

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014051114

DECISION

Student's legal guardian and educational rights holder (Parent) filed a due process hearing request (complaint) on Student's behalf with the Office of Administrative Hearings, State of California, on May 23, 2014, naming Pasadena Unified School District (District). OAH continued the matter for good cause on July 7, 2014.

Administrative Law Judge Laurie Gorsline heard this matter in Alta Dena, California, on September 15, 16, 17 and 18, 2014.

Attorney Pamela Daves represented Student. Parent attended the hearing on September 15, 16, 17 and 18, 2014. Student did not attend the hearing. Attorney Karen E. Gilyard represented District. Shermella Roquemore, Program Coordinator, attended the hearing on behalf of District.

At the close of hearing on September 18, 2014, the ALJ granted a continuance to October 3, 2014, for the parties to file written closing arguments. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES¹

1. Did District deny Student a free appropriate public education by:
 - A. Failing to assess Student in a timely manner in response to Parent's requests for assessment on April 15, 2013, and October 13, 2013;
 - B. Failing to provide Parent with a copy of the procedural safeguards upon Parent's April 15, 2013, request for assessment; and
 - C. Failing to timely and completely respond to Parent's written requests for Student's educational records dated April 15, 2013 and October 13, 2013?
2. Did District fail to offer Student a FAPE in the December 2013/January 2014 individualized education program by:
 - A. Failing to offer a one-to-one aide;
 - B. Failing to offer services to address Student's social skills deficits;
 - c. Failing to offer sufficient counseling and other mental health services; and
 - D. Failing to offer sufficient academic instruction services.

SUMMARY OF DECISION

Student failed to meet his burden of demonstrating District denied him a FAPE by failing to timely assess him. Student did not prove Parent's April 15, 2013 letter was delivered to District, and Parent's signature on the IEP meeting notices constituted her agreement to extend the time to conduct Student's assessments and initial IEP in response to Parent's October 13, 2013 letter. Student also failed to prove District failed to timely provide Parent with a copy of the Parent's Rights and Procedural Safeguards or

¹ The issues have been rephrased 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.)

that Student was denied a FAPE by District's failure to timely produce Student's educational records. However, as to the substance of Student's program, Student proved by a preponderance of the evidence that District denied him a FAPE by failing to offer him a one-to-one aide, appropriate social skills services and intensive mental health counseling. Finally, Student failed to meet his burden of proof of establishing District denied him a FAPE by failing to provide Student with mental health counseling in the form of trauma-focused therapy or additional specialized academic instruction.

Student's request for relief is partially granted.

FACTUAL FINDINGS

1. Student was an eight-year-old male at the time of the due process hearing. On January 23, 2014, Student was determined by District to be eligible for special education services under the category of Other Health Impairments. During the relevant time period, Student lived within the District with Parent, his legal guardian and educational rights holder.

2. Student was removed from his mother's custody in 2010 and placed in foster care. Student's mother had a history of mental illness, substance abuse and domestic violence. Mother and Student's father were both incarcerated. Mother's and Father's parental rights were terminated and Student was under the jurisdiction of the Department of Children and Family Services (DCFS). Student was placed in the custody of Parent, who became his legal guardian and educational rights holder in 2010. Student was molested by a family member during a visit with Mother. At the time of the due process hearing, Parent was in the process of adopting Student and his brothers.

3. Parent has been an elementary school teacher at Chandler Elementary School, a private school, for the past ten years. Parent has a master's degree in human development.

4. Student was in kindergarten during the 2011-2012 school year. He attended Jackson Elementary School (Jackson) during the first part of the 2011-2012 school year. Student had numerous behavior problems at school, including hitting other children, throwing chairs, destroying school property, stealing, lying, refusing to do his work and not listening. He was suspended because of his behaviors, including an in-school suspension.

5. Rita Exposito has been the principal of Jackson for the past five years and employed with District for 15 years. She has worked as a literacy coach and a resource teacher in language development, math, reading, language arts and science. She has a bachelor's degree in liberal studies and a master's degree in education and instructional leadership. She holds a multiple subject teaching credential and administrative services credential. She recalled that, during the 2011-2012 school year, Student had difficulty controlling his behavior, refused to listen and was disruptive in class. Because of his behavior he was sent out of class an average of three times a week, and sometimes as many as two or three times in a single day. Jackson staff contacted Parent about Student's behavior during the 2011-2012 school year.

6. Before the end of the 2011-2012 school year, Parent removed Student from Jackson and placed him at a Montessori school because of Student's behavior and because Parent believed Student needed a smaller classroom setting. Student finished his kindergarten year at the Montessori school, where his behaviors continued and became worse. The Montessori school requested Parent remove Student from that school because of his behavior.

7. Because Parent continued to believe Student needed a smaller setting, she placed him at Harambee, a private school, where he attended first grade from approximately September 2012 through December 2012. Student's negative behaviors

continued and he engaged in inappropriate sexual behavior. The private school requested that Parent find another placement for Student.

8. Five Acres is a child and family services agency which works with DCFS in providing services to children in foster care or going through adoption, including mental health services at school and in the home. The wraparound program is a program designed for high needs children who are demonstrating multiple behavioral and emotional impairments in more than one setting and who are in jeopardy of losing placement in the home. Wraparound services are services provided by a treatment team which “wraps around” the child and the child’s caregiver. The wraparound team consists of a clinician, a child and family therapist, a parent partner who helps support the parents, and a facilitator who acts as a social worker. The goal of the wraparound team is to provide support for the child and keep them in the home. Wraparound services are provided on a short-term or temporary basis and are not meant to replace educationally related services provided by school districts.

9. Student was in the wraparound program and received wraparound services from Five Acres. Gabriel Alaniz was a wraparound clinician at Five Acres. He has worked for Five Acres since February 2012. He is licensed as a marriage and family therapist intern and works under the license of a supervisor with whom he reviews his cases on a weekly basis. He holds a bachelor’s degree in sociology, a master’s degree in psychology with an emphasis in marriage and family therapy, and a master’s degree in higher education. His duties include providing therapy services to children in the wraparound program. He works with children on their emotional and behavioral goals, meets with children a minimum of 45 to 60 minutes per week, engages in family therapy with caregivers, and speaks regularly with persons involved in the care and education of these children, including the wraparound team.

10. In January 2013, Mr. Alaniz was assigned to work as Student's therapist as part of the wraparound program and wraparound team. Student presented with a high needs case as a result of his behavior.

11. After the winter break, Parent reenrolled Student in first grade at Jackson, Student's home school. Student attended Jackson from February 2013 through the end of the 2012-2013 school year.

12. Patrice Kinsey was Student's first grade teacher after he was re-enrolled at Jackson. She has been employed by District for 39 years. She has been a first grade teacher at Jackson for 20 years. She has a bachelor's degree in early childhood education and a general education teaching credential.

13. While in first grade at Jackson, Student's behaviors were more under control, but were not resolved. He was not physically acting out in a sexual manner, but he was making sexual comments and he was physically and verbally aggressive at least five times a week.

14. Mr. Alaniz met with Student at Jackson for therapy for 60 to 90 minutes per week at least once a week, and sometimes twice per week. During the last trimester of the 2012-2013 school year, Mr. Alaniz regularly met with Student right after lunch at Jackson. Mr. Alaniz made the most progress with Student during this time because he was able to counsel Student "in the moment" or right after the behaviors occurred. Mr. Alaniz spoke to Ms. Kinsey about Student's behaviors and worked with Student on his regulating his emotions, controlling his outbursts and aggression, and helping him to process his previous traumas which were contributing to these behaviors. He used primarily play therapy and family therapy in different settings.

15. At hearing, Parent claimed that, upon the suggestion of Ms. Exposito, on April 15, 2013, Parent wrote a letter to Ms. Exposito requesting an initial special education assessment of Student and a copy of all District assessments at least five days

prior to any IEP team meeting. According to Parent, District never responded to this letter. Parent equivocated and was inconsistent in her responses as to when she requested an initial assessment. Parent inconsistently claimed she made her first request for assessment when Student was in the first grade, in kindergarten and before Student returned to Jackson. Parent appeared confused as to when she made her initial request for assessment and the inconsistencies in her testimony rendered her testimony unreliable.

16. Ms. Exposito denied ever receiving the April 15, 2013 letter or speaking to Parent about an assessment. The procedure at Jackson for processing parent requests for assessment was that Ms. Exposito placed a copy of the request in the child's file and the original in the psychologist's mailbox. She also emailed the psychologist to let her know the request was received. All requests for assessment were forwarded to her and she received them shortly after they were received from parents. Ms. Exposito never received Parent's April 15, 2013 letter.

17. Student earned at least grade level scores in the areas of reading, math, listening, speaking and writing at the end of the 2012-2013 school year. In the area of behavior and social skills, Student received grades indicating at least an average level of accomplishment, but in many areas he received marks indicating an average level of accomplishment plus "a little extra effort." Student's final report card stated he made good progress and was promoted to the second grade.

THE 2013-2014 SCHOOL YEAR

18. During the 2013-2014 school year, Student attended Jackson for second grade. Through DCFS, Student received Therapeutic Behavior Services from Five Acres for a period of time during second grade. Therapeutic Behavior Services were a short-term adjunct therapeutic service for a child already receiving therapy who needed more behavior support and counseling.

19. Whitney Reese was Student's second grade teacher. Ms. Reese has a bachelor's degree and a master's degree in human development and holds a multiple subjects teaching credential. She has no special education credentials and has no specialized training in working with students with disabilities. She has been employed by District since 1997 as a general education teacher where she has taught kindergarten through third grade.

20. Student's second grade class had between 20 and 22 students and no other adults. Between September and December 2013, Ms. Reese observed Student having difficulty interacting with other students. He had trouble cooperating and working in groups. She observed Student striking another student in class and she received reports every other day that Student was hitting other students. He engaged in frequent name-calling and taunting of other students, which at one point during her testimony, she estimated could have occurred on more than 40 occasions between September and December 2013. She communicated with Parent once or twice per week about Student's behavior. She sent weekly notes home to Parent, which increased to a daily basis.

21. Shortly after October 13, 2013, Parent made a written request for a special education assessment to Ms. Exposito in the form of a letter dated October 13, 2013. Parent hand-delivered the letter to District's special education office. The letter also requested copies of the evaluations and protocols within a reasonable time before any IEP team meeting. Parent had attended other IEP meetings for other children and wanted the documents so that she could prepare for Student's IEP. Parent never received copies of the evaluations or protocols prior to the IEP meeting.

22. On October 18, 2013, school psychologist Christina Veatch interviewed Parent. Christina Veatch has been employed by District since August 2013. She has also been a contract social worker for an adoption agency since June 2010. She worked for

the Orange County Office of Education from 2010 through 2012 as a career coach in alternative schools. She received a master's degree in education from Chapman University in 2012 and a bachelor's degree in psychology from Carlton College in June 2010. She has a pupil personnel services credential in school psychology. She is not a licensed psychologist or a clinical psychologist. She read the manual in conducting an adaptive behavior system assessment, but had no experience in conducting this assessment.

23. Parent provided Ms. Veatch with Student's family, educational and therapeutic history. Parent reported Student had significant behavior problems, including a history of lying, hitting and destruction of property. Parent was also concerned about Student's attention issues and explained Student had difficulty making friends and often fought with his peers. Parent reported that Student had a history of inappropriate urination and inappropriate touching of another student in the restroom.

24. On October 21, 2013, Parent met with Ms. Veatch. Ms. Veatch gave Parent an Assessment Plan which Parent signed and returned to Ms. Veatch during the meeting. Parent was provided with a copy of Parent's Rights and Procedural Safeguards and some rating scales to fill out as part of the assessment. The assessment authorized an initial assessment of Student in the following areas: academic achievement, health, language and speech, motor development, social/emotional, adaptive behavior and an alternative means of cognitive assessment because Student was African-American. School districts cannot use standardized intelligence tests to assess African-American children, so they use alternative means of assessing cognitive ability.

25. Ms. Veatch conducted District's initial psycho-educational assessment of Student between October and December 19, 2013. As part of her assessment, she interviewed Student and Ms. Reese, and relied upon her prior interview of Parent. She reviewed Student's cumulative and on-line file, his grades and attendance, and reports

from other District IEP team members. She did not review any records from Student's prior schools or Five Acres. She had Parent sign authorizations for the release of records from Student's prior schools and from Five Acres, but never sent the releases because she felt she had enough information to prepare her assessment report. At hearing, she explained that "in hindsight" she should have obtained Student's prior records.

26. Ms. Veatch spoke to Ms. Reese in October or November 2013. Ms. Reese told her that Student's academic problems were related to his behaviors in class, and he was acting out in class. He also had difficulty on the playground. Math and written expression were particular areas of weakness for Student, but Ms. Reese's greatest concern was his behavior and his difficulty working with others. Student had a temper, had trouble getting along with peers, was easily frustrated with peers in class and could not manage his frustration. Student was very argumentative, got in physical fights, and had trouble with group work. Student's behavior incidents occurred several times throughout the day. Ms. Reese reported Student often had to be removed from the classroom because of his behavior. Ms. Reese reported Student required constant guidance and supervision throughout the day, and that he was sometimes responsive to redirection. She reported Student's behavior was better when she worked with him one-on-one as compared to independent or group work where there was no immediate supervision, that his DCFS therapeutic behavior services aide was very beneficial to him and that Student would benefit from having someone keep "an extra eye" on him during nutrition and lunch.

27. Ms. Veatch observed Student in class for 20 minutes on November 7, 2013. He was in "time out" for arguing with his peers. When he returned to his seat, he frequently bickered with other students in his group and became annoyed if someone forgot their turn or chose a book he did not like. When Ms. Reese sat next to him and encouraged the group to work together and problem solve, he was observed to be

more attentive. Ms. Veatch also observed Student's social interactions during recess for 20 minutes. She observed him pushing another boy out of the way.

28. As part of the District's initial assessment, Parent completed and returned all of the assessment rating scales except the Behavior Assessment System for Children, Second Edition. The Behavior Assessment System for Children is a comprehensive measure of both positive attributes and problem behaviors in school, home, and the community. Although Parent claimed at hearing she returned the completed rating scales, her testimony was not persuasive. District's records indicated that the rating scales were never received from Parent. Parent had no specific recollection of the date the rating scales were returned and she admitted Ms. Veatch called her to remind her to return the missing documents.

29. On the Behavior Assessment System for Children, Ms. Reese rated Student's behavior in the Clinically Significant range for the broad categories of Externalizing Problems and Behavioral Symptoms. She also noted concerns about a variety of adaptive skills with a particular deficit in Social Skills. Scores in the Clinically Significant range denote a high level of maladaptive behavior.

30. Parent and Ms. Reese completed the Conner's 3rd Edition rating scales which are used to assess behaviors associated with Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Conduct Disorder. Parent's ratings fell in the Clinically Significant range for all areas, including Inattention, Hyperactivity/Impulsivity, Learning Problems, Executive Functioning, Defiance/Aggression and Peer Relations. Student also met some of the screener items for Anxiety and Depression, as well as a severe conduct item of "has forced someone into sexual activity" suggesting a need for immediate attention. Ms. Reese's ratings fell in the "At Risk" or "Clinically Significant" range for almost all areas with particular concerns in the areas of Hyperactivity/Impulsivity, Defiance/Aggression, and Peer

Relations. Student also met one of the screener items for Depression. Based on the ratings provided by Parent and Ms. Reese, Student met the criteria for Attention Deficit Hyperactivity Disorder (Combined Type), Oppositional Defiant Disorder and Conduct Disorder.

31. Parent and Ms. Reese also completed the Adaptive Behavior Assessment System, 2nd Edition. The Adaptive Behavior Assessment is a comprehensive, norm referenced measure of adaptive skills. It provides a general adaptive composite that reflects the student's overall level of adaptive behavior in comparison to other students of the same age. Parent's ratings placed Student's overall adaptive behaviors in the Deficient range. Ms. Reese also rated Student's overall adaptive skills in the Deficient range and she marked the social composite as an area of particular weakness. For example, she marked never in the following areas: waits his turn in games, uses his free time productively, invites others to play with him, seeks friendships with same-age peers, or apologizes after hurting someone's feelings. Ms. Reese also noted that someone had to accompany Student to the bathroom, because he bullied others in the hallway and threw wet toilet paper on the ceiling.

32. John Sungho Yang is a District resource specialist program teacher. He has been employed by District since September 1995. He has a bachelor's degree from the University of New Mexico and a master's degree in special education from California State University at Los Angeles. He holds a resource specialist program certificate, a multiple subject general education credential and a mild/moderate special education credential. On November 18, 2013, Mr. Yang conducted an academic achievement assessment to determine Student's present levels of achievement. On the Kaufman Test of Educational Achievement, Second Edition, Student tested within the average range on every subtest except reading comprehension where he was below average.

33. Adrienne Floriano has been employed by the District for over 14 years as a school nurse practitioner. She has both a bachelor's and master's degree in nursing. She holds a nursing credential and is a registered nurse and a registered nurse practitioner. Ms. Floriano conducted Student's health assessment on November 21, 2013. As part of her assessment, she reviewed Student's health and development history provided by Parent, including Student's behavioral issues. Based on her assessment, Student appeared to her to be generally healthy. Ms. Floriano prepared a written report on December 19, 2013, summarizing the results of her assessment.

34. Griselda Contreras is a licensed speech and language pathologist. She has a bachelor's degree in communication disorders and a master's degree in elementary education and communication disorders. During the 2013-2014 school year, she was employed by Catalyst Speech Language Pathology. She conducted District's speech and language communication development assessment beginning in October 2013. As part of her assessment, Ms. Contreras administered various tests and conducted interviews of Parent and Ms. Reese. She interviewed Ms. Reese on October 17, 2013. Ms. Reese reported Student had behavior difficulties in the classroom, but she was not concerned with his speech and language. In class, Student got angry when he did not get his way; Ms. Reese had placed Student close to her as a way of controlling his behavior. Ms. Reese also reported Student did not want to follow instructions and required repeated reminders to focus on his work. Ms. Reese reported Student was very bright, but she was concerned with Student's behavioral issues on the playground because he had conflicts with other students. Ms. Contreras observed Student in class for 30 minutes on October 17, 2013. She did not observe any behavior issues, but noted he became distracted and required redirection from Ms. Reese to focus on his work. Because Student scored within the average range on all tests given as part of her assessment,

Ms. Contreras concluded Student did not meet the eligibility criteria for speech and language impairment. She completed her report on January 17, 2014.

35. Kelly Lu was a school based occupational therapist. She has been employed by My Therapy Company since October 2013. She holds both a bachelor's and master's degree in occupational therapy. She conducted District's occupational therapy assessment of Student on November 22, 2013. As part of her assessment, she administered certain tests, conducted clinical observations, conducted interviews with Ms. Reese and Parent and had them fill out sensory processing measure questionnaires, which Ms. Reese returned on December 2, 2013 and Parent returned on January 8, 2014. Parent reported Student had poor attention in class and behavioral issues at school. Ms. Reese reported Student had difficulty following rules and interacting with peers. The information obtained from Parent on the sensory processing measure questionnaire indicated Student had definite dysfunction in social participation. The assessment also revealed Student exhibited functional, age-appropriate fine motor skills and visual motor integration. Ms. Lu concluded Student did not demonstrate a need for occupational therapy services to access his academic curriculum. Ms. Lu completed her report on January 15, 2014.

36. At some point around November or December 2013, Student stopped receiving DCFS Therapeutic Behavior Services for a period of time.

37. In November 2013, Student was referred to Dr. Maria Scott for psychological assessment by Ruth Lee, his social worker at DCFS, due to concerns about Student's emotional and behavioral functioning. Dr. Maria Scott is employed by the Los Angeles County Department of Mental Health where she works as a Clinical Psychologist in Juvenile Hall in Sylmar. From 2001 to September 12, 2014, she worked as a Clinical Psychologist in the Specialized Foster Care Program in the Department of Child and Family Services Office in Pasadena. Dr. Scott received her bachelor's degree in

psychology from Yale University in 1990 and her doctorate degree in psychology from Alliance University. She is licensed to practice clinical psychology. Her duties as a clinical psychologist at the Specialized Foster Care Program included consulting with social workers at DCFS, conducting psychological evaluations of foster children, attending meetings with staff, foster children and caregivers, and attending IEP meetings.

38. Dr. Scott conducted a psychological assessment of Student, which included standardized testing, meetings with Student, reviewing documents provided by Student's social worker, including Student's history regarding his exposure to domestic violence and sexual and substance abuse, his history of behavior problems in school, input from Student's therapist Mr. Alaniz, interviews with Parent, and review of written questionnaires completed by Ms. Reese. The testing revealed clinically significant elevations in the areas of depression, anger, dissociation, sexual concerns, and on all post-traumatic stress scales. Student's records indicated he had a diagnosis of Oppositional Defiant Disorder. The information from both Parent and Ms. Reese indicated Student was exhibiting a behavioral disturbance on a daily basis and that it was interfering substantially with his ability to benefit from his education. Ms. Reese reported Student as performing below grade level in reading, writing and mathematics, having significant behavioral problems in school, an inability to control his behavior, and that he "shut down" when frustrated with simple work tasks in writing, reading and math. Ms. Reese's responses reflected Student's significant problems with respect to his affective and behavioral functioning, attention problems and impulsivity and trauma-related symptoms. Parent reported Student had been soiling himself, was engaged in impulsive behavior, had difficulty interacting with peers, was non-compliant and aggressive, had difficulty paying attention, had both emotional and behavioral disturbance in school, and that his symptoms were interfering with his academic progress. Parent also reported a noticeable decline in Student's functioning with the

termination of DCFS Therapeutic Behavior Services, including an increase in his behavioral difficulties and bladder control and retaining stool. Mr. Alaniz reported Student had initially made good progress in reducing his symptoms of inappropriate touching and retaining stool, but that his progress had stalled.

39. On November 25, 2013, District sent Parent a notice scheduling the IEP team meeting for December 19, 2013, a date previously agreed to by Parent. At some point prior to December 19, 2013, Parent called Jackson and advised District she could not attend this meeting on that day. At some point, Parent signed the December 19, 2013 meeting notice. The notice signed by Parent indicates that Parent was unable to attend on December 19, 2013 and Parent requested a different date for the initial IEP team meeting.

40. Prior to December 19, 2013, Ms. Veatch completed a draft of her assessment report.

41. There was no IEP team meeting on December 19, 2013. On December 19, 2013, Mr. Yang spoke to Parent by telephone about some of Student's issues. Parent and Mr. Yang mutually agreed to reschedule the initial IEP team meeting for January 23, 2014. Mr. Yang claimed this December 19, 2013 telephone call was an IEP team meeting. His testimony on this issue was not credible and was impeached by other evidence, including the testimony of Ms. Veatch.

42. On December 19, 2013, District sent a new notice to Parent rescheduling the initial IEP team meeting for January 23, 2014. At some point prior to or on January 23, 2014 Parent signed the notice and checked the box on the form indicating she would attend this meeting.

43. In December 2013, Parent told Ms. Veatch that Dr. Scott was assessing Student and that Ms. Veatch should contact Dr. Scott to discuss her findings and diagnosis. Parent provided Ms. Veatch with Dr. Scott's contact information.

44. In January 2014, Dr. Scott prepared a Psychological Assessment report. Dr. Scott's report summarized the testing results and information received from Parent, Ms. Reese and Mr. Alaniz. The report documented Student had received wraparound services through Five Acres for nearly two years and Student had been receiving DCFS Therapeutic Behavior Services, which had since ended. Based upon her assessment of Student, Dr. Scott diagnosed Student with attention deficit hyperactivity disorder, post-traumatic stress disorder, and dysthymia, a chronic depression in which children have to have exhibited symptoms for at least a year. The report stated Student had significant emotional and behavioral problems and he would likely continue to have challenges in regulating himself and needed ongoing therapeutic and educational support. It stated Student had significant mental health needs including a need for intensive therapeutic support for the foreseeable future. Dr. Scott recommended Student receive individual trauma-focused therapy. She also recommended intensive mental health services with several contacts a week, especially in the school setting where Student was struggling the most at the time. Dr. Scott also recommended social skills building, either by participation in a group or incorporated into his individual therapy because Student was particularly challenged in this area. Dr. Scott also recommended a psychiatric evaluation to determine whether medication would help address some of his symptoms of ADHD and emotional distress. Dr. Scott recommended accommodations in the classroom, including flexibility in his program to accommodate fluctuations in his mood, compliance, and attentiveness, and opined Student would likely need ongoing academic and behavioral support in order to achieve at a level commensurate with his cognitive potential.

45. In mid-January 2014, Ms. Reese attended a meeting at DCFS with Parent to assist Parent in receiving additional Therapeutic Behavior Services for Student. Ms. Reese believed Student had responded well to one-on-one therapeutic behavior

support and that he required continued support because he was still having problems on the playground during school, after school, at lunch and at recess. He was hitting and pushing other children, and calling them names. Ms. Reese observed Student had more problems when Student's boundaries were a lot larger and there were more children and fewer adults present.

46. On January 22, 2014, Ms. Veatch spoke to Dr. Scott by telephone about her diagnosis of Student.

47. Ms. Veatch revised her assessment report to include Dr. Scott's diagnosis of Student. In her final report dated January 22, 2014, Ms. Veatch also reported the results of her assessments and the assessment conducted by Mr. Yang, as well as a summary of the interviews she conducted. The report documented that Student's difficulty working with peers and behaving appropriately in class negatively impacted his achievement. Student had some difficulties with memory and attention tasks and his adaptive behaviors were lower than expected based on his processing abilities. In the area of academic achievement, although Student demonstrated grade appropriate skills in a one-on-one testing environment, Ms. Reese reported Student had difficulty demonstrating his knowledge in class. Specifically, Ms. Reese rated Student reading fluency, math skills, and written expression as below grade level. Student's learning potential was estimated to be in the average to low average range. Ms. Veatch recommended Student qualified for special education and related services under eligibility categories of Other Health Impairments and Emotional Disturbance. She also recommended Student receive specialized academic instruction through the resource specialist program, counseling with the school psychologist to address the educational impact of his emotional symptoms, and some interventions to address auditory memory difficulties. She also recommended possible interventions for attention to include preferential seating, frequent prompts to stay on task, frequent checks for

understanding and seating away from peers, if necessary. She recommended Other Health Impairments eligibility because Student had a diagnosis of attention deficit disorder which was negatively impacting his behavior and ability to participate in class. Ms. Veatch based her recommendation for eligibility under the category of Emotional Disturbance on Dr. Scott's diagnosis of post-traumatic stress disorder and dysthymic disorder, that Student was having behavioral challenges in school which were affecting his progress, and that he had issues in forming relationships with peers and showing appropriate moods under different circumstances. At hearing, Ms. Veatch further explained that her recommendations were based on Student's inappropriate behaviors in class which often resulted in his removal from the classroom, his trouble working cooperatively with others and his struggles to maintain friendships with peers.

THE JANUARY 23, 2014 IEP TEAM MEETING

48. District held Student's initial IEP team meeting on January 23, 2014. The IEP team included Parent, Dr. Scott, Mr. Lionel Garcia, a parent partner from Five Acres, Ms. Exposito, Ms. Veatch, Mr. Yang (who left before the meeting concluded), Ms. Floriano, Ms. Contreras, and Ms. Lu. Parent was provided with a written copy of her parental rights and procedural safeguards.

49. During the January 23, 2014 IEP team meeting, the IEP team members reviewed the Student's present levels and discussed the assessment reports, eligibility, service recommendations, accommodations, modifications, and proposed goals. Ms. Veatch presented her report and Parent was provided a copy of Ms. Veatch's report. Parent participated in the IEP process, and had the opportunity to ask questions and provide input at the IEP team meeting. At hearing, Mother claimed she was not able to read the entire document at the IEP, but failed to explain how much of the document she read or how that prevented her from participating in the IEP process.

50. On the issue of eligibility, the IEP team decided Student qualified for special education under the category of Other Health Impaired. The team decided against Emotional Disturbance as a basis of eligibility to avoid the stigma that might result. The team adopted five math goals, a reading comprehension goal for first grade level, a reading decoding goal, and one behavior goal. District's offer of placement and services was for Student to attend Jackson with 135 minutes per week of Specialized Academic Instruction in a group through the Resource Specialist Program, 20 minutes per week of counseling with the school psychologist, and the implementation of a behavior support plan. In Ms. Veatch's opinion, District's offer provided a FAPE because it addressed Student's areas of need and covered his goals. She opined that 20 minutes of counseling was appropriate because of Student's age and documented attention difficulties. Ms. Veatch admitted educationally related intensive counseling services were available to Student if student demonstrated a need and District had staff that specialized in this type of counseling. She believed Student did not need group counseling because he had never had any counseling at school. Ms. Reese thought Student needed explicit conversation on problem solving strategies, and individual counseling seemed like a good place to begin his services. Ms. Veatch claimed she did not create goals for depression because she "did not see it" and it had not been reported to her that depression was impacting him at school. A behavior support plan was developed by Ms. Veatch because Student's behavior was impeding his learning on a daily basis.

51. The subject of retention was discussed at the IEP team meeting. The team agreed to revisit the issue at a later date after observing Student's progress. Parent requested a one-to-one aide to address Student's behaviors. Ms. Veatch told Parent that District might agree to an aide at some point, but it was not something District could agree to until less intensive interventions were first attempted. Ms. Veatch told Parent

that obtaining an aide was a process, and District would have to do some counseling first and revisit the issue in a few weeks to determine if Student needed something more intensive. Parent and Dr. Scott thought Student needed more than 20 minutes of counseling per week, but Ms. Veatch told them "this is how we start."

52. Student's behaviors were discussed at the IEP team meeting. At hearing, Ms. Reese testified inconsistently as to Student's need for a one-on-one aide. Ms. Reese reported that Student was distracting other students in class, was not able to focus on his classwork, was not paying attention, had to be sent to principal's office and lost out on instruction. Ms. Reese explained that Student required support to deal with his behaviors which were getting in the way of his progress. However, she said she did not believe Student required a one-to-one aide, but then claimed Student needed another person who could interact directly with him on the playground at lunch and at recess to assist him in his interactions with his peers. She stated Student did not need someone other than herself "looking out for him," but also admitted he needed someone help him engage with others, help with social interaction, and believed someone similar to a Therapeutic Behavior Services worker would be helpful. When questioned about the information she provided to Ms. Veatch about Student needing constant guidance, she was evasive. She admitted that while it would have been helpful for Student to have someone with him on the playground, she did not know if it was "a need." Ms. Reese's inconsistencies and evasiveness undermined her credibility on the issue of whether Student required aide support.

53. Dr. Scott provided a copy of her assessment report to the IEP team. She reported her findings and recommendations, including that Student had extensive mental health needs. She explained Student needed support in regulating his behavior, addressing his history of abuse through therapy, and assistance with social skills because he had difficulty interacting appropriately with peers. Dr. Scott also explained

that because of Student's attention deficit diagnosis he needed help in his academics, including flexibility in the manner instruction was presented to him so he can achieve at a level that is consistent with his cognitive potential.

54. At hearing, Dr. Scott explained that Student's behavioral problems interfered with him accessing his education and that he needed the support of a one-on-one aide. Dr. Scott also believed 20 minutes was an insufficient amount of time for counseling sessions given the frequency of Student's behaviors and the emotional problems he was demonstrating in class, and such short sessions would not be effective in addressing his behaviors. Student needed intensive mental health services, with multiple contacts a week because of frequency of behaviors at school and at home. He also needed trauma-focused therapy, but Dr. Scott gave no opinion on the frequency or duration of the treatment needed except that it could take a year. Dr. Scott also explained her recommendation for social skills services. She did not know what was available at Jackson, so she recommended Student participate in a social skills group at school, if it was available, and if not, then at an outside agency or in the course of his individual therapy, but preferably both. She believed Student needed social skills services because of frequency of his behavioral issues and his inability to interact in an age appropriate manner with his peers as reported by Ms. Reese and Parent. She further explained the importance of Student developing the social skills necessary to permit him to develop friendships as he went through school so as to prevent him from being isolated and excessively angry.

55. At hearing, Ms. Veatch maintained that Dr. Scott's report was not reviewed at the IEP team meeting, but also conceded the report may have been discussed "briefly." Ms. Veatch also claimed she did not recall much of what Dr. Scott said during the meeting and that Dr. Scott's recommendations were not discussed at the IEP meeting. She implausibly denied reading Dr. Scott's report even though she presented

Dr. Scott's diagnosis as part of her presentation at the IEP team meeting and used Dr. Scott's findings to support her recommendations regarding Student's eligibility for special education. When questioned about the reasons why she never read Dr. Scott's report, she was evasive and claimed she could not remember. Ms. Veatch's inconsistencies and evasiveness undermined her credibility and rendered her testimony less persuasive than that of Student's witnesses.

AFTER THE JANUARY 23, 2014 IEP TEAM MEETING

56. Parent met with Ms. Veatch regarding questions she had about the assessment report, but could not recall the date of that meeting. Parent reviewed the IEP after the January 23, 2014 IEP team meeting and approved it on January 28, 2014.

57. After the IEP meeting, Ms. Lu, the occupational therapist, learned that some of the information in her report applied to another student. She never informed Parent about the mistake. At hearing, Ms. Lu explained that, while she listed the incorrect sensory processing measure results in the body of her written report, the results of Student's scores were correctly stated in the Appendix to her report and that she used the correct information in formulating her recommendations and in making her presentation to the IEP team. Copies of Ms. Lu's assessment protocols were kept in a file with Student's name which file was moved to the District office shortly before the due process hearing.

58. Student received counseling from Ms. Veatch after the IEP meeting, once per week for 20 minutes. Because Student's behavior goal focused on interacting appropriately with peers, they mainly worked on emotional regulation, how to manage emotions in different settings, problem solving strategies and techniques with peers, and role playing.

59. After the January 23, 2014 IEP team meeting, District staff reported to Parent that Student was slamming children to the ground, was being physical on the

playground, was engaged in inappropriate sexual behavior, and was using bad language. Between February and May 2014, Parent received reports from Ms. Reese that Student was stealing food, not paying attention, name-calling, being disrespectful, and engaged in inappropriate sexual conduct.

60. According to Ms. Reese, between February and June 2014, Student's negative behaviors became more frequent. In class, Ms. Reese had to redirect him as many as 10 times per day to get his work done. He became more disruptive, was tossing things, making faces, breaking canyons, making noise, and name calling. She could not recall if she had to send Student out of class for inappropriate behavior, but said it was possible because he continued to hit and call other children names, including sexual names. She never sent Student to the bathroom by himself because he bullied other children in the hallway and moved his body in such a way that he acted like he was going to hit them. She received complaints on a daily basis from other students about his name-calling and hitting, and this continued throughout the 2013-2014 school year.

61. In March 2014, Ms. Reese began sending texts to Parent from her cell phone because Parent was not receiving the notes she sent home about Student's bad behavior. She also telephoned Parent about Student's behavior. Ms. Reese claimed she could not remember the contents of the texts messages, but her claimed lack of memory appeared evasive. Ms. Reese's testimony about Student's sexual misconduct was also evasive and inconsistent. She initially denied reporting to Parent that Student was touching a female student's chest, but later Ms. Reese admitted she saw Student touching another student's chest. She also admitted she sent a text to Parent reporting Student was involved in a sexual incident, but Ms. Reese attempted to minimize the event by blaming it on another student and claiming Student was not the only one engaged in the behavior.

62. In approximately April 2014, Parent personally reported to Ms. Exposito that Student was caught spreading feces in the bathroom. Ms. Exposito counseled Student.

63. On April 16, 2014, Parent signed a Request for Records Checklist acknowledging receipt of Student's IEP, Addendum(s) to IEP, Psychological Records, Assessment Reports, IEP Progress Reports, Letters/Facsimiles/Memorandums, Health Records, Attendance Records, Progress/Grade Report, Cumulative File, Records of Discipline and all other information in Student's file. District's form Request for Records expressly identifies "Assessment Reports" as "pupil records" which are "maintained" by District.

64. In late April or early May 2014, Parent had a conversation with Ms. Exposito about the issue of retaining Student. Ms. Exposito believed Student was not far enough behind to retain him in the second grade, and any academic benefit he might receive would not outweigh the emotional trauma retaining him might cause. At hearing, Parent claimed Ms. Exposito told her that Student was going to be retained in second grade which Ms. Exposito denied. After this meeting, Parent understood Student would remain at Jackson in the second grade even though Student's Report Card indicated Student was promoted to third grade. It was unclear why Parent continued to believe Student would be retained in second grade even after she received Student's Report Card.

65. Student's Report Card for the last trimester of the 2013-2014 school year reported that Student earned "basic" progress scores in writing, speaking and listening and mathematics, "basic+" in writing, and a "basic-" in reading.

66. In May 2014, Parent spoke to the principal at Field Elementary School about Student attending Field and was told she had to apply for a permit from District so Student could attend second grade at Field with his brothers. District granted

Parent's permit request. Parent believed changing schools would help with Student's behavior issues. She also believed that because Student was being retained, it would be better if he changed schools given the peer and social skills issues he was having at Jackson.

67. In May 2014, Student was tested by Reading Partners. Reading Partners is a nonprofit organization based at Jackson and at least two other school sites. It provides individual one-to-one tutoring which is staffed by volunteers. It is available to any student that Ms. Exposito or a teacher recommends for the program and consists of two 45-minute sessions twice a week. Student attended Reading Partners from September 2013 to May 2014. The end of the year report from Reading Partners reported Student's reading level in October 2013 was at the level of first grade and one month, or 76 words per minute, and that in May 2014 he was reading at 86 words per minute, or at a second grade level.

68. Mr. Alaniz continued to provide therapy services to Student during the 2013-2014 school year, but the therapy was provided after school at Jackson because Student was receiving DCFS Therapeutic Behavior Services during the school day for a portion of the school year. Mr. Alaniz met with Student twice a week when Student was having more problems. He consulted regularly with Ms. Reese and the coordinator in the after school program Student attended. At hearing, Mr. Alaniz observed that when DCFS Therapeutic Behavior Services were terminated, Student's behaviors became worse at home and at school. He reviewed Dr. Scott's report with the wraparound team and agreed with her recommendations. At hearing, he described Student's case as one of the most high needs cases because many of Student's behaviors were out of control. Mr. Alaniz described Student's social skills and behaviors as follows: he always has to win, he has a difficult time sharing or apologizing, he starts to yell or "shuts down" completely when he gets angry, he cries when he does not get his way, he is verbally

aggressive, and he uses intimidation. He observed that other children do not want to be around Student because of his behaviors. Mr. Alaniz credibly explained that 20 minutes of therapy a week would not be effective with Student because of his age. In order to be effective, Student's therapy would have to include play therapy and play therapy cannot be done effectively in 20 minutes. He explained that children have a hard time describing their emotions and problems, but are better at acting them out, and that both talk and primarily play therapy must be used with children. He also explained that Student's counseling needed to be geared toward the school setting because Student's problems at school were different than those at home. Mr. Alaniz explained that Student needed a one-on-one aide so that he could be taught "in the moment" the behavior occurred. Mr. Alaniz explained that Student lacked social skills and did not know how to express his emotions appropriately with peers, which limited his ability to make friends and adversely affected his self-esteem which, in turn, contributed to the negative behaviors. Mr. Alaniz recommended group therapy outside the classroom for 45-60 minutes per week, with five to eight children.

THE 2014-2015 SCHOOL YEAR

69. Student began attending Field for the 2014-2015 school year, attending a second grade class. During the week of September 8, 2014, Parent was informed by Field that Student should not have been retained without conducting an IEP team meeting, which at the time of the due process hearing was in the process of being scheduled.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

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) et seq.³; 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 with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child’s individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All references to the Code of Federal Regulations are to the 2006 version.

child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); 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 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student, as the complaining party, bears the burden of proof.

ISSUE 1A: TIMELINESS OF ASSESSMENTS IN RESPONSE TO PARENT'S APRIL 15, 2013 AND OCTOBER 13, 2013 REQUESTS

5. Student contends District denied him a FAPE by failing to assess him for special education and related services in response to Parent's April 15, 2013 letter requesting initial assessments. Student argues that in April 2013 Parent delivered a letter addressed to Ms. Exposito requesting that Student be assessed and that District never responded to the letter. District contends it never received Parent's April 15, 2013 letter.

6. Student also contends District denied him a FAPE by failing to timely assess him for special education in response to Parent's October 13, 2013 letter requesting that Student be assessed. Student contends District's assessments and the Student's initial IEP should have been conducted within 60 days of October 21, 2013, the date Parent signed the assessment plan. District contends it timely began their

assessments of Student and convened the initial IEP team meeting on December 19, 2013 during a telephone call with Parent because Parent could not attend in person. District argues that a new date of January 23, 2014 for IEP team meeting was selected because it was a mutually agreeable date when Parent could participate in person.

7. Before any action is taken to place a student with exceptional needs in a program of special education, an assessment of the student's educational needs must be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.)⁴ An assessment may be initiated by request of a parent, a State educational agency, other State agency, or local educational agency. (20 U.S.C. § 1414(a)(1)(B); Ed. Code, §§ 56302, 56029, subd. (a), 56506, subd. (b).)

8. When a student is referred for assessment, the school district must provide the student's parent with a written proposed assessment plan. (Ed. Code, § 56321, subd. (a).) A school district shall make reasonable efforts to obtain informed consent from the parent before conducting an initial assessment. (20 U.S.C. § 1414(a)(1)(D); Ed. Code, § 56321, subd. (c)(1).) The assessment may begin immediately upon receipt of the parent's consent. (Ed. Code, § 56321, subd. (c)(4).)

9. When a student is referred for assessment, the school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral (with limited exceptions not applicable in this case). (Ed. Code, § 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, § 56321, subd. (c)(4).) The district has 60 days from the date it receives the parent's written consent for assessment, excluding vacation and days when school is not

⁴ The IDEA uses the term "evaluation," while the California Education Code uses the term "assessment." As used in this decision, the terms "assessment" and "evaluation" mean the same thing and are used interchangeably.

in session, to complete the assessments and develop an initial IEP, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a).)

10. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School District, et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

11. Procedural violations of the IDEA only constitute a denial of FAPE if they: (1) impeded the student's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County, Mont.* (9th Cir. 2008) 541 F.3d 1202, 1208, quoting *Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.) (20 U.S.C. § 1414(a)(1)(C); Ed. Code, § 56302.1, subd. (a).)

12. Here, Ms. Exposito credibly testified that she never received Parent's April 15, 2013 letter and that all requests for special education assessments were forwarded to her. Furthermore, Parent was not persuasive in her assertions that she made her initial written request for assessment in April 2013. On more than one occasion during her testimony, Parent demonstrated confusion and uncertainty as to when she made her initial request for assessment and she contradicted herself during her testimony on this point. While she claimed she made her initial request for assessment in April 2013 when Student was in the first grade, she also testified that the initial request for assessment was made when Student was in kindergarten and before Student was reenrolled at Jackson. It was through the assistance of leading questions that Parent stated the request was made while Student was at Jackson and this undermined Parent's credibility on this issue. Given Ms. Exposito's testimony and

Parent's confusion as to the date she made her initial request for assessment, Student failed to meet her burden of proof in establishing District procedurally violated the IDEA by failing to timely assess Student in response to Parent's April 15, 2013 letter.

13. District responded to Parent's October 13, 2013 request for assessment by timely providing Parent with an assessment plan on October 21, 2013. Parent consented to the assessments and returned the assessment plan to District on October 21, 2013. District was required to complete the assessments and hold an IEP team meeting within 60 days, excluding vacation and days when school is not in session, unless Parent agreed in writing to an extension.

14. Although District did not complete the initial assessment and hold an IEP team meeting until January 23, 2014, the evidence established that Parent agreed in writing to an extension of 60-day statutory deadline. Here, District attempted to convene the IEP team meeting on December 19, 2013 after obtaining Parent's verbal agreement to this date. The uncontradicted evidence established Parent cancelled the December 19, 2013 IEP team meeting, and that during her conversation with Mr. Yang on December 19, 2013, she verbally agreed to a new date of January 23, 2014. The evidence also established that at some point either on or prior to the January 23, 2014 IEP team meeting she Parent signed the December 19, 2013 IEP meeting notice making it clear that she could not attend the December 19, 2013 IEP team meeting and had requested a new date. The evidence also established that at some point on or prior to January 23, 2014, Parent signed the January 23, 2014 IEP meeting notice evidencing her written agreement to January 23, 2014 for the IEP team meeting. Parent presented no persuasive evidence that she did not agree to an extension of the 60-day deadline in which to hold the IEP team meeting. Given these circumstances, Parent's signature on the two IEP meeting notices constituted Parent's written agreement to an extension of the 60-day statutory period in which District was required to complete its assessments

and hold an IEP team meeting. As such, Student failed to meet his burden of proof in establishing District procedurally violated the IDEA by failing to complete the initial assessments and hold an IEP team meeting until January 23, 2014.

ISSUE 1B: PROVIDING PARENT WITH PROCEDURAL SAFEGUARDS IN RESPONSE TO PARENT'S APRIL 15, 2013 REQUEST

15. Student contends District denied him a FAPE by failing provide Parent with a copy of the Parent's Rights and Procedural Safeguards upon her request for initial assessments in April 2013 and that this significantly impeded Parent's opportunity to participate in the decision making process and caused a deprivation of educational benefits to Student. District contends it never received Parent's April 2013 letter.

16. Legal conclusions 1 through 4 and 12 are incorporated by reference.

17. The IDEA requires that school districts establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) A copy of the notice of a parent's or guardian's rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the IDEA shall be included in the notice of a parent's or guardian's rights. (Ed. Code § 56321, subd. (a).) A copy of the procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year, except that a copy shall be given to the parents: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; 3) in accordance with certain discipline procedures; or 4) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a); Ed. Code, § 56301 subd. (d)(2).)

18. As discussed with regard to Issue 1A above, Student failed to meet his burden of proving that Parent made an initial request for written assessment in April 2013. Because Student failed to establish this foundational fact, Student failed to meet

his burden of proving District was required to either prepare an assessment plan in response to the April 15, 2013 letter or provide Parent with a copy of her procedural safeguards with such assessment plan. Accordingly, Student failed to establish that he was denied a FAPE or that Parent was deprived of the opportunity to meaningfully participate in the decision making process by failing provide Parent with a copy of the Parent's Rights and Procedural Safeguards in response to her April 15, 2013 letter.

ISSUE 1C: PRODUCTION OF STUDENT'S RECORDS IN RESPONSE TO PARENT'S APRIL 15, 2013 AND OCTOBER 13, 2013 REQUESTS

19. Student contends District denied him a FAPE by failing to timely provide Parent with a copy of his educational records in response to Parent's April 15, 2013 and October 15, 2013 letters. Student contends the failure to timely provide Student's educational records to Parent significantly impeded Parent's opportunity to participate in the decision making process and impeded Student's right to a FAPE. Student argues that because Parent did not receive these records in accordance with her requests, she was not able to adequately prepare for the IEP team meeting on January 23, 2014. In Student's closing brief, Student also contends that because Parent was never provided with a copy of Ms. Lu's occupational therapy protocols or testing instruments until the due process hearing, such that Student was prevented from requesting an independent occupational therapy evaluation or challenging the appropriateness of the occupational therapy report in his complaint. District contends it never received Parent's April 2013 letter. District also contends that Student never requested educational records and that Parent signed a written acknowledgement of receipt of Student's records on April 16, 2014.

20. Legal conclusions 1 through 4, and 11 through 14 are incorporated by reference.

21. To guarantee parents the ability to make informed decisions about their child's education, the IDEA grants parents of a child with a disability the right to examine all relevant records relating to their child's "identification, evaluation and educational placement." (20 U.S.C. §1415(b)(1).) Parents may request copies of their child's educational records at any time, and are entitled to receive those copies within five business days of their request. (Ed. Code § 56504.) Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA) to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b); 34 C.F.R. § 99.3.) The United States Supreme Court defined the word "maintained" in this context by its ordinary meaning to "preserve" or "retain." (*Owasso Indep. Sch. Dist., No 1-011 v. Falvo* (2002) 534 U.S. 426, 433-34 [122 S.Ct. 934, 151 L.Ed.2d 896].) The Court explained that FERPA requires "a record" of access for each pupil and that this single record must be kept "with the education records" which suggested that Congress contemplated that education records would be kept in one place with a single record of access. (*Id.* at p. 434.) Pupil or education records do not include "records of instructional, supervisory, and administrative personnel...which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b).)

22. On the claim that District denied Student a FAPE by failing to timely provide all Student's educational records in response to Parent's April 15, 2013 letter, Student failed to meet his burden of proof. As discussed with regard to Issue 1A above, Student failed to establish Parent sent or District received Parent's April 15, 2013 letter. Accordingly, Student failed to establish he was denied a FAPE or that Parent was

deprived of the opportunity to meaningfully participate in Student's educational program because District did not provide records in response to Student's April 15, 2013 letter.

23. In her October 13, 2013 letter, Parent requested a copy of all protocols and evaluations within a reasonable time prior to any IEP. The evidence established that District maintained Student's assessments as part his file because on April 16, 2014, six months after Parent's October 13, 2013 request, District provided to Parent the requested assessments as part of Student's file which indicated that these records were kept in one place with a single record of access. Specifically, District's form Request for Records which was signed by Parent on April 16, 2014, expressly identifies "Assessment Reports" as "pupil records" which are "maintained" by District.

24. Unlike the assessments, there was no evidence that Student's file included the protocols or that such protocols were "maintained" or kept in one place with a single record of access. While Ms. Lu testified that copies of her assessment protocols were moved to the District office and that the protocols were in a file labeled with the Student's name, her testimony failed to establish that those protocols were institutional records kept by a single central custodian as opposed to Ms. Lu's individual working file which she separately maintained. Accordingly, Student failed to establish the protocols were education records within the meaning of Education Code section 56504.

25. Because the assessments requested by the Parent directly related to the Student and were maintained by District as part of his file, they were education records within the meaning of FERPA. Education Code section 56504 requires educational records to be produced to a parent within five days of their request. Therefore, Parent's request for production "within a reasonable amount of time prior to any IEP" is construed as five days prior to the IEP team meeting. Thus, to the extent the

assessments were completed five days prior to the January 23, 2014 IEP, which would have been on January 18, 2014, District was required to produce them.

26. Here, Parent did not receive the evaluations requested by her prior to the January 23, 2013 IEP. With the exception of Ms. Veatch's psycho-educational assessment report, which is dated January 22, 2014 and included the results of Mr. Yang's academic assessment, all of the assessment reports were completed five days prior to the January 23, 2014 IEP team meeting. Ms. Floriano's Nurse's Assessment Report was completed on December 19, 2013, Ms. Lu's Occupational Therapy Report was completed on January 15, 2014 and Ms. Contreras' Speech-Language Evaluation Report was completed on January 17, 2014. Thus, Student met his burden Student met his burden of establishing that District procedurally violated the IDEA by failing to timely produce the District's assessments. However, as discussed below, Student did not demonstrate the delay in producing these documents rose to the level of a denial of a FAPE.

27. Student did not meet his burden of establishing that District's delay in producing the assessments significantly impeded Parent's opportunity to participate in the decision making process. Notwithstanding Parent's claim that she requested production of these assessment documents in order to prepare for the January 23, 2014 IEP team meeting, Student offered no persuasive evidence that Parent was unable or had insufficient time to review the Nursing Assessment, the Occupational Therapy Report, or the Speech-Language Evaluation Report at the IEP, or that the failure to obtain these documents prior to the IEP caused any hardship on Parent in either preparing for or participating in the IEP. On the contrary, the evidence established that Parent meaningfully participated in the IEP process, had the opportunity to ask questions and provide input, and was accompanied by Dr. Scott and a parent partner from Five Acres.

28. Student also did not meet his burden of persuasion that District's delay in producing the assessments prior to the January 23, 2013 IEP resulted in a loss of educational opportunity or cause a deprivation of educational benefits. Student's belated claim that the failure of District to produce Ms. Lu's occupational therapy protocols prevented Student from requesting an independent occupational therapy evaluation or challenging the appropriateness of the occupational therapy report in Student's due process complaint has no merit. As an initial matter, Student failed to establish that the protocols were education records within the meaning of Education Code section 56504. Furthermore, even assuming the protocols were education records which District did not produce to Parent until the due process hearing, Student failed to establish what information contained in the protocols would have caused Student to request an independent occupational therapy assessment or challenge the appropriateness of that assessment. Significantly, Student objected to District's attempt to admit the occupational therapy protocols into evidence at the due process hearing. Furthermore, while Ms. Lu listed the incorrect sensory processing measure results in the body of her written report, the results of Student's scores were correctly stated in the Appendix to her report and it is uncontroverted that she used the correct information in formulating her recommendations to the IEP team. Student offered no competent evidence to contradict Ms. Lu's opinion that Student did not demonstrate a need for occupational therapy services to access his academic curriculum and the IEP team's conclusion that Student was not eligible for such services. Accordingly, absent evidence that Student should have been found eligible for such services, District's delay producing Ms. Lu's protocols cannot be said to have caused a loss of educational opportunity or a deprivation of educational benefits.

29. In summary, Student failed to carry his burden of proof that District's delay in producing Student's assessment reports was a procedural violation that amounted to a denial of FAPE.

ISSUE 2A: THE FAILURE TO OFFER A ONE-TO-ONE AIDE IN THE DECEMBER 2013/JANUARY 2014 IEP

30. Student contends District denied him a FAPE at the January 23, 2014 IEP team meeting by failing to offer him a one-to-one behavioral aide and that his negative behaviors impeded his education. District contends Student did not require a one-to-one aide and Student's socialization skills improved following implementation of the school-based counseling offered at the IEP.

31. Legal Conclusions 1 through 4, 13 and 14 are incorporated by reference.

32. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

33. In the case of a child whose behavior impedes his or her 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; Ed. Code, § 56341.1, subd. (b)(1).) California law defines behavioral interventions as the “systematic implementation of procedures that result in lasting positive changes in the individual’s behavior,” including the “design, implementation, and evaluation of individual or group instructional and environmental modifications . . . designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual’s right to placement in the least restrictive environment as outlined in the individual’s IEP.” (Cal. Code Regs., tit. 5, § 3001, subd. (d).) 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, 1028-1029.)

34. The preponderance of the evidence established District denied Student a FAPE by failing to provide Student with one-on-one behavioral support. At the time of Student’s January 23, 2014 initial IEP, the IEP team knew Student’s history, his diagnosis and that Student was exhibiting a behavioral disturbance on a daily basis which was interfering substantially with his ability to benefit from his education. That information was not only contained in the IEP, the assessments and Dr. Scott’s report, which Dr. Scott presented at the IEP, but had been reported by Parent and Ms. Reese during District’s assessments of Student. Student’s behavior issues were reported by Ms. Reese and/or Parent to Ms. Veatch and several other District members of the IEP team. Ms. Reese reported to Ms. Veatch that Student required constant guidance and supervision throughout the day, Student’s academic problems were related to his behavior issues, and Student’s behavior was better when she worked with him one-on-one. While at various times during her testimony, Ms. Reese denied Student needed a one-on-one aide, that testimony was not credible given the overwhelming amount of evidence to the contrary, including her own admissions. Ms. Reese admitted Student’s behaviors

were getting in the way of his progress and Student needed another person who could interact directly with him and assist him in his interactions with his peers. She also admitted Student had more problems when Student's boundaries were larger and there were more children and fewer adults present. In class, Ms. Reese attempted to be Student's one-on-one aide by placing Student close to her as a way of controlling his behavior. The fact that Ms. Reese also accompanied Parent to DCFS to advocate for the reinstatement of Student's one-on-one Therapeutic Behavior Services further established that she believed Student needed a one-on-one aide.

35. The evidence proved that District failure to provide one-on-one support to Student at the IEP team meeting was not premised upon an examination of Student's unique needs, but rather on some vague District "policy." Although the information available to District at the time of the IEP team meeting clearly supported a one-to-one aide be provided to Student, Ms. Veatch told Parent that District would not agree to an aide until less intensive interventions were first attempted because that was the District's "process" and that Parent would have to wait for some unspecified amount of time before District would meet to determine if an aide was justified. District offered no persuasive explanation for this delay given the severity of Student's behavior needs.

36. The testimony of Dr. Scott and Mr. Alaniz also supported Student's claim that District should have provided Student a one-on-one aide. Dr. Scott credibly testified that Student's behavioral problems were preventing him from assessing his education and supported providing Student with a one-on-one aide. Dr. Scott was not only candid in her testimony, but her opinions were based upon a review of Student's history of behavior problems in school and input from Ms. Reese. She was also knowledgeable about Student's family history, disabilities and mental health issues and had been a clinical psychologist for 19 years.

37. Mr. Alaniz also credibly testified about the importance of Student having a one-on-one aide. He explained that a one-on-one aide would be able to redirect Student in the moment the negative behaviors manifested and that when such techniques had been used in the past, Student made the most progress. In fact, the evidence established that Student demonstrated a functional decline when one-on-one support was terminated. Mr. Alaniz's testimony was given great weight because he had worked with Student every week for the past 19 months and was in a position to observe Student's behavior since January 2013 when first assigned to Student's case. Mr. Alaniz was a credible witness and appeared to be very knowledgeable about Student and effective therapy techniques when working with children.

38. In sum, Student established that District denied him a FAPE at the January 23, 2014 IEP team meeting by failing to offer him a one-to-one behavioral aide. Student's remedies will be discussed below.

ISSUE 2B: THE FAILURE TO OFFER SERVICES TO ADDRESS STUDENT'S SOCIAL SKILLS DEFICITS

39. Student contends District denied him a FAPE at the January 23, 2014 IEP team meeting by failing to offer him social skills services. Student argues District was aware of his deficits in the area of social skills and peer interactions, but that District failed to offer him any group counseling. District claims its offer of 20 minutes per week of school-based counseling addressed Student's social skills needs and that there was no denial of FAPE.

40. Legal conclusions 1 through 4, 13, 14 and 32 through 38 are incorporated by reference.

41. Social skills services are a related service which is "required to assist a child with a disability to benefit from special education..." (34 C.F.R. § 300.34(a).)

42. The preponderance of the evidence established that District denied Student a FAPE by failing to provide Student appropriate social skills services. At the time of Student's January 23, 2014 initial IEP team meeting, the IEP team was fully aware of Student's significant social skills deficits. During the District's assessments, Ms. Reese told Ms. Veatch that she had great concern over Student's difficulty in working with others. She also told her Student got into physical fights and had a temper. On the Adaptive Behavior Assessment teacher rating scale, Ms. Reese stated Student never waits his turn in games, never uses his free time productively, never invites others to play with him, never seeks friendships with same-age peers, and never apologizes after hurting someone's feelings. Ms. Veatch observed Student had been placed in "time out" for arguing with his peers and that he bickered with other students in his group and became annoyed if someone forgot their turn or chose a book he did not like. Ms. Veatch's assessment report documented Student's difficulty working with peers and that it negatively impacted his achievement. In fact, her recommendation for Student's special education eligibility was based in part on Student's inability to form relationships with peers and his trouble working cooperatively with others.

43. The evidence established that the 20 minutes of individual counseling offered by the IEP team was insufficient to address Student's social skills needs. Dr. Scott credibly testified that Student required group therapy at school because Student had difficulty interacting appropriately with peers and that it was very important that Student learn the skills necessary to make friends. The evidence also proved that 20 minutes was an insufficient amount of time for counseling sessions given the frequency of Student's behaviors and the emotional problems he was demonstrating in class, and such short sessions would not be effective in addressing his behaviors.

44. Mr. Alaniz credibly testified that Student lacked social skills and did not know how to express his emotions appropriately with peers, which limited his ability to

make friends and adversely affected his self-esteem which, in turn, contributed to the negative behaviors. Mr. Alaniz's recommendation of group therapy outside the classroom for 45-60 minutes per week, with five to eight children was credible in light of the totality of the other evidence.

45. Ms. Veatch's testimony that 20 minutes per week of individual counseling was appropriate to address Student's social skills issues was not persuasive. She was substantially less experienced than Dr. Scott, and she was evasive and inconsistent in other parts of her testimony which undermined her overall credibility. For example, she implausibly claimed she had never read Dr. Scott's report, but could provide no explanation for her failure to read it considering she had included the conclusions in her own report. Her testimony that Student did not need group counseling because he had never had any counseling at school was not logical, and did nothing to explain why group therapy was not necessary for Student in order to address his social skills deficits.

46. Student established that District denied him a FAPE at the January 23, 2014 IEP team meeting by failing to offer him appropriate social skills services. Student's remedies will be discussed below.

ISSUE 2C: THE FAILURE TO OFFER SUFFICIENT COUNSELING AND OTHER MENTAL HEALTH SERVICES

47. Student contends District denied him a FAPE at the January 23, 2014 IEP team meeting by failing to offer him sufficient counseling and other mental health services. Student argues that District was aware that Student had an extensive mental health disturbance, but only offered 20 minutes of school based counseling which was inadequate to meet his mental health needs in the school setting. Student argues that District should have offered him intensive mental health counseling for at least 60 minutes twice per week, as well as trauma-focused therapy. District claims its offer of 20

minutes per week of school based counseling addressed Student's mental health needs in an educational setting and that there was no denial of FAPE.

48. Legal conclusions 1 through 4, 13, 14, 32 through 38, and 43 through 46 are incorporated by reference.

49. Educationally related mental health services are a related service which is "required to assist a child with a disability to benefit from special education..." (34 C.F.R. § 300.34(a).)

50. The preponderance of the evidence established District denied Student a FAPE by failing to provide Student appropriate mental health counseling. In spite of the abundance of information indicating Student had serious emotional disturbance and the availability of educationally related intensive counseling services, District offered a minimal amount of counseling in the form of school-based counseling with the school psychologist. The evidence established that District's IEP offer of 20 minutes of counseling per week was insufficient to meet Student's mental health needs as they impacted him in the school setting.

51. At the time of Student's January 23, 2014 IEP team meeting, the IEP team was fully aware of Student's significant mental health issues and how those issues impacted his ability to learn. As an initial matter, the IEP team was aware that Dr. Scott had diagnosed Student with PTSD and dysthymia. In fact, Ms. Veatch based her recommendation of Emotional Disturbance eligibility on Dr. Scott's diagnosis of post-traumatic stress disorder and dysthymic disorder. The IEP team was also aware that Dr. Scott had recommended intensive mental health services with several contacts a week, especially in the school setting where he was struggling the most at the time. Ms. Veatch also recognized that Student's mental health issues were impacting him in the school setting because she recommended counseling with the school psychologist to address the educational impact of Student's emotional symptoms.

52. Ms. Veatch admitted that educationally related intensive counseling services were available to students who demonstrated a need, but she failed to persuasively explain why Student, whom she had recommended qualified for special education as under the eligibility category of emotional disturbance, was not offered these services. The evidence of Student's need for intensive counseling was abundant at the time of IEP team meeting. Besides the information in the assessments and Dr. Scott's report, the reports of Student's behavior from Ms. Reese and Parent persuasively established that Student had a need for intensive counseling.

53. Dr. Scott credibly testified that Student needed intensive mental health services with several contacts a week and that 20 minutes was an insufficient amount of time for counseling sessions given the frequency of Student's behaviors and the emotional problems he was demonstrating in class, and such short sessions would not be effective in addressing his issues. Similarly, Mr. Alaniz credibly testified that 20 minute sessions would not be effective. His testimony, together with Dr. Scott's, established that at least 60 minutes per session was appropriate given Student's age and the type of therapy required with children. In contrast, Ms. Veatch's testimony that 20 minutes of counseling was appropriate was not convincing and she was not a credible witness.

54. However, Student did not establish by the preponderance of the evidence that Student was denied a FAPE by the District's failure to offer trauma-focused therapy separate from intensive mental health counseling. In this regard, Student failed to establish the difference between trauma-focused therapy and intensive mental health counseling requested by Student or why District was required to provide trauma-focused therapy as part of Student's offer of a FAPE.

55. Accordingly, Student met its burden of establishing that District denied him a FAPE at the January 23, 2014 IEP team meeting by failing to offer him intensive

mental health services, but failed to meet his burden of proving that he was denied a FAPE by the District's failure to offer trauma-focused therapy.

ISSUE 2D: THE FAILURE TO OFFER SUFFICIENT ACADEMIC INSTRUCTION SERVICES

56. Student contends District's January 23, 2014 offer of 135 minutes per week of Specialized Academic Instruction Services through the Resource Specialist Program provided in a group setting was insufficient to meet Student's unique needs. Student argues that District should have offered the Specialized Academic Instruction on an individual basis instead of a group basis. District contends that the offer of academic instruction services was sufficient to permit Student to make academic progress as evidenced by his promotion to the third grade at the end of the 2013-2014 school year.

57. Legal conclusions 1 through 4, 13, 14, 32 through 38, 43 through 46 and 51 through 54 are incorporated by reference.

58. Student presented no evidence that he required specialized academic support beyond the offer made by District. While the evidence established that Student had behavioral, social skills, and mental health needs which District failed to properly address, the evidence did not establish that 135 minutes of resource specialist support or the manner in which such support was delivered was inadequate to address Student's academic needs. Student's academic assessment indicated he tested within average range on every subtest except reading comprehension where he was below average. Because Ms. Reese reported Student had some areas of concern and Student had difficulty demonstrating his knowledge in class, the IEP team offered specialized academic instruction through the resource specialist program. In sum, District's offer of resource specialist support was reasonably calculated to provide educational benefit at the time it was made, and Student produced no evidence to the contrary.

59. As such, Student failed to establish that District denied him a FAPE at the January 23, 2014 IEP team meeting by failing to offer him specialized academic support beyond the offer made by District.

REMEDIES

1. Student prevailed on Issues 2A, 2B, and part of 2C, such that District denied Student a FAPE by failing to offer a one-on-one aide, social skills services and mental health counseling as part of his January 23, 2014 IEP. As a remedy, Student requests compensatory services in the form of Therapeutic Behavior Services or a one-on-one aide for 5 hours per day, a social skills program for 60 minutes per week, and intensive mental health services for 120 minutes per week, for every week school was in session from January 23, 2014 through the date the due process complaint was filed. Student requests a total of 525 hours of Therapeutic Behavior Services or one-on-one services, 21 hours for social skills services, and 42 hours of intensive mental health services.

2. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "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 ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 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 ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.)

3. The evidence established District's January 23, 2014 IEP denied Student a FAPE by failing to offer Student a one-on-one aide during the regular school year for each day of regular school he attended. The evidence also established that 20 minutes per week of counseling was inadequate to address Student's behavioral and social skills deficits, that he required multiple contacts per week of intensive mental health counseling in sessions of at least 60 minutes, and 45 to 60 minutes per week of group therapy for social skills development in groups of five to eight children. Thus, as a remedy until such time as it is superseded by a new, agreed-upon IEP, Student's January 23, 2014 IEP shall be amended to include the following:

- A. dedicated one-on-one aide for Student to be provided by qualified District staff or if no qualified District staff is available then by a non-public agency for five hours per day for each regular school day that Student attends school;
- B. Social skills services in the form of group therapy outside the classroom for 60 minutes per week in 60 minute sessions and in groups of five to eight children to be provided by District staff or if no District staff is available then by a certified non-public agency of Parent's choosing; and
- C. Educationally related intensive mental health counseling services of 120 minutes per week provided on an individual basis in 60 minute sessions by qualified District staff, or if no qualified District staff is available, then by a certified non-public agency of Parent's choosing.

4. In addition, for failure to provide a FAPE to Student at the January 23, 2014 IEP, Student is entitled to receive as compensatory services 120 minutes per week of intensive mental health counseling, and 60 minutes per week of group therapy for social skills development. The compensatory award shall be computed based on the number

of weeks school was in session from the date of the January 23, 2014 IEP through the date of this decision, or 27 weeks. Computation of the award is based upon the ALJ taking official notice of District's 2013-2014 and 2014-2015 school calendars, as posted on District's website. Day-for-day compensation, 120 minutes per week of intensive mental health counseling, and 60 minutes per week of group counseling are awarded because of the severity of Student's needs, the deficiencies in District's offer and the delay in providing appropriate services. District offered no group counseling or intensive mental health counseling.

ORDER

1. Until such time as it is superseded by a new, agreed upon IEP, Student's January 23, 2014 IEP shall be amended to include the following:
 - A. dedicated one-on-one aide for Student to be provided by qualified District staff or if no qualified District staff is available then by a non-public agency for five hours per day for each regular school day that Student attends school;
 - B. Social Skills Services in the form of group therapy outside the classroom for 60 minutes per week in 60 minute sessions and in groups of no more than five to eight children to be provided by District staff or if no District staff is available then by a certified non-public agency of Parent's choosing; and
 - C. Educationally related intensive mental health counseling services of 120 minutes per week provided on an individual basis in 60 minute sessions by qualified District staff, or if no qualified District staff is available then by a certified non-public agency of Parent's choosing.
2. As compensatory education, District shall also provide 27 hours of compensatory social skills services in the form of group therapy outside the classroom, to be provided by a certified non-public agency of Parent's choosing and which services

can be used even when school is not in session and which services shall expire, if not used by Student, on January 23, 2016.

3. As compensatory education, District shall also provide 54 hours of educationally related intensive counseling services by a certified non-public agency of Parent's choosing, which services can be used even when school is not in session and which services shall expire, if not used by Student, on January 23, 2016.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on Issues 2A and 2B and partially prevailed on Issue 2C. District prevailed on all other issues.

RIGHT TO APPEAL

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

DATED: October 29, 2014

_____/s/
LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings