Student referred to this as the offer of "interim placement and services" in his complaint, and the parties also used this term during the hearing. However, using this language leads to confusion when one discusses the 30-day interim IEP team meeting.

3) Did San Juan deny Student a FAPE for the 2017-2018 school year, including extended school year, by committing the following procedural violations:

a. predetermining his IEP; and

b. denying his Mother meaningful participation in the IEP process?

4) Did San Juan deny Student a FAPE for the 2017-2018 school year, including extended school year, by failing to offer him an appropriate placement?

SUMMARY OF DECISION

Student transferred into San Juan in November 2017 from another school district that is not part of San Juan's special education local plan area. At the time he was enrolled as a San Juan student, he was attending a nonpublic school. His last consented to IEP was developed in June 2017 and it called for this placement. Student contended that San Juan was required to make a clear written offer for his initial placement as a transfer statement, and it did not do so, and also argued that the placements San Juan offered in a special day class in two different district elementary schools were not comparable to the placement and services in the June 2017 IEP. Student also questioned San Juan's failure to convene an IEP team meeting when it was required to do so, alleged certain procedural violations, and claimed San Juan denied him an appropriate placement. San Juan disagreed.

In this Decision it is found that the offer of an initial placement for a student transferring into a new school district is not required to be in writing. Therefore, San Juan's verbal offers of initial placement and services were compliant. Further, San Juan offered as initial placement a special day class for students with Autism Spectrum Disorder in the moderate to severe range. This class was comparable to Student's IEP placement in a nonpublic school, even though it was located on a comprehensive elementary public school campus. In January 2018 San Juan sent Mother two written documents that contained information about San Juan's initial offer, but they contained errors. However, these documents were not formal IEP offers, and it is found that they did not deny Student a FAPE, deprive him of educational benefit, or significantly impede Mother's opportunity to participate in the development of an IEP.

In this Decision it is found that San Juan was not required to convene an IEP team meeting to make an offer of initial placement and San Juan did not unduly delay making verbal offers of initial placement for Student. However, once San Juan realized that Mother did not intend to place Student in a San Juan program, San Juan should have convened a 30-day interim IEP team meeting to discuss the placement and services, and to determine whether it would adopt the IEP from June 2017 that was developed by his previous school district, or to develop its own interim IEP. San Juan did not do so. However, this procedural violation did not significantly impede Mother's participation in the IEP process, deny Student a FAPE, or impede his educational progress. San Juan did not commit any other

procedural violations. Finally, San Juan's offers were for appropriate placement and services.

San Juan committed a procedural violation by failing to convene a 30-day interim IEP team meeting for Student within a reasonable time after he enrolled in the district, even though he was not attending a San Juan program as his initial placement. Although this violation did not deny him a FAPE or educational opportunity, or deny Mother meaningful participation in the process, San Juan is ordered to provide training for special education personnel in the area of accepting students with IEP's transferring into San Juan from other school districts.

FACTUAL FINDINGS

Jurisdiction

1. Student resided with Mother within the boundaries of San Juan at all times at issue. He was nine years old at the time of hearing, and qualifies for special education because he meets the eligibility criteria for autism. At the time of hearing Student was attending a special day class designed for children with Autism Spectrum Disorder at Mariemont Elementary School within San Juan's boundaries. The children in this class are moderately to severely disabled. From kindergarten through March 23, 2018, Student attended two different nonpublic schools.

2. Student and Mother moved to Nevada County in early 2016, and he was enrolled in the Clear Creek Elementary School District. Clear Creek is a school district with one elementary school, and fewer than 200 students. It did not have a special day class suitable for Student. Clear Creek determined that Sierra Foothills Academy, a nonpublic school in Loomis, California, was the most suitable placement for Student.

3. Mother understood that Student's initial placement by Clear Creek at Sierra was an interim placement because he was transferring into Clear Creek from another school district. She understood that within 30 days of the initial placement at Sierra an IEP team meeting would be convened, and the IEP team would either accept Student's former IEP and adopt it, or it would develop a new one. At the 30-day IEP team meeting in 2016, the team developed an IEP that placed him at Sierra. Sometime after Student began attending Sierra, Clear Creek's superintendent determined that Student required the assistance of a one-to-one aide, and one was then provided through the auspices of a nonpublic agency which had a contract with Sierra. Clear Creek paid Sierra's tuition for each day Student attended Sierra, and paid for the speech and language and occupational therapy he received, as well as the services of his one-to-one aide. In addition, Sierra charged for transportation services, and Clear Creek paid for Student's transportation to and from Sierra. All of these services were in Student's last Clear Creek IEP.

Student's Last Consented-to IEP, June 2017

4. Student's last consented-to IEP with Clear Creek was dated June 6, 2017. This IEP called for Student to be placed at a nonpublic school, where he would receive specialized academic instruction for 315 daily minutes, two weekly sessions of 30 minutes each for individual speech and language therapy, one 30 minute weekly individual occupational therapy session, and 345 daily minutes of intensive individual services (a one-to-one aide). He was also to receive transportation to and from school. Student continued to attend Sierra after this meeting.

Student's Enrollment at San Juan

5. On November 6, 2017, Mother enrolled Student in the San Juan district due to a recent move.[4] The evidence established that Clear Creek stopped paying for Student's placement and services at Sierra as of November 5, 2017. When Mother registered Student she provided proof of residence; Student's birth certificate and immunization record; and a copy of the June 6, 2017 IEP from Clear Creek. At the time of the enrollment interview, Mother told the enrollment clerk that she wanted an IEP team meeting convened by San Juan. Student continued to attend Sierra after Mother enrolled him as a San Juan student.

SAN JUAN'S TRANSFER PROCESS FOR STUDENTS WITH IEP'S

6. When a new student with an IEP is enrolled in a San Juan school, the Special Education Department is notified. The department maintains a "specialist of the day" rotation that allows the enrollment clerk to send the new student's information, including an IEP, if one has been provided, to a designated employee within the Special Education Department. Jennifer Apgar, a San Juan program specialist, was the specialist of the day who received the information about Student when Mother enrolled him.[5] Ms. Apgar contacted Clear Creek between November 6 and 8, 2017, and requested Student's records.

[4] The June 6, 2017 Clear Creek IEP, had a Sacramento address listed for Mother, but Mother explained that this was the address where she was receiving her mail. There was no evidence that Clear Creek ever questioned whether Student was in fact residing within its boundaries.

[5] Ms. Apgar has a master's degree in education and has been a program specialist with San Juan for more than seven years. She has an educational specialist credential (moderate to severe), and an administrative credential. Prior to becoming a program specialist, Ms. Apgar spent 10 years as the teacher of an elementary school special day class for children who were moderately to severely autistic.

San Juan was not in session November 9, and 10. Ms. Apgar received Student's Clear Creek records on November 14, 2017.[6]

San Juan's Autism Spectrum Disorder Special Day Classrooms

7. San Juan has developed two programs in recent years for elementary school students in grades three through five who have autism in the moderate to severe range. One of these programs is at Carriage Elementary School, and the other is at Mariemont. These classrooms are mirrors of each other with no more than 12 students, three instructional aides, and a properly credentialed special education teacher. Speech and language therapy and occupational therapy are available on both campuses. Behavioral services are also embedded in each program, and the classrooms are similarly structured and programmed to serve children with autism in the moderate to severe range. Mariemont is located at the southwest end of San Juan in Sacramento, and Carriage is located at the northeast end of San Juan in Citrus Heights. The program at Carriage was previously located at Citrus Heights Elementary School, which closed in 2016.

Student's Classroom at Sierra Foothills Academy

8. At Sierra Student was being taught by an intern teacher working on her special education credential who was supervised by Sierra's principal, Laura Wood who has both a mild to moderate and moderate to severe special education credential. All students at Sierra were placed there pursuant to their IEP's. There were no privately placed students at Sierra. Classrooms had approximately 10 students, and each classroom had aides, so there was a high level of adult support for the students. Some students were on the autism spectrum while others had other disabilities that required a placement with intensive services. Student received the speech and language and occupational services called for in his IEP at Sierra. No one disputed that Student was receiving a FAPE at Sierra and his educational needs were being met.

Student's Assignment to Carriage

9. Ms. Apgar reviewed the records from Clear Creek when she received them, and noted that Student's primary eligibility category was autism, that he was receiving speech and language services for a total of 60 minutes per week, occupational therapy for 30 minutes per week, the full time services of a one-to-one aide, and that he was placed in a nonpublic school. Student's home was closer to Mariemont, but Ms. Apgar believed that classroom was at capacity. However, there was room for Student at Carriage. Ms. Apgar believed this placement was comparable to the placement called for in the IEP of June 6, 2017, although it was on a public school campus, and not at a nonpublic school. On November 17, 2017, the day before Thanksgiving break began, the enrollment office notified

[6] It was unclear whether she received hard copies of the records from Clear Creek, or received the right to access them through the Special Education Information System which many schools use to allow each other access to a Special Education Student's records.

Mother that Student would be placed in a moderate to severe Autism Spectrum Disorder special day class at Carriage Elementary School in Citrus Heights.[7]

10. After being informed of the proposed placement at Carriage, Mother asked to speak to someone in the Special Education Department, but due to the Thanksgiving break Ms. Apgar did not call back Mother until November 27, 2017, the first day of school after the break. Mother wanted to visit Carriage before Student began to attend. However, she explained to Ms. Apgar that both she and Student were sick that week. A visit to Carriage was arranged for 10:00 a.m. on December 8, 2017, a date that was suggested by Mother. Ms. Apgar then called San Juan's Transportation Department and arranged for Student to be transported between his home and Carriage beginning December 11, 2017, as she believed Mother would have no objections to the placement once she had seen it.

Sierra's Request for Payment from San Juan

11. At this time, Student was still attending Sierra. On December 1, 2017, Ms. Wood, sent an email to San Juan asking about entering into a contract with San Juan so Student could continue placement there. On December 5, 2017, Ms. Apgar sent an email to Ms. Wood telling her that Student would be attending a program within San Juan. Ms. Wood then asked if Mother was in agreement, and Ms. Apgar responded that when a student transfers into San Juan, a comparable initial placement is found, and an IEP team meeting will then be held within the next 30 days. Sierra continued to request a contract with San Juan over the next several months.

Confusion Regarding the Initial Offers of Services

WITHDRAWAL OF AGREEMENT TO CARRIAGE

12. On December 8, 2017, Mother visited the special day class at Carriage. Ms. Apgar and Holly Gennuso, accompanied Mother. Ms. Gennuso was the program specialist assigned to both Mariemont and Carriage.[8] Following the tour of the classroom and campus at Carriage, Mother, Ms. Apgar, and Ms. Gennuso met in the school nurse's office. Ms. Apgar and Ms. Gennuso explained to Mother that Student would be receiving all of the services called for in his IEP from June 2017. Mother did not ask about the specific services he would be receiving, such as the specific amounts of occupational and speech and language therapy, and the services of a one-to-one aide. Mother testified candidly that she

[7] The evidence did not establish whether this information was given to Mother verbally or in writing.

[8] Ms. Gennuso has been a program specialist for San Juan since February 2017. She was a school psychologist for a total of 15 years, and began working for San Juan in 2014. Ms. Gennuso holds a pupil personnel services credential, as well as an administrative credential.

understood Student's Clear Creek IEP would be implemented in its entirety at Carriage for the initial placement.

13. During the discussion following the Carriage tour, Mother asked for an IEP team meeting. It was explained that an IEP team meeting would be held within 30 days after Student began attending Carriage. However, Ms. Apgar offered to meet with Mother on December 15, 2017, to discuss any concerns she might have, and Mother agreed to the meeting. Later the same day, after returning from the tour of Carriage, Mother sent an email to Ms. Gennuso saying she did not want Student to attend the Carriage special day class. In the same email she asked for an IEP team meeting, the first time this request was made in writing. On December 13, 2017, Mother sent an email cancelling the December 15, 2017 meeting, but suggested December 20, 2017, as a date for a meeting to further discuss placement at Carriage, but that meeting was canceled by Mother. In the meantime, Student continued to attend Sierra.

14. At hearing, Mother explained her concerns about Carriage. This included the facts that a high school was located right next door to Carriage, and that the playground had inadequate fencing. Student had a past history of elopement which is why she was concerned. She was also concerned about a child in the special day class who approached her and touched her when she visited, which was a behavior she and Sierra had been working to extinguish in Student.

MOTHER'S REQUESTS FOR AN IEP TEAM MEETING AND FOR FUNDING OF SIERRA BY SAN JUAN

15. As previously noted, Mother's first written request for an IEP was in her email to Ms. Gennuso on December 8, 2018 following the tour of Carriage. On December 19, 2017, Mother sent a letter through the U.S. Postal Service addressed to "The Director of Special Education At San Juan Unified School District." In this letter, Mother complained that she had made numerous requests for IEP team meetings since enrolling Student at San Juan, and had been refused. She asked for "a written offer of FAPE" from San Juan, and stated that Student would continue to attend Sierra and San Juan would fund the placement at Sierra. Mother said Student's attendance at Sierra would continue until San Juan held an IEP meeting and made a written offer of a FAPE.

DELAY IN RESPONSE TO MOTHER'S DECEMBER 19, 2017 LETTER

16. Winter break for San Juan began December 22, 2017, and school did not resume until January 9, 2018. The December 19, 2017 letter was referred to Ms. Cantrall.[9]

[9] At the time of hearing, Ms. Cantrall was in her eighth year as a program manager with San Juan. She holds mild to moderate, and moderate to severe special education credentials, as well as an administrative credential. Ms. Cantrall has a master's degree in special education. She began her teaching career in nonpublic schools. She began teaching at San Juan in 2001 as a special education teacher, and then became a program specialist at

She asked Ms. Apgar to draft a response. Ms. Apgar did so, and sent it to Ms. Cantrall for review. There was a delay in sending the response to Mother, and Mother grew increasingly concerned. Although Student continued to attend Sierra, with all the services specified in the IEP from June 2017, Mother wanted a written offer of a FAPE from San Juan for the initial placement, and an IEP team meeting. Mother requested an IEP team meeting because she has a poor memory and she wanted a written San Juan IEP to review. She also wanted support from Student's regional center workers, as well as Sierra staff, at a meeting to discuss San Juan's offer initial placement.

17. On January 23, 2018, Mother and Ms. Cantrall spoke on the telephone. Ms. Cantrall explained that because San Juan had the Autism Spectrum Disorder moderate to severe special day classes, it was not offering Student continued placement at a nonpublic school. Ms. Cantrall had just discovered there was room for Student at the Autism Spectrum Disorder special day class for moderately to severely disabled students at Mariemont and asked Mother if she was interested in that program.[10] Mother indicated that she was interested and Ms. Cantrall contacted Ms. Gennuso and asked her to see if Mother wanted a tour of the Mariemont program, and to arrange such a tour if she did.

A SERIES OF ERRONEOUS COMMUNICATIONS

18. On January 25, 2018, Ms. Cantrall sent an email to Mother. She attached the response letter to Mother's December 19, 2017 letter, which had been drafted by Ms. Apgar This draft response letter was dated January 9, 2018, and outlined the contacts and events pertaining to the proposed initial placement of Student at Carriage since Student's enrollment in San Juan on November 6, 2017. The letter stated that Student would continue to receive the speech and language, and occupational therapy services outlined in the June 2017 IEP, but did not make any reference to the one-to-one aide. In addition to the January 9, 2018 letter, Ms. Cantrall had printed out a form generated by the Special Education Information System titled Interim Special Education Services, and attached that form to the January 25, 2018 email, to satisfy Mother's repeated requests for a written offer of a FAPE from San Juan. Unfortunately Ms. Cantrall did not thoroughly review the form before attaching it to the email sent to Mother.

19. The Interim Services form was a document that was not usually provided to families. Rather, the information contained on the document was referenced by members of San Juan's staff who were involved in the initial placement process for transferred students. At the end of November 2017, Ms. Apgar had entered information into the Information

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San Juan in 2005. In that capacity she was very involved in developing autism specific programs for the district.

[10] Conflicting evidence was presented as to when this opening occurred; Ms. Gennuso, Ms. Apgar, and Ms. Cantrall believed the vacancy did not occur until January 2018, although Ben Goudy, the teacher of the special day class at Mariemont believed his class was not full when Student enrolled in November 2017.

System with the intention of showing Student's interim placement was the special day class at Carriage. She also listed the services he was to receive in this placement. Unfortunately, due to a combination of factors, including inaccurate recording of Student's prior IEP services and the erroneous listing of the location of the placement at a school that had closed in 2016, the Interim Services form did not reflect correct information concerning Student. Although the form correctly showed Student receiving 315 daily minutes of specialized academic instruction (to reflect placement in the special day class), transportation to and from school, and 30 minutes weekly individual occupational therapy, it incorrectly showed only 30 minutes weekly individual speech and language therapy, and did not show Student receiving the services of a one-to-one aide.[11] In addition, the form did not reflect placement at Carriage; rather, it showed a school named Citrus Heights Elementary School followed by the word, "Closed." The document also stated that the 30-day interim IEP team meeting would be held by January 12, 2018. Despite these errors, Mother did not contact San Juan with any questions concerning these incorrect attachments to the January 25, 2018 email.

20. The testimony at hearing of Ms. Apgar, Ms. Gennuso, Ms. Cantrall, and Mr. Goudy (teacher of the Mariemont special day class) was unequivocal: San Juan's practice is to faithfully implement the previous IEP of a student transferring into the district from another school district in the initial placement before the 30-day interim meeting. Had Student attended Mariemont, San Juan would have implemented the June 6, 2017 IEP, at Mariemont, until an IEP team meeting was held within 30 days.

Offer of Placement at Mariemont

21. Mr. Goudy is a certificated special education teacher with a moderate to severe credential. Most, if not all, of the students in his class were nonverbal. Speech and language therapy and occupational therapy were provided on the Mariemont campus during the school day. Mother toured Mariemont on January 30, 2018. Tour participants included Mother, Student's aunt, Student, Ms. Gennuso, and Mr. Goudy. Mother observed the classroom, and after the tour she notified Ms. Gennuso that she wanted Student to begin attending the special day class at Mariemont on February 8, 2018, and transportation was contacted to ensure Student would be picked up on that date. It is found that San Juan made its offer of initial placement and services at Mariemont on January 30, 2018.

22. Mother wanted Student to make a smooth transition from Sierra to Mariemont, so it was agreed that Mr. Goudy would go to Sierra and conduct an observation of Student in his classroom. Ms. Gennuso arranged for a meeting to be held at Mariemont on February 6, 2018, to discuss Student's transition to Mariemont. After observing Student at Sierra on

[11] San Juan sent Mother another Interim Services form right after Student filed his complaint, and it gave her another on April 4, 2018. The parties did not dispute the accuracy of any of the Interim Services forms provided to Mother in regards to the amount of time reflected for specialized academic instruction, and the provision of transportation, and those items were correctly recorded on each of these forms given to Mother, so no further mention will be made of these items.

February 5, 2018, Mr. Goudy believed his classroom would be a good fit for Student, and he did not believe there would be any difficulty with the transition from Sierra to the Mariemont special day class.

FEBRUARY 6, 2018 MEETING AT MARIEMONT

23. Participants at the February 6, 2018 meeting, included Mother, Ms. Wood, Student's Sierra teacher, and both Student's previous regional center worker and his current Sacramento regional center worker. Ms. Gennuso and Mr. Goudy also attended. The speech and language therapist and occupational therapist who served Mariemont were unable to attend. This was not an IEP team meeting, and there was no formal agenda.[12]

Filing of Request for Due Process by Student

24. After Student filed his complaint with OAH on February 6, 2018, with a request that he be granted stay put at Sierra, San Juan assumed, correctly, that Student would not begin attending the special day class at Mariemont on February 8, 2018.

25. On February 23, 2018, OAH ordered Stay Put for Student in a nonpublic school. San Juan was not required to maintain Student in Sierra. San Juan arranged tours for Mother at two Sacramento-based nonpublic schools. However, Mother did not like either nonpublic school she toured.

Further Discussions between Sierra and San Juan regarding Payment for Student

26. Student continued to attend Sierra after filing his complaint with OAH, and after the stay put order was issued. Student obtained an "invoice" from Sierra prior to hearing that showed total charges of $9,873.50 from November 6, 2017, through the end of January 2018, and charges of $8,449.00 from February 1, 2018, through March 23, 2018. These charges include tuition for the days Student attended Sierra, the cost of the speech and language, and occupational therapy Student received, as well as the cost of his one-to-one aide. However, Sierra has never billed San Juan for Student's attendance and services from November 6, 2017, to March 23, 2018 (the last day Sierra permitted him to attend), and San Juan never entered into a contract with Sierra agreeing to his placement there. Sierra never

[12] The meeting was scheduled to begin at 3:00 p.m. Student's complaint was date-stamped as being received by OAH at 3:48 p.m. on February 6, 2018, and there is no mention in the complaint of this meeting. Student raises no issues related to this meeting in his complaint, and he did not file an amended complaint to discuss events that occurred after the complaint was drafted and raise claims that were not made in his original complaint. At the PHC San Juan objected to any issues being raised pertaining to events after the date of the filing of the complaint. Therefore, this meeting and any discussions regarding the Mariemont offer that occurred at this meeting or thereafter are not relevant and will not be discussed further in this Decision, although there was testimony from several witnesses about this meeting, and documents related to this were admitted.

billed Mother for Student's attendance and services between November 6, 2017, and his last day of attendance on March 23, 2018, and it has no intention of doing so.

27. In early March 2018, Ms. Cantrall had a telephone conversation with Ms. Wood. Ms. Wood had had numerous contacts with San Juan personnel since November 2017, and had repeatedly asked that San Juan enter into a contract with Sierra to continue Student's enrollment at Sierra. San Juan personnel had consistently informed Ms. Wood that it had an appropriate placement for Student in a district classroom, and would not be placing him at Sierra. During the March 2018 telephone conversation Ms. Cantrall told Ms. Wood that she questioned the wisdom of Sierra allowing Student's continued attendance, since San Juan would not be contracting with Sierra to pay for him. Within a few days of this conversation, Ms. Wood informed Mother that Student could not attend Sierra after March 23, 2018, when Sierra's spring break began.

28. Although Sierra had originally provided transportation for Student when he was enrolled at Clear Creek, as called for in his IEP, Mother began transporting Student between home and Sierra each day he attended at some unknown point of time during the 2016-2017 school year, or the 2017-2018 school year. Between November 6, 2017, and March 23, 2018, Mother drove Student to and from Sierra. Student established the distance between his home and Sierra was 19.5 miles, which was 39 miles round trip. Student is seeking reimbursement for two round trips between her house and Sierra, for each day Student was in attendance.

Attendance at Mariemont Beginning April 5,2018

29. Student began attending Mr. Goudy's special day class at Mariemont on April 5, 2018. A fulltime one-to-one aide was assigned to him. The class was a good fit for Student, and the transition was smooth. He continued to receive two 30-minute sessions of individual speech and language therapy weekly, and one 30-minute individual occupational therapy session weekly. A 30-day interim IEP team meeting was held on May 4, 2018, and an interim IEP was developed at the meeting. Mother signed consent to this IEP. Student's placement was a special day class, with specialized academic instruction; 60 minutes weekly speech and language services, both individual and group sessions; 30 minutes weekly occupational therapy in a group setting; and a one-to-one aide. The team understood that this meant Student would remain in Mr. Goudy's special day class at Mariemont. It was very clear during the hearing that Mother was happy with Student's placement at Mariemont. Student's annual IEP team meeting was to be held in early June 2018, to determine his placement for the 2018-2019 school year.

LEGAL CONCLUSIONS

Introduction: Legal Framework under the Individuals with Disabilities Education Act [13]

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq. (2006);[14] Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic, and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs.

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

[14] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

4. The Supreme Court recently clarified the *Rowley* standard in *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S.___, 137 S.Ct. 988 [197 L.Ed.2d 335] (*Endrew F.*). The Court explained that when a child is fully integrated into a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit a child to achieve passing marks and advance from grade to grade. (*Id.*, 137 S.Ct. at pp. 995-996, citing *Rowley*, 458 U.S. at p. 204.) In cases in which a student is not fully integrated into a regular classroom, the student's IEP must be reasonably calculated to enable the student to make progress appropriate in light of his circumstances. (*Endrew F., supra*, 137 S.Ct. at p. 1001.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this matter, Student had the burden of persuasion on the issues decided.

Issue 1: Initial placement offers for transfer students

6. Student contends San Juan failed to make a formal written offer of an initial placement and services, and failed to offer him a comparable placement to that in his last consented to IEP dated June 6, 2017. Student argues that San Juan should have offered him placement in a nonpublic school, but instead repeatedly offered him placement in a special day class in a public school setting. Further, Student argues that San Juan repeatedly provided Mother with offers that eliminated services that were part of the June 2017 IEP from Clear Creek, specifically, a one-to-one aide, appropriate speech and language services and transportation. Student claims all of these acts or omissions denied him a FAPE.[15]

7. San Juan argues that there is no legal requirement that an initial offer of placement for a transfer student with an IEP be in writing. Further, San Juan claims the placements it offered in Autism Spectrum Disorder special day classes at Carriage and Mariemont were comparable to the classroom where Student was placed at Sierra. In addition, San Juan contends that it repeatedly and verbally confirmed with Mother that it would be providing Student with all of the services called for in the June 2017 IEP, and understood that included 30 weekly minutes of occupational therapy, 60 weekly minutes total speech and language services, and a one-to-one aide. San Juan asserts that, if there

[15] Although Student alleged that transportation to and from school was one of the enumerated missing items in San Juan's offers of interim placement in his complaint, the evidence established that transportation to a San Juan school was always offered, and Student did not raise this in his closing argument.

were any representations that services from the June 2017 IEP would not be provided to Student in the written Interim Services form, and the letter it attached to Ms. Cantrall's January 25, 2018 email, these representations were due to clerical errors or Special Education Information System glitches, and should be disregarded.

WHETHER OFFERS OF INITIAL PLACEMENTS AND SERVICES FOR TRANSFER STUDENTS WITH IEPS MUST BE WRITTEN

INITIAL PLACEMENTS

8. The IDEA, federal regulations, and California statutes all address student transfers from one school district to another, in the same state, in the middle of a school year. The new school district must provide Student with a FAPE with "comparable" services to those described in the last consented to IEP from the prior school district, in consultation with the parent, for no more than 30 days. Within the 30 days, the receiving district must hold an IEP team meeting at which either the previous IEP is adopted, or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. §300.323(e); Ed. Code §§ 56043(m)(1) and 56325(a)(1).)

SAN JUAN'S OFFERS OF INITIAL PLACEMENT AND SERVICES

9. San Juan made multiple verbal offers of an initial placement between November 17, 2017, and February 6, 2018. Verbal offers of placement in the special day class at Carriage were made on November 17, and December 8, 2017.

10. On January 23, 2018, during a telephone conversation with Mother, Ms. Cantrall suggested placement in the special day class at Mariemont. Then on January 25, 2018, Ms. Cantrall sent Mother an email and attached the written Interim Placement form from the Information System. This communication included a number of errors, including placement a closed school, an incorrect statement of the amount of speech and language services Student was to receive, and a failure to mention the need for a one-to-one aide. The email also included San Juan's letter, dated January 9, 2018, responding to Mother's December 2017 letter which caused additional confusion by offering placement at the special day class at Carriage, with occupational therapy and speech and language services, but including no mention of Student's one-to-one aide.

11. Following Mother's observation at Mariemont on January 30, 2018, San Juan offered placement there, and it was agreed Student would begin attending the Mariemont special day class on February 8, 2018. Had Student begun attending Mariemont on February 8, 2018, the June 6, 2017 IEP, was the operative description of Student's services. The IEP would then be implemented at Mariemont, and an IEP team meeting would have been held within 30 days of the start date.

LEGAL REQUIREMENTS FOR MID-YEAR TRANSFERS INTO A NEW EDUCATIONAL AGENCY

12. When the parties requested the opportunity to submit written closing arguments they were asked to specifically address the issue of any requirement that offers of initial placement and services for transfer students with IEP's be in writing. While Student cites one federal case in his closing brief, *S. H. v. Mount Diablo Unified School Dist.* (N. D. Cal. 2017) 263 F.Supp. 3d 746 (*Mount Diablo*), this case does not specifically state that all initial offers of placements made when a student with an IEP transfers from one district to another must be in writing. Rather it determines that when the school district held an IEP team meeting and made a written offer of initial placement, the written offer needed to be clear. Student also cites two OAH cases as authority that initial offers be in writing, but although OAH decisions may be persuasive, they are not binding authority. (Cal. Code Regs., tit. 5, § 3085.) Neither of the prior OAH cases stated a requirement that an offer of initial placement must be in writing. Student has provided no legal authority to support his contention that an initial offer for a student transferring into a district during the school year be in writing.

13. In this case both state and federal statutes concur: when a child moves within the state, but to a new district that does not share an educational agency with Student's prior district, and that transfer occurs during the school year, the new school district is not required to replicate the exact circumstances of Student's last IEP. Instead, the new district is required only to provide services comparable to the previously approved IEP, for up to 30 days, at which time it must either adopt the previously approved IEP, or develop, adopt and implement a new IEP consistent with state and federal law. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. §300.323(e); Ed. Code §§ 56043(m)(1) and 56325(a)(1).) Other than the statutes and regulations cited above, there are no other references in the IDEA, the Code of Federal Regulations, or the Education Code mandating requirements that must be met when a student transfers from one school district to another in California. There is no requirement that a school district's offer of initial placement and services to a student with an IEP transferring from another school district during the school year be in writing.

14. San Juan made several verbal offers of initial placement to Student between November 6, 2017, and February 6, 2018. In these multiple conversations with Mother, Ms. Apgar, Ms. Gennuso, and Ms. Cantrall explained that when Student began his interim placement all of the services in the June 2017 IEP would be provided. The verbal offers of interim placement were sufficient, and were not required to be in writing.

COMPARABLE PLACEMENT

COMPARABILITY OF CARRIAGE

15. San Juan was obligated to offer Student an initial placement comparable to that in his last consented-to IEP. Student did not establish that the special day class at Carriage was incomparable to Sierra.

16. Following Mother's observation on December 8, 2017, Ms. Apgar and Ms. Gennuso met with her in the nurse's office at Carriage, and confirmed with her that *all* of the services in the IEP of June 6, 2017, would be provided to Student at Carriage during the initial placement. Mother testified credibly at hearing that this was her understanding. She did not initiate any discussion of the amount of speech and language, and occupational therapy services Student would be provided at Carriage, or whether he would be provided with a one-to-one aide during the initial placement, because she understood that San Juan would implement the June 6, 2017 IEP in its entirety at Carriage until the 30-day interim IEP team meeting.

17. The Sierra classroom had 10 students, significant adult support, and Student was provided with on-campus speech and language and occupational therapy, a one-to-one aide, and transportation. He was provided with 315 daily minutes of specialized academic instruction.

18. Although the Carriage classroom was operated by a public school district and located on a comprehensive elementary school campus, it had 12 or fewer students, with three classroom aides in addition to the teacher. It was staffed with personnel who could meet Student's needs as a child with autism in the moderate to severe range. He would be provided with his occupational therapy, and speech and language services at Carriage in accordance with his June 2017 IEP. All of San Juan's witnesses credibly testified that they knew they were required to implement the June 2017 IEP in its entirety, and that included the stated amounts of speech and language and occupational therapy, and the one-to-one aide. There was no dispute between the parties that all of San Juan's offers included transportation from Student's home to school and back. Nor was there any dispute that both placements offered the same daily amount of specialized instruction minutes contained in the June 2017 IEP. Student failed to establish by the preponderance of the evidence that the special day class at Carriage was not comparable to his placement at Sierra.

COMPARABILITY OF MARIEMONT,

19. The special day class at Mariemont was a mirror of the classroom San Juan proposed for placement of Student at Carriage. It had 12 or fewer students, three classroom aides in addition to the teacher, and on-campus speech and language and occupational therapy services. Again, San Juan intended to implement the June 6, 2017 IEP, in its entirety until the 30-day interim IEP team meeting. Following Mother's visit to Mariemont on January 30, 2018, it appeared to San Juan that Mother agreed to the proposed placement in the Mariemont special day class taught by Mr. Goudy. Student produced no evidence that the two classrooms were not comparable. The offer of placement at Mariemont was comparable to Student's placement at Sierra.

STUDENT'S ARGUMENTS ABOUT COMPARABILITY ARE WITHOUT MERIT

20. Student cites to a number of non-precedential OAH cases and cases from other jurisdictions in arguing that Carriage and Mariemont were not comparable. These cases are

not persuasive, however, because this is a particularly factual determination. San Juan agrees that this determination is necessarily factual. Whether a hearing officer or judge found a prior placement for a specific student transferring into a school district not comparable to a placement called for in that student's IEP would assist in this analysis only if situations described in the cases cited were the same as in this case. Student cites no such case.

21. Student presented no evidence at hearing that distinguished Student's placement at Sierra from the offered placements in the special day classrooms at Carriage and Mariemont other than the fact that Sierra is a nonpublic school, and San Juan's offered placements are on the campus of a comprehensive public school. Although Mother had expressed concerns about the location of Carriage next to a high school, and inadequate fencing due to Student's history of elopement, this did not establish that Carriage was not a comparable placement in relation to Sierra. Student presented no evidence as to why Student's needs could not be met on a public school campus as opposed to a nonpublic school. The evidence at hearing suggested that Clear Creek placed Student at Sierra because it was just a single elementary school district with fewer than 200 students, and thus did not have a program to meet Student's needs. Accordingly, Student failed to meet his burden of proof that the placements at Carriage and Mariemont were not comparable to Sierra, at hearing.

PROCEDURAL VIOLATIONS

22. A procedural violation constitutes a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes a parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or caused a deprivation of educational benefits for the child. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.) The Ninth Circuit has confirmed that not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033, fn.3 (*Park*); *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) The Ninth Circuit has also found that IDEA procedural error may be held harmless. (*M.L.* v. *Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 652.).

ERRORS IN DOCUMENTS PERTAINING TO INITIAL PLACEMENT

23. The attachments to Ms. Cantrall's January 25, 2018 email to Mother, had errors in their descriptions of the services to be provided to Student during the course of discussing Student's initial San Juan placement as a transfer student with an IEP. While unfortunate, these errors did not impede Mother's participation in the process, deprive Student of educational benefit, or deny him a FAPE. The record shows that Mother actively participated in the search for a San Juan initial placement, talking to San Juan personnel on the telephone, exchanging emails, and meeting with them in person on December 8, 2017, and January 30, and February 6, 2018. Furthermore, Mother testified that she always understood that San Juan was required to, and would provide Student with placement and

services as outlined in the June 2017 IEP. There was no evidence that the documents attached to the January 25, 2018 email, impeded her ability to participate in the decision-making process, especially since she did not ask San Juan about them after they were sent to her. And when they were sent, Mother was already considering the possibility of placement at Mariemont, not at Carriage. There was no dispute that Student was receiving a FAPE when he attended Sierra, and this Decision finds that the placements offered were comparable to the Sierra program. Accordingly, it is found that no remedies are due Student as a result of errors being present in written documents pertaining to the offer of initial placement at Carriage. Student did not prevail on Issue 1.

Issues 2, and 3: Failure to hold an IEP team meeting, denial of meaningful participation, and predetermination

FAILURE TO HOLD AN IEP TEAM MEETING FOR THE 2017-2018 SCHOOL YEAR

24. Student contends that San Juan denied Student a FAPE, and committed a serious procedural violation because it did not convene an IEP team meeting following Mother's multiple requests, or within 30 days after Student's initial placement in San Juan, or at least, by January 12, 2018. This last date was indicated as the date for the 30-day interim IEP team meeting on the Interim Services form transmitted to her on January 25, 2018.

25. San Juan claims it was not required to hold a 30-day IEP meeting until Student began attending the initial placement it offered. Further, during this period when Student was not attending a San Juan placement, it was not required to convene an IEP team meeting, even though Mother requested one several times.

WHEN INTERIM IEP TEAM MEETINGS MUST BE CONVENED

26. An interim IEP team meeting must be convened within 30 days after a student with an IEP has attended an initial placement after transferring from another school district during the school year. Although school breaks of five or more days will extend this timeline in the case where a parents makes a written request for an IEP team meeting (Ed. Code, § 56343.5) it is determined that this provision does not apply in the case of a 30-day interim IEP team meeting.

27. According to the U. S. Department of Education's Office of Special Education and Rehabilitative Services, a school district enrolling a student from another school district must offer an initial placement within a reasonable time. ("Questions and Answers on Individualized Educational Programs (IEPs), Evaluations and Reevaluations" revised June 2010.) However, reasonableness depends on the facts of each case.

28. In the instant case, Mother enrolled Student in San Juan Unified School District on November 6, 2017. It was not unreasonable that San Juan did not make an offer of an interim placement until November 17, 2017, the last day of school before the week-

long Thanksgiving break began. Ms. Apgar requested Student's records from Clear Creek within two days of enrollment, and did not receive them until November 14, 2017. When the offer of placement at Carriage was made in November, the expectation was that Student would begin school at Carriage on or about November 27, 2017, when Thanksgiving break ended. Because Mother wanted to visit the placement first, but could not do so until December 8, 2017, the 30-day time period for the interim IEP team meeting did not begin to run. After Mother turned down the Carriage placement, the 30-day time period still did not begin to run since San Juan agreed to meet on December 15, and again on December 20, 2017. However, Mother cancelled both meetings.

29. San Juan reviewed Mother's December 19, 2017 letter, on January 9, 2018. At this point, since Mother still had not agreed to an initial San Juan placement, San Juan should have begun the process of convening a 30-day IEP team meeting to begin no later than February 8, 2018, if Student did not begin to attend an offered initial placement. However, San Juan did not do this. Although Mother visited Mariemont and wanted Student to attend Mariemont beginning on February 8, 2018, the complaint in this matter was filed on February 6, 2018, and Student continued to attend Sierra until March 23, 2018.

WHEN REQUESTED IEP TEAM MEETINGS MUST BE CONVENED

30. Student also questions whether San Juan should have held an IEP team meeting 30 days after Mother's verbal requests on November 6, and December 8, 2017, and written requests beginning on December 8, 2017. A meeting of an IEP team requested by a parent or guardian to review an IEP pursuant to Education Code section 56343, subdivision (c), shall be held within 30 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written request. Mother's first written request for an IEP team meeting was made December 8, 2017, but the 30-day period for convening that meeting was interrupted by San Juan's winter break, which began December 22, 2017, and ended January 9, 2018. Therefore, the earliest an IEP team meeting was required to be convened based on Parent's written request was January 30, 2018. However, San Juan did not convene an IEP team meeting until May 4, 2018, and this meeting was a 30-day interim meeting, not a meeting convened due to Mother's request.

DENIAL OF MEANINGFUL PARTICIPATION DUE TO LATE IEP MEETING.

31. The procedural safeguards that protect parents' rights to be involved in the development of their child's educational plan are among the most important in the IDEA. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013), 720 F. 3d 1038, 1044.) And a district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Parental participation in the IEP process is also considered "(A)mong the

most important procedural safeguards." (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882.) Parents have an adequate opportunity to participate in the IEP process when they are "present" at the IEP meeting. (34 C.F.R. § 300.322(a); Ed. Code, § 56341.5, subd. (a).)

32. Some delay in holding the 30-day interim IEP team meeting to determine whether the prior IEP would be adopted or a new one developed was reasonable, as noted above. Mother knew from her experience in Clear Creek that an IEP team meeting should be held 30 days after an initial placement when a student transfers to a new school district. However, she requested an IEP team meeting when she enrolled Student on November 6, 2017, and on later dates, because she felt that a San Juan IEP team meeting, before Student began attending, would provide her with clear information about what San Juan was offering Student as an initial placement. She wanted Student's regional center workers with her at the meeting as support, and because she has a poor memory, the IEP documents would help her in the decision-making process. And while San Juan did not believe it was required to convene an IEP team meeting before Student began attending school in the district, Ms. Apgar and Ms. Gennuso agreed to meet with Mother on December 15, 2017, and on December 20, 2017, although Mother cancelled both meetings. These meetings were never intended to be an IEP team meeting, nor was the meeting at Mariemont on February 6, 2018.

33. Student began attending Mariemont on April 5, 2018. San Juan convened the 30-day interim IEP team meeting on May 4, 2018. While timely as to when Student started school, there was a delay of nearly six months from the time Student enrolled in San Juan, and three months from the reasonable time for convening a 30-day interim IEP team meeting (determined above to be February 8, 2018) when it was clear Mother was refusing placement at Carriage. It was also a delay of over three months from the time San Juan should have convened an IEP team meeting based on Mother's written request on December 8, 2017 (determined above to be January 30, 2018). However, the question is whether San Juan's failure to hold an IEP team meeting earlier significantly impeded Mother's right to participate in the development of a San Juan IEP, and it is found that failure to hold such a meeting did not significantly impede Mother's right to participate in the IEP process.

34. The record established that Mother maintained contact with San Juan from the time she enrolled him in early November 2017, until she filed her due process complaint on February 6, 2018, which moved the case into the legal arena. For the three month period after enrollment on November 6, 2017, Mother had numerous telephone conversations with San Juan personnel, engaged in email correspondence with them, and had personal contact with them when she visited Carriage and Mariemont. Therefore, it is found that San Juan's failure to convene a 30-day interim IEP team meeting by February 8, 2018, or to convene an IEP team meeting by January 30, 2018, after Mother's December 8, 2017 written request, did not significantly impede Mother's participation in the IEP process. In addition, the evidence established that Student received a FAPE and educational benefit during this time since he continued to attend Sierra, and then began to attend Mariemont in April.

35. San Juan witnesses testified that it was more productive to hold a 30-day IEP team meeting after Student had been attending a San Juan program for three or four weeks, so San Juan staff could observe and work with him. By doing so, San Juan staff would be able to determine his strengths and weaknesses, and levels of performance. This would assist the team in deciding whether to develop new goals and a comprehensive San Juan interim IEP until it was time for his annual IEP team meeting in June, or to adopt the June 2017 IEP from Clear Creek. However, San Juan was unable to cite any authority that supports its position in this regard. Student partially prevailed on Issue 2, to the extent that he established San Juan should have had an IEP team meeting months before the 30-day interim IEP team meeting on May 4, 2018. However, Student did not meet his burden of proof that failure to convene a timely IEP team meeting denied him a FAPE, deprived him of educational benefit, or significantly impeded Mother's participation in the IEP process.

PREDETERMINATION

36. It cannot be determined from reading Student's complaint, or written closing argument, or the testimony he elicited from witnesses, why Student claims San Juan predetermined its offers of initial placement and services, other than the fact that it offered him placement in its own programs, rather than continuing his placement at Sierra. San Juan points out that it offered Parent both Carriage and Mariemont during the time period at issue, and that Mother was an active participant in the process to provide Student with an appropriate initial placement.

37. A school district that predetermines the child's program and does not consider the parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal v. Hamilton County Board of Education*, *supra*, at 858; see also, *Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) School officials and staff do not predetermine an IEP simply by meeting to review and discuss a child's evaluation and programming in advance of an IEP meeting. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693 fn.3.) The test is whether the school district comes to the IEP meeting with an open mind and several options, and discusses and considers the parents' placement recommendations or concerns before the IEP team makes a final recommendation. (*Hanson v. Smith,* (D. Md. 2002) 212 F.Supp.2d 474, 486; *Doyle v. Arlington County School FBoard* (E.D.Va. 1992) 806 F.Supp. 1253, 1262.)

38. Districts are required to consider parents' preferences. The IDEA does not require a school district to accept parents' choice of program; but it must consider suitable alternatives. (*Blackmon v. Springfield R-XII School Dist*. (8th Cir. 1999) 198 F.3d 648, 658.)

39. An initial placement for a student transferring into a school district during the school year must be chosen by a school district in consultation with parents, and the evidence established that Mother had significant contact with San Juan personnel to discuss its proposed placements at Carriage and at Mariemont. San Juan did not ignore Mother, and very clearly consulted with her about the placement as part of the process of finding an initial

placement for Student. San Juan did not predetermine its initial offers of placement and services for Student, pending the 30-day interim IEP team meeting.

NEED FOR TRANSITION PLAN FOR STUDENT ATTENDING A NONPUBLIC SCHOOL TO BE PLACED IN A PUBLIC SCHOOL CLASSROOM

40. During the hearing, the ALJ became concerned that San Juan was asking Mother to agree to return Student to a public school setting from a nonpublic school setting without creating a transition plan pursuant to Education Code section 56345, subdivision (b)(4). She asked the parties to brief the issue.

41. Education Code section 56345, subdivision (b)(4) requires a school district to develop a transition plan for a student moving from placement in a nonpublic school, or a special day class, to a placement for at least part of the day in a regular education class. Student contended that San Juan was required to create a written transition plan for Student to begin attending the San Juan special day class, and it was a procedural error for San Juan to not do so since he was moving from a nonpublic school to a public school placement. San Juan disagreed, and claimed there is no need for a transition plan because the proposed change of placement was a change only to a special day class, not to a regular classroom for any part of the day, and the placement was an initial placement for a transfer student.

42. San Juan's analysis of this issue is correct: under the facts of this case, a written transition plan was not needed to change Student's placement from a nonpublic school to a public special day class, and this is especially true since the new placement is an initial 30-day placement for a transfer Student. San Juan did not commit a procedural violation by failing to create a transition plan for Student. Student did not prevail on Issue 3.

Issue 4: Failure to offer an appropriate placement for the 2017-2018 School Year

43. In his complaint, Student claims San Juan failed to offer him an appropriate placement for the 2017-2018 school year. In his closing argument Student claims the placement was not appropriate because it was not a nonpublic school and San Juan purportedly was not offering services that were in the June 2017 IEP. San Juan asserts that its proposed placements of Mariemont and Carriage were comparable, and it intended to provide Student with the services in his IEP from June 2017, until the 30-day interim IEP team meeting was held.

44. The evidence established that San Juan did offer Student an appropriate placement at Carriage in November and December 2017, and at Marimont in January 2018. Student did not present evidence that either placement was inappropriate. A school district is required to offer a student a placement that will meet his unique needs and provide him with educational benefit. Although Mother did not like Carriage because of its proximity to a high school, concerns about whether Student could elope from the playground, and the presence of a child in the classroom who exhibited a behavior Student also exhibited, which she wished to extinguish, these factors did not make the Carriage program inappropriate. In

regards to the Mariemont program, there was no evidence that it was an inappropriate placement. San Juan prevailed on Issue 4.

REMEDIES

1. Student partially prevailed on Issue 2, in that San Juan did not convene an IEP interim team meeting within a reasonable time after Student enrolled, or after Mother's written request for an IEP team meeting. In his closing brief, Student proposes two remedies should he prevail. The first is for San Juan to pay the costs for Student to attend Sierra from November 6, 2017, through March 22, 2018, which Student contends is $18,267.25.[16] Student's second proposed remedy is for Mother to be reimbursed for two round trips between her house and Sierra, for each day Student was in attendance during this time. Student estimates this amount to be $2,453.10. He determined this amount based on the mileage between Student's home and Sierra, using Internal Revenue Service mileage rates in effect at the time.

2. San Juan believes it owes nothing, but in its closing brief it states that if Student prevails on one or more issues, it will pay Sierra for 10 days Student attended Sierra, between the dates of November 6, 2017, and the time it first offered placement at Carriage, November 17, 2018. However, that amount cannot be determined based on the invoices admitted into evidence at hearing, and the record of Student's attendance at Sierra during the 2017-2018 school year. Further, Student did not present evidence that San Juan actually owed Sierra money; Sierra chose to allow Student to continue attending, even after San Juan initially told Ms. Wood on December 1, 2017, that San Juan would not be continuing Student's placement there, and reiterated that many times afterwards. Sierra has not billed, and has no intention of billing Mother for Student's attendance between November 6, 2017, through March 22, 2018.

3. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369-370 (*Burlington; Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra*, at p. 374 [the purpose of the IDEA is to provide students with disabilities "a free appropriate public education which emphasizes special education and related services to meet their unique needs."].) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

[16] Student adjusted the amounts shown on the Sierra invoices to reduce charges for speech and language services that were reflected on the invoices admitted into evidence, on dates Student did not receive the therapy.

4. Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Puyallup,* at p. 1496.) A school district also may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Ibid.*) These are equitable remedies that courts may employ to craft "appropriate relief" for a party.

5. Student established that San Juan should have held an IP team meeting earlier than May 4, 2018, and failure of Student to begin attending the program San Juan offered as its initial placement was not good cause for not holding the meeting. However, Student did not establish that failure to hold an IEP team meeting, under the circumstances of this case, significantly impeded Mother's participation in the IEP process. Therefore it is found that Student is not entitled to the remedies of payment to Sierra, or reimbursement for mileage to and from Sierra.

6. Staff training is an appropriate compensatory remedy under these facts. The IDEA does not require compensatory education services to be awarded directly to a student. Staff training concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils can be an appropriate compensatory remedy, and is appropriate in this case. (*Park*, *supra,* at p. 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].)

7. It has been found that San Juan did not hold a timely 30-day interim placement meeting, or a timely IEP team meeting following Mother's written request on December 8, 2017. Accordingly, San Juan shall provide two hours training to special education personnel concerning a school district's obligations to special education students transferring into the district, with a portion related to convening timely IEP team meetings. This training shall not be provided by San Juan personnel, or any attorney or law firm that represents San Juan.

ORDER

1. Student's requests for relief are denied.

2. San Juan shall provide two hours training to special education personnel concerning a school district's obligations to a Student transferring into the district, with a portion related to convening timely IEP team meetings. This training shall not be provided by San Juan personnel, or any attorney or law firm that represents San Juan, and shall be completed no later than October 31, 2018.

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, Student and San Juan each partially prevailed on issue 2. San Juan prevailed on issues 1, 3, and 4.

RIGHT TO APPEAL THIS DECISION

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

Dated: July11, 2018

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings