BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT AND SAN JOAQUIN COUNTY OFFICE OF EDUCATION.	OAH Case No. 2013110831

DECISION

On November 22, 2013, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings, naming the Manteca Unified School District and San Joaquin County Office of Education. OAH granted a continuance for good cause on December 20, 2013.

Administrative Law Judge Peter Paul Castillo heard this matter in Stockton, California, on February 10, 11, 12, 24, 25, 26 and 27 and March 3 and 4, 2014.

Carly Christopher and Evan Goldsen, Attorneys at Law, represented Student. Student's mother attended for the entire hearing, and Student's father attended for portions of the hearing. Student was not present at the hearing.

Roger Goatcher, Director of Student Services, represented District. Rodney L. Levin, Attorney at Law, represented County. Brandi Brunni, County Division Director, Special Education, was present for the entire hearing.

At the conclusion of the hearing, the matter was continued to April 1, 2014, at the parties' request to file written closing briefs. The record was closed on April 1, 2014, with the parties' filing of closing briefs and the matter was submitted for decision.[1]

ISSUES[2]

Issue 1: Did District and County deny Student a free appropriate public education by violating Student and Parent's procedural rights, since it prevented Parent from meaningfully participating in Student's educational decision-making process and/or denied Student an educational benefit by failing to assess Student in all areas of suspected disability:

a. For the 2012-2013 and 2013-2014 school years, by failing to conduct an augmentative and alternative communication and/or assistive technology assessment; and

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[1] County and District's closing brief was received by OAH on April 1, 2014, and Student's closing brief was received untimely on April 2, 2014, as the facsimile transmission was completed at 5:24 p.m. (Cal. Code Regs., tit. 1, § 1006, subd. (h).) On April 7, 2014, County moved to strike Student's closing brief for failure to follow the ALJ's instruction concerning line spacing, double spacing, and page length. Student filed a response on April 16, 2014. County's motion to strike is granted as Student's entire 30-page closing brief is single spaced, in direct contravention of the ALJ's explicit instructions.

[2] The issues were framed in the February 5, 2014 Order Following Prehearing Conference. The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

b. For the 2012-2013 school year through April 30, 2013, and the entire 2013-2014 school year by failing to conduct a functional behavior analysis , and the 2012-2013 school year by failing to perform a functional analysis assessment ?

Issue 2: For the 2012-2013 and 2013-2014 school years, did District and County deny Student a FAPE by violating Student and Parent's procedural rights, since it prevented Parent from meaningfully participating in Student's educational decision-making process and/or denied Student an educational benefit by failing to:

a. Provide accurate baselines on all goals the individualized education plan offers;
b. Report on and update all of Student's goals in the annual IEP team meetings;
c. Update all of Student's IEP goals based on data;
d. Provide Parents with quarterly IEP goal progress reports;
e. Provide Parents with data regarding Student's progress on goals;
f. Translate into Spanish all IEP offers, letters, and assessments;
g. Permit Parents to observe Student at school;
h. Consider parental concerns regarding services to Student as expressed at IEP team meetings and correspondence;
i. Consider parental concerns regarding Student's health as expressed at IEP team meetings and correspondence; and
j. Permit Parents to voice their concerns through correspondence and in IEP team meetings, including holding an IEP team meeting in their absence?

Issue 3: For the 2012-2013 and 2013-2014 school years, did District and County deny Student a FAPE by failing to:

a. Create goals in all areas of needs;
b. Draft goals in accordance with state standards-based curriculum;

c. Address Student's English-language development through appropriate goals and services;
d. Offer appropriate services in the areas of applied behavior analysis, academics, a qualified one-to-one aide, occupational therapy and speech and language; and
e. Materially implement Student's IEP's in the areas of ABA, specialized academic instruction, a one-to-one aide, and speech and language services?

SUMMARY OF DECISION

This Decision holds that Student did not have the significant behavior problems, such as pinching, scratching, and lack of attention, that Student alleged and did not require as much one-to-one direct teaching as requested. Further, County and District developed an education program that met Student's unique needs regarding academics, OT, and behavioral. County and District did not retaliate against Mother in limiting her classroom observations and access to the classroom. County and District did consider parental concerns at the IEP team meetings and in written correspondence; their failure to agree to Parents' wishes did not mean that they did not consider parental concerns. County and District timely translated documents for Parents and orally went over documents in Spanish with Mother so she would be prepared for the IEP team meetings. However, County and District failed to permit Parents to participate in the August 2013 IEP team meeting as they unlawfully convened the meeting in their absence. Additionally, County and District failed to provide Student with adequate speech and language services from a speech and language pathologist, as he required direct services because of the severity of his speech and language deficits.

FACTUAL FINDINGS

FACTUAL BACKGROUND

1. Student is seven years old and eligible for special education and related services under the category of autistic-like behaviors. He lives within the boundaries of District with his Parents, who are Spanish speakers. District found Student eligible for special education and related services at age three. Pursuant to a settlement agreement, which was in effect until the start of the 2012-2013 school year, Student attended the Kendall School from April 11, 2011 through April 5, 2012. Kendall provided Student with 35 hours a week of ABA services, primarily one-to-one discrete trial training.[3]

2. After Kendall, Student transitioned into a County special day class located at Veritas Elementary School, which is a District campus. When Student enrolled in Veritas, County became responsible for assessments, IEP development, and convening IEP team meetings. Kendall personnel provided Student with discrete trial training through the end of the 2012 calendar year, and County personnel have provided this service since then. Cynthia Campero has taught the County special day class at Veritas during all times Student attended, except when she was on leave from August through November 2013, when Cynthia Kelch taught the class. Student also receives services from the Valley Mountain Regional Center.[4]

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[3] Discrete trial training involves repetitive, one-to-one drills, in which the instructor attempts to teach the student a particular skill or behavior, usually in a cubicle or at a table.

[4] Regional Centers operate under authority of the Lanterman Developmental Disabilities Act (Welf. & Inst. Code, § 4500 et seq.), and may provide specified services to help children and adults with "developmental disabilities" as defined, including autism, to live at home to the extent possible, and access the community. (Welf. & Inst. Code, §

MARCH 27, 2012 IEP TEAM MEETING

3. On March 27, 2012, County and District convened an IEP team meeting to develop an IEP for the 2012-2013 school year and to discuss Student's placement and transition. The settlement agreement provided for Student's transition to a County special day class, unless the parties agreed otherwise, under which Student would attend to the 2012 extended school year for half the time at Kendall[5] and the other half at a County special day class.

4. Maria Polk, Kendall's site director, told the team that Student had made slow but steady progress on the goals that Kendall had developed. County and District discussed proposed new goals, but Parents wanted more time to review the goals, so County and District agreed to table the discussion until Student's annual IEP team meeting in July 2012. The IEP team agreed that Student would work on the Kendall goals in the meantime.

5. The IEP team next discussed Student's proposed kindergarten placement. All team members agreed that Student was not ready for a general education class. Mother inquired about Student remaining at Kendall. Ms. Polk stated that Kendall was not appropriate because it is not a certified non-public school for kindergarten. District addressed why one of its special day classes would not be appropriate because it could not adequately address Student's needs. After discussing Parents' concerns, County and

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4512.) The definition for eligibility under the Lanterman Act for autism is not the same as for eligibility for special education services under the category of autistic-like behaviors.

[5] At this time, Kendall was changing to a new name, Therapeutic Pathways, and both names were used at IEP team meetings. For this Decision, Kendall will be used to refer to both names.

District believed that a County special day class for children with autism would be the appropriate placement as it could provide him with one-to-one support and access to both special education and typically developing peers.

6. Parents consented to the March 27, 2012 IEP placing Student in the County special day class, and Student's transition started on April 16, 2012. Through end of that school year, Student attended for half time at Kendall and the other half at Veritas special day class, with Kendall providing one-to-one instruction. During the extended school year, Student would attend full-time at a County special day class, with Kendall providing aide support. The IEP team members agreed that County would present Parents with a triennial assessment plan in preparation for the July 2012 IEP team meeting.

JULY 3, AUGUST 13, SEPTEMBER 5, AND NOVEMBER 14, 2012 IEP TEAM MEETINGS

July 3 and August 13, 2012 IEP Team Meetings

7. County conducted psychoeducational, OT, and speech and language assessments in preparation for the July 3, 2012 IEP team meeting. Kendall also prepared a progress report. Before the meeting, County's Spanish interpreter went over these reports and the proposed goals with Mother because County would not be able to have translated copies available for the meeting.

8. The July 3, 2012 IEP team meeting lasted about three hours and included discussion of the assessment findings and Student's continued eligibility for special education services under autistic-like behaviors. The IEP team did not complete discussion of the assessment reports, so it met again on August 13, 2012, to discuss the speech and language assessment, and County hoped then to move on to the proposed goals. The 2012-2013 school year started on August 9, 2012, and County continued the

same service level through the August 13, 2013 IEP team meeting, to work on the Kendall goals.

9. However at the August 13, 2013 IEP team meeting, Mother did not want to proceed because she did not have translated copies of the assessment reports or the proposed goals. County agreed to translate the documents and convene another IEP team meeting when she had them. County would continue to provide Student with special education services at its Veritas special day class as previously agreed.

September 5, 2012 IEP Team Meeting

10. County provided Parents with a Spanish translation of all the assessment reports and the draft IEP before the September 5, 2012 IEP team meeting. Any purported difficulty Mother had in the prior IEP team meetings was remedied as she was an active participant in this meeting. The Kendall progress report was discussed. The IEP team agreed on Student's continued eligibility under autistic-like behaviors, and to include speech and language impairment as a secondary eligibility category. The IEP team began to discuss goals. Mother was an active participant in the discussion of goals, asking questions and suggesting changes, such as adding goals to reflect skills used in a general education kindergarten class. Because Mother did not agree to the proposed goals, County scheduled another IEP team meeting for November 14, 2012, and agreed that Project Administrator Debbi Hopman would meet with Mother, with a translator, in the interim to discuss Mother's proposed goals.

11. The parties also discussed what educational program Student would have until the parties agreed upon a new IEP. Mother expressed her displeasure with Student's placement at Veritas in letters and at the IEP team meeting, especially her concern about his regressing. County disagreed with Mother's regression concern. Ms. Campero explained Student's school day and his work on new skills and maintenance of existing skills. County and District agreed with Mother to continue Student's existing

education program at Veritas, including using the Kendall aides rather than County aides, until the IEP process was completed.

November 14, 2012 IEP Team Meeting

12. Between IEP team meetings, Ms. Hopman met with Mother and a translator to discuss the goals, and Mother continued to express her displeasure with Veritas, contending that Student was regressing, was having toileting accidents at school, and that he increasingly pinched and scratched his younger brother at home. The IEP team met on November 14, 2012. Mother expressed these and other concerns for 45 minutes at the IEP team meeting during the discussion proposed goals and Student's continuation at Veritas. After a lunch break, the IEP team discussed all 19 goals. County and District attendees agreed with the proposed goals, while Mother did not. The IEP team then went over proposed services and placement, with Mother requesting that Student return to Kendall while County and District felt that Student should remain at Veritas after going through a continuum of placement options.

Goals

UPDATING GOALS

13. Student contends that County and District had inaccurate baselines for the proposed goals, and did not report on goals or update them based on information presented at the IEP team meetings. At the IEP team meetings Mother made suggested changes based on her knowledge of Student, which County accepted. Student could not point to any specific errors in the baseline information County used to develop goals. County and District had the Kendall report on Student's progress on goals. County held monthly team meetings with Mother to discuss Student's progress. Additionally, Kendall updated the goals it worked with Student while he attended its program, so the goals

Student worked on when he went to Veritas were based on his current levels of performance.

14. Student argued that many of County's proposed goals addressed skills that he had already mastered at Kendall. County proposed retaining many of the same Kendall goals, with some updated to reflect Student's progress, while other goals were substantially similar to Kendall's because Student had not yet mastered those goals. Susan Scott, County's autism specialist, explained that while Student may have mastered a particular skill in discrete trial training at Kendall, he had not generalized the skill in different environments, like circle time. Therefore, Student had a continued need to work on these skills during as maintenance to retain them, while he worked on generalizing these skills in a more natural environment. Student did not present any evidence that County's proposed goals were not appropriate based on ABA principles as Student's expert, Dr. Carina Grandison,[6] admitted that she is not an expert on ABA. Dr. Grandison observed Student twice for her private neuropsychological assessment, on April 10 and September 6, 2013. Finally, Ms. Polk, who attended the IEP team meetings regarding goals, did not tell the team that the present levels of information were not correct.

[6] Dr. Grandison is an Assistant Clinical Professor at the University of California, San Francisco School of Medicine, in its Department of Psychiatry. Dr. Grandison's specialty is developmental neuropsychology. She has been a licensed clinical psychologist in California since 1996. From 1994 through 1995, she was a Clinical Instructor, Department of Psychiatry, Harvard Medical School; from 2003 through 2006, she served as the Director of the Neuropsychology Assessment Service, Children's Hospital, Oakland, California; and currently at UCSF since 1997. Since 2006, she has worked exclusively in private practice assessing children.

BEHAVIOR

Present Levels of Performance and Unique Needs

SCRATCHING, PINCHING AND MOUTHING

15 Student asserted that his proposed IEP's failed to adequately address his scratching and pinching of others and his mouthing of objects. Mother informed the IEP team in meetings and correspondence about Student's increased scratching and pinching on his younger brother and injuries Student allegedly received at school. Also, Mother complained that Student would pick up items at school and place them in his mouth, which led to illness. Mother believed that Student's conduct was caused by not having the intensive, one-to-one program he had at Kendall and by County's failure to appropriately educate Student.

16. Student contended that his increased scratching and pinching of his brother at home should be addressed at school because of its seriousness. While Student's conduct at home may have been serious, Student did not demonstrate that it had any impact on his ability to make adequate educational progress, or that it had any negative effect at school. Additionally, Student did not present sufficient evidence to establish that his conduct at home was caused by anything that occurred at school.

17. Student did on occasion pick up items from the ground in his class and put them in his mouth. However, Veritas staff testified this behavior was not very frequent and staff could easily redirect Student and take the item from him. Additionally, Dr. Grandison did not see Student mouthing items during her observations, which confirmed that it was not a frequent occurrence. Finally, Ms. Scott[7] conducted an FBA of

[7] Ms. Scott has been County's autism coordinator for the past four years, and for the three years prior worked for Kendall for three years as in-home therapy coordinator. Ms. Scott is also a Board Certified Behavior Analyst , which she obtained in 2004.

Student in May and June 2013, and she did not document significant pinching, scratching or mouthing. She concluded staff could easily address any such behavior.[8]

18. Photographs introduced at hearing did not establish either that Student received any significant injuries while in the County special day class, or if he did, that those injuries were not significant. Kendall and County aides testified credibly that Student's scratching and pinching of them, were infrequent, not particularly forceful, and readily redirected, , and did not increase after the Kendall aides left. The pinching and scratching happened primarily during discrete trial training when the aides attempted to have Student perform a non-preferred task. While Student left at times marks on the aides, they were not serious.

ATTENTION

19. Based on the observations of Mother and his expert, Dr. Grandison, Student contended that he did not receive meaningful educational benefit in the County special day class because of his inattention during discrete trial training and especially during group activities, like circle time and art.

20. Mother observed Student not paying attention to the instruction during her visits. However, Student knowing his Mother was in the class and looking for her best explained his inattention during Mother's observations. Further, the Kendall aides who worked with him at both locations refuted Student's contention that he had much better attention while attending Kendall. They testified that his inattention lasted

[8] While much of the information from Dr. Grandison's assessment and Ms. Scott's FBA was not available until after the November 14, 2012 IEP team meeting, the evidence is relevant as to whether it provided Student a FAPE because Student asserted that his behavior was similar or worse after this IEP. In contrast, County stated his behavior did improve.

typically only a few seconds in both settings, and that they could easily redirect him back on task.

21. Dr. Grandison noted that during both her visits Student was often inattentive during discrete trial training and even more during group instruction. Dr. Grandison observed Student often just staring at the ceiling, unnoticed by his aides; 30 seconds to a minute would elapse before they redirected him. Dr. Grandison stated that Student's attention was worse during her September 2013 visit.

22. Dr. Grandison's conclusions were substantially outweighed by contrary evidence. Ms. Campero, Ms. Kelch, Ms. Scott, and the classroom aides challenged Dr. Grandison's observations. They testified consistently that during the observation and at all other times that Student did not stare aimlessly at the ceiling or anywhere else for extended periods as County teachers and aides noticed Student's inattention after a few seconds and easily redirected him back to task during both individual or group instruction. County personnel who worked with Student consistently testified that his attention had improved since Dr. Grandison's April 2013 visit, and had not regressed as Dr. Grandison contended. Ms. Scott's FBA, started in May 2013, contradicted Dr. Grandison's assessment findings about Student's rate of inattention and the ability of Veritas staff to get Student back on task.

23. The evidence about Students' attention deficits supported County and District based on the consistency of County personnel who worked with Student. They were more credible in part because they acknowledged that Student still faces significant challenges and did not minimize his problems. Dr. Grandison, on the other hand, was overly focused on the question of placement; she tended to rush to the conclusion that any problem required a different placement. She failed to consider how County could address the problem at Veritas. Additionally, Dr. Grandison's credibility is lessened because County personnel who accompanied her during the September 2013

observation and spoke to her all denied making the negative statements that she attributed to them. The County personnel appeared genuinely upset about the inaccuracies in Dr. Grandison's report of their comments, and were more convincing in their testimony than Dr. Grandison was to their statements and observations in September 2013. Additionally, the data collected by County overall, not just the data selectively presented by Student, did not indicate continuous, serious gaps in attention that prevented him from obtaining meaningful benefit from discrete trial training.

24. Student would display inattention to the task he was working on or group instruction for several seconds before the classroom teacher or aides would redirect him, and the redirection easy to accomplish. County personnel who worked with Student more accurately presented information as to Student's attention issues. Information from Mother was not reliable due to her desire for Student to return to Kendall from the outset. Dr. Grandison was not reliable based on her numerous misstatements concerning her September 2013 observation. Thus, while Student had significant attention problems, they were not as severe as he contended. County assessments, present levels of performance in the IEP, and progress reports more accurately described his attention than by Mother and Dr. Grandison.

Goals

25. For the reasons set forth above, Student did not require specific goals to address pinching, scratching, or mouthing objects, as these behaviors did not interfere with his ability to access the curriculum and make meaningful educational progress. Further, County did propose goals to increase his independence and improve his communication, which were intended to teach him better ways to express himself. County did propose goals to improve his attention. Student did not provide persuasive evidence that the proposed attention goals were not adequate to meet his unique needs.

OCCUPATIONAL THERAPY

Assessment

26. Student argued that the proposed OT goals failed to address his sensory processing and fine and gross motor deficits. For the triennial IEP, County occupational therapist Kelly Inderbitzen provided only an update because Student had a comprehensive County OT assessment in January 2012. Ms. Inderbitzen reviewed the January 2012 assessment, observed Student twice in June 2012, worked directly with him, spoke to County staff working with him.

27. Ms. Inderbitzen did not dispute that Student's low muscle tone and poor endurance reduce his attention because he may be too tired to participate. He had difficulty maintaining interest in his schoolwork. He did not have significant sensory process deficits as he was only slightly distracted by loud sounds, unexpected touches, and light, and did not continuously seek out or avoid sensory stimuli. While Student ran into other students, possibly seeking sensory input, this did not occur frequently. Regarding self-care, Student could eat finger food and remove unbuttoned or unzipped clothing, but could not use eating utensils or unfasten clothing fasteners.

28. Parents obtained a private OT assessment in April 2013 from the Easter Seals, which provides private OT services and services for school districts. Karen Chaddock[9] conducted the assessment. Ms. Chaddock reviewed a 2010 Easter Seals assessment of Student and a parent questionnaire. She did not review either County's January 2012 assessment or the June 2012 update. While Ms. Chaddock's assessment occurred after the series of IEP team decisions at issue, the information she obtained is

[9] Ms. Chaddock has worked for Easter Seals since 2006 as an occupational therapist and has extensive experience assessing autistic children for private and school district assessments and providing services to these children.

relevant to the adequacy of County's offer it was obtained only shortly after those decisions. Ms. Chaddock's assessment findings concerning Student's strengths and deficits were not sufficiently different from those of the County OT assessment to put the latter in question.

Goals

29. For the IEP's at issue, County developed OT goals for Student in the areas of gross and fine motor, sensory processing, and activities of daily living. The gross motor and sensory processing goals would have required Student to work on his endurance so he would have more energy to play independently. The goals concerning writing and the activities of daily living addressed Student's fine motor skills, such as holding an eating utensil or toothbrush, or unfastening buttons.

30. Ms. Chaddock could not offer an opinion as to the adequacy of the November 2012 IEP OT goals since she never reviewed the Count's assessment information or his IEP's, and because the areas of need she found corresponded with the County's goals. Other than Ms. Chaddock, Student did not present further evidence to establish that County's OT goals were not adequate. He argued that he had mastered some of these skills with Kendall, but County witnesses adequately explained that though Student learned skills in one-to-one sessions, he still had trouble generalizing skills, so OT skills had to be repeated in both one-to-one sessions and in a natural environment, like the playground, for Student to retain the mastered skills. Accordingly, Student failed to establish that the OT goals were not adequate.

SPEECH AND LANGUAGE

Assessment

31. County speech and language pathologist Isabel Contreras conducted her assessment in May and June 2012.[10] For her assessment, Ms. Contreras reviewed District's 2009 assessment and a private assessment conducted by Hearsay, a certified non-public agency, in 2010. She also spoke to County and Kendall personnel who worked with Student, and obtained answers to questionnaires regarding Student's speech from Mother. Ms. Contreras observed Student at Veritas and worked with him during the administration of formal testing.

32. Student's lack of attention made Ms. Contreras's formal testing almost impossible, and it did not produce useful information. Information from County and Kendall personnel showed that Student could make word approximations, such as 'fips' for chips, and make and respond to simple requests. However, Student's articulation was a significant deficit, as those who worked with him only understood him about half the time. Information from County and Kendall personnel and Mother established that while Student understood Spanish and English, he communicated in English in class. Student's receptive and expressive skills were both severely impaired; he scored below the first percentile on the Preschool Language Scales, Fifth Edition on both measures. Student would often express himself by leading an adult by the hand to what he wanted. He understood and spoke words that were favored, like food or Dora from the television show, or that were part of daily use, like washing your hands or shoes. Student's

[10] Ms. Contreras received a bachelor's degree in communicative disorders in 2000 and a master's degree in speech and language pathology in 2005. She is licensed and credentialed to provide speech and language services, and has worked for County since 2002.

pragmatic language was quite limited; he rarely made eye contact with others and engaged in little social interaction.

33. Ginna Brents,[11] of Hearsay, conducted a private assessment in January 2013. Ms. Brents had assessed Student in 2010. For her assessment, Ms. Brents reviewed her prior assessment, which included IEP documents and conducting formal testing. Her new assessment lasted three to four hours on one day. County and District did not have her assessment report until the fall of 2013. However, the information in Ms. Brents' assessment is contemporaneous with the November 2012 IEP and findings consistent with Ms. Contreras's assessment as to Student's unique needs.

34. Ms. Brents's assessment findings concerning Student's receptive, expressive, and pragmatic speech and language deficits were consistent with those of Ms. Contreras. Student's functioning ability was about the same in both assessments, and so were his unique needs.

Goals

35. County proposed numerous goals to address Student's speech and language deficits. They focused on having Student understand and follow simple classroom instructions, (such as "get your backpack"), and having him make simple requests. County proposed goals for expanding Student's vocabulary, which would allow him to understand more commands. County also proposed a pragmatic language goal

[11] Ms. Brents, who is bilingual, has bachelor's and master's degrees in speech language pathology and has been a California-licensed speech and language pathologist since 2003. She has owned Hearsay since 2007, and her practice includes assessing and providing services to autistic children, for both parents and districts. Some of the evidence referred to Ms. Brents as Ginna Rojas, her former name.

so Student could work on playing with classmates. Finally, County proposed an articulation goal so Student could work on speech intelligibility.

36. Ms. Brents did not address the adequacy of County's proposed goals, Student's contention that the proposed goals were not based on his present levels of performance, or whether Student required additional goals. In contrast, Ms. Contreras persuasively provided specific details that supported the adequacy of County's speech and language goals.

ENGLISH LANGUAGE DEVELOPMENT

37. County was aware of Student's need to work on English language development. The speech and language goals required Student to use English in his communication by increasing his English vocabulary. Additionally, all the class instruction and the picture exchange communication system were in English. Neither Ms. Brents nor any other professional testifying for Student provided an opinion as to the adequacy of County's goals related to Student's English language development. Ms. Contreras persuasively explained how the proposed goals would meet Student's English language needs.

Services

APPLIED BEHAVIOR ANALYSIS

38. Student's central contention was that he required a full-time discrete trial program like that he had at Kendall, while County and District countered that he required a mix of one-to-one discrete trial training and group instruction. Student's position rested on his lack of progress and alleged regression while in Ms. Campero's classroom, as compared to the progress he made with full-time discrete trial training at Kendall.

39. Student attempted to demonstrate through Kendall personnel who supervised his program and worked with him at Veritas that he did not make adequate progress. However, his Kendall aides who worked with him and kept data, along with their supervisors who interpreted the data, all stated that Student made slow, but steady progress at Veritas at about the same rate he made while at Kendall.

40. County also provided an hour a week of behavior intervention services through Ms. Scott, which included observation of Student with his aides, review of data, consulting with the Veritas staff, and direct work with Student. Further, no one from Kendall believed that Student required a full-time discrete trial training program, and all agreed that the mixture of individual and group instruction was appropriate.

41. Mother and Regional Center administrator Elizabeth Dias made it appear that Parents' request that County and District address Student's behaviors at home was based on information from Regional Center that the conduct was their responsibility. However, Ms. Dias and Student's prior Regional Center case manager believed that Veritas was appropriate to meet Student's unique needs.

42. The only evidence, besides Parents' observations, that the mixture of group and individual instruction was not adequate, was from Dr. Grandison, based on her April and September 2013 observations. As noted previously, Dr. Grandison stated that she has little expertise as to ABA. Additionally, her recommendation appeared to be merely repeating the recommendations of the 2001 National Resource Council, which recommended 20 to 35 hours of ABA intervention a week for children with autistic-like behaviors in general, without any analysis of Student's specific needs at home and school or why Student required discrete trial as opposed to other ABA methodologies.[12]

[12] *Educating Children with Autism* (Committee on Educational Interventions for Children with Autism, Division of Behavioral and Social Sciences and Education, National

However, as Ms. Scott explained, ABA encompasses various instructional methodologies and some of these may be one-to-one instruction and other group instruction. Ms. Scott and Ms. Campero explained in detail how the Veritas special day class employs ABA principles during the entire school day that Dr. Grandison appeared to know little about. Finally, Kendall personnel who worked with Student supported Ms. Scott and Ms. Campero's description of the Veritas program, and believed that Veritas was appropriate.

ONE-TO-ONE AIDE

43. County offered Student one-to-one aide support with rotating aides during the entire school day to avoid Student becoming dependent on one particular person. Student presented no evidence to challenge County's practice or that County could not ensure one-to-one aide support during the entire school day.

44. Student elicited information as to training, experience, and qualifications from the County aides, Ms. Scott, and Ms. Campero. The County aides had proper initial and ongoing training from the County in discrete trial training and other ABA methodologies employed in the classroom. Additionally, the two Kendall aides assigned to the classroom, who provided training to the County aides, found the County aides to be qualified to meet Student's needs. Thus, Student did not demonstrate that the County aides in Ms. Campero's classroom were not qualified to provide discrete trial training or any other services required by Student's IEP.

Research Council of the National Academy of Sciences, Washington D.C.; National Academy Press, 2001), p. 148.

OCCUPATIONAL THERAPY

45. Student contended that County's offer of 90 minutes a month of OT consultation to the special day class staff was not adequate to meet his unique needs and he required individual services instead. Ms. Chaddock opined, based on her assessment, documents and information that she reviewed, that Student required 60 minutes a week of individualized OT in a location that had numerous OT devices so Student could work on all his physical processing deficits.

46. Ms. Chaddock and Ms. Inderbitzen did not dispute the severity of Student's OT deficits, just how to address them. Ms. Chaddock's opinion was not persuasive because of her lack of knowledge regarding the OT support Student received in Ms. Campero's classroom. Ms. Chaddock did not evaluate how County worked on Student's OT deficits during the entire school day, supported by Ms. Inderbitzen, who consulted with the Veritas staff and observed and worked with Student during her bimonthly, 45-minute classroom consultations.

47. Ms. Inderbitzen and Ms. Campero described how the classroom personnel work on fine motor skills during discrete trial training and other classroom activities. During recess, classroom personnel work with Student on play structures and other play equipment for his gross motor skills, motor planning, and sensory processing. As to the OT equipment that Ms. Chaddock believed that Student required, Ms. Inderbitzen and Ms. Campero explained the adequacy of the equipment in the classroom to work on fine motor skills and on the playground to work on Student's gross motor and sensory processing. Finally, Ms. Inderbitzen would work with Student during her consultations to judge his progress on goals and to demonstrate to classroom personnel skills and techniques to utilize with Student. Accordingly, Student could not demonstrate why Student required individualized OT service to meet his unique needs.

SPEECH AND LANGUAGE

48. Student contended he required direct speech and language services because County could not meet his needs through consultative services, with Veritas staff working on speech and language skills during classroom instruction. Ms. Contreras opined that Student did not require pullout speech and language services because the Veritas staff worked on his speech and language goals during discrete trial training in the class.

49. However, Ms. Brents was more convincing that based on Student's slow rate of progress and level of deficits that he required an hour a week of individual, pullout speech and language services. Ms. Brents did not discount that Veritas staff would work with Student on speech and language skills during class time or that the consultation services would help. Ms. Brents has experience in providing speech and language services to students in school districts and provided a detailed analysis why, in her opinion, Student requires some individual speech and language services based on his slow progress since she had previously assessed Student, and requires some individualized attention by a speech and language pathologist. Ms. Contreras' analysis presumed no individualized speech and language services were required because the class Student attended provided sufficient services to him but she did not persuasively explain why that presumption was accurate.

50. Under the IEP proposal, the Veritas staff would not only work on speech goals in discrete trial training, but also in naturalistic settings so Student could generalize his skills. However, Ms. Brents explained that was not sufficient as Student required individual attention to work on his articulation deficit. Also, Student needed individual work for his receptive and expressive language deficits to help him follow directions and to express through simple verbal expressions what he required. While Veritas worked with Student with his picture exchange communication system and his

ability to communicate improved, Student also needed to learn how to receive instruction and express himself orally, which required individual attention until he could begin generalizing these skills with the support of the classroom staff. Ms. Brents was more credible as to Student's need for an hour a week of individual speech and language services. Her analysis was more thorough in analyzing his significant deficits and slow progress and more persuasive in explaining how the individual service combined with the work done in the classroom was needed.

ENGLISH LANGUAGE DEVELOPMENT

51. While Student required individualized instruction to work on his speech and language deficits, he received adequate instruction in the Veritas special day class with the classroom staff working on the speech and language goals with him in English. Student did not produce evidence, other than the general contention that he required full-time discrete trial training to work on his goals, to establish that County needed to provide additional instruction or services for his English language development.

NEED FOR ASSESSMENTS DURING 2012-2013 SCHOOL YEAR

Assistive Technology and Assistive Augmentative Communication

52. Due to Student's significant deficits in Student's ability to communicate, he contended that County and District should have conducted assistive technology and assistive augmentative communication assessments to find means that are more effective for him to communicate.

53. The fact that County did not conduct a formal assessment while Student attended Veritas did not mean that County did not attempt to determine if other communication devices, other than his picture exchange system, would allow him to communicate better. Because Student liked his Dora the Explorer electronic device, County personnel thought that an iPad with communication applications might be

effective. County personnel tried to instruct Student on how to communicate with the iPad but he did not show any interest in using it. However, Student continued to use his Velcro picture exchange strip and he made meaningful progress in to communicating with it during the school year as the icons used to communicate requests expanded with his improving vocabulary.

54. County personnel did not believe that Student required an augmentative and alternative communication or assistive technology assessment. Student did not present testimony from any professional that County should have conducted an augmentative and alternative communication or assistive technology assessment during the 2012-2013 school year.

Functional Behavior or Functional Analysis Assessments

55. Student asserted that County and District needed to conduct either a FBA or functional analysis assessment [13] due to his behavior problems that significantly impaired his and his classmates' ability to access the curriculum. The at issue behaviors were Student's pinching, scratching, lack of attention, and running into others.

56. As noted earlier regarding the discussion of Student's behavior, his pinching, scratching, attention difficulties, and running into others did exist, and

[13] California law in effect during the 2012-2013 school year created the functional analysis assessment as a more extensive supplement to the assessment required under federal special education law. California school districts were required to conduct an functional analysis assessment, including several specified procedures, when a student developed a "serious behavior problem," and the IEP team found that the instructional/behavioral approaches specified in the IEP had been ineffective. In contrast, an FBA is a creation of federal law and does not impose similar requirements for what an FBA must contain.

analyzed in County's psychoeducational assessment was not as serious as Student contended. The staff at Veritas were easily able to redirect Student when he engaged in maladaptive behaviors. Dr. Grandison's April 2013 observations did not establish otherwise, as Dr. Grandison exaggerated what she observed, in a large part because of her lack of understanding of ABA instruction and methodology. Ms. Scott, with her training, education, and experience, especially which related to her obtaining a BCBA, established that Student's behaviors, based on her own observations and information from the Veritas staff, were not serious enough to require either an FBA or functional analysis assessment.

57. Nonetheless, County eventually agreed to conduct an FBA in April 2013, to placate Mother, even though Student's behaviors were not so significant to require one. County presented the FBA at the May 20, 2013 IEP team meeting.

IEP IMPLEMENTATION

58. Parents did not consent to the November 2012 IEP offer until April 20, 2013. Thus, County continued to implement the last agreed-upon and implemented educational program with the Kendall goals, with County personnel, and speech and language and OT consultative services. When Mother finally consented to County implementation of the November 2012 IEP, County began to implement this IEP, especially the goals. At the May 20, 2013 IEP team meeting, Mother withdrew her consent because, according to her, she did not understand the goals. Her testimony that she did not rescind consent at the May 20, 2013 IEP team meeting is not believable because County personnel had no reason to make up the rescission after expending considerable effort to obtain her consent. County immediately ceased implementation of the November 2012 IEP until Mother gave consent again on June 9, 2013, when County resumed implementation of the November 2012 IEP.

59. Regarding the amount of intensive individual services, County agreed and provided this through the Kendall aides, for 210 minutes a day through the end of the calendar year, and County aides took over in January 2013. Student contended that County did not provide this level of service from January 2013, forward based on the posted schedule in Ms. Campero's classroom that Dr. Grandison observed in April 2013, which provided for only 150 minutes a day. However, Dr. Grandison never inquired with Ms. Campero whether Student received all the individual instruction since she did not observe for the entire school day. Ms. Campero and the classroom aides testified convincingly that they provided the 210 minutes a day of intensive individual services during discrete trial training, and also outside the classroom at recess and lunch. The intensive individual services need not only be provided through discrete training as this instruction could also take place during settings that are more natural, both in and out of class.

60. The November 2012 IEP did not specify intensive individualized instruction as the prior educational program did. It just required specialized academic instruction for the school day and a one-to-one aide. However, County and District stated at the IEP team meetings that Student would continue to receive the 210 minute a day of intensive individual instruction. Until Parents consented to the new IEP in April 2013, County in fact continued to provide the discrete trial training in the classroom cubicle, plus individual instruction during recess and lunch, which equaled 210 minutes a day.

MAY 20, 2013, JULY 17, 2013, AUGUST 6, 2013, SEPTEMBER 9, 2013 AND OCTOBER 2, 2013 IEP TEAM MEETINGS

May 20, 2013 IEP Team Meeting

61. County and District scheduled Student's annual IEP team meeting at Parents' request to May 20, 2013, so Dr. Grandison could attend. Dr. Grandison did not

attend because, according to Mother, she had not completed translating her assessment report into Spanish.

62. Ms. Scott presented the FBA. The FBA confirmed information in County's prior psychoeducational assessment and information Ms. Scott and Ms. Campero already knew about Student's behaviors and their causes, which primarily were requesting Student to perform a non-preferred task or having Student move from a preferred task. Ms. Scott did not recommend the development of a behavior support plan because Student's behaviors did not seriously affect his or his classmates' ability to access the class curriculum. Additionally, classroom staff were able to redirect Student with the intervention techniques already in place. The class used a visual schedule so Student knew what to expect to reduce his frustration. Finally, Student did not have Dr. Grandison review the FBA for her assessment or criticize it at hearing.

63. County did prepare goals for the May 20, 2013 IEP team meeting, and presented them to Mother there. The IEP team did not discuss the proposed goals as County was expecting Dr. Grandison to present her assessment report and then to discuss the proposed goals. County spent a great deal of time responding to questions Mother raised at the meeting, especially why Student could not go back to Kendall, and addressing her request for further information regarding questions posed in her correspondence. The meeting adjourned with the team members agreeing to meet again.

July 17, 2013 IEP Team Meeting

64. At the time of the July 17, 2013 IEP team meeting, Student was not attending the extended school year program. Mother removed him because she was not permitted to observe his class at will or permitted to drop him off at the classroom door. The July 17, 2013 IEP team lasted seven hours, most of which time was spent listening and responding to Mother's concerns, either raised in correspondence or at the

meeting, regarding Student's purported lack of progress and behavior problems. Ms. Campero and County personnel also presented Student's present levels of performance. Finally, County presented 11 of its 18 proposed goals before Mother ended the meeting. County and District wanted to continue the IEP team meeting for the next day. Mother declined and stated that she was next available on August 6, 2013, just two days before the start of the 2013-2014 school year.

August 6, 2013 IEP Team Meeting

65. On August 5, 2013, Mother informed County that she would not attend the IEP team meeting the next day because Dr. Grandison was not available. County hand delivered a letter to Mother to inform her that the meeting would proceed as scheduled. County and District stated to Mother that they needed to hold the IEP team meeting because of the need to have an IEP offer in place before the start of the 2013-2014 school year, but that Mother was not required to accept the offer.

66. County and District decided that they could continue with August 6, 2013 IEP team meeting without Parents because even if Parents attended it was not likely that they would accept the offer at the meeting, and that they would schedule a later IEP team meeting when Parents could attend and present the formal offer. In the interim, County would continue to provide the educational program in the November 2012 IEP to which Parents had provided consent. County and District personnel did meet on August 6, 2013, where they discussed, without Parents, the IEP offer and completed it.

September 9, 2013 IEP Team Meeting

67. Dr. Grandison and Ms. Brents attended the September 9, 2013 IEP team meeting to present their reports.[14] Dr. Grandison had observed Student in his classroom

[14] The attorneys for Student and County also attended the IEP team meeting.

on September 6, 2013. Ms. Brents had not seen Student since her January 2013 testing. At the IEP team meeting, Dr. Grandison presented her updated report that contained information from her recent visit, and Ms. Brents presented the report that she completed in April. Only Ms. Brents addressed the draft IEP by disagreeing with the proposed consultation for speech and language services, while Dr. Grandison just stated that Student required a more intensive program because Veritas staff could not properly address his deficits. Dr. Grandison left the IEP team meeting before the team could review the proposed goals. The meeting concluded without further discussion of the proposed IEP for the 2013-2014 school year.

October 2, 2013 IEP Team Meeting

68. The IEP team met again on October 2, 2013, to complete an IEP offer. The parties' attorneys attended. The IEP team discussed Ms. Brents' proposed goals in her presence and County made some changes to the proposed speech and language goals. The IEP team reviewed Ms. Chaddock's OT assessment that Parents obtained in April 18, 2013, which County had received only a couple of days before the meeting. County explained that its proposed OT goals addressed concerns raised in the private OT report. The County then discussed each goal with Mother and her legal counsel, considering information they provided, along with information in Dr. Grandison's report, and made some changes to address the concerns raised.

69. The IEP team then further discussed services and placement in light of Dr. Grandison's report. Mother and counsel focused on Dr. Grandison's contention that Student had regressed between her April and September visits, which County disputed. County did agree to provide individual speech and language service to Student. Otherwise, County's offer for services and placement was unchanged from the draft presented to Mother in May 2013. County and District disagreed that Student needed an intensive ABA program as he had at Kendall because Student made meaningful

progress at Veritas. Mother did not consent to the proposed IEP. County stated that it would provide an English copy of the IEP with the changes made at the IEP team meeting to Mother and counsel by the end of the week, but the Spanish translation would take about three weeks.

70. Mother provided consent to the offer of October 2, 2013, on November 20, 2013. However, because of the confusing and lengthy nature of Mother's letter, District did not realize until early January 2014 that Mother provided consent, and made up for that missed service. As to the failure to implement the goals for that few week period, District established that this failure to implement did not deny Student a FAPE because the failure was for a minimal period.

Goals

BEHAVIOR

71. The behavior goals in the October 2, 2013 IEP overlapped greatly with the speech and language goals on improving Student's social communication, especially how to share, to provide an outlet for his frustration, and to ask for help, and not pinch or scratch others. Since Student's low-muscle tone made it harder for him to have the energy to pay attention in class, County proposed to have Student use the play equipment independently to increase his alertness level. Another attention goal focused on following instructions during group activities, and playing independently with toys for longer periods.

72. As with the November 2012 IEP, the October 2, 2013 IEP did not have specific goals to address Student's pinching and scratching nor mouthing of items. Dr. Grandison admitted at the September 2013 IEP team meeting that she did not observe the pinching and scratching at school that Mother indicated was a significant problem at home and did not state that Student required goals for mouthing. Further, as discussed previously, Student failed to establish a need for specific goals to deal with

pinching or scratching as Student did not display this conduct at school to the extent that it interfered with his ability to access the class curriculum.

73. The October 2, 2013 IEP contained goals to increase Student's ability to attend. Ms. Scott, Ms. Kelch, and the classroom aides were convincing that Dr. Grandison exaggerated her findings about Student's lack of attention, and slowness of classroom staff to redirect Student, during her September visit. Data collected over several months documented Student's progressive improvement in paying attention, especially during group activities. Also, Dr. Grandison never opined that the proposed goals were not adequate to address Student's attention deficits.

OCCUPATIONAL THERAPY

74. County had accurate information regarding Student's present levels of performance and based on that updated his goals in the October 2, 2013 IEP. Student attempted to no avail to demonstrate through Veritas personnel and County occupational therapist, Ms. Inderbitzen, that the progress Student had made on his gross and fine motor skills and sensory processing was de minimis. Ms. Chaddock, Student's expert, did not opine that the proposed goals were not adequate to meet his unique needs. Ms. Inderbitzen explained, based on her observations and working with Student, how the goals met his needs and allowed him to make adequate progress. The goals addressed fine and gross motor skills and sensory processing, and Student failed to produce sufficient evidence that they were inadequate.

SPEECH AND LANGUAGE

75. County updated Student's speech and language goals in the October 2, 2013 IEP based on the progress Student made in the brief time that it was able to implement the November 2012 IEP goals. While Student contended that the 2013 speech and language goals were substantially similar to the 2012 goals, this was to be

expected because County had to implement the Kendall goals for most of 2013 because of Parents' lack of consent to the November 2012 IEP goals. County did incorporate suggested changes by Mother and Ms. Brents, Student's expert. Ms. Brents did not give an opinion that the proposed speech and language goals were inadequate, and Student's questioning at hearing of the County speech and language pathologists to establish the inadequacy of the goals was not successful.

ENGLISH LANGUAGE DEVELOPMENT

76. As with the November 2013 IEP, County designed the speech and language goals in the October 2, 2013 IEP to meet Student's English language development needs. Student's then speech and language therapist, Juana Mier, explained how the speech and language goals adequately addressed English language development, while Student presented no evidence to the contrary.

Services

APPLIED BEHAVIOR ANALYSIS

77. Student continued to assert at the IEP team meetings for the 2013-2014 school year that he required a full-time discrete trial training program, and not just the Veritas special day class with its incorporated ABA techniques and an hour a week of behavior intervention services. Student's contention is based upon the same opinions of Dr. Grandison that are found unpersuasive above.

78. Additionally, Dr. Grandison lacked understanding of ABA teaching techniques. She criticized in her September 2013 observation the action of Veritas aides in placing their hands over Student's and assisting him to do the assigned task during discrete trial training. She accused the aides of not permitting Student to learn since they were giving him the answer. However, Ms. Scott, who is considerably more qualified in ABA techniques, explained that the technique used was an acceptable ABA

technique called errorless learning, in which the aides assist Student to learn the task with hand-over-hand work, rather than having Student perform the task by himself with less prompting until Student performs the task on his own. At hearing, Student did not attempt to establish through the Kendall personnel who worked with Student that the Veritas aides were using improper ABA teaching with errorless learning. Nothing in Student's behavior, progress on goals, or the quality of Veritas staff required a more intensive ABA program than County provided.

ONE-TO-ONE AIDE

79. For the 2013-2014 school year, Student contended that Ms. Campero's long-term substitute, Ms. Kelch, and the aides in the special day class, were not qualified to provide the one-to-one instruction required by his IEP. Student based his argument on Dr. Grandison's observation that the aides were not properly working with Student, and lack of progress as he in fact regressed since Dr. Grandison's April 2013 visit. Those arguments were unpersuasive for the reasons set forth above.

80. Ms. Kelch demonstrated that she was a capable replacement for Ms. Campero. Ms. Kelch obtained her teaching credential for mild to moderate and moderate to severe students in May 2013, and she was a student teacher in Ms. Campero's class February through May 2013. While this was Ms. Kelch's first teaching position, she had the requisite educational experience to teach the class, additional training before she took over the classroom from Ms. Scott, and oversight by Ms. Scott while she taught the class.[15] Additionally, Ms. Kelch was familiar with working

[15] Ted McNair replaced Ms. Scott as the autism coordinator in October 2013 when Ms. Scott obtained another position in County. Mr. McNair is also a BCBA and responsible for providing behavior intervention services to Student. Student does not question his qualifications.

with autistic children, especially using ABA methodologies, because her son has autism. She worked directly with him using ABA techniques attended his IEP team meetings, and observed him in class.

81. Ms. Kelch was competent to oversee the work of the classroom aides with Ms. Scott's assistance. The classroom aides had the requisite experience, training, and had ongoing oversight and training by Ms. Scott during her classroom visits. Ms. Scott and Ms. Kelch were more convincing than Dr. Grandison that the aides properly worked with Student based on their knowledge of ABA instructional techniques. Mother's belief that the County aides were not appropriate was based simply on her belief that Student needed to go back to Kendall, which is addressed above.

OCCUPATIONAL THERAPY

82. Ms. Campero, Ms. Kelch, and the classroom aides worked hard with Student to improve his motor skills and reduce his sensory processing deficits. With their help, Student gained more independence in using the playground equipment so that he could independently climb, use the slide, or ride a bicycle, and to choose on his own, what he wanted to use. Student's fine motor skills slowly improved as he could trace lines and was able to use a spoon to feed himself. Additionally, information from Student's expert Ms. Chaddock as to his need for direct OT services was outdated as it was based on year-old information, and not on Student's abilities at the start of the 2013-2014 school year.

SPEECH AND LANGUAGE

83. County and District's original IEP offer in May 2013, continued the consultative speech and language services with no direct services to Student. However, the November 2013 offer provided 60 minutes a week of individual, pull-out services.

County admitted that provision of the pull-out service was included to placate Mother, not because Student required this service.

84. Ms. Brents' critique on County's speech and language offer focused on failure to provide individual services for the prior school year, and was persuasive for the reasons set forth above. After the September 6, 2013 IEP team meeting, Ms. Brents revised her report to recommend 90 minutes a week of pull-out speech and language service because she was first made aware of the lack of direct services at the IEP team meeting. Ms. Brents increased her recommended time to make up for the individual services time that Student had missed and the progress he would have made if County had provided her recommended service level. Ms. Brents' service level recommendation appropriately considered the severity of his deficits and arrived at a proper level of service to make up for progress he should have made, had appropriate services been provided earlier.

ENGLISH LANGUAGE DEVELOPMENT

85. As with the November 2013 IEP, County designed speech and language goals to meet Student's English language development needs, with Veritas class personnel implementing both. County's speech and language pathologist and the classroom aides described the IEP goals at hearing and explained how they addressed English language development, while Student presented no evidence that the goals were inadequate.

NEED FOR ASSESSMENTS DURING 2013-2014 SCHOOL YEAR

86. Parents did finally request assistive technology and augmentative and alternative communication assessments on September 20, 2013. On October 4, 2013, County sent an assessment plan, in English and Spanish, to Student's counsel and Mother, along with a translated copy of the September 9, 2013 IEP. The evidence did

not support Student's contention that Mother and his counsel never received the assessment plan. Student could not explain why neither Mother nor Student's counsel contacted County to inquire about the assessment plan until the hearing, as they both believed that Student required such an assessment. Additionally, Ms. Brunni testified convincingly, supported by emails that County sent the requested assessment plan, and Student could not explain why County would not send out an assessment plan.

87. Student did not establish that he needed another FBA during the 2013-2014 school year because he could not show that Ms. Scott's FBA did not accurately describe Student's behaviors. Student did not establish that he exhibited any worsening behaviors that would require a functional behavior assessment. Dr. Grandison's assessment was not an accurate representation of Student's behavior because she exaggerated his difficulties and did not take into consideration that Mother did not permit Student to attend most of the extended school year.

PARENTAL OBSERVATIONS

88. Student contended that County and District retaliated against Mother for exercising her legal rights by preventing her from observing Student in his classroom at Veritas and at his extended school year class at Lathrop. Student tried to show that while other parents could drop off their children at Student's classroom and even go inside and observe, Mother was not afforded the same right.

89. When Student began attending the County class, Mother would drive him to school and take him to his classroom, where classroom staff would greet Mother and take him into class. Mother, and on rare occasions Father, would come to the class to pick up Student at the end of the day. Parents of general education students attending Veritas did the same. However, in response to a school shooting in Connecticut, in January 2013 the Veritas principal began to enforce District policy that parents had to drop off and pick up their children at the front of the school and could no longer walk

onto the campus without first checking in at the school office. Mother resisted this requirement and attempted on several occasions to take Student to his classroom, despite receiving notification in January 2013 of the newly enforced school policy. Numerous County and District witnesses testified as to the change of policy and established that it was uniformly applied starting in January 2013.

90. Veritas staff established that parents were not permitted to walk into the classroom at will. County policy did not prevent parents from observing a County classroom, provided parents gave notice of the observation and were accompanied by a County employee. Student did not establish that Mother's ability to observe Student's class was less than any other parent's ability to observe it. Student did not establish that other parents could go into the classroom and observe at any time, especially not after January 2013 when all parents at Veritas were required to drop off their children at the front of the school.

91. At the start of the 2013 extended school year at Lathrop, Parent and a few other parents dropped off their children at the classroom. County and Lathrop subsequently informed Mother and other parents that they needed to drop off their children at the front of the school. Mother attempted to circumvent this by entering the campus from the school field and then walking to the classroom. County and Lathrop informed Mother that she could not enter the campus from the field and needed to drop off and pick up Student at the front of the school like the rest of the parents.

92. County's classroom observation policy during the entire time at issue was clear. Observations by parents required prior notice so County could arrange for someone to accompany the parent or other observer. Additionally, prior notice permitted County to check with the classroom teacher to see what time of day the observation should be, and for how long. This served to prevent disruption of the classroom, and helped to schedule the observation during a particular activity a parent

wanted to observe. Student was unable to demonstrate that County applied a different observation policy to Mother than to other parents, and County personnel were all consistent that the observation policy was applied not only for Student's special day class, but also for all County classrooms.

93. Student further asserted that County's classroom observation policy prevented Mother from participating in Student's educational decision-making process because of limitations for how long and when she could observe, thus limiting the information she had. However, Mother's tactic during the 2012-2013 school year, even knowing County's prior notice policy, was to make a request in writing to County two or three days before she wanted to visit and then to visit without a confirmation from the County

94. One time, she made such a request and then went to Veritas and told the office staff that she had an appointment to visit Student's class. County administrator Shelley Garrett was at Veritas that day, and told Mother that no visit was scheduled and that Mother needed to wait until she had confirmation to observe before going to the school. Mother refused to leave, claiming that she had the right to visit. Eventually after speaking to the Veritas principal, Mother left and was met by a police officer in the school parking lot. Student contended that Veritas contacted the police to intimidate Mother. However, the evidence showed that Veritas contacted the police because Mother refused to leave the campus after being directed to do so.

95. Mother continued to make observation requests on short notice, and to ask to observe for the entire school day to ensure that County implemented Student's IEP, properly instructed him and protected his safety. County established that day-long observations interfered with classroom instruction. Ms. Campero established that in her experience, the children in her class get distracted with the presence of an unfamiliar person after an hour and her ability to teach the students declines. County was willing to

schedule observations during different times during the school day, but this did not satisfy Mother.

96. Student did not establish that Mother needed to visit his classroom as often or for as long as she requested to gain adequate information to participate in the IEP development process. County established that staggered visits would permit Mother to get an accurate picture of the class. Eventually for 2013-2014, County scheduled hour-long observations for a different time of the school day, once of month, to coincide with monthly team meetings, which would ensure that a County person would be available to accompany Mother during the observation. These observations have occurred and Student could not demonstrate why the scheduled visits are not adequate.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA[16]

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)[17] et seq.; Ed. Code, § 56000 et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children

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

[17] All subsequent references to the Code of Federal Regulations are to the 2006 version.

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; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services.].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs and academic and functional goals related to those needs. It contains a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining goals, making progress in the general education curriculum, and participating in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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

typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer Island*).) Although the required educational benefit is sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit," or "meaningful educational benefit," all of these phrases refer to the same *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. 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].) Here, Student bears the burden of persuasion by a preponderance of the evidence.

ISSUES 1: ASSESSMENT

5. A student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b)(2), (c)(4); Ed. Code, § 56320, subds. (e), (f).) A school district's failure to adequately assess a student is a procedural violation that may result in a substantive denial of FAPE. (*Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11–1253 JVS(MLGx)) 2012 WL 2478389, *8; 20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2).)

6. In the case of a child whose behavior impedes his learning or that of others, the IEP team must consider, when appropriate, "the use of positive behavioral

interventions, and supports and other strategies to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028; *County of San Diego v. California Special Educ. Hearing* Office (9th Cir. 1996) 93 F.3d 1458, 1467-68.)

7. Before July 1, 2013, California law required a school district to conduct an functional analysis assessment when a student was found to have caused a serious injury as the result of his disability, or required a behavior intervention plan.[18] (Ed. Code, §§ 56520- 56525 and Cal. Code Regs., tit. 5, § 3052.) A behavior intervention plan was required when a student "exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP."

8. Student failed to bring forth sufficient evidence to establish that County was required to conduct assistive technology and augmentative and alternative communication assessments. Student did not call as a witness any person familiar with conducting or using assistive technology and/or augmentative and alternative communication assessments to provide an opinion that these assessments were needed. County used augmentative communication with Student with his picture exchange book, which he used effectively with increasing use of picture icons. County attempted to use technology with an iPad, which Student showed no interest in using. Additionally, Student's speech was emerging, and Veritas staffed paired the icons in the picture exchange book with saying to Student what the item. This improved receptive language and expressive language with Student attempting to produce the word. Finally, County

[18] This statute was repealed effective July 1, 2013, but was in effect during the period involved in Issue 1b. (Stats. 2013, ch.48, eff. July 1, 2013.)

timely sent Parents and their legal counsel an assistive technology / augmentative and alternative communication assessment plan in October 2013 in response to their request, and did not receive consent to the plan. Thus, Student failed to establish County did not provide a required assistive technology or augmentative and alternative communication assessment.

9. Student attempted to establish through Mother and Dr. Grandison that Student had significant behavior problems that interfered with his ability to make meaningful educational progress, especially pinching, scratching, mouthing, running into others, and inattention that required a behavior assessment. However, both the Kendall aides who worked with Student through the 2012 calendar year and Veritas staff who worked with him directly afterwards testified persuasively that he rarely pinched or scratched and that they could easily redirect him when he did.

10. Student's attention was a significant issue while at the Kendall school and at Veritas, but the Veritas personnel could easily redirect Student back on task, and would do so quickly. Dr. Grandison's observation in April 2013 did not establish the existence of serious behavior problems and her conclusions from her September 2013 observation are unpersuasive because of her misquoting of Veritas staff and her lack of understanding of ABA teaching methods. Finally, the data collected in totality at Veritas, not just from the selected days Student focused on, established that Student's attention was improving along with his progress on goals. While Student's progress was slow, Student did not establish that his rate of progress was not commensurate with his ability.

ISSUES 2A, 2B, AND 2C: GOALS – BASELINES AND UPDATES

11. Federal and state law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C.

§ 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) 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.) 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. v. Clark County Sch. Dist*. (9th Cir. 2001) 267 F.3d 877, 882.) The IEP shall also include a statement of the program modifications or supports for school personnel that will be provided to the pupil to allow him or her to advance appropriately toward attaining the annual goals to be involved and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

12. A school district has the right to select a program for a special education student, as long as the program is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D. Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323, *7; *O'Dell v. Special Sch. Dist. of St. Louis* (E.D. Mo. 2007) 503 F.Supp.2d 1206, 1216.; *Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d 880, 885) Nor must an IEP conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [the IDEA does not provide for an "education . . . designed according to the parents' desires."], citing *Rowley*, *supra*, 458 U.S. at p. 207.)

13. Student failed to establish that the baseline information was not accurate in developing Student's goals. County and private speech and language and OT assessments contained substantially similar information regarding Student's strengths and weaknesses. As to Student's behavior challenges, County had accurate baselines about his ability to attend, mouthing, biting and scratching. Based on Veritas staff and Kendall personnel

observations of Student at Veritas, Student did not establish that the baselines were inaccurate through Mother or Dr. Grandison as they both exaggerated any problem Student might have. County updated Student's goals based on his progress, first based on information from Kendall during 2012-2013 school year, and then in the 2013-2014 school year based on data maintained at Veritas, which was accurate. Therefore, Student did not prove that County and District failed to update his goals and had inaccurate baseline information when developing the goals.

ISSUES 2D AND 2E: PROGRESS ON GOAL REPORTING

14. The IEP shall include "a description of the manner in which the progress of the pupil toward meeting the annual goals . . . will be measured and when periodic reports on the progress the pupil is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided." (Ed. Code § 56345, subd. (a)(3); see 20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(a)(3)(ii).)

15. Student failed to establish that County and District did not provide timely progress reports. County timely reported to Parents Student's progress on goals at IEP team meetings and in quarterly progress reports. County also provide Parents with data taken by Veritas staff in several forms to satisfy Mother's changing requests. County held monthly team meetings with Mother during all relevant times to discuss Student's progress. Accordingly, Student did not establish that County and District failed to provide Parents with timely progress on his goals.

ISSUE 2F: TRANSLATION

16. Local educational agencies "shall take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians . . . whose native language is other than

English." (Ed. Code, § 56341.5, subd. (i); see also 34 C.F.R. § 300.322(e) [same].) The local educational agency shall also "give the parent or guardian a copy of the individualized education program, at no cost." (Ed. Code, § 56341.5, subd. (j); see also 34 C.F.R. § 300.322(f) [same].) California has clarified that the obligation to ensure that a parent or guardian understands the proceedings extends to the IEP documents themselves, which must be provided to the parent in his or her primary language upon request. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

17. Regarding translation of documents before IEP team meetings, County was responsible for preparing the IEP documents and conducting or obtaining required assessments. County did not have draft IEP's or assessment reports translated into Spanish before the IEP team meetings. To ensure that Mother understood the draft IEP's, especially the proposed goals, and assessment reports, County discussed these documents with Mother before IEP team meetings with a Spanish translator. The assessors presented their reports and answered any questions Mother had.

18. Student did not demonstrate that Mother did not understand the information in the proposed IEP's or assessment reports when the IEP team meetings commenced or that failure to have translated reports before the IEP team meetings was a procedural violation. Ms. Brents prepared her initial report in English and went over her report orally in Spanish with Parents and she believed that they understood what she told them. Further, not only was Mother an active participant in the IEP team meetings that usually lasted several hours, she was very knowledgeable as to her son's needs and what she believed to be appropriate to meet his needs. She spoke her mind during these meetings and expressed disagreements with information presented by County or District personnel. No indication existed that County's failure to translate documents before the IEP team meetings limited Mother's ability to be a forceful advocate for her son and to meaningfully participate, especially since County continued

IEP team meetings at her request so that she could be prepared. Also, Student did not establish that three weeks was too long for County to translate documents for Parents.

ISSUE 2G, 2H, 2I, AND 2J: PARENTAL RIGHT TO OBSERVE AND PARENTAL INPUT

19. Federal and state law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) 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.) 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. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

20. A school district is required to consider the results of a privately procured assessment when developing an IEP. (Ed. Code, § 56341.1.) However, the school district is not required to adopt its recommendations. (Ed. Code, § 56329, subd. (c).)

21. The regulatory framework of the IDEA places an affirmative duty on educational agencies to include parents in the IEP process. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1044).) An IEP team meeting may only be conducted if the parents affirmatively refuse to attend. (*Ibid.*, citing *Shapiro v. Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078.) Frustration in scheduling meetings with the parent, or difficulty working with the parent, does not excuse a failure to include the parent in a student's IEP team meeting when the parent expresses a willingness to participate. (*Id.* at p. 1045). A school district cannot eschew its affirmative duties under the IDEA by blaming the parents. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055.) A school district's attempt to timely meet an annual IEP review deadline does not trump parental participation and warrant refusal to reschedule

it at parent's request. (*Doug C.*, *supra*, at p. 1046.) Neither may a school district refuse to reschedule the meeting to avoid disrupting the other IEP team members' schedules, as the IDEA requires that the parent's attendance take priority over other members' attendance. (*Ibid.*, citing *Shapiro*, 317 F.3d at p. 1078 [a district cannot exclude a parent from an IEP team meeting in order to give priority to its representatives' schedules].) Infringement on the parent's ability to participate in the IEP formulation process is reason alone to conclude that the student was denied a FAPE. (*Id.*, at p. 1047.)

21. A district may not conduct an IEP team meeting in the absence of parents unless it is "unable to convince the parents that they should attend," in which case it must:

> … keep a record of its attempts to arrange a mutually agreed on time and place, such as--
>
> (1) Detailed records of telephone calls made or attempted and the results of those calls;
>
> (2) Copies of correspondence sent to the parents and any responses received; and
>
> (3) Detailed records of visits made to the parents' home or place of employment and the results of those visits.

(34 C.F.R. § 300.322(d)(2006); Ed. Code, § 56341.5, subd. (h).)

23. Student contended that County and District did not consider Parents' contributions during IEP team meetings or the letters Mother sent to County and District about all aspects of his education, especially regarding Student's health, scratching, and pinching at home and school, and overall regression of skills.

24. During all IEP team meetings, Mother brought up her contention that Student regressed once he left Kendall. Student contends that County and District did

not consider Parent's view because they continued to offer the County special day class even after Parents brought forth all the problems with the Veritas class. However, the fact that County and District disagreed with Parents did not mean that they did not consider their views, as they believed that he was making meaningful progress. As to the pinching, scratching, and mouthing, County personnel did not see serious instances of these behaviors. They explained that Student did not demonstrate the extreme behaviors, such as pinching and scratching, at school that purportedly happened at home. County and District did make changes to Student's goals based on Parents' input. The fact that County and District did not agree with Parents' request for a more intensive ABA program resulted from a good faith disagreement, not ignoring Parents' views and information from private assessors.

25. As to Mother's health concerns, County once again went over its universal health precautions with classroom staff, even though staff practiced this and Student did not excessively place items in his mouth. County responded to Mother's concerns about toileting accidents, and worked to reduce toileting accidents through a toileting schedule in which County has increased the time during which it will take Student to the bathroom.

26. As noted above, County repeatedly explained its observation policy to Mother. County and District observation policies did not impair Parents' ability to participate in Student's educational decision-making process.

27. Mother also sent a constant stream of letters to County and District. Part of Mother's frustration was the delay in County's response, which occurred because her letters were written in Spanish and needed to be translated into English for County and District administrators to understand, and then a response translated back into Spanish for Parents. County's response was slower than District's response, because of the greater volume of Mother's mail to County. At times, District delays in responding to

correspondence occurred because District needed to get information from County. While Mother believed that County and District ignored her concerns because they did not acquiesce to her demands, County and District disagreed based on the information to the contrary they possessed.

28. However, County and District failed to permit parental participation by proceeding with the August 6, 2013 IEP team meeting in Parents' absence just to create an IEP offer before the start of the 2013-2014 school year. Mother requested August 6, 2013, for the IEP team meeting, and County and District's frustration with her for wanting to cancel the meeting the day before is understandable. However, that does not permit County and District to go through with the IEP team meeting and make an offer at its conclusion, which prevent parental participation. County and District did not try to comply with the above requirements for attempting to persuade parents to attend an IEP meeting and documenting those efforts.

ISSUE 3A AND 3B: ADEQUATE GOALS

29. 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).)

30. Student had the burden of persuasion to establish that County and District proposed inadequate goals to meet his unique needs, but failed to do so. None of Student's experts testified about the offered goals in either IEP and gave an opinion that

the goals failed to address any of Student's unique needs. Student attempted to demonstrate through County witnesses who developed the goals that they were not adequate, but the County witnesses persuasively explained what Student's unique needs were, his present levels of performance and how the goals would permit him to make meaningful educational progress. Student's questions of County personnel are not evidence.

ISSUE 3C: ADEQUATE SERVICES

31. The methodology used to implement an IEP is left to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.2d 1141, 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.)

32. Student did not establish that he require individual, pull-out OT service. Ms. Inderbitzen and Ms. Chaddock did not dispute the severity of Student's fine and gross motor and sensory processing deficits. Ms. Chaddock recommended pull-out, individual services based on a clinical analysis of Student's total needs, and not just what he required for purposes to access his education and to make meaningful educational progress. Ms. Chaddock failed to consider in her analysis that the Veritas special day class integrates OT into its program, and that Veritas staff could implement the recommendations she made in her report without individual OT service. Finally, Ms. Inderbitzen demonstrated that Student made meaningful progress with the consultation model used with Student at Veritas.

33. Student did establish his need for pull-out speech and language services as he required more than just consultation and Veritas staff integrating speech work into the class. Unlike his OT deficits, deficits in expressive and receptive language and

articulation were much more severe according to both the County and private assessments. While Student needed the integration of speech and language into the Veritas classroom that was provided, along with classroom consultation by the speech and language pathologist, his needs were severe enough to require pull-out services as well.

34. Ms. Brents was more convincing than Ms. Contreras that Student needed individual attention to work on his articulation and expressive and receptive language deficits as his skills in those areas were equivalent to an almost two-year-old child. Ms. Contreras presumed that the consultative model would be adequate because Veritas staff worked on speech during instruction she did not make an individual analysis based on Student's needs. While County and District did not have Ms. Brents' assessment when they made the November 2012 IEP offer, Ms. Brents established that the information that County and District possessed then warranted individual, pull-out services for an hour a week. County and District did correct this error when they offered an hour a week of speech and language individual sessions in the October 2013 IEP, even though it was done mainly to placate Parents.

35. For ABA services, Student did not establish that he required a return to a one-to-one program he received from Kendall. Student did not prove that he suffered regression in any areas after he left Kendall or when the Kendall aides stopped working with him. District witnesses established that Student made adequate progress on IEP goals when Parents permitted them to work on these with Student. The data collected at Veritas showed Student's progress, not regression, when looked in its totality, and not just selected days. Dr. Grandison does not have experience, training, and education with ABA based on her own resume, testimony, and lack of understanding in response to questions. In contrast, Ms. Scott has extensive experience, training, and education with ABA and clearly explained the adequacy of Veritas' mix of individual and group

instruction. The personnel from both Kendall and Veritas testified persuasively that the Veritas program was adequate to meet Student's needs. Finally, Regional Center's claim that possible in-home services to address this behavior at home were County and District's responsibility as an educationally related service was without legal justification.

36. Student did not establish that the one-to-one aides at Veritas did not have the required training and experience. County provided aides with sufficient initial training by appropriately qualified personnel, who then received ongoing training by the classroom teacher, autism coordinator, and other individuals brought in for seminars. For the Veritas aides, Ms. Campero, Ms. Kelch, and Ms. Scott provided proper oversight. Each of the four aides who appeared at hearing was knowledgeable of ABA instructional methods. In contrast, Dr. Grandison lacked knowledge of these as reflected by the errors in her report, such as not recognizing hand-over-hand work as part of errorless learning. Finally, the Kendall supervisors and aides thought that the Veritas aides were qualified. Accordingly, Student did not establish that Veritas did not have qualified aides to provide him with the one-on-one services he needed.

ISSUE 3D: IEP IMPLEMENTATION

37. A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815.) For example, a brief gap in the delivery of services may not be a material failure. (*Sarah Z. v. Menlo Park City School Dist.* (N.D.Cal. May 30, 2007, No. C 06-4098 PJH) 2007 WL 1574569, *7.)

38. Student did not establish that County failed to provide the required 210 minutes a day of intensive individual services. The only proof Student introduced was Dr. Grandison's looking at the classroom schedule, without asking Ms. Scott, Ms. Campero, or Ms. Kelch if Student received the 210 minutes of daily instruction. Ms.

Scott, Ms. Campero, and Ms. Kelch showed how Student received the 210 minutes a day of instruction in and out of class with discrete trial training and other instruction, such as individual work with Student using play equipment.

39. Student did not establish that Mother did not rescind the April 26, 2013 consent for the November 2012 IEP at the May 20, 2013 IEP team meeting. The IEP notes show that Mother rescinded consent, which was corroborated by the other IEP team members who recall Mother's rescission of consent. Additionally, if Mother did not rescind consent, she need not have written County on June 9, 2013, to provide consent again. While County failed to acknowledge until January 2013that Mother consented to the implementation of the October 2013 IEP in her November 20, 2013 letter, County made up for any lost services by providing compensatory services, and the time County did not implement Student's goals was so brief that it did not constitute a material breach of the IEP.

ISSUE 3E: ENGLISH LANGUAGE DEVELOPMENT

40. Student did not establish that County and District failed to meet his English language development needs. County developed speech and language goals that addressed improving his ability to communicate in English, which Student did not demonstrate were inadequate. County used English in Student's picture exchange communication system and his ability to use English improved while at Veritas. Veritas staff also worked on improving Student's English by speaking to him only in English, and Student did not establish that the lack of individual speech and language services hindered his English language development. Accordingly, Student did not prove that County and District failed to provide him adequate goals and services related to English language development.

REMEDIES

41. Student requested compensatory education for purported services that County and District should have provided, but did not. Student also requested a change of placement from Veritas to Kendall or a program like Kendall that would provide full-time, one-on-one discrete trial training.

42. ALJ's have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).)

43. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra,* 31 F.3d at p. 1496.) These are equitable remedies that courts may employ to craft appropriate relief for a party. An award of compensatory education need not provide "day-for-day compensation." (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) 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 v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Puyallup , supra,* 31 F.3d at p. 1497.) The award must be fact-specific and 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." (*Reid v. District of Columbia*, *supra*, 401 F.3d at p. 524.)

44. The only substantive denial of FAPE involved County and District not offering Student an hour a week of pull-out individual speech and language services in its November 2013 IEP offer. The fact that County and District did not offer this service did not cause Parents to decline consent to the IEP; their central reason for declining was that they wanted Student to leave Veritas and have a full-time, discrete, trial

training program. Student was able to make adequate progress in all other areas. However, his speech and language progress was much slower. Ms. Brents demonstrated Student's need for individual speech and language services based on her assessment in April 2013. While that information was not available to County and District in November 2012, Student's present levels of performance were about the same and information that County possessed in November 2012 warranted an hour a week of individual speech and language services. Further, Ms. Brents was more convincing than Ms. Contreras that Student would have made meaningful education progress if he had the individual speech and language services, and that 90 minutes a week would be appropriate for this failure. Thus, the period in which Student did not receive adequate speech and language services is from November 20, 2013, through the October 2, 2013 IEP offer, and the appropriate remedy is 30 minutes a week of compensatory, pull-out individual speech and language services for the 2014 extended school year and 2014-2015 school year.

45. The IDEA does not require compensatory education services to be awarded directly to a student, if staff training is an appropriate remedy. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 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.].) Student did not establish any loss of educational benefit caused by the conduct of County and District in convening an IEP team meeting on August 6, 2013, after Parent informed them that she would not attend. County and District did not try to implement the August 6, 2013 IEP, and convened another IEP team meeting a month later in which private assessments were presented, and changes made to the IEP in response to information Mother and private assessors provided. Therefore, the appropriate remedy is training for County and District

personnel in charge of calling and convening IEP team meetings on scheduling and convening IEP team meetings when Parents do not attend.

ORDER

1. County and District shall provide as compensatory education 30 minutes a week of pull-out individual speech and language service from the beginning of the 2014 extended school year through the end of the 2014-2015 school year while school is in session, in addition to any other speech and language service in Student's last agreed-upon and implemented educational program.

2. Within 120 days of this decision, County and District shall provide staff responsible for noticing and convening IEP team meetings with two hours of training regarding steps to ensure parent attendance at IEP team meetings, the conditions under which meetings can take place in their absence, and documentation of attempts to ensure parent attendance. County and District shall maintain a sign-in sheet of meeting attendees.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on Issue 2j and partially on Issue 3d. County and District prevailed on Issues 1a, 1b, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 3a, 3b, 3c, and 3e and partially on Issue 3d.

RIGHT TO APPEAL THIS DECISION

This is a final administrative Decision, and all parties are bound by 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 90 days of receipt of this

Decision. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505, subd. (k).)

DATED: May 7, 2014

/s/

PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings