

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2017120274

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on December 6, 2017, naming Capistrano Unified School District. The matter was continued for good cause on January 16, 2018.

Administrative Law Judge Rommel P. Cruz heard this matter in San Juan Capistrano, California, on March 27, 28, 29, April 9, and 10, 2018.

Brian Sciacca and Tony Nguyen, Attorneys at Law, represented Student. Mother and Father attended the hearing on all days. Student did not attend the hearing.

Kirsten Zittlau, Attorney at Law, represented District. Danielle Gigli, Co-Counsel, attended the hearing for part of the second day. Linda Koo, Program Specialist, attended the hearing on behalf of District on March 27, April 9 and 10, 2018. Sara Young, Executive Director of Alternative Dispute Resolution/Compliance attended the hearing on behalf of District on March 28 and 29, 2018.

OAH granted a continuance at the parties' request for the parties to file written closing arguments. On April 30, 2018, upon timely receipt of the written closing

arguments, the record was closed and the matter was submitted for decision.

## ISSUES<sup>1</sup>

1. Did District deny Student a free appropriate public education from December 5, 2015, to the present by:
  - a. Failing to provide sufficient and appropriate goals and services in the areas of:
    - i. Academics,
    - ii. Communication,
    - iii. Behavior,
    - iv. Social-emotional, and
    - v. Mental health;
  - b. Failing to provide a timely assessment plan and assessments for the areas of:
    - i. Social-emotional, and
    - ii. Mental health;
  - c. Failing to offer a timely individualized education program meeting as requested by Parents;
  - d. Failing to provide necessary and appropriate IEP team members at IEP team meetings; and
  - e. Failing to consider Parents' input at IEP meetings?
2. Did District deny Student a FAPE from the 2016-2017 school year to the present by failing to provide an appropriate educational placement in the least

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<sup>1</sup> The issues pleaded in the complaint have been combined, reorganized and 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.)

restrictive environment?

## SUMMARY OF DECISION

This Decision holds that District denied Student a FAPE by failing to offer academic services following the October 27, 2017 IEP team meeting. On October 27, 2017, District had sufficient information to conclude that Student was extremely apprehensive of returning to Ladera Ranch Middle School. District offered Student temporary home hospital instruction as an option, but failed to follow through with home hospital instruction after receiving a properly completed Medical Status Report form from Student's psychiatrist. District's failure to provide home hospital instruction denied Student academic services to which he was entitled to, in violation of the Individuals with Disabilities Education Act.

This Decision also holds that District denied Student a FAPE by failing to offer an appropriate behavior goal in the October 6, 2016 and October 5, 2017 IEPs. Those IEPs failed to provide a measurable goal designed to address Student's inability to independently redirect his attention in all educational settings, denying Student the benefit of expanding this skill beyond the social skills class.

The October 6, 2016 and October 5, 2017 IEPs also failed to offer an appropriate social-emotional goal and related services designed to help Student express his frustration and manage his emotions. Though such a goal was offered in the October 15, 2015 IEP, Student did not meet that goal. Despite Student's struggles with managing his emotions and expressing his frustrations, the goal was not continued in the October 6, 2016 IEP and never reintroduced. The failure to continue the goal and to provide related services, denied Student the benefit of learning to manage his emotions and express his frustrations.

Additionally, October 5, 2017 IEP failed to offer an appropriate measurable social-emotional goal to address Student's need to move from preferred tasks to

non-preferred tasks with minimal protests across all educational settings. The failure to include such a goal denied Student the benefit of generalizing that skill beyond the social skills class.

Furthermore, Student proved that District denied him a FAPE by failing to provide him with speech and language services as prescribed by the October 6, 2016 IEP. Student was denied direct speech and language therapy for eight months, which was more than a minor discrepancy from what was required by the IEP, in violation of the IDEA.

However, Student did not meet his burden in proving that District denied him a FAPE by failing to offer appropriate goals in the areas of academics, communication, and mental health. The goals were designed to adequately measure and address Student's needs in those areas. Student also did not prove that District failed to provide sufficient and appropriate services in the areas of behavior and mental health.

Student also did not prove that District should have assessed Student in the areas of social-emotional and mental health prior to October 27, 2017. Student did not demonstrate that District should have suspected additional social-emotional goals and services were necessary or that mental health was an area of need warranting an assessment. In addition, Student did not prove the October 27, 2017 assessment plan was insufficient.

Furthermore, Student failed to prove that he was denied a FAPE when an IEP team meeting was not convened in the spring of 2017, and failed to prove that District denied Parents an opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. Moreover, Student did not prove that District failed to include all necessary individuals at IEP team meetings, as all legally required members were present.

This Decision further holds that Student failed to meet his burden in proving

District denied him a FAPE by offering placement at Ladera Ranch during Student's sixth and seventh grade. The weight of the evidence demonstrated that Student was not bullied at Ladera Ranch and he continued to access and succeeded at grade-level work.

## FACTUAL FINDINGS

1. Student was a 13-year-old seventh grader at the time of the hearing, who resided with Parents within the boundaries of District at all relevant times. He was eligible for special education under the primary category of autism and the secondary category of Other Health Impairment for attention deficit hyperactivity disorder. At the time of the hearing, Student was privately placed at Fusion Academy, a private school accredited by the Western Association of Schools and Colleges.

## BACKGROUND

### October 15, 2015 Multi-Disciplinary Assessment

2. District prepared a multi-disciplinary assessment report dated October 15, 2015, as a part of Student's triennial IEP review. The Behavior Assessment System for Children, 2nd Edition assessment was administered. This assessment tool was designed to evaluate behavior in children and adolescents. The teacher and parent rating scales reflected at-risk to clinically significant concerns in the area of anxiety, suggesting a high level of maladjustment. The assessment defined anxiety as having the tendency to be nervous, fearful, or worried about real or imagined problems.

3. Parents reported to District's assessors that Student was receiving therapy and medication management from the Drake Institute and Dr. Shivani Chopra. It is unclear in the multi-disciplinary assessment report if Dr. Chopra was providing both therapy and medication management or only medication management. No evidence was offered to clarify her role in Student's treatment at the time the multi-disciplinary assessment report was written.

4. Dr. Chopra founded Premier Mind Institute in 2013. Her practice involved assessing and treating children, adolescents, and adults with mental health issues. Her treatments used a combination of therapies and medication. She possessed a Doctor of Medicine degree and was board certified in forensic psychiatry, child and adolescent psychiatry, and adult psychiatry. She began treating Student in March 2015, although the evidence did not reflect that Parents informed District when Dr. Chopra started providing Student therapy in addition to medication management.

#### October 15, 2015 triennial IEP

5. Student's triennial IEP review was held in two parts, on October 15, 2015, and November 6, 2015; the final document was dated October 15, 2015. Parents shared that Student was doing well, but questioned whether the IEP team was preparing Student for the following year in middle school.

6. The October 15, 2015 IEP offered goals in the areas of social-emotional functioning, communication, behavior, and written expression. Student required intermittent teacher prompting to self-regulate, monitor his attention, and apply self-monitoring strategies. The annual behavior goal, named "Redirection of Attention," was aimed at strengthening Student's ability to redirect his attention with independence. It required Student to independently self-regulate and monitor his attention to task by using self-monitoring strategies such as a self-timer and tally marks. The writing goal, "Multi-Paragraph Writing," was offered to address Student's struggles with organizing his writing and staying on topic.

7. The October 15, 2015 IEP also offered a social-emotional goal named "Frustration/Self-Regulation." Student required help regulating his feelings and expressing inappropriate and hurtful thoughts. The goal required Student to appropriately express his frustration using strategies, such as requesting a break, asking for help, or using a calm voice. He was expected to demonstrate this 80 percent of the

time in a two-week period.

8. The October 15, 2015 IEP included 20 minutes of specialized academic instruction two times per month on a consultation basis, in the general education setting. The IEP also included direct speech and language services once per month for 30 minutes, outside of the general education classroom. Social skills instruction, identified in the IEP as intensive behavior intervention, was offered 30 minutes, twice a week in a group setting during the lunch period, referred to as "Lunch Bunch." This service was expected to expire on June 9, 2016. Starting August 15, 2016, the intensive behavior intervention services would be adjusted to direct group instruction once a week for 30 minutes, to take place in a separate setting.

9. As the end of Student's fifth grade year approached, he became more anxious about transitioning to middle school. In early 2016, Dr. Chopra began providing counseling to help Student through his anxiety. Dr. Chopra saw Student once per month for half an hour to an hour. Mother joined their sessions. Parents did not inform District that Student was receiving counseling until on or after October 9, 2017.

#### MAY 13, 2016 TRANSITION IEP

10. On May 13, 2016, an addendum IEP team meeting was held to discuss Student's transition to Ladera Ranch for sixth grade in middle school. Mother, English teacher Robin Chapa, education specialists Rose Antonatos and April Paulson, and Ladera Ranch assistant principal Kristin Orloff attended.

11. The May 13, 2016 addendum IEP offered specialized academic instruction in the general education setting for collaborative English and math classes each day. Student was offered instruction in English and math by a general education teacher with an instructional aide in the classroom to support students receiving special education. The May 13, 2016 IEP also added specialized academic instruction on a consultation basis, once per week for 20 minutes for the first two months of school, ending on

October 14, 2016. The addendum IEP added an accommodation for Student to have at least two “go to” adults whom Student could see when he was having a problem.

Mother consented to the addendum IEP on May 26, 2016.

12. Student did well in fifth grade and Mother, at hearing, expressed no concerns about Student’s academic, social or behavioral progress that year. Student was making progress or meeting expectations in all areas. At hearing, Mother shared that there were instances in fifth grade that Student felt overwhelmed and sought support from a designated person. The two designated “go to” people in middle school would help Student with anxiety stemming from multiple classroom transitions, more teachers and the larger school campus. Student was to enroll at Ladera Ranch, which served approximately 1500 students.

## 2016-2017 SCHOOL YEAR

### Transition to Middle School

13. Student began attending Ladera Ranch in August 2016. Mother testified that Student’s first day of sixth grade was traumatic. Ladera Ranch had a power outage and students were released early as a result. When Mother arrived at the school, she found Student holding on to the school gates, crying, and alone. Ladera Ranch principal George Duarte was able to comfort him.

14. On September 13, 2016, Student’s sixth grade English teacher, Ms. Chapa, emailed Mother about Student’s recent difficulties in English class. Ms. Chapa indicated that Student was not receptive to the instructional aide’s assistance and became very exasperated and short with the aide. He was slow to get going on his assignments and more recently would not attempt some assignments, even with Ms. Chapa’s help. Student was disruptive and disrespectful in class, making it difficult for Ms. Chapa to meet his needs. Ms. Chapa sought Mother’s suggestions to help Student in class and



alleviate the stress triggering his inappropriate behavior.

15. Mother responded to Ms. Chapa in an email a few hours later. Mother stated Student had been returning home very upset and anxious about English class and the aide's instructions. Mother shared that Student was embarrassed to be singled out in class, and being reprimanded caused him anxiety, upset him, and led to him raising his voice. Mother opined that Student was not angry, but rather hurt, overwhelmed, and scared. Mother was apologetic for Student's behavior and appreciative of Ms. Chapa's email and her work with Student. Mother also shared that the transition to middle school had been tough on Student. Mother mentioned he was being treated by a "doctor who monitors ADHD medicine."

16. That afternoon, Ms. Chapa replied to Mother's email. Ms. Chapa had attributed Student's behavior to his frustration, but now understood that anxiety and stress were also a factor. Ms. Chapa offered to share their emails with, or speak to, District's school psychologist, Paul Youngerman, if Mother was agreeable. Ms. Chapa wanted to seek Mr. Youngerman's input and suggestions to help Student feel comfortable and far less anxious in her classroom. She also informed Mother that she had spoken to Student a few times about his altercations with peers. Their talks were always helpful.

17. Mother responded and agreed to Ms. Chapa reaching out to Mr. Youngerman for guidance. At hearing, Ms. Chapa explained that Student did not consistently misbehave; therefore, she did not seek Mr. Youngerman's guidance, as she did not believe it was necessary at the time.

18. On October 3, 2016, Mother emailed Student's math teacher, Heather Love, concerned about Student's grades and his anxiousness and frustration in math. At hearing, Ms. Love shared that the only instance she observed Student frustrated was when another student offered to share her notes with him. This annoyed him. She did

not observe Student to appear depressed. Student was disciplined in math class for calling a classmate "moron" which resulted in a "bag it." A "bag it" was a disciplinary consequence where a student was required to clean up trash during the lunch period.

19. Michael Schooler was Student's sixth grade physical education teacher. Mr. Schooler had been a physical education teacher at Ladera Ranch for 15 years, teaching students both in general and special education. At hearing, Mr. Schooler explained that the boys' physical education locker room was shared by students in grades six through eight. There were two male physical education teachers present in the locker room at all times, roving throughout the locker room and supervising the entrance and exit.

20. Mr. Schooler described Student as very likeable. He observed Student to get along with his classmates. He spoke with Student frequently, and they often talked about dogs, specifically Mr. Schooler's dog. The physical education instruction focused on cooperative play. Student did well interacting with other students in the class. Ms. School did not observe Student to be anxious or upset in his class.

21. Robin Palmer was Student's sixth grade science teacher. She taught math and science for 28 years. Ms. Palmer described Student as a gifted learner and very bright. Ms. Palmer noticed that Student interacted with her more than he did with his classmates. Student did not initiate a lot of interaction with his peers. He had a friend in fourth period who he sat with.

22. Rose Antonatos was an education specialist for 16 years and had taught for approximately 25 years. As an education specialist, Ms. Antonatos was responsible for developing IEPs and designing behavior plans. She also taught students with disabilities. She was responsible for providing IEP meeting notices and invitations.

23. Ms. Antonatos was Student's case carrier throughout his time at Ladera Ranch. As Student's case carrier, she acted as Student's IEP point person by monitoring Student's progress on goals, ensuring proper implementation, and acting as a hub for

parents, teachers, and service providers. At the start of each year, she provided each of Student's teachers with a summary of Student's IEP.

24. Tom Bogiatzis was a full-time school counselor at Ladera Ranch since 2014. He had been a school counselor for 18 years. At hearing, Mr. Bogiatzis explained that he provided students with individual counseling but did not consider his role to be as a therapist. If a student's needs required more than a few meetings with the student, he provided the parents with resources for outside therapists. He knew at the start of the 2016-2017 school year that he was a "go-to" person accommodation called for in Student's IEP.

25. David Vargas was a Senior Intensive Behavior Intervention Assistant for District. He provided individual or small group tutoring for students with social needs. Mr. Vargas possessed a bachelor's degree in psychology, but did not possess a teaching or administrative credential. He was also not a licensed or credentialed speech-language pathologist, nor was he supervised by one.

26. Mr. Vargas was Student's social skills studies tutor throughout Student's time at Ladera Ranch. He was responsible for providing the intensive behavior intervention services in Student's IEP. However, at hearing, Mr. Vargas explained that there was nothing intensive about the social skills class. He was assigned to work on Student's social-emotional, communication, and behavior goals. Student's social skills studies class had anywhere between three to seven students at a time. Though the IEP called for 30-minutes classes, Student remained with the class for the entire 52-minute period. Student began with one class a week, but joined the lunch period social skills studies group at some point during the school year.

27. Mr. Vargas described Student as smart, funny, personable, and mature for his age. Student improved in how he interacted with peers in his group. Mr. Vargas characterized him as one of Mr. Vargas' better students, with no behavioral issues in the

class.

### Alleged Bullying in Sixth Grade

#### PARENTS' TESTIMONY

28. At hearing, Mother testified to instances of name-calling, hitting, and harassment that Student reportedly experienced from other students. Student reported on the second day of sixth grade that student B poured water on his head and laughed. The following day, Student reported that student B took his books from him during physical education class. Student also reported that other students threw things at him. According to Mother, several parents of other students called her to report incidents of bullying that their children witnessed of Student.

29. Student recounted to Mother that student A, an eighth grader, called Student "gay" and pushed him to the ground in physical education class causing Student to bleed. Student A also hit him in the back of the head during the lunch period. Student reported to Mother that student A repeatedly hit Student and threatened to kill him. Mother testified to calling Ladera Ranch school counselor Mr. Bogiatzis twice to talk about the incidents, providing him with detailed descriptions of the incidents. Mother stated that Student's physical education locker was relocated away from student A's locker. However, no other evidence confirmed that a locker change was made because student A did in fact commit the alleged acts or simply to accommodate Student's and Parents' concerns.

30. Father testified that Student was reluctant to leave home, and to participate in activities that he normally enjoyed, such as attending church and play practice at Ladera Ranch. Father recounted an event where he, Student, and Student's sister were out in the community and Father observed Student crying, fearful, and biting down on a water bottle. Confused, Father asked his daughter what was happening, and she told him that it was the kids sitting behind them. Student presented no additional

evidence regarding what the kids were doing to cause Student to react that way or why their presence distressed Student.

#### DR. CHOPRA'S TESTIMONY

31. At hearing, Dr. Chopra explained that Student became her patient in March 2015. During their sessions starting in August 2016, Student often initiated conversations about bullying and openly reported incidents of being bullied at Ladera Ranch. He described instances of being called names, punched, hit, and being told to perform disgusting acts on animals. Student spoke of his issues with the math class aide, and how he felt picked on and put on the spot. More recently, their discussions had focused on Ladera Ranch's handling of those situations.

32. At hearing, Dr. Chopra stated that she relied solely on Student's and Mother's accounts about the bullying. She did not speak to anyone from District.

#### REPORTED INCIDENTS

33. On August 23, 2016, Student filed an incident report with Ladera Ranch alleging to have been teased by student H for being autistic. Student H gestured and made a comment, "look at me stupid kid, I have autism," which Student perceived was directed at him. When questioned at hearing as to why Mother believed student H's comments were directed at Student, Mother explained that student H was aware of Student's disability as student H's family were acquaintances from church. The incident report was not presented at hearing; however, that complaint was recorded in the "Student Assertive Discipline Record" section of AERIES under Student's records. AERIES was District's online records database, which contained such things as grades, attendance, and investigations of reported bullying. The database noted that Student reported student H "made a teasing comment 'look at me stupid kid, I have autism', after the fundraiser assembly."

34. Also documented in AERIES was an incident reported by Student that occurred on February 14, 2017. Student was walking with a friend, when another student joined in on their conversation. Student corrected that student about a comment that student made. The student then called Student an “unkind name.” Student named two witnesses to the incident. When interviewed, one witness did not recall anything negative being said. The other witness said he was not present during the incident.

35. Mother testified that Student reported to her having filed between five to seven incident reports related to being bullied during sixth grade. Mother recalled another two incident reports were filed by another student, and another was filed by Student and his older sister, who was also a Ladera Ranch student. Mother testified that one incident report was filed that involved a student placing a phone emitting a high-pitched sound to Student’s ear. Mother did not review any sixth grade incident reports. No incident reports were offered at hearing relating to the sixth grade and no explanation was offered at hearing as to why no other sixth grade incidents, other than the two noted above, were documented in Student’s Assertive Discipline Record.

36. A sworn affidavit by student G, a 12-year-old Ladera Ranch student, was offered into evidence by Student. Student G affirmed that “[i]n sixth grade [she] filed an incident report after [she] saw [Student] being bullied by older students at lunch. They were saying mean things to him and pushing him. [She] gave [her] incident report to Mrs. Larkin in the school office.” No other affidavits were offered by Student at hearing.

#### TEACHER OBSERVATIONS

37. Mr. Schooler, Ms. Palmer, Ms. Chapa, Mr. Vargas, and Ms. Love all credibly testified they did not witness Student being hit, called names, teased, or in any way bullied by other students. They were thoughtful in their responses and demonstrated sincere concern for Student’s well-being. Ms. Chapa, who openly shared her concerns about Student and reached out to Mother for suggestions to better support Student,

was particularly persuasive. Neither Student nor any other student reported to the teachers that Student was hit, pushed, punched, teased, called names, had water dumped on his head, or had his books taken away.

38. At hearing, Mr. Bogiatzis estimated meeting with Student approximately five to eight times while Student attended Ladera Ranch. He described Student as bright, pleasant, and a great kid. During his meetings with Student, they talked about Student's interactions with his peers and various social interactions. On several occasions, Student reported to him of being called names, such as "stupid" and "idiot." At hearing, Mr. Bogiatzis did not recall Student reporting having been called any other names by other students. Student did not report water being dumped on him or his books being taken from him by other students.

October 6, 2016 IEP

39. On October 14, 2016, an IEP team meeting was convened for Student's annual IEP review. The proposed IEP was dated October 6, 2016. Parents, District administrator Michael Brandt, Ms. Antonatos, Ms. Chapa, Student's sixth grade social studies teacher Mary Dunncliffe, and speech-language pathologist Bethany Malamatenios attended. District provided Parents with their procedural safeguards. Parents declined a reading of the safeguards.

40. Parents shared that Student's transition to middle school started well but had been difficult since. Parents reported that Student was bullied, resulting in incident reports being filed with the school. Parents shared that the bullying transferred into the classroom, causing greater anxiety for Student. Parents requested that Student's teachers learn what motivated Student rather than viewing him as non-compliant. No evidence was presented at hearing as to what, if any, specific incidents of bullying Parents raised at the meeting.

41. Ms. Dunncliffe shared that Student followed group instruction, worked

independently, and completed classwork and homework. She described Student as respectful to her, but at times, he was frustrated with his peers. Student preferred to work alone. When frustrated, Student asked to speak to an adult and was good about explaining why he was frustrated. His ability to express a concern without hurting someone's feelings improved, but he continued to struggle working in groups.

42. Ms. Chapa shared that Student was inconsistent with following group instruction, working independently, and completing classwork. At the start of the school year, he had difficulty responding positively to one of the reminders from the teacher and instructional assistant and was often discouraged and shut down. However, in the three weeks prior to the IEP team meeting, she saw great improvement from Student in this area. Student got along with his peers most of the time, but refused to work with a partner or in a group. She described him as very bright, thoughtful, and kind to others.

43. Ms. Chapa shared that, at times, Student became stressed and shut down when he got behind in class. She opined that Student's unhappiness came from a place of stress, and could be perceived as rudeness.

44. The IEP team reviewed Student's progress on prior IEP goals. In the area of social-emotional functioning, the IEP team reviewed the progress reports prepared by Mr. Vargas. Student did not meet his goal to be more accepting of change without protest; however, Mr. Vargas opined that it was still early in the school year and more data needed to be collected. Student met his goal in the expression of thoughts and feelings. As to the "Frustration/Self-Regulation" goal, Mr. Vargas noted that Student met this goal in the social skills group setting. However, the October 6, 2016 IEP indicated that Student was making progress towards the goal, but not having met the goal. The general education teachers opined that Student needed to generalize this skill across all educational settings.

45. In the area of communication, the "thinking of you" goal focused on



Student's ability to monitor and modify his own behavior to keep his mind and body in the group. The "Perspective Taking" goal required Student to ask appropriate questions to discover other people's opinions and interests. Student did not meet those goals.

46. In the area of behavior, Student met his "Redirection of Attention" goal to independently self-regulate and monitor his attention to task by using self-monitoring strategies. However, Mr. Vargas noted that Student only met this goal in the social skills group setting. The general education teachers opined that Student needed to generalize this skill across all educational settings. In the area of written expression, the IEP team did not have enough information to determine if he had met the "Multi-Paragraph Writing" goal.

#### PRESENT LEVELS OF ACADEMIC AND FUNCTIONAL PERFORMANCE

##### Social-Emotional Functioning

47. Student's awareness of others' feelings was a strength, which he demonstrated by expressing his thoughts to others in a kind and appropriate manner. The IEP noted that he appropriately expressed frustration, but he could not do so across all educational settings. In the area of needs, Student still needed to accept change without protest. Student was described as loud and argumentative when routines were changed or things did not go his way. This occurred 60 percent of the time, more often when interacting with his peers.

##### Communication

48. Student's expressive and receptive language skills were within the average range compared to same-age peers, but his pragmatic language skills were weaker. He had difficulty interacting appropriately in both structured and unstructured settings. He also struggled with understanding and acknowledging the perspectives of others. Despite making progress in small group assignments, Student continued to struggle

with conversational language. He continued to have difficulty with flexibility and perspective taking during small group work.

#### Behavior

49. Student was able to self-regulate and monitor his attention to access grade level curriculum. Despite having met the same "Redirection of Attention" goal contained in October 15, 2015 IEP, the October 6, 2016 IEP noted Student needed to improve his ability to independently redirect his attention without prompting. He required intermittent teacher prompting to self-regulate, monitor his attention to tasks, and apply self-monitoring strategies, such as utilizing a self-timer or tally marks.

#### Written Expression

50. Student was thoughtful, possessed a strong point of view, and was not shy about voicing his opinion. However, he struggled with organizing his writing and staying on topic. He required a lot of modeling and scaffolding. Student was not able to independently answer a text-dependent question in paragraph form.

#### ANNUAL GOALS

51. The October 6, 2016 IEP offered one goal in the area of social-emotional functioning, two goals in the area of communication, one goal in behavior, and one goal for written expression.

#### Social-Emotional

52. The one social-emotional goal, identified as "Acceptance/Flexibility," called for Student to independently accept a change in his routine, specifically a non-preferred change or activity, without protest in four out of five opportunities in a two-week period. The responsible individuals for this goal were the education specialist, general education teacher, and support staff. The goal was to be measured using data collected

from observations. The October 6, 2016 IEP did not continue the "Frustration/Self-Regulation" goal despite Student's inability to regulate his emotions and appropriately express his frustration across all educational settings.

### Communication

53. The education specialist, speech-language pathologist, general education teacher, and support staff were responsible for the two communication goals. The first communication goal, identified as "Figurative Language," called for Student to demonstrate understanding of the difference between literal and figurative language during structured and unstructured activities. Student had to identify literal/non-literal language that had occurred during a social interaction one time per week. The goal was to be measured by data collected through observations and teacher and staff reports.

54. The second communication goal was labeled "Perspective Taking." It called for Student to demonstrate flexible thinking and behavior by taking the perspective of others while working in a small group without prompting by a teacher or instructional aide. This could be demonstrated by Student going along with another student's idea or approach. The goal required Student to reduce his outbursts or inappropriate responses to no more than once per month. The goal was to be measured by data collected through observations.

### Behavior

55. The behavior goal was identified as "Redirection of Attention." Student was expected to independently self-regulate and monitor his attention to task by using self-monitoring strategies in four out of five trials in a two-week period. The goal was to be measured using data obtained through observations. The education specialist, general education teacher, and support staff were to implement and monitor this goal. Every aspect of the goal, including the baseline performance, with the exception of the

target dates, was identical to the October 2015 IEP "Redirection of Attention" goal. Though the October 6, 2016 IEP noted that Student had met the October 2015 IEP "Redirection of Attention" goal, Student had not actually met that goal as he still required intermittent teacher prompting and could not independently redirect his attention across all educational settings.

#### Written Expression

56. The writing goal was labeled "Text Dependent Paragraph." Student was required to independently answer a text dependent question with a topic sentence, a lead-in, a quote/concrete detail from the test to support the answer, and two commentaries, or evidence of his own thinking. Student had to explain how the quote supported his thinking/answer. He was expected to be 75 percent accurate in three trials. The trials would take place after modeling/scaffolding. The goal was to be measured through work samples. Student, the education specialist, general education teacher, and support staff were identified as the people responsible for this goal.

#### PLACEMENT, ACCOMMODATIONS, SUPPORTS, AND SERVICES

57. District offered placement in the general education setting with four percent of the day to occur outside of the regular classroom for special education services. District offered specialized academic instruction on a consultation basis, once a week for 20 minutes, in the general education setting to be provided by the education specialist. District offered direct specialized academic instruction daily in collaborative math and English classes, at 52 minutes for each class, in the general education classroom. District offered direct speech and language services once a month, for 30 minutes each session, outside the regular classroom. Intensive Behavior Intervention, which involved direct instruction of social skills, was offered once per week for 30 minutes in the general education setting.

58. The IEP listed seventeen accommodations, which included providing positive behavior strategies such as positive reinforcement, social stories, visual supports, and sensory breaks; having at least two “go to” adults in place who Student could seek out when he was having a problem; having extended time for classroom assignments, projects, and homework as needed; and more time for tests as needed. Mother consented to the IEP.

59. Mother testified that sometime following the October 6, 2016 IEP team meeting, she contacted District’s virtual school program and was told by District personnel Julia Gerfin that a change of placement to virtual school would require the approval of the IEP team. District’s virtual school was an online program that students could participate in outside of a school campus. Virtual school consisted of grade level work and exams that closely monitored a student’s participation. A teacher was also available online.

60. On November 2, 2016, Mother emailed Ms. Love informing her that Student’s math grades were making him extremely anxious, interfering with his ability to perform on homework and classwork. At hearing, Ms. Love explained that Student was earning a high B grade at the time of Mother’s email and was doing great. Ms. Love mentioned that Student did not respond well to the instructional aide in math class.

61. On November 16, 2016, Ms. Chapa emailed Mother sharing her observation of Student and a peer during the lunch period in her classroom. Ms. Chapa noted Student to be truly comfortable, relaxed, calm, and happy. This was a stark contrast to her observations of him in English class. Ms. Chapa asked if there was anything she could do to make him feel more relaxed.

62. On December 1, 2016, at 7:51 a.m., Ms. Chapa emailed Mother expressing how worried she was about Student. Ms. Chapa described how Student was “so despondent in class and just does not do anything without reminders.” Student disliked

the reminders, which worsened his experience in English class. He was simply not enjoying the class. Ms. Chapa asked Mother how she could help Student relax in class and to make his experience more enjoyable.

63. At hearing, Mother explained that on December 1, 2016, she learned a Ladera Ranch student had just taken his own life. Ms. Chapa's description of Student as despondent greatly alarmed Mother as she interpreted the timing of, and the concern expressed in, Ms. Chapa's email to suggest Ms. Chapa was also worried about Student harming himself.

64. Mother replied to Ms. Chapa and informed her that Student was seen by a pediatrician for blood work and a sleep study to look into physical and emotional concerns that was displaying in the home. Mother noted that math and English were the two classes that were extremely stressful to Student and these concerns were not present in elementary school. At hearing, Ms. Chapa explained that despondent was a strong word to use to describe Student. What Ms. Chapa meant to say was that Student appeared unhappy, and was noncompliant at times. At hearing, Ms. Chapa stated that she spoke to Mother to clarify her email and her intent in describing Student as despondent.

65. In Ms. Chapa's reply to Mother that morning, she hypothesized that if Student's struggles were mainly in math and English, he could feel "watched" by the adults in the class, leading to more anxiety and his tendency to shut down. Ms. Chapa opined that suggested a pattern that they would be "wise to investigate" and suggested that collaborative math and English classes may not be appropriate for Student.

66. In response, Mother emailed Ms. Chapa that same morning, stating that if a change of placement was to be considered, the IEP team needed to approve the change. Ms. Chapa replied that the same aide that was in his English class was also in his first period science class. However, in science class, Student was more responsive to

reminders. Ms. Chapa hypothesized that his stress level might have been increasing throughout the day.

67. Mother emailed some of Student's teachers, requesting input about how Student was doing and if they had any serious concerns about him. Ms. Dunncliffe called Mother, reporting Student was doing great in her class. Ms. Palmer also responded by phone, stated Student was doing okay.

68. In January 2017, Dr. Chopra began prescribing Student with Zoloft, an anti-anxiety, anti-depression medication. At hearing, Mother testified that Student continued to struggle with school and bullying. Mother shared that the majority of his discussions with Dr. Chopra centered on bullying in school. He was reluctant to attend school. It was around this time that Mother found a note on Student's bedside table stating, "Please don't wake me up mom, I don't want depression and stress." Mother testified that she showed Ms. Antonatos the note the same day. At hearing, Ms. Antonatos stated she had not seen that note prior to the hearing. District was not informed that Student was taking Zoloft until on or about October 9, 2017.

69. At hearing, Mother stated her concern about Ms. Love's collaborative math class. On January 25, 2017, Student informed her that he was not permitted extra time for tests in math class. Mother was concerned that this IEP accommodation was not being honored. Additionally, Ms. Love did not respond to Mother's prior requests for help. Student also did not get along with the instructional aide in that class. For those reasons, Mother contacted Mr. Duarte and requested Student be removed from the collaborative math class and assigned a new math teacher.

70. On February 2, 2017, Mr. Duarte emailed Ms. Antonatos and Mother to find a time to meet to discuss a "possible change in placement (out of collab math)." In an email to Mother, Ms. Antonatos indicated that such a change could be discussed at an addendum IEP team meeting and suggested to meet on February 9, 2017. Mother

confirmed the February 9, 2017 meeting date.

71. On February 3, 2017, Mother emailed Ms. Antonatos regarding her interest in having Student attend District's virtual school program. Mother informed Ms. Antonatos that Ms. Gerfin wanted to participate in the IEP team meeting if virtual school was to be considered.

72. On February 7, 2017, Ms. Antonatos emailed Mother informing her of the need to reschedule the IEP team meeting because Ms. Antonatos was ill. On February 13, 2017, Mother emailed Ms. Antonatos asking when an addendum IEP team meeting could be scheduled. Ms. Antonatos replied she would speak to Ms. Love about her availability before scheduling the meeting. No IEP team meeting was convened to develop the addendum. At hearing, Ms. Antonatos stated that she contacted Student's teachers and Mother to develop the addendum IEP.

#### March 13, 2017 Addendum IEP

73. An Addendum IEP on March 13, 2017, was developed and consented to by Mother. The Addendum IEP amended Student's math class, to remove him from collaborative math and place him in general education math with no instructional aide present. The Addendum IEP participant signatures of Ms. Antonatos, Ms. Palmer, and Mr. Duarte were dated March 13, 2017.

74. Despite the change in math class periods, Ms. Love continued to be Student's math teacher. Ms. Antonatos followed up with Mother and asked how Student was doing after changing math classes. Mother shared that Student was doing better since the change. Student was happier and more relaxed at school.

#### Fourth Quarter of Sixth Grade

75. On April 17, 2017, Mother emailed Ms. Antonatos asking if an IEP team meeting was required to allow Student to attend the virtual or dual program for the



seventh grade. Mother shared that Student had indicated multiple times to Mother that he did not want to return to Ladera Ranch in the fall of 2017. Mother believed a modified schedule would be helpful. Mother hoped that preapproval by the IEP team would help avoid delays should it become necessary to place Student in a virtual school or dual program for the seventh grade.

76. Ms. Antonatos responded soon after, informing Mother that a placement to District's virtual school would require a change in the IEP. Ms. Antonatos asked if the change was only for math and if not, what other subjects Parents were considering for the virtual program. Mother replied by email, proposing one option; that Student attend school in the morning for academics and return home during the lunch period for PE and electives. Mother suggested that this arrangement could be tried "before going to a different (virtual/dual) program."

77. On April 19, 2017, Mother emailed Ms. Antonatos informing her she had to pick up Student the previous morning after he "totally broke down." Student received an F grade on his math test. Mother also shared that other students made "some mean comments" to him. Student returned to school the next day. Mother requested to schedule a meeting either between her and Ms. Antonatos or with the entire IEP team to discuss changes to Student's school day, schedule, and teacher so that they could "make next year at [Ladera Ranch] look hopeful" for Student.

78. On May 10, 2017, Mother again emailed Ms. Antonatos requesting to discuss, in person or by phone, teacher assignments for the seventh grade, modified school day schedule, or an alternative placement. Mother wanted a plan in place for a modified school day schedule or an alternative placement prior to the start of seventh grade to avoid the need for further IEP team meetings. Mother stated that Parents had spent the second half of 2016-2017 school year seeking approval from the IEP team.

79. At hearing, Ms. Antonatos testified that she did not interpret Mother's

emails to mean that Parents sought an IEP team meeting. She understood phone, or in-person meetings between her and Mother were sufficient to address Mother's request. Though virtual school was discussed over the phone on May 18, 2017, at no time did Mother request to hold an IEP team meeting to change Student's placement to a virtual school for sixth grade and seventh grade.

80. On May 18, 2017, Mother emailed Ms. Antonatos to confirm their discussion earlier that day and to review the major points she and Ms. Antonatos covered in their conversation. Student would remain in the collaborative program for English language arts, but not for math. Student would be considered for the study skills class in the seventh grade to help alleviate homework stress. Efforts would be made to schedule his academic classes in the morning, in the event that modified school day or enrollment in a virtual/dual program became necessary, as it would allow for a smoother transition. Additionally, if Student was not succeeding at the beginning of seventh grade, an IEP team meeting would be convened as soon as possible to consider a different placement or a modified school day. At hearing, Ms. Antonatos stated that it was her impression that Mother was satisfied with the plan.

81. Over the summer, Ms. Antonatos met with an academic advisor to schedule Student's seventh grade classes. They arranged for Student to have his academic classes in the morning from first to fourth periods, followed by a resource class with Ms. Antonatos for fifth period. The resource class would have allowed Student to decompress, and serve as a safe place to help Student do any catch-up work. It also would have allowed Ms. Antonatos to monitor him.

82. No further IEP team meeting was convened during the remainder of the 2016-2017 school year. For the 2016-2017 school year, Student earned grades of As and Bs, with the exception of a C in "Comp App Intro" in the second quarter, a C+ in social sciences in the third quarter, and a C+ and C in social sciences and English respectively

in the fourth quarter.

## 2017-2018 SCHOOL YEAR

83. Student returned to Ladera Ranch on August 15, 2017, for his seventh grade year. Mother sent his new teachers an introduction letter, summarizing what she believed to be Student's strengths, weakness, and highlighting some of his IEP accommodations. Her letter explained that autism, ADHD, and anxiety were some of his challenges. The letter did not mention any of the negative experiences Student had reported to Mother in sixth grade.

84. On September 12, 2017, Mother emailed Denise Rothchild, Student's math teacher, expressing how upset she was to learn Student was getting in trouble and shutting down in her class. At hearing, Mother testified that Student was anxious in math. He fell behind on class assignments and was required to remain in class during lunch period to catch up. This concerned Mother as being held back for lunch was not a positive behavior strategy contemplated in the IEP.

85. On September 12, 2017, District sent Parents an IEP Meeting Notice, proposing an IEP team meeting on October 5, 2017, to hold Student's annual IEP review. The notice indicated that the following individuals were invited: principal/designee, special education teacher, general education teacher, speech-language pathologist, and an autism specialist.

## Alleged Bullying

### FIRE DRILL INCIDENT

86. Michael Hale was Student's seventh grade science teacher, in first period. Mr. Hale had been a teacher for eight years, with teaching credentials in biology and physical science. He had no special education credential. At hearing, Mr. Hale shared that Student was doing well in science class, earning a high B grade. He was pleasantly

surprised to see Student compromising and problem solving with his peers during group work. Student had a friend in the class and they worked together on many group assignments.

87. On September 28, 2017, Student filed an incident report with the school. Student reported during first period, Mr. Hale yelled at him for not using complete sentences on an assignment. He received a 0 and was upset. During an evacuation drill, Student saw some students playing with a Rubik's cube. He asked the other students if he could have a turn with the cube. During his turn, he reported the other students told him he could not do it and called him "dumb." One student grabbed the Rubik's cube from Student. Student then described being "harassed and bullied, like always." Student K then told Student to "suck you cat" and "suck you dog." Student reported being very angry. Student also reported that student K continued to harass him and felt he was being attacked from every angle. He noted, "I finally was done." He threw a pencil at student K. Student reported that Mr. Hale then yelled at him, but not at any of the other students who "bullied" him. Student wrote, "I was done, I tried to leave because I cannot do this anymore." Under the section that asked if there was any other information that he wanted to share to help resolve the situation, Student wrote, "No, but I cannot do this anymore, I am done." He circled "yes" on the incident report indicating he considered the incident to be "bullying." He also indicated that he shared this incident with Parents.

88. On September 29, 2017, Mr. Hale emailed Mother to share what he observed in science class the day before. He had asked Student to fix an assignment that required complete sentences, but he did not raise his voice to Student. He saw Student throw a pencil at a classmate. When asked why he did that, Student explained that the other student was bothering him. Student got emotional and could not concentrate during a group assignment. He became more agitated. Student then

packed his belongings and said he could not handle it anymore and that he was done. Mr. Hale asked a campus supervisor to escort Student to the office. Mr. Hale observed Student crying and quite distraught. He asked the other student what happened. Mother replied to Mr. Hale's email and stated that Student arrived to school after first period that morning because he was afraid to go to science class.

89. At hearing, Mr. Hale described what he remembered of the events of September 28, 2017. During a fire drill, his students were evacuated onto a field and he passed his class off to another teacher. He then left his students to do a "search and rescue." When he and his class returned to the classroom, he noticed Student was upset. He asked Student to redo an assignment because it was not legible. He did not raise his voice to Student. At some point, he saw Student throw a pencil at a classmate. Student packed up his belongings and walked out of class. As he exited, an office aide was approaching and Mr. Hale requested the aide accompany Student to the office. Mr. Hale had never seen Student that upset. He spoke to the other students who reported to him that Student was insistent on having a turn with the Rubik's cube. Student could not solve the cube and they asked him to return it to them. Student resisted and they took it from him, which upset Student. Mr. Hale did not observe Student being harassed, called names, or targeted in any way by his classmates. Student did not report any of these things to him.

90. At hearing, Mother testified that after the fire drill incident, Student called her from the office and asked to be picked up. When she arrived at school, she and Student went into Mr. Bogiatzis' office to speak privately. Mr. Bogiatzis was not present. They completed the incident report. Student shared with Mother that he threw the pencil at the other student because the student kept telling him to "suck a dog." On the ride home, Student acknowledged what he did was wrong and that he was not handling this like some other kids because he had a lot of time left on this earth. At that moment,

Mother took that comment to mean that Student contemplated taking his own life, because a memorial walk was to take place the following week to remember the student who took his own life in December 2016. Student and Mother went to Dr. Chopra that afternoon. At hearing, Dr. Chopra testified that Student was distraught, anxious, sad, and remorseful for throwing a pencil. He was concerned about returning to school and not being able to "do this anymore."

#### JAILBREAK GAME INCIDENT

91. Amy Andreasen was Student's seventh grade physical education teacher. At hearing, Ms. Andreasen shared that Student got along with the students in physical education class and fit in well. She did not observe him being called names or being picked on. Student never gave her the impression that he did not want to be at Ladera Ranch.

92. On October 3, 2017, Student filed another report for an incident that took place in sixth period physical education class on October 2, 2017. Student reported that the class was playing a game of "Jailbreak" and one student in particular, on the other team, student M, was calling only his name, and no one else's, to get him out of the game. Student got upset and fed up when students from his own team started calling his name to get him out. Student reported that he told physical education teacher Michelle McGowan that he needed a break and had to leave. His classmates asked him to return to the game and he told them he needed to leave. Student M would not allow him to leave and so Student shoved him out of the way. Student then reported that student M "fought" him. Student M punched him and he punched student M, telling student M he needed to leave immediately. Student reported that Ms. McGowan broke up the fight and allowed him to finally leave.

93. Student walked to the office and called Mother to pick him up. Ms. Orloff came across Student and asked him what happened. Student said he was punched in

the face. Ms. Orloff did not observe any marks or redness on his face. When asked if Student wanted to complete an incident report, Student did not respond and did not complete an incident report at that time.

94. At hearing, Mother testified that when she picked Student up from school, a female classmate still in her physical education uniform approached her and Student and asked if Student's mouth was okay. The classmate went on to tell Mother that Student was trying to walk away when student M punched him. She saw student M grab Student and punch him.

95. The next day, on October 3, 2017, Mother and Student went to school and met with Mr. Bogiatzis. They discussed the October 2, 2017 incident and Student completed the incident report at that time. The incident report was given to Mr. Bogiatzis. Mr. Bogiatzis and Mother then shared the incident with Ms. Orloff. At hearing, Mr. Bogiatzis could not recall if he provided the written incident report to Ms. Orloff.

96. Mr. Bogiatzis asked student M to complete a statement of facts, which student M did the same day. Student M reported that he and student L followed Student as Student walked off to the field in an effort to convince Student to return to the Jailbreak game. Student L returned to the game, leaving student M and Student to talk a bit. Student M reported that Student then grabbed him by the arms and he grabbed Student's arms. Student then attempted to bite him on the left shoulder. Student M let go of Student's arms, and Student grabbed him and attempted to punch him. Someone pulled them apart and Student continued to leave the area.

97. Later that day, Mr. Bogiatzis mediated between Student and student M. Mr. Bogiatzis asked both students to complete an apology letter. The apology letter was a form that allowed students to enter responses to demonstrate their understanding of their role in the conflict, to take ownership of their conduct, to reflect on what the other student was thinking or feeling, and to figure out how to better respond in the future.

Only student M completed an apology letter.

98. In the apology letter, student M apologized for getting into a fight with Student. Student M acknowledged Student was angry because the other students were trying to get him out of the game. Student M reflected that he approached Student to get him back into the game and in the future, he would leave Student alone.

99. Incident reports were maintained by one of the assistant principals, organized and filed by student's name. The incident reports filed followed the students as they moved on from grade to grade. Student's October 3, 2017 incident report, along with student M's statement of facts and apology letter, was not retrieved until just before Mr. Bogiatzis testified at hearing. He filed the report in his own filing system and came across the report as he prepared for his testimony.

100. The following week, Ms. McGowan provided Ms. Orloff with a written report of the October 2, 2017 incident. Ms. McGowan reported the class was playing a game of "Jailbreak" on the volleyball courts. Two games were being played, and Ms. McGowan was supervising both games. She observed Student upset as he left the game and the volleyball courts area. She directed him to return to the area. Ms. McGowan suggested Student sit down in the shade to cool off and calm down. However, according to the report, Student was already a distance away, ignored her, and kept walking away. Two classmates followed Student to convince him to return to the game. Ms. McGowan then observed Student grab one of the students in a headlock and attempted to punch the student in the face while trying to bite the student's shoulder. She approached the students and she yelled for Student to let the student go. Ms. McGowan did not observe the other student punch Student, as the other student was only concerned about getting away. The second student helped pull the student out of the headlock. Student continued to leave the area. Ms. McGowan asked another student to follow Student at a distance to ensure Student got into the gated campus safely.



101. At hearing, Ms. McGowan explained that October 2, 2017, was the only time she taught Student. On that date, she and Student's assigned physical education teacher, Ms. Andreasen, swapped classes. Ms. McGowan was supervising the class on the volleyball courts. She divided the class to play two games of "Jailbreak." Ms. McGowan testified she stood at the end of the volleyball courts, between the courts, and stood five feet away from Student during the game. She did not observe anything out of the ordinary or concerning while Student was in the game. Student then began to leave the volleyball court. She noticed he was upset, so she asked him to take a break and relax in the shade. Student continued to walk away. Ms. McGowan asked him where he was going and asked him to return. Student did not respond. Student M followed Student and was about 15 feet away from Ms. McGowan when student M caught up to Student. Student put student M in a headlock. She did not observe student M push Student. According to Ms. McGowan, Student released student M and continued to walk off the volleyball courts. She assumed he was returning to the campus. Ms. McGowan asked another student to follow Student to ensure he safely returned to campus.

102. On October 9, 2017, student L submitted his statement of facts regarding the Jailbreak game incident. Student L wrote he and student M followed Student when he left the Jailbreak game. He and student M asked Student to return to the game. Student then told them both to go back to the game or "I will make you myself." Student L wrote that Student told student M that he was going to punch student M in the face. Student L saw Student grab student M and swing him around.

103. On October 10, 2017, student M submitted another statement of facts for the same incident. Student M wrote that he and student L followed Student and tried to convince Student to return to the game. When student L returned to the game, he and Student were alone. Student then threatened, grabbed, and attempted to hit him and bite him on the shoulder. Mother learned for the first time at hearing that the written

accounts prepared by Ms. McGowan, student M, and student L did not report Student was hit.

104. Student could be inflexible at times, and did not respond well when corrected by peers and teachers. Student was easily frustrated with his peers, and he had a tendency to inaccurately interpret and perceive what others students said and did. A benign comment was interpreted to be aggressive. His perception of being bullied had more to do with his difficulties in interacting with his peers as a result of his social and communication deficits than it had with the occasional name-calling he experienced.

October 5, 2017 IEP

105. On October 3, 2017, Mother emailed Student's teachers and Ms. Antonatos informing them that Student would need to be at home for a while under doctor's advisement. In her email, Mother requested the teachers provide her with any assignments for the remainder of the quarter, which ended around the middle of October.

106. Student's annual IEP team meeting convened on October 5, 2017.<sup>2</sup> Mother, Ms. Antonatos, Ms. Malamantenios, and autism specialist and intensive behavior intervention supervisor, John McCarthy, attended. Mr. Hale joined the meeting approximately 46 minutes into the meeting. Ms. Dunncliffe did not attend the meeting. District provided Mother with her procedural safeguards. She waived a reading of the safeguards.

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<sup>2</sup> Student's audio recordings of the October 5, 2017, and October 27, 2017 IEP team meetings were admitted into evidence and reviewed in their entirety by the ALJ.

## PRESENT LEVELS OF ACADEMIC AND FUNCTIONAL PERFORMANCE

### Social-Emotional Functioning

107. The IEP team began with addressing Student's present levels of performance. As to the areas of social-emotional functioning, communication, and behavior, the IEP team reviewed Mr. Vargas's written progress report. Mr. Vargas opined that Student worked well with group members in the social skills class. He attended the additional lunch period group. Mr. Vargas observed a few instances when Student's emotions overtook his sensibility and he made poor decisions. Ms. Antonatos shared the same observations; when Student was caught up in his emotions, it was difficult for him to manage his feelings in the heat of the moment. Mr. Vargas noted that he would continue to work with Student in not allowing his emotions to cloud his judgement and decision-making.

108. Mr. Vargas opined that Student met the "Acceptance/Flexibility" goal in his social skills group setting. Student had no issues transitioning from a preferred activity into a less preferred activity. However, District clarified that though Student met this goal in the social skills class, it was District's recommendation to continue the goal to allow Student to generalize this skill in other settings. As an area of need, the IEP noted that Student continued to demonstrate some inflexibility, verbally protesting when asked to do a non-preferred activity or when corrected by a teacher. Student responded in a loud and argumentative manner when things did not go his way or when routines were changed. His struggles occurred mainly when interacting with peers. The October 5, 2017 IEP noted that this occurred more than 60 percent of the time. At hearing, Ms. Antonatos clarified that the 60 percent was a clerical error and the correct percentage should have been 35 to 40 percent. Ms. Malamatenios observed Student in the classroom, the social skills class, and in Ms. Antonatos' resource class. At the meeting, she shared that Student did not consistently respond appropriately to being corrected

by teachers or peers.

109. Additionally, Student was not using appropriate coping strategies during challenging peer interactions. In response, Student engaged in avoidance behavior such as leaving the classroom upset or putting his head down to remove himself from the interaction. However, after calming down, Student was able to gain perspective and articulate his feelings and the feelings of others.

#### Communication

110. Student met the "Figurative Language" goal in the social skills group setting where he had no difficulty distinguishing between literal and non-literal language. Student had not met, but was making progress towards, the "Perspective Taking" goal, even in his social skills studies class. Student's emotions overwhelmed him at times, clouding his judgment. Student was good about discussing those periods of being emotionally overwhelmed and offered better ways of handling the situation. Mr. Vargas noted that they would continue to work on improving his coping skills and strategies to deal with stressful situations.

111. Though Student improved his ability to work in small groups, he continued to struggle with conversational language outside of the social skills studies class. He interpreted figurative language literally and did not always pick up on jokes made by peers.

112. His interactions with peers improved, he was able to make friends in the classroom, and participated in group work. However, he continued to react negatively when frustrated. Being corrected by teachers and peers, or when a classmate made a comment he disagreed with, were just some of the things that easily frustrated Student. He was able to gain perspective when the moment had passed and could identify and articulate his feelings and the feelings of others.

### Behavior

113. Mr. Vargas reported that Student met the "Redirection of Attention" goal in the social skills group setting; however, Student still needed to generalize the goal across all educational settings. In group, Mr. Vargas noted that Student had no difficulty attending to task throughout the duration of the social skills class session. However, the October 5, 2017 IEP also noted as a baseline for the behavior goal, that Student still required intermittent teacher prompting to self-regulate, monitor his attention to task, and apply self-monitoring strategies. This baseline was essentially the same baseline reflected in the October 6, 2016 IEP.

### Written Expression

114. Student met his "Text Dependent Paragraph" writing goal. Student was creative and answered text-dependent questions with proper components, with prompting. He identified the evidence for a claim and had no problem articulating his point. Student still struggled with organization and receiving correction from peers and teachers during editing.

115. Mother shared that they were working hard towards the goals and that middle school continued to be very hard for Student, socially and emotionally. The IEP noted that Student's social studies and English teachers observed Student to follow group instruction, work independently, and complete assignments. His math teacher observed him to be inconsistent in those areas.

116. At the meeting, Ms. Malamatenios shared that she failed to provide Student with eight sessions of once-a-month, 30 minute, direct speech and language services, as called for in the October 6, 2016 IEP. She misunderstood the October 6, 2016 IEP to provide for consultation instead of direct service. Ms. Malamatenios apologized to Mother and indicated she would provide eight sessions of pull-out speech and language services to make up for the missed services.

## ANNUAL GOALS

117. The October 5, 2017 IEP proposed two goals in the area of social-emotional functioning, two goals in the area of communication, one goal in the area of behavior, and two goals in the area of written expression.

### Social-Emotional

118. The first social-emotional goal was identified as "Acceptance/Flexibility. Student was expected to independently accept a change without protest in four out of five opportunities over a two week period when presented with a change in his routine, specifically to a non-preferred activity. Progress was to be measured using data collected from observations. The education specialist and the general education teacher were responsible for the goal. The annual goal as written mirrored the October 6, 2016 IEP's "Acceptance/Flexibility" goal, with the same people responsible for the goal using the same evaluation methods.

119. The second social-emotional functioning goal was identified as "Coping Strategies." When presented with a challenging peer interaction, the goal required Student to independently utilize previously identified coping strategies, such as going to a "safe place" for a short, specified period, taking a break, and taking a deep breath and counting before reacting. Student was expected to demonstrate this in four out of five opportunities across all settings. The goal was to be measured through observations. Student, an education specialist, a speech-language pathologist, a general education teacher, and an intensive behavior intervention tutor were identified as the people responsible for the goal.

120. The October 5, 2017 IEP did not offer a goal, similar to the October 15, 2015 IEP's "Frustration/Self-Regulation" goal, which was not continued in the October 6, 2016 IEP, to help Student regulate his feelings and express inappropriate and hurtful thoughts by using strategies such as requesting a break, asking for help, or using a calm

voice.

### Communication

121. The first communication goal was labeled "Indirect Language." Ms. Malamatenios explained at the IEP team meeting this goal was to focus on helping Student grasp what a statement was inferring or hinting at. To meet the annual goal, Student had to demonstrate understanding of the difference between direct and indirect language, such as jokes and sarcasm that occurred during a social interaction once per week. The interaction was to occur during structured and unstructured activities in the classroom, speech room, and in the social skills group. The goal was to be measured by observations, with the education specialist, speech-language pathologist, general education teacher, and intensive behavior intervention tutor designated as the responsible individuals for the goal.

122. "Perspective Taking," the second communication goal required Student to demonstrate flexible thinking and behavior by taking the perspective of others during small group work. This was to occur during unstructured activities during the school day. Student would accomplish the annual goal by going along with another student's idea or approach, without prompting from a teacher or instructional aide, and reducing his outbursts or inappropriate responses to no more than once per month. The goal was to be measured through observations. The education specialist, speech-language pathologist, general education teacher, and intensive behavior intervention tutor were responsible for the goal.

### Behavior

123. The "Redirection of Attention" goal was continued from the October 6, 2016 IEP. The goal and its two immediate benchmarks were identical to the prior IEP's goal in this area. The same method of measurement was proposed and the same people

were tasked with the goal.

124. At the IEP team meeting, Ms. Antonatos reported that Student was able to access the curriculum and use strategies when he was distracted to self-regulate his attention. However, Ms. Antonatos explained the recommendation to continue the goal was to allow student to continue to strengthen in this area because it was an important skill Student would need to turn to as he progressed through middle school and high school.

#### Written Expression

125. The first writing goal was identified as "edit revise." Student was expected to correct and revise identified errors and add details on final draft writing pieces with an average of 80 percent accuracy on three trials. The goal was to be measured using data collected through observations.

126. "Text evidence," the other writing goal, expected Student to accurately and appropriately use at least two pieces of evidence from a written story to support claims. Student was expected to average 80 percent accuracy on three trials. The goal was to be measured by data collected through observations and work samples. Student and a general education teacher were responsible for both writing goals.

#### PLACEMENT, ACCOMMODATIONS, SUPPORTS, AND SERVICES

127. District offered to place Student in the general education classroom, with four percent of the time spent outside of general education for special education services. The IEP identified Student's need for small group instruction to be provided by specially trained staff. The accommodations and supports offered were identical to the October 2016 IEP.

128. Services offered consisted of direct specialized academic instruction for 52 minutes daily and specialized academic instruction, once per week for 20 minutes on a



consultation basis. District offered "Collab English and Collab Math," though only one 52-minute class was offered. District also offered direct speech and language services, in a separate setting, once per month for 30 minutes. Lastly, District offered one, 30-minute session of intensive behavior intervention direct services each week.

129. At the IEP team meeting, Ms. Malamatenios suggested Student could meet with a District intervention specialist to discuss coping strategies Student could use to deescalate when emotionally overwhelmed. This suggestion was for a one-time meeting and not offered as an IEP service.

130. Upon arriving about 45 minutes into the IEP team meeting, Mr. Hale asked Mother how Student was doing. Mother explained that Student was physically ill and that his absence was also a continuation of why he missed first period science class a few days before. Student was home with a doctor's note. Ms. Antonatos asked if Student's illness was psycho-somatic. Mother responded that they were trying figuring it out. Mr. Hale shared that he felt Student's description of their interaction on September 28, 2017, following the fire drill was a bit distorted in how Student described the way Mr. Hale spoke to him.

131. Mr. Hale asked Mother how he could support Student. Mother welcomed any help, such as assignments, to help her support him at home. Mr. Hale informed Mother that if Student did not return the following Monday he would reach out to Mother and put together some assignments to send home.

132. As the IEP team meeting was concluding, Mother asked, "One of the questions I asked last year, so I would ask it again, just to double check that we still think this is an appropriate placement because I feel like there's social emotional things in here that lead me to want to ask that question." District IEP team members opined that Ladera Ranch was an appropriate placement to allow Student to strengthen his social and communication skills in a natural setting. Ms. Malamatenios suggested that

an intervention specialist could meet with Student, get a preliminary reading and provide an opinion if additional services were appropriate. If so, then a social-emotional assessment may be necessary and if that was the case, then Student's triennial assessments could be conducted sooner. Ms. Malamatenios explained that an assessment was needed to add intervention specialist support as an IEP service. District IEP team members opined that the school setting offered Student a natural environment to apply and foster his social skills.

133. At the IEP team meeting, Mother also shared that Student was punched in physical education class on October 2, 2017, but the post-fire drill and Jailbreak game incidents were not discussed in detail. District IEP team members acknowledged the need to help Student feel safer about returning to Ladera Ranch, and emphasized the importance of involving the intervention specialist. Mother initialed the IEP indicating she had an opportunity to participate and develop the IEP. The IEP team meeting was concluded with no discussion of convening a follow-up IEP team meeting

134. Ms. Dunncliffe arrived after the conclusion of the IEP team meeting, but Ms. Antonatos asked Ms. Dunncliffe to sign the participation page of the IEP despite not being present at the IEP team meeting.<sup>3</sup> Ms. Dunncliffe asked when Student would be returning. Mother responded that she did not know when Student would be returning. Ms. Dunncliffe asked why Student was out, Mother informed her that Student was not physically and social-emotionally able to attend school at that time and he was being assessed and the goal was for him to return to school but he was not yet ready to return. At the meeting, Mother did not identify the evaluator who was assessing Student.

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<sup>3</sup> This portion was captured in Student's audio recording of the October 27, 2017 IEP team meeting.

135. After the meeting, Ms. Dunncliffe, Ms. Antonatos, and Mother discussed the possibility of having Student take a math test at Ladera Ranch the next day. Mother did not rule out the possibility. She requested notes from Ms. Dunncliffe to help Student prepare for the test should Student choose to come to Ladera Ranch the next day. Student did not return to Ladera Ranch to take the test.

136. On October 6, 2017, Mr. McCarthy emailed Mr. Duarte and copied Ms. Antonatos, Mr. Youngerman, and Ms. Malamatenios. In his email, Mr. McCarthy felt Student was avoiding school due to "fears of returning: bullying, teasing, etc." Mr. McCarthy wrote, "This didn't sit well with me, and I'm wondering if there is a plan to get him to return to school, and how to make him feel safe at Ladera. ... I felt like the meeting left some things unanswered."

137. Ms. Orloff emailed Mr. McCarthy shortly thereafter. She shared her investigation of the Jailbreak incident. Student reported being punched in the face in physical education class; however, no marks were visible. Ms. Orloff explained that her investigation at that point, suggested Student left the game, walked away from the vicinity, and was followed by a classmate. They then pushed each other.

138. In her email, Ms. Orloff also shared that she spoke to Mother about the incident and suggested that Student be provided a "safe place" to go, a location within sight of a teacher when he felt overwhelmed in physical education class. Student would need to request to go to the safe place and return to join the class, seeking permission from the teacher when leaving to and returning from his safe place. According to Ms. Orloff's email, Mother had agreed. Ms. Orloff wrote that Ms. Antonatos should include this as a goal in the upcoming IEP. In her email, Ms. Orloff also apologized to Mr. McCarthy that they "did not have an admin present at the meeting. ... it should have been me."

139. That same day, Mr. Youngerman replied to the IEP team. In his email, Mr.

Youngerman suggested adding a social/emotional goal and offering support by an intervention specialist a couple of times over the next month or two. Mr. Youngerman wrote that he agreed with Mr. McCarthy that "there does not seem to be a plan for this student to return to school." He suggested that Student meet with a District intervention specialist who was a licensed therapist. Mr. Youngerman also suggested that District obtain authorization for the release of information for District to speak to Student's private doctor, consider involving a District nurse for medical issues, and to convene a staff meeting.

140. Mr. McCarthy signed his name on the October 5, 2017 IEP participant signature page as the autism specialist. No one signed as the administrator and there was only the typed name "Orloff, Kristin" next to the signature line. At hearing, Mr. McCarthy testified that he acted as the administrator at that IEP team meeting and had represented to the IEP team during that meeting that he could assume that role. No such representation was made. At hearing, both Mother and Ms. Antonatos testified that there was no one acting as administrator at the meeting. Furthermore, Ms. Orloff acknowledged in her October 6, 2017 email to Mr. McCarthy, Ms. Antonatos, Mr. Youngerman, and Ms. Malamatenios, that no administrator was present at the October 5, 2017 IEP team meeting. When questioned by the ALJ at hearing, Mr. McCarthy testified that of the nearly 300 IEP team meetings he attended, the October 5, 2017 IEP for Student was the only time he assumed the role of administrator. Mr. McCarthy was not truthful about his role at the IEP team meeting. Accordingly, his testimony was given little weight due to his effort to mislead the ALJ.

141. At hearing, Ms. Orloff also testified that an administrator was present at the October 5, 2017 IEP team meeting and that all legally required IEP team members were present. However, Ms. Orloff also testified that she did not know Mr. McCarthy's credentials but understood that Mr. McCarthy was functioning as the administrator at

the IEP team meeting. Yet in her own email the day after the meeting, she acknowledged no administrator was present and she should have been her acting as administrator at the October 5, 2017 IEP team meeting. Furthermore, Mr. McCarthy responded to her October 6, 2017 email and did not clarify his role at that IEP team meeting. Ms. Orloff's testimony was inconsistent and an effort to cover District's failure to include an administrator at the October 5, 2017 IEP team meeting. Accordingly, her testimony was given little weight.

142. On or shortly after October 9, 2017, District received a letter written by Dr. Chopra dated October 9, 2017, stating she had been treating Student since March 2015 for Autistic Spectrum Disorder, ADHD, generalized anxiety disorder, and depressive disorder. Dr. Chopra stated Student had shared with her in the past year about several incidents of bullying and negative experiences in school. Dr. Chopra noted Student had nightmares about returning to Ladera Ranch. She prescribed Student Zoloft, an anti-depressant and anti-anxiety medication, in January 2017. Dr. Chopra observed Student to worsen in the past several months with respect to depression and anxiety, with his experiences in school being the biggest factor. Dr. Chopra opined that Student should be placed in another setting in the event his IEP accommodations or additional accommodations for his health and safety could not be provided. While District and Parents worked to resolve the issues, Dr. Chopra recommended Student receive instruction in the home.

143. At hearing, Dr. Chopra defined "generalized anxiety disorder" as having excessive worry and nervousness, more often than not, where the individual cannot control the worry. The worry is so intense that it leads to restlessness, lack of focus, irritability, fatigue, muscle tension, and sleep loss. She opined the disorder typically lasts for six months. Dr. Chopra defined "depressive disorder unspecified" as being sad or irritable, having sleep difficulty, feelings of worthlessness or guilt, low energy, lack of

focus, eating too much or too little, self-harm or suicidal thoughts.

144. Dr. Chopra testified that Student did not have active suicidal thoughts but presented with passive suicidal thoughts. She explained passive suicidal thoughts as wondering if life was worth living or a person wishing they were not around. Dr. Chopra shared Student consistently felt unsafe at Ladera Ranch for the past three years. He felt he could not trust the teachers. Based on his negative experiences with students at Ladera Ranch, she opined that returning to Ladera Ranch would be too traumatic for him. Dr. Chopra opined that the irreversible negative association he had with Ladera Ranch would only worsen his anxiety should he return to Ladera Ranch.

145. At hearing, Dr. Chopra explained that her October 9, 2017 letter was to support in-home instruction for Student while Parents and District developed a plan that addressed accommodations and possible new school locations for Student. She opined that Student desired to return to a school setting but not to Ladera Ranch.

146. Amanda Bratcher was District's program specialist since October 2017. Ms. Bratcher possessed a bachelor's degree in sociology and a master's degree in special education. She was credentialed in administrative services and moderate/severe special education. Ms. Bratcher reviewed Student's triennial assessment, prior IEPs, educational records and in speaking with other members of his IEP team. She and other IEP team members discussed Dr. Chopra's letter at a staffing meeting soon after receiving the letter.

147. At hearing, Mr. Youngerman and Ms. Bratcher opined that Dr. Chopra's letter was too broad and did not provide enough information to determine if home hospital instruction was appropriate. They also expressed confusion as to Dr. Chopra's recommendation for either short-term or longer-term home hospital instruction. Mr. Youngerman opined that if Student's condition was long term, then a more permanent restrictive setting would be more appropriate. Mr. Youngerman advised Ms. Antonatos

to possibly invite Dr. Chopra to participate at an IEP team meeting. District did not share with Parents any concerns they had about Dr. Chopra's letter before the next IEP team meeting. District also did not ask Parents if they would agree and consent to having Dr. Chopra participate in the next IEP team meeting to share her knowledge of Student.

148. On October 10, 2017, Ms. Antonatos wrote to Parents, requesting to schedule an IEP team meeting. She included an IEP Meeting Notice and a Notice of Procedural Safeguards. The IEP Meeting Notice indicated the purpose of the meeting was for a "Part II" of the annual IEP review and offered three dates and times for possible meetings. Also invited to the meeting were a principal/designee, a special education teacher, and a general education teacher. Neither Dr. Chopra, nor a school psychologist was invited. Parents responded indicating their intention to attend the meeting on October 27, 2017.

149. On October 23, 2017, Dr. Chopra provided Student with a medical note retroactively excusing Student from school on September 28, 2017, and from school prospectively beginning on October 3, 2017.

#### October 27, 2017 IEP Team Meeting

150. The IEP team reconvened for Student's annual IEP review. Parents, Student's attorney Tony Nguyen, Ms. Orloff, Ms. Antonatos, Ms. Malamatenios, school nurse Julee Malone, and Ms. Bratcher attended. No school psychologist was present. Parents excused the attendance of a general education teacher. District offered Parents a copy of their procedural safeguards. Parents declined the safeguards.

151. The IEP team discussed placement options. Mother advised the team that she could not get Student to step foot on Ladera Ranch. She did not feel Ladera Ranch was a safe environment to push him to return to. Mr. Nguyen shared that Student adamantly expressed to him he did not feel safe to return to Ladera Ranch. Mother expressed frustration that there were nine to ten incident reports filed and not all had

been investigated. She also expressed concern that Student's IEP accommodations had not all been provided. She was confused and concerned that the October 5, 2017 IEP offered goals that had been previously met but were being continued, which suggested to her that either the IEP team did not know Student's present levels of performance or that Student had regressed. Father voiced his frustration that he could not get Student to attend community events such as church for fear Student would encounter other students from Ladera Ranch. Father opined that Ladera Ranch was a hostile environment in Student's eyes.

152. District listened carefully to Parents' reports and did not discount Student's fear and anxiety about returning to Ladera Ranch. Parents reiterated their concern that Ladera Ranch was not an appropriate educational setting for Student. Ms. Orloff suggested a modified school schedule that would allow Student to attend Ladera Ranch for academics, speech and language services, and social skills classes. Parents shared that it was their hope that Student would return to a school campus, but the priority was to address his fears and anxiety before sending him back on campus.

153. Ms. Malone explained that in her experience, a student's anxiety, whatever the cause, overrode everything they did for the student. She opined that if Student was dead set on not coming back to Ladera Ranch, for whatever reason, pushing him to return to Ladera Ranch would be setting him up for failure. She further opined that he was too young to be able to set aside his fears and reassure himself that he would okay returning to Ladera Ranch.

154. Parents confirmed that Student was receiving counseling services and medication management by Dr. Chopra. District explained that home hospital instruction was typically offered to address significant, short-term illnesses. According to District, home hospital instruction would allow no more than five hours a week of instruction, typically after school hours between three and five o'clock in the afternoon.



District further explained that a home hospital instruction teacher would not normally be trained, and be experienced in teaching all subject matters. Ms. Orloff was clear that home hospital instruction was an option. She also suggested that if Student would not return to Ladera Ranch, another District middle school could be a suitable option. District suggested Dr. Chopra work with Student on defining his anxiety, whether his anxiety stemmed from Ladera Ranch specifically or school in general.

155. The IEP team discussed virtual school or a blended program of on-campus instruction with some virtual classes. The team also discussed conducting assessments. District proposed conducting Student's triennial assessments early. Parents were provided with a Medical Status Report, a form to be completed by Dr. Chopra to initiate home hospital instruction because District found Dr. Chopra's letter was not sufficient. District stated that home hospital instruction was driven by the physician. Once the physician completed the Medical Status Report form and District authorized it, an addendum IEP to change the placement would be developed. The addendum IEP would not require another IEP team meeting. District provided Parents with an assessment plan and a release of information authorization form to allow District to speak to Dr. Chopra and obtain current information as to Student's present levels of functioning. District did not express to Parents any confusion, concern, or inconsistency relating to Dr. Chopra's letter. District reiterated that home hospital instruction and virtual school were options at the time. District did not advise Parents that consent to the assessment plan or to the release of information was required prior to initiating home hospital instruction or virtual school.

156. At the IEP team meeting, when asked if District was making a FAPE offer, Ms. Bratcher stated, "We don't know the extent, would need to do some assessments on the anxiety." The IEP meeting notes for October 27, 2017 stated, "There was no offer of FAPE at this time. The current offer of FAPE, on 10/5/17 was made prior to receiving

letter from [Student's] medical doctor note 10/9/17. The team would like to move [Student's] Triennial assessment to gather more information and include social emotional assessment to determine if the offer of FAPE remains appropriate. The nurse told parents the option of HHI was driven from the doctor's input on the MSR. The [assistant principal] indicated virtual could start as early as Monday." The meeting concluded with no discussion of a follow up IEP team meeting to convene a third part of Student's annual IEP review.

157. At hearing, Ms. Antonatos, Ms. Orloff, and Ms. Bratcher all testified that the offer of FAPE made on October 27, 2017, was the same offer presented on October 5, 2017. It was District's position at hearing that no new information was provided to warrant changing the October 5, 2017 offer of FAPE. Furthermore, Ms. Antonatos testified at hearing that District needed assessments of Student since District received new information as to Student's social-emotional well-being, as Student was anxious and fearful of returning to Ladera Ranch.

#### October 27, 2017 Assessment Plan

158. The October 27, 2017 assessment plan was identified as a triennial assessment. The plan proposed to assess Student in the areas of academic, speech/language, intellectual development, social/emotional/adaptive behavior, perceptual/processing, and health/physical status. Parents consented to the assessment plan in March 2018. Parents did not explain the delay in providing consent. Also, Parents did not consent to the release of information to allow District to speak to Dr. Chopra. At hearing, Mother explained that the release was too broad and she was concerned that sharing Student's information would jeopardize Student's relationship with Dr. Chopra.

#### Home Hospital Instruction

159. Dr. Chopra completed the "Physician Section Only" portion of the Medical

Status Report. She indicated in the report that Student could not participate in a portion of the school day. Dr. Chopra also indicated on the report that Student could not participate in a one-hour-per-week established alternative instructional program that would require him to leave the home one hour per day or for an average of five hours per week. Dr. Chopra indicated on the report that Student did not have a medical illness or immune-suppressive condition that restricted his contact with others. She also indicated that Student could leave the home. Dr. Chopra testified she had not entered an estimated return date because she was uncertain when Student would be ready to return to school, and her failure to date her signature was an oversight on her part.

160. The evidence did not include clear dates on which information passed back and forth, but Mother submitted the Medical Status Report to Ms. Antonatos within a week after the October 27, 2017 IEP team meeting. District called Mother two weeks later and informed her that the estimated return date and signature date needed to be entered. Mother contacted Dr. Chopra by phone and Dr. Chopra authorized Mother to enter the dates on Dr. Chopra's behalf. Dr. Chopra authorized Mother to enter May 1, 2018, as the projected date of return. Mother back dated Dr. Chopra's signature November 1, 2017. Mother wrote her initials next to the dates. Mother immediately resubmitted the corrected Medical Status Report to District.

#### District's Efforts to Hold Another IEP Team Meeting

161. On November 16, 2017, Ms. Antonatos wrote to Parents requesting to schedule an IEP team meeting, and she included an IEP Meeting Notice and Notice of Procedural Safeguards. The IEP Meeting Notice indicated the purpose of the meeting was to review Student's annual IEP and proposed three meeting dates for Parents to choose: November 28, December 4, and December 8, 2017. Ms. Antonatos' letter indicated that if Parents did not respond to District, "the IEP meeting will occur on the third date." Ms. Antonatos' letter did not provide details as to what concerns or aspects

of the annual IEP District sought to address at the meeting. Parents did not respond to the request to convene an IEP team meeting.

162. On December 4, 2017, Ms. Antonatos again wrote to Parents requesting to schedule an IEP team meeting. The letter was similar to the previous letter dated November 16, 2017, and again included an IEP Meeting Notice and Notice of Procedural Safeguards. The IEP Meeting Notice indicated the purpose of the meeting was to review Student's annual IEP and proposed three meeting dates for Parents to choose: December 12, 13, and 20, 2017. Ms. Antonatos' letter indicated that if Parents did not respond to District, "the IEP meeting will occur on the third date." Ms. Antonatos' letter did not provide details as to what concerns or aspects of the annual IEP District sought to address at the meeting. District did not receive a response from Parents.

163. Student filed his complaint with OAH on December 6, 2017. District did not convene an IEP team meeting in December or before the due process hearing was held. Student did not return to Ladera Ranch. Neither between the dates Mother resubmitted the Medical Status Report form with the necessary dates included, as directed by Dr. Chopra, on approximately November 15, 2017, and the date Student filed his complaint, nor any time thereafter, did District move forward with setting up home hospital instruction. Instead, Student was home schooled by Mother, using school assignments periodically provided by his teachers until approximately January 17, 2018.

164. Parents finally consented to the assessment plan in March 2018. As of the time of hearing, Parents had not signed the release of information to authorize Dr. Chopra to talk with District.

#### PARENTS' EXPENDITURES

165. Student provided proof of 22 payments made by Parents to Premier Mind Institute between April 14, 2016 and January 10, 2018, in the form of canceled checks. The payments totaled \$6,050.

166. In January 2018, Parents enrolled Student in Fusion Academy for tutoring services in math and English. Student offered proof of payment of \$2,890 made on January 17, 2018, in the form of a credit card statement for tutoring services at Fusion Academy.

167. In mid-March 2018, Parents enrolled Student in full-time courses at Fusion Academy. At the time of hearing, Parents had paid \$6,212.50, amounting to half of the tuition owed to Fusion Academy for five classes. Parents did not provide District with written notice of their intent to privately place Student at Fusion Academy and seek reimbursement from District

168. Student's courses at Fusion Academy included math, English, science, social studies, and physical education. At the time of hearing, Parents were still in the process of adding one more class to give Student a full schedule. Student received one-to-one instruction with the exception of physical education, where Student had two classmates. Student did not receive social skills instruction at Fusion Academy. Student's only time to socialize with other students was during "Homework Café" where students worked on their individual assignments in a room along other students.

169. Mother testified that Student received good grades at Fusion Academy. Student did not share any difficulties or reluctance to attend Fusion Academy with Dr. Chopra. Student felt more accepted and enjoyed the one-to-one instruction.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>4</sup>

1. This hearing was held under the Individuals with Disabilities Education Act,

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<sup>4</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

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)<sup>5</sup> et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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

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<sup>5</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

Ed. Code, §§ 56032, 56345, subd. (a).)

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

4. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*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. 951, fn. 10.)

5. In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000] (*Endrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstance.” “[E]very child should have a chance to meet challenging objectives.” (*Ibid.*) *Endrew F.* explained that “[t]his standard is markedly more demanding than the ‘merely more than de minimis’ test .... [¶] The

IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.*, as the Court was "[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case." (*Id.* at p. 1001.) Further, the Ninth Circuit held that the Supreme Court's decision in *Endrew F.*, *supra*, did not change the FAPE standard, but rather clarified it. (See, e.g., *E.F. v. Newport-Mesa Unified School District* (9th Cir. Feb. 14, 2018) 2018 WL 847744, at \*1).)

6. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 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].) Student requested the hearing in this matter, and therefore Student has the burden of proof related to the issues for hearing.

ISSUES 1(A)(I), (II), (III), (IV), AND (V): DID DISTRICT FAIL TO PROVIDE SUFFICIENT AND APPROPRIATE ANNUAL GOALS AND SERVICES IN THE AREAS OF ACADEMICS, COMMUNICATION, BEHAVIOR, SOCIAL-EMOTIONAL, AND MENTAL HEALTH?

7. Student contends that October 6, 2016 and October 5, 2017 IEPs failed to



offer appropriate goals by failing to continue or modify all of Student's unmet goals. Student also argues that District failed to increase services for Student in the areas of communication and behavior when he did not meet the annual goals. Student further alleges the October 6, 2016 IEP failed to offer appropriate services to address Student's anxiety, depression, and withdrawal. Student also claims that District failed to provide speech and language services pursuant to the October 6, 2016 IEP. Additionally, Student argues that District failed to offer services through District's intervention specialist despite knowing that Student was struggling with generalizing his social skills outside of the social skills class.

8. District contends the IEPs goals were appropriate and that any goals that were met, but continued were offered to strengthen and generalize Student's skills in those areas. District also argues that Student received the benefit of eight inadvertently missed 30-minute speech sessions in his social skills class. Furthermore, District contends it had no reason to suspect that additional goals and services were necessary to support Student in the areas social-emotional and mental health.<sup>6</sup>

#### Legal Authority

9. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed,

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<sup>6</sup> Student asserts in his closing argument that District denied him a FAPE by failing to provide him with the accommodation of two "go to" adults as only one adult was identified, which prevented Student from seeing an adult in time of need. District argues that the accommodation was offered to Student at all times. This issue was not stated in Student's complaint and therefore, under Education Code section 56501, subdivision (i), it is not addressed in this Decision.

reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) The IDEA requires that an IEP contain a projected date for the beginning of special education services and modifications, and "the anticipated frequency, location, and duration of those services and modifications." (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

10. A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, "[t]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*)

11. 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.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in

12. The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).)

13. Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C.

§1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).)

The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

14. A student with a temporary disability which makes attendance in the regular day classes or alternative education program in which the student is enrolled impossible or inadvisable shall receive individual instruction provided the school district. (Ed. Code, § 48206.3, subd. (a).) The individual instruction may be provided in the student's home. (Ed. Code, § 48206.3, subd. (b)(1).) A "temporary disability" means a physical, mental, or emotional disability incurred by the student in which the student's return to regular day classes or to an alternative education program would not require special intervention. (Ed. Code, § 48206.3, subd. (b)(2).) A temporary disability shall not include a disability for which a student is identified as an individual with exceptional needs. (*Ibid.*)

#### Analysis

OCTOBER 6, 2016 IEP

#### 1(a)(i): Academics

15. Student's only academic weakness was in the area of written expression. The October 6, 2016 IEP noted there was insufficient information to determine if he met the October 15, 2015 IEP multi-paragraph writing goal. However, the October 6, 2016 IEP did not offer to continue that goal. Instead, the October 6, 2016 IEP offered a new writing goal to improve Student's ability to independently answer text dependent questions in a paragraph form. That goal was appropriate and measurable. As of October 6, 2016, Student only needed to work on organizing his writing and staying on topic. His new goal continued to address appropriate writing techniques. No evidence

was offered to show that the failure to continue the multi-paragraph writing goal deprived Student of an educational benefit.

16. The services provided to meet the October 6, 2016 IEP writing goal was also appropriate. Student was primarily in general education with a small percentage of his day spent outside that setting. He received appropriate specialized academic instruction and earned passing grades to allow him to progress academically year to year. By October 5, 2017, Student had met his October 2016 IEP writing goal. No evidence was offered at hearing as to what additional services could have been offered that District failed to provide.

#### 1(a)(ii): Communication

17. The "Figurative Language" and "Perspective Taking" goals offered in the October 6, 2016 IEP were appropriate. Student's pragmatic language skills required attention; he had difficulty interacting appropriately in both structured and unstructured settings. Student was also inflexible with peers, struggling to see their point of view. Both communication goals were tailored to improve Student's ability to interact, use conversational language and understand the perspective of others. Progress was measured through data collected through teacher observations and reports. Student failed to prove the communication goals were inappropriate or that other needs in the area of communication should be been addressed.

18. As for services, Student proved that District did not provide the direct speech and language services as required by the October 6, 2016 IEP. At the October 5, 2017 IEP team meeting, Ms. Malamantenios honestly disclosed she misread the October 6, 2016 IEP to interpret speech and languages services were to be provided on a consultation basis and not direct instruction. As a result, Student was not provided eight direct speech and language sessions over eight months of school.

19. District's argument that Student received the benefits of speech and

language therapy through the instruction provided by Mr. Vargas was unconvincing. The IEP required speech and language therapy to be provided by licensed or credentialed speech-language pathologist or an assistant supervised by a licensed or credentialed speech-language pathologist. Mr. Vargas did not have the training, experience or credentials to provide the service, and therefore, his instruction did not satisfy the October 6, 2016 IEP's related service requirement.

20. The October 2016 IEP called for monthly, 30-minute therapy sessions to be provided to Student directly. Failing to provide eight sessions over eight months, was more than a minor discrepancy from what was required by the IEP. Thus, Student proved by a preponderance of the evidence that District denied him the benefits of speech therapy to which he was entitled, in violation of the IDEA.

#### 1(a)(iii): Behavior

21. The October 6, 2016 IEP behavior goal, "Redirection of Attention," was designed to strengthen Student's ability to independently redirect his attention. The baseline, annual goal, and benchmark goals as written, mirrored the October 2015 IEP behavior goal that Student met. Though the October 6, 2016 IEP noted that he met the October 15, 2015 IEP "Redirection of Attention" goal, Student still could not independently redirect his attention outside of the social skills class. At the IEP team meeting, the teachers expressed a need to continue the goal to allow Student to generalize his skills in all educational settings. By failing to adjust any aspect of the behavior goal from 2015 to 2016, the goal could not have been tailored to meet Student's needs, as District did not discuss why Student could not generalize this goal outside of his social skills class and what he needed to do so. The October 15, 2015 IEP "Redirection of Attention" goal did not succeed in helping Student generalize independent redirection of his attention. Repeating the "Redirection of Attention" without tweaking the goal to target or measure generalization could only have led to

the same failed outcome. The October 6, 2016 IEP offered a behavior goal inadequate to meet Student's behavioral need. District committed a procedural violation by offering an inappropriate behavior goal. The violation denied Student the educational benefit of generalizing independent redirection of his attention across all educational settings, in violation of the IDEA. Accordingly, Student proved by a preponderance of the evidence that District denied Student a FAPE by failing to provide an appropriate behavior goal in the October 6, 2016 IEP.

22. However, though the "Redirection of Attention" goal was not tailored to Student's behavioral need, Student failed to show how the related services in the October 6, 2016 IEP were deficient. In addition, Student offered no evidence as to what additional services should have been offered to address Student's unique needs. Therefore, Student did not meet his burden in proving that the October 6, 2016 IEP failed to offer sufficient and appropriate behavior related services.

#### 1(a)(iv): Social-Emotional

23. The October 6, 2016 IEP's social-emotional goal, "Acceptance/Flexibility," was appropriate and measurable. As of October 6, 2016, Student still needed help accepting change without protest. The goal aimed to improve Student's ability to transition from preferred tasks to non-preferred tasks. The goal was measurable though data collected from observations. Student was offered social skills instruction by Mr. Vargas to address this goal.

24. However, the October 6, 2016 IEP failed to continue the "Frustration/Self-Regulation" goal, or use another goal to address this need. As of October 6, 2016, Student had not met the October 15, 2015 IEP's "Frustration/Self-Regulation" goal. Student continued to struggle to manage his emotions and express his frustration. He still became frustrated with his peers, and struggled to participate in group activities. Student was not receptive to the

instructional aide's assistance and became very exasperated and short with the aide. Ms. Chapa reported that Student would shut down when he got overwhelmed with stress. The evidence clearly demonstrated that Student's ability to manage his emotions and express his frustration appropriately remained an area of need, which required a goal, support and services. Therefore, Student met his burden in proving by a preponderance of the evidence that the October 6, 2016 IEP failed to offer an appropriate goal and services in the area of social-emotional functioning.

#### 1(a)(v): Mental Health

25. The weight of the evidence demonstrated that on October 6, 2016, District had no reason to suspect Student's mental health was an area of need that required goals and services to be offered in the October 6, 2016 IEP. District was previously aware that Student had a history of anxiety. Counseling services were not offered during Student's fifth grade year. Nonetheless, he succeeded in fifth grade as he met, or was making progress, in all areas.

26. Student had difficulty transiting to middle school. The IEP team anticipated some struggles and they developed the May 13, 2016 Addendum IEP with that in mind. Student's difficulties were primarily in math and English, centered on the instructional aides and his perception of his grades. He appeared unhappy in English class. He had difficulty responding positively to reminders from Ms. Chapa and the instructional aide and was often discouraged and then shut down. However, the past three weeks leading up to the October 6, 2016 IEP team meeting, Student greatly improved in that area. Also, there were no reports of any other struggles in his other classes. None of his other sixth grade teachers observed Student to be anxious or depressed.

27. Despite his reluctance to work with the aides, he continued to access the curriculum and earned grades of As and Bs in math and English, with the exception of a "C" for English in the fourth quarter of sixth grade. He earned mainly As and Bs for his

quarterly grades in the other classes. Amending his IEP to remove him from collaborative math, and moving his math class from fourth period to first period, alleviated a lot of his stress and he appeared happier at school. Seventh grade started well and his schedule was working out nicely. Student appeared stressed from time to time; however, the degree and frequency of his anxiety did not prevent Student from accessing grade-level curriculum in the general education classroom and making progress in his academic work and towards his IEP goals.

28. Furthermore, Parents did not inform District at any time prior to District receiving Dr. Chopra's October 9, 2017 letter, that Student's anxiety and depression were being addressed in therapy. Parents also did not share with District until October 9, 2017, that Student's anxiety had worsened and he was depressed, which required him to take anti-anxiety, anti-depressant medication since January 2017. District remained unaware of the severity of Student's anxiety for around nine months and unaware of his recent fear of returning to Ladera Ranch until District received Dr. Chopra October 9, 2017 letter and met with Parents on October 27, 2017.

#### OCTOBER 5, 2017 IEP

29. At the time District made its offer of FAPE on October 5, 2017, Student had only been out of school for three days. District had no reason to suspect Student's school-related anxiety was so severe as to impact his ability to access his education at Ladera Ranch for an extended period. On October 5, 2017, the severity of Student's anxiety and his projected return date to Ladera Ranch remained uncertain.

30. On October 27, 2017, an IEP team meeting was held to discuss the concerns raised by Mother at the conclusion of the October 5, 2017 IEP team meeting, along with Dr. Chopra's findings and recommendations reflected in her October 9, 2017 letter. District appropriately responded by proposing assessments of Student and sought parental consent to allow Dr. Chopra to speak to District. This would have



allowed District to investigate the concerns raised by Parents and Dr. Chopra regarding Student's school-related anxiety and fears of returning to Ladera Ranch. The post-October 5, 2017 information raised doubts within the IEP team as to whether the October 5, 2017 IEP offer of FAPE remained appropriate. District's effort to obtain current, accurate information about Student was reasonable. Without accurate information as to Student's social-emotional and mental health, District could not rework its offer of FAPE to address his needs. However, Parents refusal to allow Dr. Chopra to speak to District and their decision to withhold consent to the assessment plan until March 2018, denied District critical information necessary to make any changes to its October 5, 2017 IEP offer of FAPE.

1(a)(i): Academics

31. The October 5, 2017 IEP academic goals offered were appropriate in light of the information available to District at the time. The first writing goal, "edit revise," was tailored to address Student's struggles with accepting constructive corrections from peers and teachers. The goal was measureable, and adequately designed to be measured through data collected by observations.

32. Likewise, the second writing goal in the October 5, 2017 IEP was appropriate. The goal, "text evidence" was to help Student improve his writing organization by asking him to use pieces of evidence from a story to support his positions. The goal was measurable, calling for Student to increase his accuracy, as the number of evidences he was required to use increased.

33. The October 5, 2017 IEP services to support the writing goals were also appropriate in light of information District had at the time. The October 5, 2017 IEP offered direct specialized academic instruction daily for 52 minutes in collaborative English. Academics, overall, were an area of strength for Student and he required little support and services through the IEP to support him academically. Student failed to

establish how the services were inadequate and identify what additional academic services Student should have received. Thus, Student did not meet his burden in proving District failed to offer him appropriate goals and services pursuant to the October 5, 2017 IEP.

34. However, at October 27, 2017 IEP meeting, District was made aware of Student's extreme apprehension of returning to Ladera Ranch. What was apparent to all IEP team members at that meeting was that Student had an emotional ailment that made attendance at Ladera Ranch inadvisable. Whether Student's ailment was short-term or long-term remained unclear. In response, District provided Parents with a Medical Status Report, a form to be completed by Dr. Chopra to initiate home hospital instruction.

35. Parents provided District with a properly completed Medical Status Report form on, or about November 15, 2017. No IEP team meeting was required to develop an addendum IEP to provide Student instruction at home. All that remained was for District to authorize the instruction. However, no authorization was provided by District, nor was an addendum IEP developed to initiate home hospital instruction. Student was entitled to receive ongoing instruction due to his emotionally fragile state. Though District required more information to make an appropriate annual offer of FAPE, the weight of the evidence demonstrated that Student could participate in academic instruction in the home. Once District received the completed Medical Status Report from Parents on or about November 15, 2017, District had approximately nine school days before Student filed his complaint, to authorize and offer Parents an addendum IEP for temporary academic instruction in the home. District offered no explanation as to why an addendum IEP was not developed and offered. Student was left at home to be instructed by Mother using assignment packets sent home from school.

36. The failure to amend the IEP to provide Student academic instruction in

the home on a temporary basis was a procedural violation that denied Student an educational benefit. Therefore, Student established by a preponderance of the evidence that District denied him a FAPE by failing to provide him with academic services.

#### 1(a)(ii): Communication

37. The October 5, 2017 communication goals were appropriate and measurable based on the information District had at the time. Student struggled with conversational language outside of the social skills class. He interpreted figurative language literally and did not always pick up on jokes made by his peers. Being corrected by teachers or peers, or when a classmate made a comment he disagreed with, were just some of the things that easily frustrated Student. The two communication goals, "Indirect Language," and "Perspective Taking" were tailored to address Student's difficulties in picking up inferences from what he read and heard, and helped him think more openly, and respond accordingly, by gaining a better understanding of what others were thinking.

38. The October 5, 2017 IEP offered sufficient and appropriate services to help Student meet the communication goals. Speech and language services were to be provided by a licensed speech-language pathologist or an assistant speech-language pathologist on a monthly basis. Student did not offer any evidence calling in to question the adequacy of the services offered as to the communication goals. Student also did not present any evidence as to how much speech and language therapy student should have received instead. Further, Student offered no evidence as to whether Student was willing and able to benefit from speech and language services following the October 27, 2017 IEP team meeting while he was homebound. Therefore, Student did not meet his burden in proving that District failed to provide sufficient and appropriate goals and services in the area of communication.

#### 1(a)(iii): Behavior

39. The October 5, 2017 IEP failed to offer an appropriate behavior goal. The October 5, 2017 IEP offered the same behavior goal as the October 15, 2015 and October 6, 2016 IEPs. The previous IEPs' behavior goals failed to help Student generalize his ability to redirect his attention and District did not analyze why Student was not generalizing these skills outside of his social skills class. The goal as written was inadequate, and repeating the same goal, without any changes to the way the goal was measured or implemented, could only lead to the same failed result. The failure to offer an appropriate behavior goal was a procedural violation that denied Student the educational benefit of generalizing independent redirection of his attention across all educational settings. Therefore, Student proved by a preponderance of the evidence that District denied him a FAPE by failing to offer him an appropriate behavior goal in the October 5, 2017 IEP.

40. However, Student did not prove how the services in the October 5, 2017 IEP were inadequate to address Student's behavior needs. Student offered no evidence as to how the services were deficient or what additional services were needed but not offered. Hence, Student failed to prove the October 5, 2017 IEP failed to offer sufficient and appropriate behavior related services.

#### 1(a)(iv): Social-Emotional

41. The October 5, 2017 IEP's "Acceptance/Flexibility" goal was not appropriate and measurable to allow Student to generalize his ability to transition from a preferred activity to a non-preferred activity across all educational settings. He met the October 6, 2016 IEP's "Acceptance/Flexibility" goal in the social skills class, but could not generalize the skill across all educational settings. The October 5, 2017 IEP's "Acceptance/Flexibility" goal was identical with no analysis as to why he could not generalize this skill outside of his social skills class. The October 5, 2017 IEP did not

modify the goal in any way or offer additional services to help Student generalize the skill in other settings outside of the social skills class. Repeating the same goal, without any modification to the goal or to the related services, could only have led to the same result, the inability of Student to transition from a preferred activity to a non-preferred activity in other educational settings. Therefore, Student established by a preponderance of the evidence that the October 5, 2017 IEP's "Acceptance/Flexibility" goal was not designed to meet Student's social-emotional needs.

42. Furthermore, the October 5, 2017 IEP continued to fail to offer a goal to help Student express his frustration and regulate his emotions. Mr. Vargas and Ms. Antonatos observed Student's emotions to overwhelm his judgment. When Student was caught up in his emotions, it was difficult for him to manage his feelings while in the heat of the moment. The "Frustration/Self-Regulation" goal was first offered in the October 15, 2015 IEP, but Student never met that goal. The failure to continue that goal in October 6, 2016, and the failure to reintroduce the goal in October 5, 2017, were procedural violations. The violations denied Student the benefit of learning to express his frustrations and manage his emotions appropriately, similar to the instances Student experienced, such as the physical education incident when Student walked away from class due to his frustration. Therefore, Student met his burden in proving District denied him a FAPE by failing to include a goal to address Student's need to appropriately express his frustration and regulate his emotions, and to offer supports and services to meet that goal.

43. The second social-emotional goal, "Coping Strategies," was appropriate. Student engaged in avoidance behavior, such as leaving the classroom upset or putting his head down to remove himself from challenging peer interactions. It was an important goal that was geared to improve Student's ability to respond to challenging peer interactions by using coping strategies. However, this goal does not directly

address Student's inability to express his frustrations unrelated to challenging peer interactions, such as falling behind on classwork or being asked to redo an assignment.

44. The October 5, 2017 IEP offered weekly 30-minute social skills instruction. Student offered no evidence demonstrating the services offered were inadequate, and no evidence as to what, if any, other services were needed to address Student's social-emotional needs. Student did not offer any evidence to support why Student required an intervention specialist to help him generalize his social skills. Furthermore, Student offered no evidence that Student was willing and able to participate in services geared to address his social-emotional needs while he was homebound. Therefore, Student did not meet his burden in proving District failed to offer appropriate social-emotional services.

45. The failure to offer appropriate behavior goals were a procedural violation that denied Student the educational benefit of generalizing his ability to move from a preferred task to a non-preferred task across all educational settings and to more appropriately cope with his increasing frustrations at school. Therefore, Student proved by a preponderance of the evidence that District denied him a FAPE by failing to offer him an appropriate social-emotional goal in the October 5, 2017 IEP.

#### 1(a)(v): Mental Health

46. On October 5, 2017, District did not have sufficient information that warranted adding to the IEP, mental health goals and services, such as counseling. As discussed earlier in this Decision, it was not until District received Dr. Chopra's October 9, 2017 letter and in speaking to Parents on October 27, 2017, did District gain a fuller understanding as to the severity of Student's anxiety and the impact it was having on his education. On October 27, 2017, District requested authorization to allow Dr. Chopra to speak to District regarding her findings and recommendations. Parents denied District that opportunity. Without accurate information District could not determine if, or what,

goals and services, should have been offered. Accordingly, the absence of IEP goals and services in the area of mental health did not deny Student a FAPE prior to October 27, 2017.

ISSUES 1(B)(I) AND 1(B)(II): DID DISTRICT FAIL TO TIMELY PROVIDE AN ASSESSMENT PLAN AND ASSESS STUDENT IN THE AREAS OF SOCIAL-EMOTIONAL AND MENTAL HEALTH?

47. Student contends that District should have suspected Student's social-emotional and mental health needs were not being met, and his school-related anxiety was impacting his ability to receive an education. Student argues that District should have therefore assessed Student in the areas of social-emotional and mental health. District argues that it timely offered an assessment plan upon learning of the severity of Student's anxiety through Dr. Chopra's letter and the information shared at the October 27, 2017 IEP team meeting.

Legal Authority

48. A failure to properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.*, 158 F.Supp. 2d 1190, 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and District agree otherwise, but at least once every three years unless the parent and District agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted if the local educational agency "determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment." (20 U.S.C. §1414(a)(2)(A); 34 C.F.R. § 300.303(a); Ed. Code, §

56381, subd. (a)(1).)

49. A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

50. When a student is referred for special education assessment, the school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral, not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral. (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).) A school district is required to complete an assessment or reassessment and hold an IEP team meeting to review the results within 60 days of receiving written parental consent to assess, exclusive of school vacations in excess of five schooldays and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

#### Analysis

#### 1(B)(I): SOCIAL-EMOTIONAL

51. Student did not establish that District should have offered to assess Student's social-emotional functioning prior to October 27, 2017. Student also did not prove that District failed to assess Student's social-emotional functioning prior to hearing. District was aware that Student was anxious, and his anxiety primarily stemmed from this math and English classes, the instructional aides in those classes, and his perception of his grades. Yet, he continued to perform grade-level work and earned passing marks in all his classes throughout his time at Ladera Ranch. District responded



by changing Student's math from collaborative to general education in March 2017. That helped alleviate Student's anxiety and he appeared happier at school. Furthermore, Student did not report to his teachers he was being teased, called names, hit, or in any way harassed. Though Student reported to Mr. Bogiatzis of being called stupid or idiot on a few occasions, Student did not establish at hearing how these few incidents of name calling triggered a need for District to assess Student's social-emotional status or functioning.

52. On October 5, 2017, Mother told District that Student was not physically and social-emotionally ready to return to Ladera Ranch. District received Dr. Chopra's letter the following week. At the October 27, 2017 IEP team meeting the IEP team discussed in detail about Student's struggles with anxiety and his fears of returning to Ladera Ranch. In light of the new information, District timely provided Parents with an assessment plan at the October 27, 2017 IEP team meeting to assess Student's social-emotional status and functioning. Parents did not consent to the assessment plan until March 2018. District was entitled to 60 days to conduct and present its assessment findings to Parents. Therefore, Student failed to meet his burden to prove District should have sought and assessed Student's social-emotional functioning prior to October 27, 2017 and that District failed to assess Student's social-emotional function prior to hearing.

#### 1(B)(II): MENTAL HEALTH

53. Similarly, the weight of the evidence established that mental health was not an area of need to be assessed prior to October 27, 2017. Upon learning of the severity of Student's school-related anxiety, District offered Parents an assessment plan. Though the October 27, 2017 assessment plan did not offer a specific evaluation for mental health, no evidence was offered to demonstrate that the other evaluations proposed, such as the social-emotional functioning and health assessments were

inadequate to assess Student's present levels of functioning and needs. Therefore, Student did not meet his burden of proof that District should have offered to assess Student's mental health prior to proposing the October 27, 2017 assessment plan and that the October 27, 2017 assessment plan was insufficient.

ISSUES 1(C) AND 1(E): DID DISTRICT FAIL TO CONVENE A TIMELY IEP TEAM MEETING IN SPRING 2017, THEREBY DENYING PARENTS MEANINGFUL PARTICIPATION IN THE DEVELOPMENT OF STUDENT'S IEP?

54. Student contends District committed a procedural violation of the IDEA when it failed to convene an IEP team meeting within 30 days of receiving Parent's request for an IEP team meeting in the spring of 2017. Student claims that Parents requested an IEP team meeting to discuss changing Student's placement to a virtual school. Student argues that the failure to convene the IEP team meeting denied Parents meaningful participation to consider and develop an IEP providing Student with alternative placement options. District contends that an IEP team meeting was not specifically requested by Parents to discuss virtual school for Student.

Legal Authority

55. The law requires an IEP team to meet at least annually "to determine whether the annual goals for the pupil are being achieved, and revise the individualized education program, as appropriate, to address among other matters the following: (1) Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate. . . ." (Ed. Code, § 56341.1, subd. (d).) An IEP meeting must be called when the "pupil demonstrates a lack of anticipated progress." (Ed. Code, § 56343, subd. (b).)

56. A meeting of an IEP team requested by a parent or guardian to review an IEP pursuant to Education Code section 56343, subdivision (c), shall be held within 30

calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written request. (Ed. Code, § 56343.5.)

57. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (458 U.S. at pp 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

58. Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044 (*Doug C.*.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a free appropriate public education to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).)

59. A school district is required to conduct not just an IEP team meeting, but also a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485; *Fuhrmann v. East Hanover Board of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in

the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

### Analysis

#### 1(C): IEP TEAM MEETING

60. Student did not prove that District failed to convene a timely IEP team meeting in the spring of 2017. On February 2, 2017, Mother and Ms. Antonatos discussed convening an IEP team meeting to amend the IEP to change Student's math class from collaborative to general education. They agreed to convene an IEP team meeting on February 9, 2017. That meeting was canceled by District and was not rescheduled. Instead, the March 13, 2017 Addendum IEP was developed through phone calls by Ms. Antonatos to other IEP team members and resulted in an IEP that placed Student, according to Parent's desires, in general education math without an instructional aide. Mother consented to the March 13, 2017 Addendum IEP.

61. Subsequent emails from Mother to Ms. Antonatos from April 17, 2017, to May 10, 2017, requested Ms. Antonatos either speak with Mother by phone or in person, or convene an IEP team meeting to discuss virtual school or a modified schedule. Ms. Antonatos and Mother addressed the topic by phone, which Ms. Antonatos reasonably understood to be sufficient in place of convening an IEP team meeting, as Mother requested any of the three options, one being telephonic communication between Mother and Ms. Antonatos. Ms. Antonatos and Mother reached an understanding of Student's seventh grade schedule and that virtual school or a dual program would be considered by the IEP team if Student struggled early in his

upcoming seventh grade school year. The weight of the evidence demonstrated that an IEP team meeting was not clearly requested by Parents and that District responded to Parents' concerns in a manner proposed by Mother, which resulted in a plan that included evaluating Student's needs for a change of placement as Parents had wanted, without the need to convene an IEP team meeting.

62. Even assuming the failure to convene an IEP team meeting was a procedural violation, Student did not establish that the failure to convene the meeting significantly impeded Parents' ability to meaningfully participate in the development of Student's IEP or denied Student an educational benefit. The plan made and documented was in line with what Mother asked Ms. Antonatos to do. Therefore, Student did not meet his burden in proving Student was denied a FAPE when District did not convene an IEP team meeting in the spring of 2017.

#### 1(E): PARENTAL PARTICIPATION

63. Parents were afforded an opportunity to share their input in the development of each of Student's IEPs for the relevant period. Mother's input was welcomed and considered in developing the May 13, 2016 Addendum IEP. Parents shared their concerns at the October 6, 2016 IEP team meeting. In developing the March 13, 2017 Addendum IEP, District responded to Mother's request to change Student out of collaborative math class, which included an instructional aide, to general education math class. Student remained with Ms. Love, but no longer had the instructional aide who he was unwilling to receive support. Student failed to identify what, if any, input Mother shared but District failed to consider in developing the March 13, 2017 Addendum IEP.

64. Parents were also active participants in the two October 2017 IEP team meetings. Though Father did not attend the October 5, 2017 IEP team meeting, Mother was afforded an opportunity to express her concerns regarding the appropriateness of

the IEP offer of placement. District IEP team members listened and reiterated their belief that Ladera Ranch was an appropriate setting to help improve Student's social and communication skills in a natural setting. At the October 27, 2017, IEP team meeting, both parents expressed their frustration and District IEP team members listened and offered their point of view and suggestions. Student offered no evidence as to what information Parents shared that District ignored. Therefore, based on Parents' reports and the October 9, 2017 letter from Dr. Chopra, District initiated the process to provide Student home hospital instruction, contingent upon completion of the Medical Status Report form by Student's treating psychiatrist. District also proposed an assessment plan to obtain current information about Student's: 1) health, related to the severity of his anxiety and depression for which he had, unbeknownst to District, been taking psychotropic medication for about nine months; and 2) social-emotional functioning, again related to his anxiety and avoidance of school. District received and acted upon Parent's contributions at the October 27, 2017 IEP team meeting. Hence, Student did not meet his burden in proving District denied Parents the ability to meaningfully participate in the development of Student's IEP.

ISSUE 1(D): DID DISTRICT FAIL TO INCLUDE NECESSARY AND APPROPRIATE IEP TEAM MEMBERS AT IEP TEAM MEETINGS ON MAY 13, 2016, MARCH 13, 2017, OCTOBER 6, 2016, OCTOBER 5, 2017, AND OCTOBER 27, 2017?

65. Student contends that District failed to include an administrator at the October 5, 2017 IEP team meeting, and failed to include knowledgeable staff members who could provide input as to Student's social-emotional and psychological needs at the October 6, 2016, October 5, 2017, and October 27, 2017 IEP team meetings. District contends all legally required IEP team members were present in all the IEP team meetings.

## Legal Authority

66. The IEP team is required to include, as part of the team one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in the regular education environment; a special education teacher; and a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a).)

## Analysis

67. All legally required IEP team members were present for the development of the May 13, 2016 and March 13, 2017 addendum IEPs and the October 6, 2016 IEP. The May 13, 2016 Addendum IEP included Ms. Orloff, who was credentialed and qualified to act as District's administrative representative, special education teachers Ms. Antonatos and Ms. Paulson, general education teacher Ms. Chapa, and Mother. No new assessments were reviewed and therefore, no individual who could interpret the instructional implications of assessment results was required.

68. The October 6, 2016 IEP team meeting also included all legally required IEP team members. Furthermore, as previously determined in this Decision, District had no reason to suspect that additional assessments, goals and services in the areas of social-emotional and mental health were necessary at the time. In addition, there were no new assessment results to be reviewed and interpreted. Student did not prove that

additional individuals with knowledge or special expertise were required to attend. Student also did not demonstrate that there were issues that the members of the IEP who attended could not address.

69. The March 13 2017 Addendum IEP involved a special education teacher, a general education teacher, Dr. Duarte as administrator, and Mother. Student did not prove that anyone else should have been invited/included in amending the IEP for the specific purpose of addressing the change from collaborative math to general education math. Even if a necessary member of the team was not included, Student failed to show how that procedural violation impeded Parents' ability to meaningfully participate in the development of the IEP or denied Student an educational benefit. Mother consented to the March 13, 2017 Addendum IEP, the change alleviated some of Student's anxiety and Student earned passing grades in all his classes.

70. The October 5, 2017 IEP team meeting had no administrator in attendance. Mr. McCarthy did not act as the administrator despite his and Ms. Orloff's testimony to the contrary. However, Student offered no evidence to establish that the absence of an administrator on October 5, 2017 denied Parents an opportunity to meaningfully participate in the IEP process or deny Student an educational benefit. District was not making an IEP offer at this meeting after receiving new information about Student's mental health and District agreeing to convene a subsequent IEP team meeting to review this information.

71. On October 27, 2017, the IEP team reconvened to discuss the October 5, 2017 IEP offer of FAPE and placement options. Ms. Orloff did attend and properly assumed the role of administrator. Also in attendance was the school nurse, Ms. Malone, who provided valuable insight into Student's anxiety and fears. Student failed to establish what knowledge or expertise any other staff member or private individual would have offered to the IEP team that was not offered at the meeting. Parents



themselves did not invite or request that Dr. Chopra be invited, and even if she was, there was nothing to suggest that Parents were willing to allow Dr. Chopra to share her thoughts and opinions of Student considering that Parents did not want her to communicate directly with District at that time. Therefore, Student did not meet his burden in proving that District denied him a FAPE by failing to include all necessary individuals at the IEP team meetings.

ISSUE 2: DID DISTRICT FAIL TO PROVIDE STUDENT AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT FROM THE 2016-2017 SCHOOL TO THE PRESENT?

72. Student contends District's continued offer of placement at Ladera Ranch for the 2017-2018 school year was inappropriate. Student also argues that District failed to properly investigate and respond to other students bullying Student. Student asserts that the failure to do so denied Student a FAPE throughout his time at Ladera Ranch. District contends that its offers of placement were appropriate and provided Student with an educational benefit that allowed him to advance grade to grade.

73. The issue as to whether District denied Student a FAPE as a result of Student being bullied was not stated in Student's complaint and therefore, under Education Code section 56502, subdivision (i), it is not addressed in this Decision.

Legal Authority

74. Both federal and state law requires a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a); Ed. Code, § 56040.1.) "Least restrictive environment" reflects the preference by Congress that an educational agency educates a child with a disability in a regular classroom with their typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403.) A special

education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).)

75. 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.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

76. In a 2013 joint letter providing guidance on the IDEA, the United States Department of Education's Office of Special Education and Rehabilitative Services and Office of Special Education Programs described bullying as the use of real or perceived power over a target where the aggression is repeated, or has the potential to be repeated, over time. Acts of bullying include physical, verbal, emotional, or social behaviors ranging from blatant aggression to subtle and covert behaviors. (*Dear Colleague Letter*, 61 IDELR 265 (OSERS/OSEP 2013).)

77. The California Education Code defines bullying as "any severe or pervasive physical or verbal act or conduct by a pupil or group of pupils ... directed toward one or more pupils" that causes or is "reasonably predicted" to cause a reasonable student to experience one or more of the following: (a) fear of harm to his or her person or property; (b) a substantially detrimental effect on his or her physical or mental health; (c) a substantial interference with his or her academic performance; or (d) a substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school. (Ed. Code, § 48900, subd. (r).) A "reasonable student" is a pupil, including an exceptional needs pupil, who exercises average care, skill, and judgement in conduct for a person of his or her age, and with his or her special needs. (Ed. Code, § 48900, subd. (r)(3).)

## Analysis

### BULLYING

78. A substantial amount of time was expended at hearing on whether Student was bullied by other students at Ladera Ranch. Student's contention that continued placement at Ladera Ranch was inappropriate centers around whether Student was bullied; causing Student to fear for his safety and impeding his ability to receive an education at Ladera Ranch. The testimony, along with supporting documentary evidence and the lack thereof, demonstrated that Student was not bullied, as defined by the law, during his time at Ladera Ranch.

79. Mother testified that five to seven incident reports were filed in sixth grade relating to Student being bullied. However, only three incidents were supported by any documentary evidence. Student G's affidavit provided no details of the alleged bullying or how the other students were being mean to Student. Moreover, no other individual testified or affirmed through an affidavit, that they witnessed Student be bullied, or received reports of Student being bullied; no other parent, student, not even Student's own sister corroborated Student's accusations. Furthermore, no credible explanation was given as to why no other incident reports were offered at hearing. Student argues that Mother took meticulous notes regarding each incident she testified to, lending to her credibility. However, no such notes were offered into evidence at hearing.

80. Mother's accounts of bullying relied primarily on Student's reporting, who was not an entirely reliable reporter. His sixth grade teachers credibly testified not witnessing or receiving reports of Student being bullied from other students, including Student himself. Student did not always perceive comments and criticism from others accurately. This was evident during the February 14, 2017 incident, in which Student alleged a student called him an "unkind name." The accounts of the two witnesses named by Student refuted Student's claim, as one witness did not recall anything

negative being said. The other witness said he was not present during the incident. Additionally, Student alleged that Mr. Hale yelled at him about redoing an assignment, which Mr. Hale credibly testified was not the case.

81. Though Parents shared at the October 6, 2016 IEP team meeting that Student was bullied, no evidence was offered at hearing as to what was specifically shared and discussed by the IEP team. Furthermore, during the numerous email exchanges between Mother and Student's sixth grade teachers, only once did Mother report a concern about the conduct of other students. On April 19, 2017, Mother emailed Ms. Antonatos that other students made "some mean comments" to Student.

82. Dr. Chopra met with Student nine times during the 2016-2017 school year. She testified that in their sessions, Student initiated conversations about bullying at Ladera Ranch and openly shared those experiences. However, Dr. Chopra's relied solely on Student's and Mother's accounts. Moreover, Dr. Chopra offered no supporting letter in sixth grade, similar to her October 9, 2017 letter, expressing concerns about bullying and Student's increased level of anxiety and depression associated with his experiences at Ladera Ranch.

83. Additionally, Mother claimed to have shared with Ms. Antonatos Student's bedside note requesting not be woken up because he did not want to be depressed and stressed. Yet, Mother failed to mention to Ms. Antonatos or any other member of District's staff that Student's level of anxiety and depression had worsened to the point that he required prescription anti-anxiety, anti-depression medication. The overall lack of supporting testimony and evidence of bullying, along with the inconsistency of what Student reported and what Parents shared with District, called into question the reliability and accuracy of Mother's accounts; diminishing the weight of her testimony. Accordingly, her testimony was not persuasive with respect to the concern about bullying.

84. In addition, student H's comment and gestures after the school assembly, assuming that it was directed at Student, did not fall within the definition of bullying. It was neither severe or pervasive to have caused, nor was reasonably predicted to cause, Student to fear for his safety or the safety of his property, to inflict substantial detriment to his physical or mental health, substantial interference with his academic performance or substantial interference with his ability to participate and benefit from the services, activities, or privileges provided by Ladera Ranch.

85. During the 2017-2018 school year, only two incident reports of alleged bullying were filed by Student. The incident of September 28, 2017, did not meet the legal definition of bullying. Being told by a classmate to "suck your dog" and "suck your cat," though highly inappropriate, was neither severe or pervasive and did not cause, nor was it reasonably predicted to cause, Student to fear for his safety or the safety of his property, to be substantially detrimental to Student's physical or mental health, to substantially interfere with his academic performance or substantially interfered with Student's ability to participate and benefit from the services, activities, or privileges provided by Ladera Ranch.

86. Similarly, the October 2, 2017 incident during physical education class was not an incident of bullying. Balancing the weight of the written accounts and the testimony of Ms. McGowan established that Student, not student M, was the aggressor during the exchange. Student did not establish that he suffered severe, repeated, or pervasive aggression within the legal definition of bullying. Accordingly, the weight of the evidence does not demonstrate that Student was bullied at Ladera Ranch.

87. Student's perception of being bullied by his peers was a result of his difficulty in appropriately interpreting social situations. His struggles with communication and social interactions with peers frustrated him, and he lacked the ability to manage and express that frustration.

## Placement at Ladera Ranch

### 2016-2017 SCHOOL YEAR

88. The weight of the evidence did not prove that Ladera Ranch was an inappropriate placement during the 2016-2017 school year. Though Student struggled to transition into middle school, he continued to access his education and did well in his classes. Academically, his anxiety gravitated around his collaborative math and English class. Student appeared unhappy in English class. Student did not respond well to the instructional aides in math and English. The May 2017 Addendum IEP, consented to by Mother, amended Student's math to general education and Mother reported that Student was doing much better after the change and appeared happier and more relaxed at school. In sixth grade math, Student received a grade of B, B-, B-, and B for the first, second, third, and fourth quarters respectively. In sixth grade English, he earned a B for the first, second, and third quarters, and a C for the fourth quarter.

89. Mother shared with Ms. Antonatos her interest in discussing a virtual school at the February 9, 2017 IEP team meeting. That meeting was canceled and not rescheduled. For the remainder of the school year, Mother and Ms. Antonatos discussed Student's program and reached an understanding that an IEP team meeting would be convened quickly to discuss having a change to a virtual school or a dual program in seventh grade if Student struggled at the next school year. Mother did not request to change Student's placement to virtual school or to enroll him in a dual program for the remainder of sixth grade.

90. Student's social and communication deficits impacted his ability to appropriately interact with his peers, who often frustrated him when they said or did something he disagreed with. Student's perceptions of these challenging interactions lead Student to his feeling targeted and bullied. However, the weight of the evidence established that Student was not bullied. Therefore, Student did not prove that Ladera

Ranch was not an appropriate placement for the 2016-2017 school year.

#### 2017-2018 SCHOOL YEAR

91. Seventh grade started out well for Student. His schedule was working. He had trouble keeping up with assignments in math class but otherwise had no academic, social, or behavioral concerns until September 28, 2017, when Student left first period science class after a challenging encounter with his peers. The physical education class incident occurred four days later, on October 2, 2017. That was his last day of attendance at Ladera Ranch.

92. At the October 5, 2017 IEP team meeting, Mother explained that Student was not physically and social-emotionally ready to return to Ladera Ranch. However, his expected return date remained uncertain. Mother, Ms. Antonatos and Ms. Dunncliffe discussed Student returning to Ladera Ranch the following day to take a science test. Mother did not rule out that possibility. She requested notes from Ms. Dunncliffe to help Student prepare for the exam should Student choose to go. District remained unaware of the severity of Student's anxiety and his fear of returning to Ladera Ranch. The October 5, 2017 IEP offered placement at Ladera Ranch.

93. The following week, District received Dr. Chopra's October 9, 2017 letter. The letter clearly indicated Student was fearful of returning to Ladera Ranch due to his reported bullying and negative experiences at Ladera Ranch. The letter noted that Student was prescribed Zoloft, an anti-depressant, anti-anxiety medication. Dr. Chopra opined that Student's depression and anxiety had worsened the past few months, with his experiences at Ladera Ranch playing biggest role in his decline. She recommended another educational setting in the event Ladera Ranch could not put in place appropriate accommodations for Student. While District and Parents figured out a plan, Dr. Chopra recommended that Student be offered home instruction.

94. At the October 27, 2017 IEP team meeting, it was clear to all IEP team

members that Student would not be returning to Ladera Ranch in the near future. Student had been out of school for over three weeks. As District's school nurse stated, Student's anxiety was so severe that pushing him to return to Ladera Ranch would set him up for failure. District provided Parents with a Medical Status Report form to have Student's treating psychiatrist complete to initiate home hospital instruction. Virtual school was also available to start immediately. District also provided Parents with an assessment plan and requested written authorization to speak to Dr. Chopra. District needed to gather more information about Student's changed circumstances to determine if the October 5, 2017 offer of FAPE remained appropriate.

95. The October 27, 2017 IEP team meeting notes, which stated, "[t]here was no offer of FAPE at this time. The current offer of FAPE, on 10/5/17 was made prior to receiving letter from [Student's] medical doctor note 10/9/17. The team would like to move [Student's] Triennial assessment to gather more information and include social emotional assessment to determine if the offer of FAPE remain appropriate." At hearing, Ms. Orloff, Ms. Antonatos, and Ms. Bratcher each testified that the offer of FAPE on October 27, 2017, remained the same offer proposed on October 5, 2017, and that same offer of FAPE was the only offer District had made by the time of hearing. At hearing, they explained that no new information was received to warrant a change in the offer.

96. However, Parents did not authorize District to communicate directly with Dr. Chopra. Furthermore, Dr. Chopra did not provide an update as to Student's status following the October 27, 2017 IEP team meeting. Parents also did not consent to the assessment plan until March 2018, denying District critical information to determine an appropriate offer of FAPE.

97. The October 5, 2017 IEP offer of placement at Ladera Ranch was appropriate in light of the information available to District at the time. The evidence demonstrated that at the time the offer of FAPE was made on October 5, 2017, and



confirmed on October 27, 2017, District lacked critical information to change its offer of FAPE based on Student's changed circumstances. District sought more information through assessments of Student and with speaking to Dr. Chopra. Parents finally consented to the assessment plan in March 2018. At the time of hearing, Parents had not yet authorized Dr. Chopra to speak to District. District needed time to acquire accurate and current information as to Student's social-emotional and mental health status, which District needed to determine an appropriate placement. Accordingly, Student did not meet his burden in proving District denied him a FAPE by continuing to offer Ladera Ranch as an appropriate placement.

## REMEDIES

1. Student prevailed on Issues 1(a)(i), 1(a)(ii), 1(a)(iii), and 1(a)(iv). District failed to provide appropriate academic instruction after Parents provided District with a completed Medical Status Report form on or about November 15, 2017, to initiate home hospital instruction. Additionally, District denied Student a FAPE when it failed to provide eight months of direct speech and language services as called for in the October 6, 2016 IEP. In addition, the October 6, 2016 and October 5, 2017 IEPs failed to offer appropriate behavior and social-emotional goals to address Student's need to generalize his ability to redirect his attention in all educational settings and to regulate and express his frustration. Finally, the October 5, 2017 IEP failed to offer an appropriate social-emotional goal to help Student generalize moving from a preferred task to a non-preferred task with minimal protest across all educational settings.

2. As a remedy, Student requests reimbursement for counseling and educational services provided by Premier Mind Institute and Fusion Academy, respectively, as well as compensatory education services. Student also requests District convene an IEP team meeting to review completed assessments, and to offer a placement at an alternative smaller campus, its virtual school, or some combination

thereof.

3. District contends any reimbursement should be denied due to the Parents' failure to provide proper notice of their intent to privately place Student at Fusion Academy. District contends Parents' did not cooperate with the District in the IEP process. District argues Student should be denied reimbursement base on their unreasonable conduct and lack of cooperation.

#### Legal Authority

4. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at pp. 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.) In assessing the propriety of reimbursement, the conduct of the parties must be reviewed. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup School District*).)

5. Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374; *Puyallup School Dist., supra*, 31 F.3d at p. 1496.) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available

to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement found to be reimbursable where it had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student had made substantial progress].)

6. The IDEA does not require that a private school placement provide all services that a disabled student needs as a condition to full reimbursement. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159; see also, *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C., supra*, 720 F.3d at p.1048.)

7. An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist., supra*, 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) The award must be

fact-specific and be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case “generalized awards” are not appropriate. (*Puyallup School Dist., supra*, 31 F.3d at p. 1497.) “There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Ibid.*)

#### Analysis

#### COMPENSATORY EDUCATION

8. District failed to provide Student academic instruction following the October 27, 2017 IEP team meeting. Parents submitted a properly completed Medical Status Report form to District on or about November 15, 2017. Dr. Chopra recommended Student receive instruction in the home. Mother was providing instruction in the home. District had sufficient information to amend the IEP to provide for instruction in the home on a temporary basis. None was offered to Parents to consider. The failure left Student lingering at home without an education. Mother was left to try teaching Student in the home using assignment packets sent home from school, with no choice other than to return Student to Ladera Ranch. Ladera Ranch was not an appropriate campus due to Student’s extreme aversion after Student perceived he was bullied on September 28, and October 2, 2017. Student was bright and studious, and was entitled to academic instruction, which he could have received in the home for an hour each day. Six weeks of temporary academic instruction in the home for one hour each day is a reasonable estimation of what Student could have received. In

considering the equities in this case, this Decision finds that Student is entitled to 30 hours of compensatory education services in the area of academics.

9. District failed to provide a total of 240 minutes of direct speech and language services as called for by the October 6, 2016 IEP. Accordingly, Student is entitled to 4 hours of compensatory direct speech and language therapy.

10. District also failed to provide an appropriate goal and related services to address Student's need to regulate his emotions and express his frustrations. The October 6, 2016 IEP failed to offer a goal for this area of need and District did not provide Student with services since then to address this need. The October 6, 2016 IEP provided Student with 30 minutes of weekly social skills instruction to address his social-emotional needs. From October 6, 2016, to Student's last date of attendance at Ladera Ranch on October 2, 2017, District did not provide Student with approximately 36 weeks of social skills instruction to help Student learn to manage his emotions and express his frustration. Accordingly, Student is entitled to 18 hours of compensatory social skills services for that purpose.

#### REIMBURSEMENT FOR COUNSELING SERVICES

11. Student did not prove that District should have provided Student with counseling services. Thus, Student's request for reimbursement for costs associated with counseling services is denied.

#### REIMBURSEMENT FOR TUTORING AND TUITION

12. Though District failed to provide Student with temporary home instruction, Parents were not entirely free of blame. Their conduct following the October 27, 2017 IEP team meeting was troubling. District sought more information to determine if its October 5, 2017 offer of FAPE remained appropriate in light of the information they received in Dr. Chopra's October 9, 2017 letter and from Parents during the October 27,

2017 IEP team meeting. District sought parental consent for a release of information to allow District to speak to Dr. Chopra. However, Parents did not provide consent, and Mother's explanation for not doing so was unconvincing. Mother was concerned that the request for information was overly broad and disclosure from Dr. Chopra would jeopardize Student's relationship with his therapist. Yet at hearing, Student presented Dr. Chopra's testimony, to share the very information Parents had withheld from District.

13. Additionally, District requested to assess Student and offered Parents an assessment plan on October 27, 2017. Parents did not provide consent until March 2018, four months later. Moreover, Parents did not respond to District's requests to convene an IEP team meeting in late November through late December 2017. Parents abandoned the IEP process. Even if District did not specifically lay out the reasons for holding another IEP team meeting in their November and December 2017 notices, it was sufficiently clear that District wanted to continue discussing Student's annual IEP and reconsider the October 5, 2017 offer in light of the newly received information regarding Student's sudden refusal to attend school due to anxiety. Parents ignored District's request, and thereby denied District an opportunity to develop an appropriate educational program in light of the educational crisis Student was facing. Parents' lack of participation was unreasonable.

14. Furthermore, Parents did not provide District with prior written notice of their intent to privately place Student full-time at Fusion Academy and seek reimbursement from District. Student's complaint did not mention private school placement and made no request for reimbursement of private educational services. In weighing District's failure to provide Student with academic instruction in the interim, with Parent's unreasonable lack of cooperation, and having found compensatory education services for Student appropriate, the balance of the equities does not entitle Student to reimbursement for tutoring services and tuition at Fusion Academy.

Student's request for reimbursement is therefore denied.

#### Placement and Goals

15. The appropriate placement for Student will depend on the results obtained through the October 27, 2017 assessment plan, the status of Student's anxiety and depression, and the level of his current academic and functional needs at the time the IEP team meeting to review the assessments results, which District shall convene. Student's request for placement in a smaller campus, virtual school, or a combination of both is premature, and is therefore denied, and the evidence presented by Student did not warrant such a placement. Furthermore, should the IEP team determine after reviewing the assessment results and any other relevant information, that 1) Student is unable to generalize his ability to redirect his attention or move from a preferred task to a non-preferred task with minimal protest in all educational settings and 2) Student is unable to appropriately regulate his emotion and express his frustration, District is to offer appropriate measurable goals to address those areas of need.

#### ORDER

1. District shall provide Student with compensatory speech and language services in the amount of four hours, to be used by the end of the 2018-2019 school year, or the services will be deemed forfeited. The service will be provided by a nonpublic agency of Parents' choice. Within 30 days of Parents providing District with the name and contact information of a certified nonpublic agency, District shall contract with the identified provider, at a rate not to exceed \$150 per hour. The timing and delivery of the services shall be coordinated between Parents and the provider.

2. District shall provide Student with compensatory social skills services in the amount of 18 hours, to be used by the end of the 2018-2019 school year, or the services will be deemed forfeited. The services will be provided by a nonpublic agency of

Parents' choice. Within 30 days of Parents providing District with the name and contact information of a certified nonpublic agency, District shall contract with the identified provider, at a rate not to exceed \$80 per hour. The timing and delivery of the services shall be coordinated between Parents and the provider.

3. District shall provide Student with compensatory academic services in the amount of 30 hours, to be used by the end of the 2018-2019 school year, or the services will be deemed forfeited. The service will be provided by a nonpublic agency of Parents' choice. Within 30 days of Parents providing District with the name and contact information of a certified nonpublic agency, District shall contract with the identified provider, at a rate not to exceed \$80 per hour. The timing and delivery of the services shall be coordinated between Parents and the provider.

4. District shall convene an IEP team meeting within 60 days of receiving parental consent to the October 27, 2017 assessment plan. If Student is 1) unable to generalize in all educational settings, his ability to redirect his attention or move from a preferred task to a non-preferred task with minimal protest and 2) regulate his emotion and appropriately express his frustration, based on the results of the assessments and any other relevant information, District shall offer appropriate measurable goals, supports, and services to address those areas of need.

5. All other claims for relief by Student are denied.

## 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 1(a)(i), 1(a)(ii), 1(a)(iii), and 1(a)(iv).

District prevailed on Issues 1(a)(v), 1(b)(i), 1(b)(ii), 1(c), 1(d), 1(e), and 2.



## 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: May 29, 2018

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/s/

ROMMEL P. CRUZ

Administrative Law Judge

Office of Administrative Hearings