BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE COUNTY OFFICE OF EDUCATION,	OAH CASE NO. 2013040771
PARENT ON BEHALF OF STUDENT, v. RIVERSIDE COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2013080367

DECISION

Parent on behalf of Student (Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), State of California, on April 16, 2013, naming the Riverside County Office of Education (County). The matter was continued for good cause on June 3, 2013. On August 21, 2013, OAH consolidated this matter with OAH Case No. 2013080367[1].

Administrative Law Judge (ALJ) Paul H. Kamoroff heard this matter in Perris, California, on October 28, November 6, 7, 12, 13, 18, 19, 20, 21, and 22, and December 9, 11 and 13, 2013.

Tania L. Whiteleather, Attorney at Law, and Punam P. Grewal, Attorney at Law, appeared on behalf of Student. Hadassah Foster, legal assistant, also attended the hearing. Student's mother (Mother) attended the hearing on October 28, 2013, and for part of December 13, 2013. Student did not attend the hearing.

[1] OAH based the timeline for the consolidated cases on the date of the filing of the complaint in OAH Case Number 2013040771.

Jack B. Clarke, Jr., Attorney at Law, and Cathy Holmes, Attorney at Law, appeared on behalf of the County. Dr. Kenneth Wesson, administrator for the Riverside County Special Educational Local Plan Area (SELPA), and Ann Vessey, Executive Director of Special Education for the County, were also present. The hearing was recorded.

The ALJ granted a continuance for the parties to file written closing arguments and the record remained open until January 10, 2014. Upon timely receipt of the written closing arguments, the ALJ closed the record and the matter was submitted for decision.

ISSUES[2]

1) Between April 16, 2011, and April 16, 2013, did the County deny Student a free appropriate public education (FAPE) by failing to comply with the procedural requirements of special education law as follows:

a) Failing to fully and appropriately assess Student in all areas of suspected disability (including behavior, mental health, health, social-emotional, speech/language, and academics);

b) Failing to use properly trained individuals to conduct appropriate assessments of Student;

c) Failing to provide appropriate behavior support;

d) Failing to offer an appropriate placement and services in Student's individualized education programs (IEP);

e) Failing to create appropriate, objectively measurable goals to address Student's unique needs;

f) Failing to provide progress reports at required intervals to document Student's educational progress;

g) Failing to convene an IEP team meeting when Student failed to make anticipated progress; and

[2] The issues have been rephrased and reorganized for clarity. Student's issue "failure to identify Student's unique educational needs" has been incorporated into Issue 1(a), and his issue "failure to offer counseling" has been incorporated into Issue 1(d). 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.)

h) Failing to include Student's parent in IEP team meetings and in all IEP determinations?

2) Did the County deny Student a FAPE by failing to provide a program in which Student could gain meaningful educational benefit?

3) Did the County deny Student a FAPE by failing to comply with the assessment plan signed by Student's parent on May 28, 2013, to timely provide the agreed-upon assessments, and to convene an IEP meeting to review those assessments?

SUMMARY OF DECISION

This matter involves Student who was detained in a juvenile detention facility on a charge of homicide of his father. During the time frame involved in this matter, he attended juvenile hall court schools. At the heart of this case is whether Student required a residential treatment center placement in order to receive meaningful benefit from his special education program. Due to the various procedural and substantive violations alleged by Student above, he asserts that the County has denied him a FAPE. Student contends that he has communication, social, emotional, behavioral and mental health needs that prevented him from obtaining an educational benefit unless he is placed in a locked residential treatment center placement for the seriously emotionally disturbed.

The County disputes Student's contentions that they have committed any procedural violations or denied him a FAPE. It contends that Student's maladaptive conduct has decreased, does not adversely impact his educational progress, and is not disability-related. The County asserts that the IEP's it provided Student constituted a FAPE for Student. Finally, the County contends that it was not obligated to consider a residential treatment center placement.

For the following reasons, this Decision finds that the County committed procedural and substantive violations by failing to provide him appropriate behavior supports, services, and placement. When combined, these factors prevented Student from receiving a meaningful benefit from special education and therefore denied him a FAPE.

FACTUAL FINDINGS

1. Student is a 13-year-old boy who currently resides at Riverside Juvenile Hall and attends the F.H. Butterfield School (Butterfield), a juvenile hall court school operated by the County. He has been eligible for special education and related services since December 12, 2005. Pursuant to an October 31, 2013 Superior Court of California (Juvenile Court) disposition order, Student will be sent to the California Department of Corrections and Rehabilitation - Division of Juvenile Justice (DJJ), located in Stockton, California, and will be attending the Johanna Boss High School, a court high school operated by the DJJ.

2. Mother has a history of substance abuse and Student was exposed to drugs in-utero. Student was one of a set of twins, but due to domestic violence at four months of pregnancy, the other twin was lost. As an infant, Mother hit Student's head against a wall. . Student lived with Mother until he was three years old, when, due to maternal substance abuse, neglect and suspected sexual abuse by Mother's boy-friend, Student's father (Father) obtained custody. Father and step-mother experienced substantial family problems and there were frequent reports of domestic violence by Father against step-mother and Student. Father was an unemployed plumber and a leader in the National Socialist Movement, a neo-nazi organization. During a period of 10 years, from August 2000 to July 2010, Child Protective Services (CPS) investigated 23 abuse allegations within the family. In May 2011, at 10 years of age, Student committed patricide and was arrested (the offense).

3. Student has a history of social and emotional difficulty and behavioral problems. He has low-to-average cognitive abilities and attendant difficulty in paying attention and poor impulse control. As a consequence, Student has delayed academic skills. His knowledge of receptive and expressive language is limited, and he has a history of verbal comprehension delays. He has pervasive problems with peers and often misunderstands interpersonal communication. Student also has difficulties in sensory processing, and he engages in sensory-seeking conduct.

Early Years through the 2010-2011 School Year

4. While in preschool, the following problems were noted: non-compliance to teachers, delays in pre-academic skills, inattention, and violent behavior toward peers. Student was expelled from preschool due to problem behaviors.

5. In Kindergarten, Student attended school within the Redlands Unified School District (Redlands USD). Redlands USD identified Student as having delays in academic skills, speech and language, behavior problems, and found that he was a danger to his peers. On December 12, 2005, the Redlands USD qualified Student for special education under the eligibility category of speech and language impairment. He received services in the area of language and was accommodated in school with a shortened schedule of one hour per day.

6. At age five, he was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and began psychotropic medication.

7. In the first grade, Student attended three elementary schools in the Riverside Unified School District (Riverside USD). In each school, his problems grew worse in language, attention and behavior. In October 2006, based upon pervasive behavior difficulty, poor impulse control, inattention, and academic problems, the Riverside USD administered a psychoeducational evaluation of Student. Based upon this evaluation, on October 13, 2006, the Riverside USD held an IEP meeting and changed Student's primary eligibility category to other health impairment (OHI), based upon his ADHD. Student was also diagnosed with Post Traumatic Stress Disorder (PTSD) at that time. The Riverside USD placed Student in a special day class (SDC) setting with accommodations and a shortened day.

8. Student continued to exhibit serious behaviors throughout the second and third grades and he was transferred to several nonpublic schools[3], including the Altus Academy and the Somerset Academy, each structured environments.

9. In 2007, Student received 50 behavior referrals for the following instances: throwing chairs in the classroom, disobeying rules, talking about killing someone or something, stabbing a peer in the arm with a pencil, using inappropriate language, scratching and kicking a campus aide, screaming in the classroom, kicking staff and students, hitting staff and students, screaming, accusing other students of hurting him, and kicking walls.

10. In 2008, Student received numerous behavior referrals for the following issues: yelling and screaming on the school bus, kicking a teacher, behaving defiantly and disrespectful behavior, using profanity, throwing rocks at students and laughing about it, kicking and hitting other students, attempting to stab another student with a pencil, kicking, scratching and pulling a teacher's hair, and threatening to kill a teacher.

11. In 2009, Student received numerous behavioral incident reports for the following: disobeying rules, threatening peers, pushing staff, screaming, attempting to bite staff, slamming and kicking desks, kicking and punching peers and staff, attempting to stab a peer in the eye with a paper clip while shouting profanities, drawing swastikas, and kicking a chair into a student's chest.

12. In September 2009, Riverside USD school psychologist Robert Schaefer conducted a psycho-educational assessment. Student was nine years-two months old and beginning the fourth grade. As part of the assessment, Dr. Schaefer administered the Behavior Assessment System for Children-Second Edition (BASC-2), which measures adaptive and problem behaviors of students in the school, home and community settings. Any score in the clinically significant range suggests a high level of maladjustment. Student scored in the "clinically significant" range for attention, hyperactivity, aggression, conduct problems, functional communication, and learning problems.

13. On the BASC-2, Student self-reported "sometimes" for the following statements:

"I see things that others cannot see."
"I hear things that others cannot hear."
"I hear voices in my head that no one else can hear."
"I feel like my life is getting worse and worse."

Student reported "often" for the following statement:

[3] Non-public schools are private schools certified by the State of California to provide special education instruction to students when a school district cannot meet a child's needs.

"Someone else controls my thoughts."

Student reported "almost always" for the following statements:

"Even when I am alone, I feel like someone is watching me."
"I am afraid I might do something bad."

14. Father completed the parent inventory of the BASC-2 by reporting "sometimes" for the following statements regarding Student:

"Does strange things."
"Babbles to self."
"Acts strangely."
"Is cruel to others."

15. The assessor also administered the Wechsler Intelligence Scale for Children-Fourth Edition, where Student received a full scale standard score of 73, which is in the borderline range of intellectual functioning, as the average range scores fall between 90 and 109. Overall, Student's academic functioning was delayed.

16. On October 5, 2009, the Riverside USD held what was Student's last agreed upon IEP, prior to the offense. The Riverside USD continued to find Student eligible for special education under the disability category of OHI, based upon ADHD. This IEP offered Student 100 percent of the school day in special education, modifications to state testing, extended school year services, transportation, two goals in reading, one goal in written expression, two goals in math, and two behavior goals. The IEP offered individual aide support to help Student focus on academic tasks, and offered various accommodations including extended time for assignments, frequent breaks, repeated directions, and small group instruction. The IEP does not provide any related services, and offered placement at Oak Grove at the Ranch, a structured nonpublic school. The IEP team recommended that Student be assessed in the area of speech and language, and the IEP team notes reflected that Father rejected counseling services. Father participated in the IEP meeting with the assistance of a legal advocate.

17. Student attended Oak Grove at the Ranch until January 2010, when Father removed him from school without notice. In March 2010, Father enrolled Student in River Springs Charter School, an online program. Student's last on-line assignment was completed in March 2011, two months prior to the offense.

18. On May 1, 2011, Student took a loaded handgun from his step-mother's closet, took the gun downstairs, pointed the gun at Father's head while he slept, and pulled the trigger with both hands. He then ran upstairs and told his stepmother, who called the police. Student reported to the police that on the night of the offense Father had threatened to take down the fire alarms in the house and burn the house down with everyone in it. Police reports indicated that Student believed that shooting his father would cause him to "go unconscious" and be hospitalized, and that when Father got out of the hospital he would

move out of the house. Student thought Father would "learn a lesson" and would "learn how I felt when I get hurt." He stated that he and his father would then "go back and be friends and start over." When he learned that his Father was dead, he suggested to the supervising deputy that his father should undergo surgery, then return home. Student was arrested the same day, and detained at Riverside Juvenile Hall.

Responsibility of the County

19. Under California law, the county office of education is responsible for the provision of a FAPE to qualified students detained in the juvenile hall within that county. Therefore, the County was the responsible local educational agency (LEA) during the time Student was at juvenile hall. As such, it was responsible for conducting necessary assessments and making IEP offers, including the offer of a residential placement if needed by Student to make meaningful educational progress. The County operates the Butterfield, located within Riverside Juvenile Hall, and the Southwest Center for Learning Court School (Southwest), located within Murrieta Juvenile Hall.

20. Riverside Juvenile Hall is a secure residential and correctional facility for young people awaiting court hearings and/or placement in long-term care facilities and programs.

21. Riverside Juvenile Hall is divided into different housing units and students receive their education in County classrooms within their assigned housing unit. Student was initially assigned to a housing unit that had a special day class (SDC), and he attended that SDC for the entire school day. This SDC had a credentialed special education teacher, an instructional aide, and typically 15 to 25 students. Student, who was 10 years old, was the youngest in the unit.

22. Detainees' mental health needs are served by a team comprised of psychologists, psychiatrists, counselors and clinical social workers. When a detainee is prescribed psychotropic medications, he is assigned a psychiatrist for medication management and a psychologist for counseling. If the detainee qualifies for special education, the duration and frequency of services, other than those provided by a psychiatrist, are governed by the pupil's IEP.

23. A detainees' day is controlled by a structured schedule and detainees are under constant monitoring from probation officers throughout the day. Throughout the day, detainees may be pulled from assigned activities for medical visits, court appointments, or psychiatric treatment.

24. Upon Student's arrival, the staff recognized that Student's main issues were inattention, self-regulation and behavior which were aggressive and agitating towards peers. Student was easily agitated and had outbursts when frustrated, and frequently had to be removed from class to deescalate.

25. On May 27, 2011, due to safety concerns stemming from Student's young age, the County moved Student from Riverside Juvenile Hall to Southwest Juvenile Hall.. Southwest is a court school located within Southwest Juvenile Hall. Student was much younger than his peers at Butterfield and Southwest, who were generally between 16 to 18 years of age. At that time, Student was five feet tall, 104 pounds, had blonde hair, and was ten years old. County staff therefore felt Student would be safer placed in an all-female unit, which was located at Southwest.

The 2011-2012 School Year

26. During the month of May 2011, Student had an extremely difficult time adjusting to being away from his family and being confined in juvenile hall. He made several threatening statements towards staff and peers. His behavior was described as disruptive, violent, defiant, and immature.

27. Officers from the Probation Department (Probation) kept daily logs regarding Student's behaviors inside and outside of the classroom. During the months of June through November 2011, Student had frequent behavior referrals for threatening staff, being disrespectful and defiant towards staff, refusing to follow staff directives, numerous outbursts and tantrums which caused him to be removed from class, and he used profanity towards staff and peers. He had to be constantly redirected, and was placed on Behavior Control Segregation (BCS) on several occasions.[4]

The July 13, 2011 IEP

28. The County held its first IEP meeting for Student on July 13, 2011. Student was 11 years old and in the sixth grade. In addition to County staff, Mother[5] and Student attended this meeting.

29. The IEP team reviewed progress on past goals, which were from the October 5, 2009 IEP, for Student. Student had met his goals in reading and written expression, and one goal each in math and behavior. Student partially met the remaining goals in math and behavior. The IEP team then reviewed Student's present levels of performance; Student was reading at the fourth grade level and required assistance in reading, writing, math and behavior. Overall, Student was functioning at the fourth to fifth grade level in all areas of academics, when he was able to focus. Although Student had been prescribed various medications for attention disorder, he sometimes refused to take these medications.

30. Student had difficulty controlling his temper and had resultant behavior difficulty with peers and staff. Student required a "tightly structured environment," even for

[4] Neither party called a witness from the Southwest Juvenile Hall, or the Southwest School.

[5] Following the offense, legal guardianship of Student had been returned to Mother.

juvenile hall, and required 100 percent of his school day in special education "to monitor behavior, not for academics."

31. The IEP team adopted five new goals. The first goal addressed reading which set as a baseline that Student could then state the main idea and identify two supportive statements with 50 percent accuracy. The goal intended that Student, when given portions of a fifth grade text, could state the main idea of the text and identify three statements within the text with 80 percent accuracy in two-to-three consecutive trials. Student's second goal was in writing. The baseline stated that Student writes a correct paragraph with 40 percent accuracy. This goal was for Student to write a correct paragraph giving information in chronological order with 80 percent in two-to-three trials. Goal three was in the area of math. The baseline was that Student could compute multiplication tables with 50 percent accuracy. The goal was for Student to complete multiplication for numbers between one and 10 with 80 percent accuracy in four-to-five trials. The fourth goal was in the area of behavior. Student's baseline was that he accepts consequence with 60 percent accuracy. Student's goal was that, after engaging in inappropriate behavior, he "will accept the consequences of behavior without angry outbursts with 100 percent accuracy" measured in three out of four trials. Goal five was also in the area of behavior. The baseline stated "[Student] uses anger management strategies with 20 percent accuracy." The goals was for Student to "when guided through the exercise, [Student] will create a menu of three anger management strategies that he will use when angry or frustrated with 100 percent accuracy in two out of three trials."

32. The IEP did not offer counseling or mental health services; however, the IEP notes reflected that Student had been receiving unspecified mental health counseling through the juvenile hall Program. The IEP failed to offer speech therapy or a behavior plan. The IEP team recommended that he be referred for a mental health assessment. The IEP provided that Student should continue placement in a SDC, with specialized academic instruction for 314 minutes daily, five days per week.

33. Mother agreed to the IEP, and the County implemented the IEP.

34. Student struggled academically as the school year proceeded. County staff recognized that he was functioning at a lower academic ability level than first contemplated and had suspected delays in speech, particularly in the rate of his speech, articulation, and vocabulary. Student also had suspected delays in fine and gross motor skills, including difficulties in handwriting and small tasks such as pulling tape from a dispenser. Student was also sensory seeking, frequently fidgeted and he required frequent movement breaks during class.

The October 24, 2011 IEP

35. To address these concerns, the County held an amendment IEP team meeting on October 24, 2011. Along with County staff, Mother attended the IEP team meeting with a

special education legal representative. County teachers shared their concerns that Student had delays in communication and handwriting. Consequently, the IEP team recommended assessments in speech and language, occupational therapy and academics. Mother provided her consent to the IEP and assessments.[6]

The December 7, 2011 IEP

36. The County held its next IEP meeting for Student on December 7, 2011, for the purpose of reviewing the speech and language, occupational therapy and academic assessments. Student was 11 years old and in the sixth grade. In addition to other County staff, Dr. Wesson facilitated the IEP meeting as the administrator designee. Suzanne Linett, the County's occupational therapist, Colleen Patrick Ali, the County's speech therapist, and Christine Farrar, who had conducted academic testing, also attended the IEP meeting. Mother attended, along with legal representation. Student did not attend.

37. Ms. Ali reviewed the speech and language assessment. She found delays in Student's articulation during spontaneous communication and a concomitant delay in his rate of speech production, which increased when he became excited. As a consequence, Student's speech was difficult to understand. Student also had an immature vocabulary. Ms. Ali's report found that Student qualified for special education under speech and language impairment. She recommended that Student receive speech services in the area of speech intelligibility and vocabulary skills.

38. Licensed occupational therapist Ms. Linett conducted an assessment of Student on November 25, 2011. She reviewed her report with the IEP team and testified as a witness on behalf of the County.

39. Ms. Linett received her bachelor of science degree in occupational therapy in 1977 and has over 35 years of experience as an occupational therapist. To assess Student's occupational therapy needs, Ms. Linett conducted clinical observations, and administered the Developmental Test of Visual Perception. Ms. Linett observed that Student's fine motor abilities, muscle strength and tone were appropriate for his age. On the Developmental Test of Visual Perception, she found that Student's visual perception was in the low average range, with the exception of visual closure, which was below average. This could impact both reading fluency and printing skills, as it impacts anticipating how a word or sentence should appear. She found that Student's overall printing skills were immature, but legible.

40. As an occupational therapist, Ms. Linett is concerned with a child's ability to process and regulate sensory information. She observed that Student had significant sensory

[6] Prior to this meeting, Student's public defender had requested that the County refrain from any assessments in the area of mental health, although he did not place a prohibition on education based assessments or the provision of mental health and psychological services.

processing issues. This frustrated Student, which impacted his ability to pay attention and caused him to fidget uncontrollably when he was over-stimulated, which was frequent. She opined that Student had significant difficulties with sensory modulation and regulation of responses to his sensory environment. Ms. Linett recommended that Student be placed in a program with structure and routine, be given movement breaks and the opportunity to use sensory regulating devices, such as a fidget ball (a small rubber ball) to calm himself and refocus. Although she did not assess Student in the area of sensory processing, she believes that this area should be assessed if a less structured environment was considered for Student.

41. Notwithstanding Student's sensory processing delays, delayed visual closure skills, and difficulty in handwriting, Ms. Linett concluded that Student did not meet the criteria for occupational therapy services.

42. Ms. Farrar reviewed an academic assessment which she had performed on November 29, 2011. She administered the Woodcock Johnson III Tests of Achievement (WJ-III). Student's standard score in broad reading was 91, with a grade equivalent of 4.6; broad math was 87, with a grade equivalent of 4.4; and broad written language was 82, with a grade equivalent of 3.6. Student's standard score in reading fluency was 90, with a grade equivalent of 4.6; and passage comprehension was 89, with a grade equivalent of 3.8. His standard score in math calculations was 80, with a grade equivalent of 3.9; and math fluency was 79, with a grade equivalent of 3.5. His standard score in spelling was 77, with a grade equivalent of 2.8; writing fluency was 92, with a grade equivalent of 4.9; and writing samples was 83, with a grade equivalent of 3.2.

43. The IEP team next discussed whether new goals or services were warranted. Given his low academic scores and teacher reports of writing delays, the team agreed to revise Student's writing goal, from writing a paragraph to writing a simple sentence. The County also provided two speech goals, one each in the area of vocabulary and articulation. Student's baseline in speech articulation was identified at 50 percent intelligible, and his baseline in vocabulary was two years below age level (at nine years old).

44. The December 7, 2011 IEP team again found that Student's behavior impeded his learning. The SDC classroom employed a token economy for all detainees, but did not provide Student a behavior support plan.

45. The IEP provided speech services at 30 minutes, 20 times yearly, and continued to provide daily specialized academic instruction solely in a SDC, due to behaviors, with physical education in a general education setting. Mother consented to the IEP.

The January 26, 2012 IEP

46. Following the December 2011 IEP meeting, the County had obtained Court approval to conduct a mental health assessment and had done so. On January 26, 2012, the County convened an addendum IEP team meeting to review the results of this assessment. In

addition to County staff, Mother attended this meeting with legal representation. Student did not attend this meeting.

47. Mr. McClung presented the mental health assessment for educational-related mental health services, which he completed in association with Mt. San Jacinto Mental Health Children Services on January 5, 2012. The assessment included observations of behavior in group with others on his unit, intake interview, review of records, consultations with the school teacher, other County staff and mental health staff. Student was on psychotropic medication at the time of the evaluation. At that time, Student's class consisted of 20 teen girls in a high school level class. Student was 11 years old and in the sixth grade. The mental health assessment found that Student had emotional and behavioral problems which interfered with his ability to learn in the classroom despite specific interventions to assist him. Student's work was "minimal and he was often distracted, off-task, outbursting [sic], defiant, and verbally abusive to others." Mr. McClung reported that Student required one-on-one assistance to complete work and to interact with staff and peers. Regarding attention, Mr. McClung found "[Student's] hyperactivity makes it difficult for him to sit still and complete assignments despite frequent breaks, structure and modifications in class."

48. Student appeared facially eager to please, yet changed subjects quickly. Although Student self-reported that he had a strong rapport with County staff, he was easily angered and had difficulty calming down when agitated. Student had significant issues of impulsivity and hyperactivity which made it difficult for him to comply with basic rules and procedures on the juvenile hall unit. His memory was slightly impaired and he suffered from flashbacks of serious physical and emotional abuse. Mr. McClung concluded that Student had an emotional disturbance which negatively affected his ability to benefit from his education. Student's emotional disturbance was complicated by a lack of insight into his own behavior and how it adversely affected others, and his own education. The report held that Student qualified for educational-related mental health services, and recommended eight therapy sessions per month, including four individual sessions and four group sessions, at 30 minutes per session, and the report provided three treatment goals. The same services were recommended for the extended school year.

49. The January 2012 IEP team amended Student's IEP to provide one group therapy session and one individual session each week, at 30 minutes per session. The same services were offered for the extended school year. The IEP included the mental health goals that were recommended in Mr. McClung's report. Per Mother's request, the amendment IEP team also discussed Student's need for a behavior support plan (BSP); the team agreed that Student required one and an assessment plan for the purpose of developing a BSP was provided to Mother. Mother provided her consent to the amendment IEP and the assessment plan.

50. On March 30, 2012, Student was moved back to Riverside Juvenile Hall, to an all-male living unit, where he attended school at Butterfield. Student appeared more irritable, defiant, and struggled academically as the school year proceeded. At school, Student would attend class but habitually engaged in fidgeting behavior with his legs and

hands, which resulted in his teachers and staff providing him a fidget ball to squeeze, and Student required frequent movement beaks. The teaching staff noted that Student was behind academically including reading, math and writing. He had a hard time coping and communicating with his peers, and frequently engaged in derogatory communication including racial epitaphs. Student was easily agitated and would act out aggressively when he felt he was being treated unfairly. Student also regularly engaged in angry outbursts while in his physical education classes.

51. During the months of December 2011, through the end of May 2012, Student had outbursts and tantrums, displayed inappropriate and defiant behavior and had numerous peer issues. He required constant redirection and frequently disobeyed rules and staff directives. He used profanity towards staff, pushed another student, and kicked doors and walls. Student had numerous "meltdowns" and was placed on BCS on five separate occasions. He was aggressive towards peers and threatened to shoot and kill another minor.

52. During the month of April 2012, juvenile hall staff reported the following:

> "Minor is very immature and wants to have his way. When he doesn't get his way, he will throw temper tantrums. He gets angry fast and fails to listen and follow directives."
> "Minor has become a danger to himself by the way he disrespects other minors. Other Minors have been giving him a pass because of his age but I am afraid that is not going to last for long."

53. During May 2012, staff at juvenile hall reported the following:

> "Minors pick on [Student] and call him names. [Student] is in need of staff attention."
> "[Student] became angry, upset and belligerent toward the teachers and staff during school P.E."
> "[Student] can't play in a [sic] organized game without having problems and cursing other minors."
> "Some kids always tease him and he gets mad."
> "[Student] continues to blame other minors for his actions. Most of the time his peers ignore him, but he is very aggressive with them."

54. During the months of June through September 2012, Student continued to struggle with behavior and emotional issues on an almost daily basis. He was still aggressive towards staff and peers, used profanity, required frequent redirection, refused to follow staff directives, had outbursts and tantrums, kicked and screamed, and threatened to kill peers. He was placed in BCS on multiple occasions and staff reported the following:

> "[Student] has had numerous peer issues with other minors in the group."
> "[Student] can't get along with peers, yells, outbursts [sic]."

"[Student] still needs constant re-directions and boundaries, when dealing with [the] simplest of directives."

55. On June 4, 2012, a psychological and neuropsychological evaluation was completed by clinical-neuropsychologist, Dr. Robert Geffner. He identified multiple school problems with attention (inability to complete tasks and maintain focus), behavior (tearing things off walls, erasing chalkboards, disconnecting things, screaming, hiding, biting, punching, stabbing with pencils, strangling with telephone cords, and hitting teachers and peers), academics (delays in all areas), speech and language (expressive and receptive delays from an early age). Overall, Dr. Geffner questioned if in-utero drug exposure accounted for Student's long history of behavioral, emotional, and developmental problems.

56. Dr. Geffner reported the following Diagnostic and Statistical Manual of Mental Health Disorders, Fourth Edition (DSM-IV) diagnoses: Post Traumatic Stress Disorder (chronic), Conduct Disorder (childhood onset type-moderate to severe), ADHD (combined type), Phonological Disorder and Learning Disorder. He found that Student had problems with primary support group (disruption of family system), problems related to social environment (no close friends), and educational problems (history of academic problems).

57. In July 2012, staff at juvenile hall reported:

"[Student] gets frustrated and starts throwing tantrums, calling other kids derogatory names, chasing them to hit them, etc."
"[Student] yells and screams in his room, bangs on his door and curses continually at staff.

The July 13, 2012 IEP

58. On July 13, 2012, the County held Student's annual IEP meeting. Dr. Wesson facilitated the meeting, which was attended by a special education teacher, a general education teacher, and Mother. Student had failed to attain a single goal from the July 2011 IEP, in reading, writing, math, and behavior, including the revised writing goal. The team did not review progress towards the speech and language goals agreed to in the December 7, 2011 addendum IEP, or the mental health goals agreed to in the January 2012 amendment IEP. The team next reviewed present levels of performance. Student still read at the fourth grade level, had delayed spelling skills, and used excessive profanity when communicating with peers and staff. Student was frequently off-task and required one-to-one instruction. Student continued having difficulty with his temper and engaged in inappropriate behavior, including disrespecting teachers, staff and peers, and had difficulty following school rules and procedures. He was often defiant towards teachers and staff. Overall, Student continued to have significant delays in reading, writing, math, and behavior. Notwithstanding the foregoing, the teacher also reported that Student was eager to learn and participated in class.

59. The July 2012 IEP, continued to qualify Student for special education under OHI due to ADHD. The IEP provided Student various accommodations including extended time for assignments, time out when feeling frustrated or anxious, preferential seating, a token reward system to motivate using preferred activities, clustering of work, and a reduction of assignment length per subject area. The July 2012 IEP, repeated the same goals in reading, writing, math, and behavior, which were offered in the July 2011 IEP and repeated the two speech goals which were offered in the December 7, 2011 IEP. The IEP did not offer any mental health goals.

60. The July 2012 IEP offered Student specialized academic instruction for the entire school day, speech therapy at 30 minutes per session, 20 times per year, weekly individual and group counseling at 30 minutes per session, and unspecified extended school year services. The IEP provided Student 100 percent of his school day in special education. The IEP did not offer a BSP, nor was one discussed during this meeting. Mother provided her consent to the IEP.

61. On July 18, 2012, a court-ordered psychological evaluation was completed by a forensic psychologist, Dr. Michael Kania, for the purpose of aiding the court in determining whether Student was capable of understanding the nature of his acts and distinguishing right from wrong.[7] His report concluded that Student was capable of knowing and understanding the nature of his acts and of distinguishing right from wrong. However, he reported that Student's limited intellect would make him vulnerable to manipulation.

62. In August 2012, Student was removed from class, screaming, was pepper sprayed for not following directions, was removed from class due to behaviors an additional four times, and received BCS. He tantrumed, was kicked by the same peer on several occasions, had emotional breakdowns while in class, was teased by peers, and had daily behavior problems. Staff reported the following:

> "[Student] continues to display poor sportsmanship, inappropriate language and lack of self-control when it comes to being angry. [Student] displays this type of behavior on a daily basis."
> "Other minors were feeding on him getting upset."
> "[Student] does not know how to interact with other minors."

The August 28, 2012 IEP

63. The County reconvened an IEP meeting on August 28, 2012. Student was 12 years old and entering the seventh grade. Mother had relocated to Spokane, Washington, since the last IEP meeting, and attended the meeting telephonically. The purpose of the IEP

[7] Dr. Kania did not testify during the hearing.

meeting was to review a triennial psychoeducational assessment that had been completed by the County school psychologist, Dr. Robert Fitzgerald.

64. The team reviewed Student's progress towards his academic goals, and determined that the goals had not been met and should be repeated. Regarding behavior, Student had also not met his behavior goals. Student continued to be easily frustrated, short-tempered, defiant towards teachers and staff, and inappropriate towards peers. The team did not discuss Student's progress towards his speech goals or review his mental health goals during this IEP.

65. Dr. Fitzgerald presented his report which he had conducted on August 23, 2012. The assessment included a review of records, observations of Student in class, interviews, the WJ-III, the Woodcock Johnson III Tests of Cognitive abilities (WJ-III-cognitive), and the BASC-2. Dr. Fitzgerald had attempted to observe Student while in physical education (PE), but Student had become emotional and did not want to participate in PE. He remained in his cell until PE was over. Dr. Fitzgerald interviewed the security officer who was present during Student's emotional difficulty, who stated that Student occasionally gets angry, hits walls and doors, and screams. During a classroom observation, the teacher was able to hold Student's attention and he participated appropriately during this math class.

66. During the assessment, Student worked diligently and appeared to enjoy the one-to-one attention afforded during the testing. Student was fidgety throughout the assessment process and was offered several breaks. At times, Student lost focus, acted impulsively, and would answer questions too quickly. When responding to questions on the BASC-2, Student required clarification on several questions and was unable to provide answers to any question regarding his parents. Relations with parental domain could not be scored. Student was taking four different psychotropic medications during the time of the assessment.

67. Dr. Fitzgerald administered the WJ-III-cognitive, which measures a student's overall intellectual ability and specific cognitive abilities. Student's standard score in general intellectual ability (GIA) was 88, with a grade equivalent of 4.3; verbal ability was 89, with a grade equivalent of 4.4; and thinking ability was 91, with a grade equivalent of 4.4. Student's standard score in cognitive efficiency was 86, with a grade equivalent of 4.3; and working memory was 84, with a grade equivalent of 3.7. His standard score in verbal comprehension was 89, with a grade equivalent of 4.4. Overall, Student's intellectual ability was in the low average range of others his age. Dr. Fitzgerald found that Student experienced difficulty in age-level verbal communication and comprehension.

68. On the WJ-III, which tests a student's academic abilities, Student's standard score in broad reading was 94, with a grade equivalent of 5.5; and broad math was 80, with a grade equivalent of 4.1. Student's standard score in reading fluency was 84, with a grade equivalent of 4.2; and passage comprehension was 92, with a grade equivalent of 4.8. His standard score in math calculations was 79, with a grade equivalent of 4.3; and math fluency was 82, with a grade equivalent of 4.0. His standard score in spelling was 84, with a grade

equivalent of 3.7; writing fluency was 94, with a grade equivalent of 5.6; and writing samples was 83. Overall, Student progressed in some areas, including reading and spelling, and had regressed in other areas, including math and reading fluency, and remained the same in other areas, when compared to the academic testing completed in December 2011.

69. Due to Student's refusal to answer any questions pertaining to his parents, Dr. Fitzgerald attempted, but could not complete, the administration of the BASC-2 rating scales.

70. Dr. Fitzgerald reviewed his report with the IEP team, and concluded that Student continued to qualify for services under OHI due to his ADHD diagnosis.

71. The August 2012 IEP, offered Student the same goals, accommodations, services, and placement as those described in the July 2012 IEP. Mother consented to the IEP.

72. During the Month of September 2012, juvenile hall staff reported that Student had meltdowns, acted aggressively towards peers and staff, had uncontrollable behavior, was sent to BCS on three occasions, and was suspended or removed from the classroom due to behaviors six times.

73. During October through December 2012, Student had difficulty communicating with peers and often misunderstood their comments, which agitated Student. Student was easily angered and reacted inappropriately, including being frequently aggressive towards peers and staff, and was suspended from class due to behaviors on three occasions.

74. On December 2, 2012, Anna C. Salter, Ph.D., completed a psychological evaluation of Student at the request of the Chief Deputy District Attorney. Dr. Salter's report was based upon a review of Student's records, including police, school, social services, and mental health. As part of her report, Dr. Salter interviewed Student for six hours on November 10, 2012. As part of her interview, she discussed the possibility of Student being sent to a residential treatment program. Student responded that he did not like juvenile hall. Some minors picked on him, and some "do bad things" in his presence. He believed that his career and life choices would be diminished if he stayed there, and expressed a desire to attend a therapeutic, residential treatment center.

75. During the month of January 2013, Student was aggressive, inappropriately communicated with peers and staff, had difficulty following directives, and had to be removed from class due to behaviors.

76. On January 14, 2013, the Juvenile Court found Student guilty of second degree murder of his Father, with the enhancement of using a firearm to cause great bodily injury. A maximum aggregate confinement time for second degree murder, with the enhancement, was 25 years to life. The matter was referred to Probation to investigate what school program and facility Student should be placed at during his confinement time.

Kamlyn Post's Testimony

77. Beginning in January 2013, Probation, led by probation officers Brenda Waterman and Kamlyn Post, began investigating school placements for Student. Ms. Post has been a deputy probation officer since 2002, and presently holds the title of senior probation officer. She first met Student in October 2012, and had been personally assigned to him for each court appearance, for each hearing, and during his Juvenile Court trial. Ms. Post provided sworn testimony on behalf of the County.[8]

78. Ms. Post is not credentialed or formally trained in the areas of mental health or education. However, she has gotten to know Student intimately, having spent considerable time with him. Ms. Post is concerned that Student has substantial mental health issues, which may include undiagnosed pathologies. For example, she observed that, during the criminal trial, Student studied photographs of Father taken immediately following the shooting without emotion or empathy, while others in the courtroom reacted viscerally to the photographs. While in detention, Student required frequent redirection and often perseverated on topics that only he found interesting. Ms. Post opined that Student's mental health issues may have impacted his self-identity and inter-personal communication. Student believed he was African-American, and therefore he believed that he could use racial slurs without repercussion. In general, Student had difficulty communicating with staff and peers, and often misunderstood others, which frustrated him and caused him to act out aggressively. As a consequence, Student had significant social and behavioral difficulty which threatened his safety, given that his peers were much older and larger than him.

79. In all, Probation screened 15 separate facilities, with an emphasis on nonpublic residential treatment centers (RTC's). A RTC is a live-in health care facility which treats multiple conditions from drug and alcohol addictions, to emotional and physical disorders as well as mental illnesses. Probation screened these facilities based upon Student's mental health issues, psychological evaluations, academic issues and behaviors. However, because each facility that Probation chose to screen was located in California, each facility failed to offer a sufficient level of security necessary to protect the public from Student. Subsequently, Student was rejected by each facility.

80. On February 5, 2013, Ms. Post provided her findings to a Juvenile Services Division Interagency Screening Committee (the screening committee). The screening committee was comprised of representatives from Probation, the County, the Department of Social Services, and the Department of Mental Health. Ms. Post believes that it is primarily the responsibility of Probation, with some advisement from the screening committee, to

[8] Ms. Post testified with the assistance of Leslie E. Murad, Attorney at Law, who is staff counsel for the County.

determine an incarcerated minor's educational placement. She does not believe it is appropriate for a pupil's IEP team to make such a recommendation.

81. In a report dated February 11, 2013, Ms. Post described that due to Student being rejected by each school, that it was Probation's recommendation that Student be placed at Johanna Boss High School, located within the DJJ, in Stockton, California. Student was 12 years old and in the seventh grade at the time. However, her report indicates that the screening committee was ordered to "explore all options" for Student's placement, and therefore, the screening committee "decided to have [Student's] case screened by the Riverside County Department of Mental Health (Department of Mental Health) for a Rate Classification Level (RCL) 13/14 placement."[9] The Department of Mental Health's investigation was led by John VanCampen, who coordinated RTC placements for minors receiving Department of Mental Health services.

The February 11, 2013 IEP

82. The County convened an IEP meeting for Student on February 11, 2013. Dr. Wesson called Mother the day of the IEP meeting to invite her attendance, but due to the late notice, Mother was unable to attend.[10]

83. The IEP team reviewed that Student was still working towards his prior annual goals in reading, writing, math and behavior. The team then reviewed Student's present levels of performance. Student was reading at the fifth grade level and his math skills were at a beginning fourth grade level. Student had difficulty in handwriting, including holding the rubber pencils provided in juvenile hall. Student could write a simple sentence. Student continued to show difficulty in communicating with peers and staff, and he had deficits in the areas of sentence combining, relational vocabulary, and multiple meanings of words. Student was frequently off-task and required one-to-one instruction. Although he was still facially eager to please, he continued having difficulty with his temper and accepting responsibility for his actions. He continued to act inappropriately, including disrespecting teachers, staff and peers, not following school rules and procedures, and acting defiantly towards teacher and staff. His delays in communication often resulted in Student not understanding the meaning of what was being said, which offended him and resulted in him

[9] A RCL level 13/14 placement is the highest level of security available for a nonpublic RTC. None of the 15 facilities previously screened by Probation held that level of security.

[10] The IEP notes state "Student's Mother was invited through U.S. mail and several attempts were made to speak to her over the phone to confirm meeting but she did not respond to the written notice and could not be reached by phone." However, Dr. Wesson testified that Mother had been reached by telephone the day of the meeting and prior to it commencing, but she was unable to attend due to a preexisting family matter. As described more fully herein, the evidence did not substantiate that the County had sent Mother prior written notice for this IEP meeting.

becoming aggressive both verbally and physically. Student also had difficulty setting and accepting behavioral limits. The County also reviewed the results of a speech and language assessment.

84. The County's speech and language assessment was conducted by Ms. Eugene, which she administered on November 14, December 7 and 14, 2012. The assessment was completed as part of Student's triennial evaluation and included a review of Student's academic records and standardized testing. Ms. Eugene has been a speech and language therapist for the County for 36 years. She received a bachelor of science degree in 1973 and her Master of Science degree in 1975. Ms. Eugene testified as a witness on behalf of the County.

85. Ms. Eugene included the following standardized testing: the Expressive One-Word Picture Vocabulary Test (EOWPVT); the Receptive One-Word Picture Vocabulary Test (ROWPVT); the Goldman-Fristoe 2 Test of Articulation (GFTA-2); the Test of Language Development-Intermediate (TOLD-I:4); and the Oral Peripheral Examination. Student was 12.5 years old when he completed this assessment.

86. The EOWPVT tests an individual's ability to name objects, actions, and concepts pictured in illustrations. The test is normed for Student's between the ages of two to 18 years. Student obtained a standard score of 73, and placed in the fourth percentile on this test, which indicated a substantial expressive language disorder. Of 100 students who were administered this test, 96 pupils performed at higher levels than Student. The ROWPVT tests an individual's ability to understand the meaning of single words. Similar to the EOWPVT, this test is administered individually and is normed for pupils between the ages of two to 18 years. Student obtained a standard score of 76 on this test, which placed him at the fifth percentile, which demonstrated a substantial receptive language disorder.

87. On the TOLD-I:4, Ms. Eugene found that Student had delays in spoken language, picture vocabulary, listening, semantics, morphological comprehension, and speaking, with serious delays in multiple meanings (when there are two or meanings of the same word) and in relational vocabulary. Ms. Eugene next administered an oral peripheral examination, which found Student's oral motor structures to be within normal limits.

88. Ms. Eugene opined that the results of her report, in particular Student's deficits in expressive and receptive language as identified by deficits by the EOWPVT and the ROWPVT, would not, by itself, qualify a pupil for speech and language services. She therefore did not feel it was appropriate to recommend speech therapy based upon these scores alone. She speculated that further testing would be required prior to recommending speech and language therapy. However, Ms. Eugene also testified that Student's scores on the TOLD-I:4 would be sufficient to qualify a pupil for speech and language therapy; yet she still failed to make this recommendation for Student. Regarding Student's remaining speech goal, which was for Student to answer "wh" questions when given a paragraph length story using age appropriate vocabulary, she opined that this goal was sufficient to address Student's areas of delay in receptive and expressive vocabulary, spoken language, picture vocabulary, listening, semantics, morphological comprehension, speaking, multiple

meanings and relational vocabulary. Ms. Eugene was unable to coherently explain how this goal addressed all of these areas of delay; or why, given her own testing results, Student did not qualify for speech and language services. Overall, Ms. Eugene provided inconsistent testimony. Her testimony was also incongruently emotional; at times, she appeared positive when discussing Student and, at other times, without explanation or transition, she cried and appeared physically distraught. For these reasons, her testimony was not persuasive.

89. Ms. Eugene's speech and language report concluded that Student's communication was functional in his current academic placement and allowed him to have access to the curriculum. She recommended that direct speech and language services were no longer needed. Despite Ms. Eugene's findings, the February 2013 IEP, offered the same level of speech therapy, 30 minutes, 20 times yearly, and repeated the same two speech goals from the prior three IEP's.

90. The February 11, 2013 IEP, offered Student the same goals and services as those offered in the prior IEP's. Similarly, the February IEP lacked goals in the area of mental health. The County continued to offer Student 100 percent of his school day in special education due to behaviors, not academic delays. The IEP team did not discuss alternatives to his placement at Riverside Juvenile Hall.

91. On February 15, 2013, the Juvenile Court agreed to continue Student's dispositional hearing so that the screening committee, this time led by the Department of Mental Health, could complete its findings regarding where to place Student.

92. Given the academic, behavior, mental health, and security parameters established by Probation and the screening committee, the Department of Mental Health located an appropriate placement for Student, Copper Hills Youth Center (Copper Hills), an RTC in West Jordan, Utah.

93. Copper Hills provides evidence-based programming for the youth in their facility. The clinical leaders at Copper Hills recognized the profound role of trauma and attachment wounds, which tend to shape the majority of the behavioral problems such youth are facing. The program focuses on four key elements in their program: building a trauma-informed treatment program that is evidenced based; using pre, mid, and post measures to objectively assess treatment effects and gains; creating competency based awareness about the effects of trauma for all staff who provide care at the facility; and providing resources, support and tools for staff and to take care for themselves as they worked in a challenging environment. Copper Hills offers a variety of programs to assist the residents with their therapeutic needs. They provide interventions and assistance to youth that have social, emotional, intellectual, and even physical difficulties. The program follows a clinical process involving assessments, individualized goals and objectives, ongoing evaluations, along with discharge planning. Copper Hills also offers a trauma-informed model of care which utilized structured psychotherapy for adolescents responding to chronic stress. The educators at Copper Hills provide individualized education to each resident. The school is

divided into three tracks, with one track devoted to adolescent males from age 13-16 years old.[11] All of the Copper Hills therapists are licensed in the State of Utah.

94. On March 12, 2013, Ms. Post spoke with Arva Encisco, who was the Director of Admissions for Copper Hills. Ms. Encisco had been in contact with Mr. VanCampen, who felt that Student "would be a perfect fit" at Copper Hills. Mr. VanCampen had sent Ms. Encisco, Student's complete educational, psychological, and criminal file. The clinical team at Copper Hills had reviewed Student's records and believed that the program at Copper Hills would be appropriate to meet Student's unique educational and therapeutic needs. Ms. Encisco opined that "our program specializes in kids with severe trauma issues, so we could really help [Student]." Ms. Encisco had not directly interviewed Student. Rather, she had relied upon Mr. VanCampen, who had directly interviewed Student on several occasions, in that regard. Based upon the clinical team's review of Student's file and Mr. VanCampen's interviews, along with the fact that the school had openings available, the staff at Copper Hills had accepted Student as a resident.

95. In a report prepared by Ms. Post and Ms. Waterman dated March 12, 2013, the screening committee concluded that Copper Hills "could provide adequate services for the minor." However, Ms. Post was concerned that Copper Hills had failed to directly interview Student, even telephonically, and had instead relied upon Mr. VanCampen's direct interviews. Ms. Post found this conduct to be highly unusual, and therefore discredited Copper Hills as a viable placement. Instead, Probation's report again recommended that Student be placed at the Johanna Boss High School, and reside at the DJJ in Stockton.

96. On March 18, 2013, the Juvenile Court convened the dispositional hearing, and reviewed Probation's recommendation that Student be placed at the DJJ. Student's counsel protested Probation's recommendation. In response, the Juvenile Court Judge requested openly to the courtroom "if anyone in the room had any suggestions as a possible placement, please give that information over to Probation." The Juvenile Court continued the disposition hearing to April 2, 2013, to consider any additional information pertaining to Student's placement.

97. On April 2, 2013, the Juvenile Court adopted Ms. Post's recommendation that Student be placed at the DJJ, and ordered a 90 day diagnostic examination be completed on Student at the DJJ. Each of the hearings held pertaining to Student's disposition was monitored by a representative or attorney for the County.

The April 8, 2013 IEP

98. The County convened its next IEP for Student on April 8, 2013. Student was 12 years old and in the seventh grade. Mother participated via telephone. Steve Figueroa, an educational advocate for Student, also attended by phone. Student's attorney, Ms. Grewal,

[11] Student would be 13 years old on June 19, 2013, approximately the same time he would be starting Copper Hills, had it been offered.

and a legal assistant, each attended in person. Robert Perez, who was Student's special education teacher, attended the meeting, along with Ms. Farrar, a probation officer, and the County's attorney. Dr. Wesson facilitated the meeting and acted as the County's administrative designee. Student attended this IEP meeting.

99. Although Ms. Eugene was not present at the April meeting, the stated purpose of the meeting was to re-review the February IEP, this time with Mother's participation. In addition, Student's representatives had requested that the County consider alternative placements outside of juvenile hall, including RTC's. Mr. Figueroa requested that the County retain an independent expert who was familiar with placing incarcerated students at nonpublic schools, outside of juvenile hall, to assess Student regarding risk management and placement. Student's advocates and attorney also requested that the County assess Student for a brain disorder and to provide an independent educational evaluation in speech and language.

100. The April IEP team did not review the February IEP or Ms. Eugene's report, because Student's counsel complained they had not had an opportunity to review the documents and provide input.

101. During the meeting, Student's teacher, Mr. Perez, reported that Student had behavioral issues while in the classroom, and Student's attorney requested a BSP. Dr. Wesson responded that Student's behaviors could be managed with goals and that he did not require a BSP.

102. The April 2013 IEP offered the same goals, accommodations, services and placement offered in the February 2013 IEP. Despite Student's representative's request, the IEP team did not discuss alternative placements to Riverside Juvenile Hall. Mother did not consent to the February or April 2013 IEP's.

The May 16, 2013 IEP

103 The last IEP held by the County for Student during the time frame at issue was held on May 16, 2013. Student was still attending Butterfield at Riverside Juvenile Hall. He was 12 years old, and was on the cusp of completing the seventh grade. The following people attended this meeting: Mother, Student, Student's attorneys: Ms. Grewal and Ms. Whiteleather, and a legal assistant for Student; Steve Figueroa; an attorney for the County; Dr. Wesson; Ms. Eugene; Dr. Chugbo; Ann Falkinburg, who was Student's counselor at Butterfield; Ms. Radican, a therapist from the Department of Mental Health; Ms. Farrar; and four probation officers.

104. Student had not met his goals in reading, writing, math, and two behavior goals, despite having been repeated over the last two years. Present levels of performance showed that Student was reading at a fifth grade level and computing math at a beginning fourth grade level. Student still required work to increase his spelling skills. His expressive and receptive language skills each fell within the below average range. Student still had

delays in the areas of sentence combining, relational vocabulary, and multiple meanings. He tended to be off-task, and worked better in an individual setting. Behaviorally, Student needed to work on his temper and to accept responsibility for his actions. He still engaged in inappropriate conduct, disrespected staff and peers, and refused to follow school rules and procedures. The IEP reported, "He gets easily offended by not understanding the meaning of what is being said and as a result he becomes aggressive both verbally and physically."

105. The team offered a new goal in the area of math, and repeated the same goals in reading, writing, and behavior, which had been offered in the previous IEP's. The team did not review goals in mental health, or offer goals in this area.

106. Ms. Eugene again reviewed her December 2012 speech and language report. She then recommended two new speech goals, to help Student use words in context in expressing language, specifically to identify and use multiple words in context. Student's attorney objected to the goals because they did not identify a baseline. Consequently, the new goals were not included in this IEP, and the IEP offered the same two speech goals, for articulation and "wh" questions, as offered in the prior IEP's. Given the dispute regarding Student's speech goals, the County decided to conclude the IEP meeting.

107. Despite Student's requests, the May 16, 2013 IEP meeting again failed to discuss an RTC placement. The IEP continued to offer Student 100 percent of his school day in SDC, for behaviors with specialized academic instruction. The IEP provided the same accommodations as the last IEP, and continued to offer Student the same counseling and speech and language services as offered in the prior IEP's. Mother did not provide her consent to the IEP.

108. During the months of February through May 2013[12], Student still had difficulty communicating with peers and often misunderstood their comments, was easily angered and reacted inappropriately, was aggressive towards peers and staff. His teacher noted concerns regarding in-class outbursts, and he was suspended or removed from class due to behaviors on 19 occasions. Staff also reported the following:

> "[Student] often engages in negative peer problems."
> "[Student] became frustrated and used profanity, [he] misunderstood another minor's jokes, which frustrated [him]."
> "[Student] is easily frustrated when provided a response he doesn't like, and becomes very upset and yells profanities: peers are often trying to calm him down."

[12] The behavior logs provided ended in May 2013; however, it was reported on June 5, 2013, that Student physically fought with peers, was defiant and cursed at staff. Student's behavior posed an "immediate safety and security threat," and he was suspended from school and sent to room confinement.

Steve Figueroa's Testimony

109. Steve Figueroa is a special education advocate who has represented numerous disabled students, including those in the custody of the County, along with several other county offices responsible for juveniles while in detention. Mr. Figueroa first met Student in March 2013, and he has directly met with Student on several occasions since then. He provided sworn testimony on behalf of the Student.

110. As an advocate, Mr. Figueroa has attended IEP meetings and court hearings on behalf of pupils with disabilities. He has been part of various IEP team meetings which have recommended out-of-state RTC placements for juveniles in custody, including for a minor who had been convicted of a homicide. He described that following an IEP team's recommendation for a specific RTC placement, the related department of probation conducts an inquiry to approve the IEP selected RTC placement based upon security needs; and the IEP team's recommendation is then provided to the Juvenile Court for that case. Based upon this process, Mr. Figueroa described that the Juvenile Court sometimes accepted, and sometimes rejected County IEP placement recommendations.

111. Mr. Figueroa is concerned that Student has difficulty sleeping, fidgets constantly, has difficulty making eye contact, lacks empathy for others, and has significant difficulty getting along with peers. He believes that Student has serious communication difficulties, and still presents with articulation delays.

112. Mr. Figueroa attended the April 8, 2013, and the May 16, 2013 IEP meetings. During each meeting he requested that the County provide Student one-to-one instructional assistance and an RTC placement. He requested the IEP team to consider several RTC's including Copper Hills. Student's attorney, Ms. Grewal, had also requested that Student be considered for an RTC. Mr. Figueroa recounted that the County team, facilitated by Dr. Wesson, had refused to discuss providing Student any placement outside of the Riverside Juvenile Hall, including an RTC. He instead referred Student's representatives to the Juvenile Court if they wished to discuss RTC placements. The IEP meetings were volatile; there was frequent yelling between the parties, and the April and May meetings ended early, with little agreement between Student's representatives and the County. Overall, the County denied Mr. Figueroa's request to provide Student one-to-one instruction, and refused to discuss any placement outside of juvenile hall.

113. Dr. Wesson's recollection of events differed from Mr. Figueroa. Dr. Wesson testified that the County had never considered an RTC for Student because "it had never been requested by anyone." However, Dr. Wesson's reflection of events was flawed. Meeting notes, which were recorded by the County during the April 8, 2013 IEP, detail that the meeting began with Mr. Figueroa requesting that the team consider an RTC placement. Mr. Figueroa further requested that the County contact a particular assessor, Susan Grossi, to "assist getting the student into one of this facility [sic]." Mr. Figueroa's testimony was generally corroborated by the County's records.

Dr. Kenneth Wesson's Testimony

114. Dr. Kenneth Wesson is a school psychologist with over 25 years' experience. His educational background includes: bachelor of arts in psychology; master of arts in counseling, doctor of philosophy and school psychology. He first met Student when he entered juvenile hall in May 2011. Dr. Wesson provided testimony on behalf of the County.

115. Each classroom at juvenile hall included a teacher who was dually credentialed to teach both special educational and general education. Although Student's classroom was identified as a 100 percent special education placement in his IEP's, it was actually the same classroom which was assigned to each student inmate in Student's living unit, which included both general education and disabled peers.

116. Each classroom utilized a positive behavior instruction system (PBIS). The PBIS implemented a token economy, where positive behavior was reinforced with preferred activities. For Student, he was reinforced with activities he found enjoyable such as reading books and magazines. The PBIS does not track antecedents, behaviors, or collect behavioral data.

117. Dr. Wesson downplayed Student's behavioral difficulty and asserted that he did not require a BSP. Rather, he reported that Student's behaviors had been appropriately managed by the imbedded PBIS program, and by Student's behavior goals. He believes that Student had experienced only occasional behavior difficulty while at school, and believes that some of his outbursts were appropriate given the harsh nature of juvenile hall. Student's behaviors were appropriate in that context, and indicated that he was able to stand up for himself. Dr. Wesson opined that if Student had not acted out aggressively towards his peers, he would have been targeted for harsher treatment and victimhood while incarcerated.

118. Dr. Wesson believes that Student required individual instruction to benefit from school, and testified that he received one-to-one instruction for 50 percent of each school day while at Southwest and Butterfield.

119. Dr. Wesson testified that it is not uncommon for the County IEP team to recommend alternative placements for incarcerated youth. These placements have included various RTC placements located outside of California. In general, nonpublic RTC's out-of-state can provide a locked-down, secured site, while nonpublic RTC's within California do not provide the same level of security.

120. Dr. Wesson described that following the County IEP's recommendation for a specific RTC, the Department of Probation will then conduct an inquiry regarding public safety concerns. This scrutiny includes determining whether the RTC has a sufficient level of security to protect the public from the minor, so that the minor does not escape or threaten the community. If Probation determines that the IEP recommended RTC meets security requirements, the placement recommendation is then presented to the Juvenile Court, which makes the final determination as to placement. Within this three step process, Dr. Wesson

has facilitated IEP team meetings which have recommended RTC placements for minors at juvenile hall. These RTC placements included secured facilities located in Utah, Texas, Wyoming, and Florida. However, for Student, the IEP team never considered an RTC placement, or any placement outside of a juvenile hall court school. Dr. Wesson testified that the IEP team had not considered an RTC placement for Student because it had not been requested by the Juvenile Court or by Student's representatives.

121. Dr. Wesson's testimony was at times inconsistent with substantial evidence provided during the hearing. For example, his testimony that the County provided Student one-to-one instruction for 50 percent of each school day was inconsistent with the IEP's, which failed to offer any individual instruction until October 2013, and the teacher's testimony, which will be more fully discussed below. As discussed herein, his testimony regarding Student's behaviors was inconsistent with behavior logs, staff reports, and various psychological assessments, which showed that Student was experiencing serious and pervasive behaviors far beyond what Dr. Wesson reported. Finally, his testimony that an RTC placement had not been considered because it had not been requested, is inconsistent with the Juvenile Court records, and IEP notes which show that Student's representative had requested an RTC placement.

Ann Vessey's Testimony

122. Ann Vessey has been the Executive Director of Special Education for the County since July 2007. She holds masters' degrees in educational administration and special education. She has worked for over 21 years as a special education administrator. She has informally observed Student on several occasions, but has not directly assessed or worked with him.

123. She has also been part of County IEP teams which have recommended minors for placement at out-of-state RTC's, including facilities located in Utah, Texas, and Florida. She similarly reported that Probation must approve the security of the IEP recommended placement, and the Juvenile Court has the final say regarding the placement. However, for Student, she did not believe it was the role of his IEP team to consider a placement outside of Juvenile Hall. Rather, for Student, Ms. Vessey believed it was the role of the Department of Mental Health to make this determination. She believes that RTC placements are reserved only for minors with serious emotional issues, and that Student did not qualify for this level of placement. Rather, she believed that his emotional issues could be appropriately addressed by a Department of Mental Health counselor, which was imbedded in the program at Juvenile hall.

124. Behaviorally, Ms. Vessey believes that Student had improved and that the PBIS had been an effective tool in curbing his outbursts. For example, she observed that his behaviors had improved during the IEP meetings. Student attended several County IEP meetings, which he attended while shackled and under the direct supervision of a deputy probation officer. Beginning at the July 2011 IEP, she observed that Student was uncontrollable. He was disrespectful, yelled, and was verbally aggressive towards his

Mother. At more recent IEP's, Ms. Vessey observed that Student acted subdued and respectful, and he no longer verbally attacked his mother.

Mother's Testimony

125. Mother complained that she was unable to participate at the February 11, 2013 IEP meeting. She had resided in Hemet, California, until August 2012, when she moved to Spokane, Washington. Following her move to Spokane, the County had sent her a written notice for the August 28, 2012 IEP meeting, which she attended by telephone. Following the August IEP, she had obtained a new home phone number, but had kept the same cellular phone number which the County had used to contact her with in the past. Up to the February 11, 2013 IEP, the County had diligently invited Mother to each IEP meeting, and the County attached copies of the written IEP notices with the IEP's; yet such notice was missing from the February 11, 2013 IEP.

126. On February 11, 2013, Mother received a telephone call from Dr. Wesson, asking whether she would like to attend an IEP meeting, which was about to begin. Mother was unable to attend and requested that the meeting be held at a later time. Dr. Wesson asked whether she could participate telephonically, at least for part of the meeting, but she was unable to do so. The County convened the meeting, where they reviewed the Student's present levels of performance, academic and behavioral issues, and the results of Ms. Eugene's speech and language assessment.

127. At the request of Student's attorneys, the County convened the April 8, 2013 IEP meeting. However, Ms. Eugene did not attend this meeting and the County did not discuss her report. During this meeting, Student's counsel requested that the team consider a RTC placement, but the County refused this request. The IEP team similarly refused to discuss RTC placements at the May 2013 IEP meeting.

128. Mother's testimony regarding the February, April, and May IEP meetings are consistent with the County's educational records for Student, which included IEP meeting notices for each IEP, except for the February 11, 2013 IEP. Her testimony was also consistent with the April 8, 2013 IEP meeting notes, which acknowledged that, for the February meeting, the County only tried to contact Mother via telephone; and show that Student's advocate requested a nonpublic school placement. Finally, Dr. Wesson confirmed that the notes contained in the February IEP meeting, which state the County had tried to reach Mother several times in writing and by telephone but were unable to do so, were inaccurate, and that he had reached her by telephone the day of the February 2013 IEP. Given the foregoing, the County did not take reasonable steps to include Mother at the February 2013 IEP meeting.

Ann Falkinburg's Testimony

129. Ann Falkinburg is a licensed marriage and family therapist with over 26 years of clinical experience. Ms. Falkinburg was a Department of Mental Health therapist

assigned to the same living unit as Student when he resided at Riverside Juvenile Hall, and while he attended Butterfield. She has been assigned to this specific living unit, "Unit Nine," for several years, where she has provided counseling for each juvenile assigned to this unit, including Student. Ms. Falkinburg was still assigned to this living unit at the time of the hearing, and was still providing counseling to Student. She testified on behalf of the County.

130. Ms. Falkinburg reported that immediately upon Student's incarceration in May 2011, she had begun providing him an intensive treatment program, due to the severity of his case and his young age. She directly counseled Student whenever he tantrumed or had an outburst in class, which was one-to-four times weekly during this intensive treatment period.

131. As a therapist, she is concerned that Student was severely under-socialized when he arrived at Juvenile Hall. Student had attention difficulties and difficulty communicating, despite being talkative. Student experienced intermittent explosive issues several times per day. He required physical interventions more than once a week. Student initially received psychotropic medication, yet medication was discontinued, due to a mutual decision between Student and his psychiatrist. Student could be firm and rigid in his convictions and, when he believed he was treated unfairly, he would become argumentative. When Student did not get his way he experienced anger, and he could become manipulative. When Student had an emotional outburst, it would take a therapist 15-30 minutes to de-escalate his behavior, during which time he had to be removed from class.

132. As of the time of the hearing, Ms. Falkinburg determined that Student was experiencing anxiety and a high degree of depression which she had not previously observed. She described these symptoms as "situational depression," and she attributed these behaviors to his pending transfer to the Johanna Boss High School and the DJJ.

133. Ms. Falkinburg reported that she worked with Student to attain his IEP based mental health goals beginning in May 2011. Yet she reported that he had attained only a 60 percent achievement level, or baseline, in goals related to his behavior and mental health. Ms. Falkinburg is concerned that Student still experienced emotional issues which needed to be addressed in his IEP's. Student still had attentional, social, and emotional delays, and appeared to be traumatized from a chaotic and abusive childhood. She believed that Student still suffers from PTSD, which has impacted his educational development, and that he required, and still required IEP-based goals and services to meet his unique needs in the areas of emotion and behavior.

134. Although Ms. Falkinburg presented as a caring and instructive witness, there were some inconsistencies in her chronological reflection of events. For example, Student was not in the living unit which Ms. Falkinburg was assigned, Unit Nine, at Riverside Juvenile Hall, during the majority of his first year while under the County's custody. Rather, on May 27, 2011, the County moved Student from Riverside Juvenile Hall to Southwest Juvenile Hall, in Murrieta, California, where he attended the Southwest School. Student resided at Southwest Juvenile Hall for 308 days, before being transferred back to Riverside

Juvenile Hall on March 30, 2012. If Student received counseling while at Southwest Juvenile Hall and the Southwest School, it was from a therapist other than Ms. Falkinburg.

135. Therefore, Ms. Falkinburg's reflection of Student's behaviors, including his intermittent explosive issues, was more likely attributable to his second year of incarceration, which was the 2012-2013 school year. Behavior logs from April 2012 through June 2013, which include the 2012-2013 school year, also show significant behavioral difficulty, including explosive issues, during this period.

136. Similarly, Ms. Falkinburg's reflection of working with Student to attain his IEP based mental health goals is flawed. During her testimony, Ms. Falkinburg stated she began working on these goals immediately upon his incarceration in May 2011. She further emphasized the importance of having IEP based mental health goals for a pupil like Student, who has emotional difficulties which impact his education. However, she could not recall which IEP Student's mental health goals were derived from, and she had difficulty recalling the specifics of his goals. For Student, the first, and only, reference to mental health goals stemmed from the January 26, 2012 IEP, which was nine months after Ms. Falkinburg reportedly began working on them (and while Student was placed at the Southwest Juvenile Hall). Again, it appears that Ms. Falkinburg was confused regarding the timeline of events, and it is more likely that she worked with Student to attain these goals following his transfer to Riverside Juvenile Hall.

Robert Perez's Testimony

137. Robert Perez has been a teacher for the County since 1984; he is dually credentialed to teach both students in general education and those in special education. He first met Student in October 2012, when Student was assigned to his classroom at Butterfield.

138. Mr. Perez worked with Student to attain his IEP goals, and provided instruction in each academic course, which for Student included math, language arts, writing, and sometimes science or geography. Although the IEP's repeated these goals each year, Student had not attained any academic or behavioral goal. Student worked at a fourth grade level and received "C's" and "B's," and the occasional "no grade" due to a lack of work completion. Mr. Perez recorded Student's grades every two weeks in written progress reports, which the County provided to Student's public defender.

139. Student's classroom at Butterfield consisted of between 15 to 23 students, with Mr. Perez and one teaching assistant, and a deputy probation officer for security. There is a frequent turnover of pupils in this class, with the average stay lasting between 30 and 140 days, and peers are generally between 16 and 18 years of age. The classroom included both pupils with IEP's and those without disabilities, with the majority of students being typically developing.

140. During class, Student frequently fidgeted, shook an arm or leg, drummed loudly on his desk, and was constantly sensory seeking with his hands. These behaviors impeded his learning and were disruptive to the entire classroom. Mr. Perez gave Student various sensory tools, such as a cleaning cloth, tissue packet, and eventually a fidget ball, to help with his sensory seeking behavior. Student was also afforded frequent movement breaks, but his fidgeting still persisted and he was unable to sit through an entire class. Mr. Perez tried to accommodate Student by shortening the length of his instructional period to 15 minutes for each course.

141. Mr. Perez had difficulty redirecting Student and instead would give him work options, whereby Student could select a preferred activity. He observed that Student had difficulty with memory and retrieval of information. When focused, Student could attend to as task for approximately 15 minutes. Mr. Perez recognized that Student required one-to-one instruction to learn and a shorter instructional period. He, or his teaching assistant, tried to provide Student individual instruction at least 45 minutes per day, in 15 minute intervals. At times, he would have a peer also tutor Student, at 15 minute intervals, up to 45 minutes per day. Given the composite of his classroom, Mr. Perez had difficulty providing Student individual attention and was not able to spend as much one-on-one time with Student as he would have liked. Mr. Perez believes that, under the right circumstances, Student had the ability to "make year-for-year growth" in each academic course.

142. Student exhibited signs of anxiety and depression, which Mr. Perez attributed to being incarcerated. It was also common for Student to have behavior problems while in class, including verbal and physical outbursts, and he was frequently removed from class to de-escalate. He required time-outs and single period suspensions, several times each week, to calm down.

143. The classroom at Riverside Juvenile Hall was a structured environment, but it could also be over-stimulating, intimidating and violent. It was not uncommon for a pupil to be physically attacked by a peer while in class, which Mr. Perez described as an "assassination." Student was much younger and smaller than his peers, slight of build even for his age, and had delayed interpersonal skills and communication difficulties. As a result, he was an irritant and a target to peers. Several inmates had notified County staff that Student had initially been given a "pass" due to his young age, but threatened that he would be harmed if he did not improve his behavior and communication skills.

144. Riverside Juvenile Hall provided students two periods of physical education (P.E.), each week day. One period was considered school P.E., while the other was not considered part of school, and was provided after the regular school-day. Student was competitive and enjoyed physical activities, especially team sports. However, he had difficulty communicating with peers and often misunderstood what they said, which frustrated him and caused him to engage in verbal and physical altercations with peers and staff. Almost daily, Student experienced outbursts and other serious behavior problems during both the school and after-school P.E. classes. It was normal for Student to be "written up" two to three times per each class. It was also common for Student to be

removed from the P.E. class altogether, sometimes by force, to de-escalate. Due to his daily, uncontrollable behaviors, P.E. classes were a constant source of frustration for Student, his teachers, peers, and staff.

145. Overall, Mr. Perez believes that Student made some progress, and he believes that Student, if given the right combination of attention and individualized instruction, can perform at a much higher level than the level of academics he demonstrated while at Butterfield. He surmised that Student had begun to enjoy reading, and that he had grown more receptive to redirection over the years, except during the P.E. classes.

The California Division of Juvenile Justice

146. During the months of July, August, and September 2013, Student was transferred to the California Division of Juvenile Justice, located in Stockton, California (the DJJ), for a 90-day classification review and evaluation, after which point he returned to Riverside Juvenile Hall. The DJJ is a separate LEA from the County. Records pertaining to Student's referral to the DJJ state "Placement in an out-of-state rehabilitative center was considered; however, concern arose when the youth was accepted into the program without having been first interviewed by the program staff. Subsequently, commitment to [the DJJ] is currently under consideration."

147. The DJJ, previously known as the California Youth Authority, is a division of the California Department of Corrections and Rehabilitation, that provides education, training, and treatment services for California's most serious youth offenders. These youths are committed by the juvenile and criminal courts to DJJ's 11 correctional facilities, four conservation camps and two residential drug treatment programs. The DJJ correctional facility located in Stockton houses male youths under the age of 18 in dormitory-style living units. This correctional facility provides education at the Johanna Boss High School, which is contained within the same facility. The Johanna Boss High School provides instruction in high school courses. Neither the DJJ nor the Johanna Boss High School falls under the authority of the County.

Testimony of the DJJ Staff

148. Four witnesses from the DJJ each testified regarding their testing and their observations of Student while he attended the Johanna Boss High School, at the DJJ. These witnesses included Dr. Kris Hunter, Dr. Mary Ann O'Neill, Lorraine Hill, and Cal Moppins, Jr.

149. On September 12, 2013, Student was administered the WJ-III by Mr. Moppins, who was Student's special education teacher while at the Johanna Boss High school in the DJ. Student's standard score in broad reading was 87 with a grade equivalent of 5.4; and broad math was 80, with a grade equivalent of 4.8. Student's standard score in reading fluency was 86, with a grade equivalent of 5.3; and passage comprehension was 87, with a grade equivalent of 4.8. His standard score in math calculations was 83, with a grade equivalent of 5.4; and math fluency was 84, with a grade equivalent of 5.2. His standard

score in spelling was 78, with a grade equivalent of 3.1; writing fluency was 88, with a grade equivalent of 5.6; and writing samples was 87, with a grade equivalent of 4.9. Overall, Student showed a lack of progress in almost every area assessed since the last WJ-III was administered in August 2012. He was still performing at between a 3rd to 5th grade level in every academic area, which meant he had fallen another year behind his typically developing peers.

150. Mr. Moppins recollected meeting Student on his first day at Johanna Boss High School. Student, who was 13 years of age and much younger and physically smaller than his peers, who were 16 to 18 years old, was terrified. He was shaking from fear and had to be taken aside to be calmed. Throughout his diagnostic placement at Johanna Boss High School, Student fidgeted uncontrollably, which entailed him constantly shaking an arm or a leg wildly, "like a jackhammer," and he required frequent movement breaks during class. Typically, juveniles are not permitted to move during class, for safety reasons. However, Mr. Moppins made an exception for Student, because he was unable to focus on any task without frequent movement breaks. Mr. Moppins also provided Student a fidget ball, which here referred to as a "squeeze toy," which helped him focus while in class. Student nonetheless was frequently distracted and inattentive during class.

151. Mr. Moppins' SDC class had eight students including Student, one teacher and one aide. Although it was not included in his IEP, Student required one-to-one instruction to learn, and Mr. Moppins, or his aide, was able to provide at least an hour per day of individual instruction for him. Student was also provided IEP-based counseling and speech therapy every other week.

152. Mr. Moppins provided a safe and structured classroom, and Student was able to receive respite from his peers during class-time. Student learned how to use the computer and how to play chess, which he enjoyed. Mr. Moppins also observed some improvement in Student's math and writing abilities. Although Student was still working at a fourth to fifth grade level while in this class, Mr. Moppins reported that Student had the learning potential to perform high school level work.

153. Dr. Mary Ann O'Neill, who is a school psychologist for the Johanna Boss High School, conducted a psychoeducational assessment of Student on September 9, 2013. Dr. O'Neill holds masters and doctoral degrees in psychology, a credential in school psychology, and is a licensed counselor and educational psychologist. She has worked for over 18 years as a school psychologist and has extensive experience as a therapist.

154. She administered the WJ-III-cognitive, and determined that Student's standard score in general intellectual ability was 91, which was in the average range of intellectual ability; verbal ability was 81, which fell in the limited ability range; and thinking ability was 95, which fell in the average range. Student's standard score in cognitive efficiency was 89, which was in the limited-average range; and working memory was 99, which was average. His standard score in verbal comprehension was 81, which showed a limited ability. When compared to the WJ-III-cognitive testing administered to Student in August 2012 by Dr.

Fitzgerald, Student showed some growth in his thinking ability, cognitive efficiency, and in his working memory. Student regressed in verbal ability and in verbal comprehension. Overall, Student's intellectual ability was in the average range of others his age, with difficulties noted in verbal communication and comprehension.

155. Dr. O'Neill also administered the Millon Adolescent Clinical Inventory (Millon), which assesses a pupil's social, emotional and behavioral status. Student received elevated scores in areas related to sexual discomfort, family, discord, and childhood abuse. The elevated scores indicated the need for counseling in the areas of social skills, family relationships, and unresolved trauma. Student also had an elevated score on the impulse propensity scale, which suggests difficulty maintaining control of behavior, which is usually demonstrated in excess and or inappropriateness. For males, this type of behavior generally involves aggression.

156. Dr. O'Neill observed that Student had difficulty while in the living unit at the DJJ. He was harassed and verbally threatened by peers, and peers interacted with him inappropriately. Student had one incident in which, for retaliation, he threw urine he had collected in a bottle on another ward's bed. She also reported that Student had serious problems with profanity, harassment, and noncompliance to direction. Despite several altercations with his peers while at the DJJ, she reported that Student's peers were being patient with him because he was new. Dr. O'Neill believes that these altercations were appropriate and indicated that Student was able to stand up for himself. Similar to Dr. Wesson, she interpreted Student's behaviors as an appropriate reaction one would have to being incarcerated, and that Student would be targeted for much harsher treatment by his peers if he did not react aggressively at times. Despite indications that Student was suffering serious social and emotional difficulty, she reported that Student programmed well in the living unit at the DJJ.

157. In summary, Dr. O'Neill found that Student did not meet the criteria for serious emotional disturbance (SED), and determined that Student continued to qualify for special education under OHI due to ADHD.

158. On September 30, 2013, Dr. Karen Hunter, Psy.D., who was a psychologist for the DJJ, conducted a Psychological Diagnostic Report of Student. She administered the Kaufman Brief Intelligence Test-2 (KBIT-2), which is a standardized intelligence screening device. Student attained a verbal standard score of 90 (low average), a non-verbal standard score of 118 (above average), and a composite standard score of 105 (average). She concluded that "there is a statistically significant difference between [Student's] verbal and non-verbal scores."

159. Dr. Hunter observed that Student presents with substantial hyperkineses, stating "he is restless, has difficulty sitting still, is fidgety, very easily distracted, and his attention is easily shifted." She also found him likable and bright, although needing attention and constant redirection. She reported that Student had transferred a significant degree of anger from his Mother, whom he had reconnected with while incarcerated, to his step-

mother, whom he now believed had tricked him into shooting his father. She detailed that Student had a "significant history of horrific abuse beginning at a very early age," with "extreme emotional and behavioral problems." Yet, her report concluded that "although he continues to occasionally engage in inappropriate behaviors, primarily due to anger with peers and his perception of unfairness, these behaviors are a far cry from those detailed in reports from his earlier years," and determined that Student no longer suffered from PTSD.

160. Dr. Hunter initially testified that one had to be exposed to death or a near death experience to be diagnosed with a PTSD. However, she later testified that a child, like Student, who had suffered serious abuse, neglect, or emotional trauma, could also suffer from a PTSD. She reported that, per her direct observation, she believed that Student no longer exhibited symptoms of a PTSD, but that he still required IEP based mental health goals and services.[13]

161. On September 23, 2013, Loraine Hill, M.S., CCC-SLP, a Language, Speech, and Hearing specialist for Johann Boss High School and the DJJ, administered a speech, language, and hearing assessment of Student. She observed that Student had difficulty maintaining a conversation, would perseverate on topics he found interesting, and had difficulty maintaining appropriate eye contact. Student was respectful to Ms. Hill, but easily distracted and had difficulty focusing.

162. Ms. Hill administered the Clinical Evaluation of Language Fundamentals-Fourth Edition (CELF-4), which assesses a pupil's receptive language, expressive language, language content, and language memory. Per the CELF-4, she determined that Student demonstrated significant difficulty recalling sentences of increasing length and complexity and repeating them verbatim. Student was also challenged by word classes and semantics. Student had delays in receptive language, expressive language, and language memory. She also administered a language sample, where she found that "Significant pragmatic language deficits became evident during the collection of the language sample." Student was observed having significant difficulty maintaining a topic of conversation, he displayed tangential responses to questions or irrelevant comments not associated with topics being discussed, frequently monopolized the conversations and spoke only about topics that were of interest to him, and he was unable to pick up on subtle cues during conversations.

163. Ms. Hill also administered the Social Language Development Test, Adolescent, which assesses the ability of students to take someone else's perspective,

[13] Following the closing of the administrative record for this matter (other than for the parties submission of closing briefs), Student filed a Motion to Reopen the Administrative Record and for Administrative Notice of Portions of the DSM-IV and of the DSM-V. The intent of Student's motion was to rebut the testimony of Dr. Hunter by showing that a death, or near death, experience is not required to diagnose a minor with PTSD. However, the totality of Dr. Hunter's testimony does not state this, and the submission of portions of the DSM-IV and V are therefore not warranted or probative. Student's motion to reopen the administrative record is therefore denied.

making correct inferences, problem solving, interpreting social language, and understanding idioms, irony and sarcasm. Student scored at the third percentile in making inferences, third percentile in problem solving, and fifth percentile in social interaction. Student was unable to understand facial expressions in a given context, and had significant difficulty taking the perspective of others, including peers or the character in a story. Student also had difficulty understanding idioms, irony, and sarcasm. Ms. Hill summarized that Student's greatest area of difficulty was in the area of pragmatics, which contributed to his overall inability to communicate effectively. She found that Student continued to qualify for speech and language services, to address his pragmatic language disorder.

The IEE Assessment Plan

164. In a letter dated April 29, 2013, from the County's attorney, Mr. Clarke to Student's attorney, Ms. Grewal, the County agreed to provide Student independent educational evaluations (IEE's) in the areas of neuropsychological, speech and language, vision therapy, functional behavioral analysis, and occupational therapy. The County requested that Ms. Grewal provide the County information regarding whom she wished to conduct the IEE's, and included an assessment plan. Mother signed and returned the assessment plan to the County on May 28, 2013. For the neuropsychological IEE, the parties agreed to Dr. Jose Fuentes. Within 24 hours, the County retained Dr. Fuentes, who initially told Mr. Clarke that he could assess Student within the following month. However, due to unrelated scheduling conflicts with the hospital he worked at, Dr. Fuentes was unable to assess Student until September 13 and 14, 2013.

Dr. Jose Fuentes' Testimony

165. Dr. Jose Fuentes has a B.S. in behavioral science, an M.A. in experimental psychology, and a Ph.D. in clinical psychology. He was retained by the County with the instruction to provide Student an independent assessment to ascertain his profile of cognitive, educational and emotional functioning, with an emphasis on providing eligibility determinations under the Individual's with Disabilities Educational Act, and related recommendations. He provided testimony during the hearing.

THE SEPTEMBER 2013 ASSESSMENT

166. On September 13 and 14, 2013, Dr. Fuentes administered the Comprehensive Test of Nonverbal Intelligence – Second Edition, which measures different but interrelated nonverbal intellectual abilities. The global nonverbal intelligence quotient derived from a student's test results is the combination of the student's pictorial nonverbal intelligence quotient and geometric nonverbal intelligence quotient. Student received a standard score of 87, which indicated a low average ability.

167. In academics, Dr. Fuentes relied upon the WJ-III previously conducted by Mr. Moppins. In executive functioning, he recited the results from the WJ-III-cognitive testing administered by Dr. O'Neill. Regarding Student's emotional needs, Dr. Fuentes determined

that Student had undergone too many recent psychological assessments, and he felt further testing in this area would be too burdensome on Student.

168. Dr. Fuentes assessed Student while he was at the Johanna Boss High School, at the DJJ. However, he conducted his report over a weekend, and was therefore unable to observe Student while in class. During testing, he was confined to a large, empty room with just himself and Student. Student was polite and responsive, fidgeted constantly, and required redirection. He did not observe Student interact with peers or staff, and he provided no independent data regarding Student in this regard.

169. Dr. Fuentes testimony at hearing was circumspect, guarded, and noncommittal. For example, he disagreed with the County's witnesses concerning their determination that Student did not meet the criteria for SED. He opined that, given Student's educational and family history, it is likely that he suffered from SED. However, he was unwilling to formally commit to this determination himself. In his assessment, Dr. Fuentes failed to conduct any testing related to SED, and his report "deferred" making a diagnosis in this area. Also during testimony, he raised a concern that Student may be impacted by fetal alcohol syndrome, given his lack of SED eligibility and his family history; yet he was unwilling to recommend an assessment in this area. In both his report and during his testimony, Dr. Fuentes was unwilling to establish, or rule out, any area of special education eligibility which had not been previously identified by the County, such as OHI, due to ADHD, and a speech and language disorder.

170. His report failed to include any recommendations regarding special education services or placement. Similarly, his testimony was unwilling to offer or commit to any suggestion for special education services or placement for Student. Overall, Dr. Fuentes' psychological evaluation, and his testimony, was inadequate to render any independent determination pertaining to Student's special education needs.

Testimony of Student's Experts

171. Student called as expert witnesses Dr. Perry Passaro and speech and language pathologist Abby Rozenberg.[14] Each had evaluated Student and produced written, draft reports regarding Student's special education needs, after the commencement of the hearing. Neither report was ever provided to the IEP team, nor was either expert made available for IEP meetings. Thus, the IEP team never had the benefit of these evaluations in making their determinations.

172. Nonetheless, they each had an opportunity to meet with Student while he was at Riverside Juvenile Hall and to administer various tests. Each had an opportunity to meet

[14] Student also called Emily Island, a self-taught expert on autism, solely for rebuttal testimony. However, Ms. Island had never met or assessed Student, or reviewed his records. Additionally, her testimony failed to rebut any specific prior testimony. For these reasons, her testimony was not given any weight for this matter.

with teachers and staff at Butterfield, but had not yet had an opportunity to observe him while at school, which they both intended to do as soon as practicable. Given their direct observations of Student, both experts emphatically testified that, in addition to other areas of disability, Student likely met the criteria for a pupil with autism or autistic like behaviors.

173. Ms. Rozenberg is a licensed speech-language pathologist and has been working in the field for over 15 years. She received her bachelor of science degree in speech-language pathology in 1989 and her master of science degree in speech-language pathology in 1991. Although Student's counsel independently retained her in November 2013, the County has agreed to pay for Ms. Rozenberg's speech and language evaluation as part of the IEE's it agreed to provide Student in the May 2013 letter from its attorney to Student's counsel.

174. On November 18, 2013, Ms. Rozenberg administered the Comprehensive Assessment of Spoken Language, and found that Student scored moderately low in his understanding of synonyms, in the fifth percent; severely low in grammatical judgment, at the second percent; severely low in meaning from context, second percent; and moderately low in pragmatic judgment, fourth percent. On the Peabody Vocabulary Test, Fourth Edition, she determined that Student's vocabulary was at the third grade level. Student also had delayed scores in associations, semantics, definitions, and flexible word use, per the results of the Word Test- Second Edition. She also administered the Test of Problem Solving-2A, and determined that Student had deficits in determining solutions, problem solving, interpreting perspectives, and severe delays in transferring insights. On the Children's Communication Checklist- 2, she found that Student simplifies words by leaving out sounds, mispronounces words, mixes words up that have similar meaning and which sound similar, and speaks incoherently, finding "it is hard to make sense of what he is saying." Student also speaks repetitively about things that no one is interested in and it is difficult to stop him from talking. He sometimes uses scripted language, saying things he does not understand, and misses the point of jokes or puns (though he is amused by nonverbal humor such as slapstick). On the Social Skills Improvement System test, he scored below average in communication, cooperation, and self-control.

175. As a speech therapist that has assessed hundreds of minors with varying disabilities, Ms. Rozenberg was concerned that Student experienced serious communication delays which were consistent with autism spectrum disorder. On that basis, following her testing, she requested that his teacher complete an inventory which assessed for autistic like characteristics. Mr. Perez completed this inventory, the Social Skills Improvement System, which showed that Student had delayed communication, empathy, assertion, responsibility, and self-control. Student had difficulty externalizing and internalizing his behaviors, with bullying, and with inattention. Student demonstrated behaviors which are specific to an autism spectrum disorder, including never taking turns in conversations, never showing concerns for others, often being preoccupied with object parts, becoming upset when routines change, stereotyped motor behaviors, repeating the same thing over and over, and nonfunctional routines or rituals. Per the teacher's inventory, Student presented characteristics commensurate with autism, and an above-average likelihood of being autistic.

176. Ms. Rozenberg was critical of the IEP's and complained that the speech and language services were inadequate. Student had deficits in receptive and expressive vocabulary, spoken language, picture vocabulary, listening, semantics, morphological comprehension, speaking, multiple meanings and relational vocabulary. As a consequence, he had severely delayed communication abilities, particularly in the area of pragmatics. After two years of County provided services, Student still manifested multiple and serious speech and language delays. She therefore recommended more intensive speech and language therapy, and determined that he required two 30-minute sessions each week of individualized instruction.

177. Dr. Perry Passaro also provided expert testimony on Student's behalf. Dr. Passaro possesses a B.S. in Biology, a M.S. in education, and a Ph.D. in educational psychology. He served as a school psychologist for over 14 years with almost six years at the Santa Ana Unified School District. Dr. Passaro has served as Director of Special Education at the Hot Springs, South Dakota School District, and for the Orange County Office of Education, which included the Orange County Juvenile Hall. Since December 2005, he has been a licensed psychologist in private practice. He has served as an independent education evaluator for 11 school districts in Southern California. Dr. Passaro was retained by Student's attorney to conduct an independent psychological evaluation. He testified persuasively during the hearing.

178. Dr. Passaro's evaluation included a review of Student's school and psychological history, a clinical interview, and psychological testing, which he solely performed. He met with Student at Riverside Juvenile Hall on November 8, 2013. During testing, Student was underweight, inattentive and distracted. He appeared tense, worried, and impulsive. He was cooperative but fidgety. He reportedly had problems with his memory. Student's speech was intelligible, with moderate articulation problems.

179. Dr. Passaro administered the Beck Depression Inventory, which is a self-reporting inventory that assesses a pupil's depression-related symptoms, and the Beck Anxiety Inventory, which similarly assesses a minor's anxiety. On the depression inventory, Student received a score in the range of "severe depression." On the anxiety inventory, received a score in the "moderate anxiety" range.

180. He next administered the Millon, and determined that Student felt sorrowful, dejected, and trapped in intense conflict. He felt miserable, misunderstood, and unappreciated. As a result, Student becomes touchy and resentful, which causes his obstructive behavior. Dr. Passaro also administered the Draw a Person: Screening Procedure for Emotional Disturbance, which assesses emotional problems. Student's overall score fell in the "strongly indicate" range for emotional disturbance. On the BASC-2, Dr. Passaro determined that Student had problems with hyperactivity, low self-esteem, and poor self-concept.

181. Dr. Passaro next administered the Social Responsiveness Scale (SRS), which assesses interpersonal behavior, communication, and repetitive/stereotypic behavior that are

characteristics of autism spectrum disorders. The SRS inventory was completed by Mr. Perez. Overall results on this test found deficiencies in reciprocal social behavior that was clinically significant and evidenced an interference with everyday social interactions. The results supported a finding of autism spectrum disorder.

182. He also tested Student utilizing the Benton Facial Recognition Test (BFRT), which provides a standardized procedure for assessing prosopagnosia (facial blindness), which can cause great social difficulty, and is common in individuals with autism spectrum disorders. Dr. Passaro noted that a significant behavioral observation which stood out during the evaluation was Student's physical response to the administration of the BRFT. Student became increasingly anxious and concerned. He had a noticeable change in mood and behavior. Student required extensive time to respond to items, and made many requests to end the test. His results fell within a deficit range (second percent), indicating an autism spectrum disorder.

183. Dr. Passaro believes that Student has been improperly diagnosed with borderline intellectual functioning, which prevented proper identification of a learning disability. He also determined that, based upon his review of records and direct testing, Student met the criteria for SED. Dr. Passaro believes that this identification has existed since at least 2006, when records indicated severe, recurrent temper outbursts manifested daily which were inconsistent with his developmental level. Records since then up to his evaluation reported that Student demonstrated very serious and pervasive problems at home, school, and while in Juvenile Hall. These included inattentiveness, over-activity (always moving); impulsiveness and fighting; uncooperative behavior; anxiousness; aggressiveness; and inappropriate but non-aggressive behavior.

184. Dr. Passaro concluded that Student met the diagnostic criteria for Autistic Disorder; Social Pragmatic Disorder; Depressive Disorder; PTSD; Child Abuse Disorder; Conduct Disorder; Generalized Anxiety Disorder; Attention Deficit Disorder; Language Disorder; Reading Disorder; Disorder of Written Expression; and Mathematics Disorder.

185. Regarding special education eligibility, he determined that Student met the criteria for autistic like behaviors, SED, OHI, due to attention combined type, specific learning disability, in reading, writing, and math; and speech and language impairment.

186. He was critical of Student's IEP's. Academically, Dr. Passaro complained that the IEP's misidentified Student's learning disorder as borderline cognition, which resulted in flawed instruction. Student, who had a nonverbal IQ score of 118, based upon the KBIT-2 administered by Dr. Hunter, should have been performing grade level work; yet, after more than two years under the County's supervision, he was still performing at between the 3rd and 5th grade levels across all academic areas. Socially, Student required more intensive speech and language to remediate serious communication delays. Behaviorally, the PBIS failed to include antecedent control or individualized positive replacement behaviors, and failed to appropriately minimize Student's behaviors. Rather Student required an individualized BSP. Dr. Passaro described that Student required a calm, safe, and structured

environment, with carefully planned, highly individualized adaptations and supports. In summation, he testified that Student required intensive social, emotional, behavioral, and cognitive based therapy which was consistent with educational programs offered at various RTC placements.

LEGAL CONCLUSIONS[15]

Introduction – Legal Framework under the IDEA[16]

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) 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 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).)[17]

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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[15] All Factual Findings are incorporated into the Legal Conclusions.

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

[17] References to the Code of Federal Regulations are to the 2006 version.

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is a preponderance of the evidence].) In this case, Student, as the petitioning party, had the burden of proof.

Juvenile Hall Education Responsibility and Duties

5. Children placed in a juvenile hall are entitled to a FAPE. (Ed. Code, § 56150.) Juvenile court schools provide educational services to all students "detained" in juvenile halls. (Ed. Code § 48645.1.) Education Code, section 48645.2, provides that county board of education shall operate juvenile court schools, or contract out their operation with the respective elementary, high school, or unified school district in which the juvenile court school is located.

Juvenile Court Schools

6. In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) When a residential placement is recommended by an IEP team, the local educational agency, such as a county office of education, is financially responsible for transportation to and from the residential placement and all special education instruction and non-mental-health related services. (Cal. Code Regs., tit. 2, §§ 60010, subd. (k) [including county offices of education within the definition of local educational agency], 60110, subd. (b)(2) [for residential placements, "The LEA shall be responsible for providing or arranging for the special education and non-mental-health related services needed by the pupil."], & 60200, subd. (d).)

Issue 1: Between April 16, 2011, and April 16, 2013, did the County deny Student a FAPE by failing to comply with the procedural requirements of special education law as follows:

7. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2).)

ISSUE 1(A): FAILING TO FULLY AND APPROPRIATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY;

8. Special education law recognizes a distinction between the "initial assessment" of the special needs child and the subsequent "reassessment" of the child. This distinction is explained as follows by the federal Office of Special Education and Rehabilitation Services, Department of Education: "An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation." (71 Fed.Reg. 46640 (Aug. 14, 2006).) Here, Student's initial evaluation was completed by Redlands USD in December 2005. Therefore, an evaluation of Student's needs by the County would constitute a reassessment of his special education needs.

9. The following standards apply to a reassessment of a disabled child. A school district must perform a reassessment of the child (1) if the district "determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation" and (2) "if the child's parent or teacher requests a reevaluation." (20 U.S.C. § 1414(a)(2)(A)(i), (ii); 34 C.F.R. § 300.303(a)(1), (2); Ed. Code, § 56381, subd. (a)(1).) In addition, at the least, a school district must reassess a special needs child once every three years, unless the parent and the district

agree that the reevaluation is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, § 56381, subd. (a)(2).)

10. The County performed the following educational evaluations: 2011 Mental Health Evaluation; 2011 Academic Evaluation; 2011 Speech and Language Evaluation; 2012 Triennial Speech and Language Evaluation; and 2013 Neuropsychological Evaluation. The DJJ performed the following educational evaluations: 2013 Psychoeducational Evaluation; 2013 Academic Evaluation; and 2013 Speech and Language Evaluation. As part of the Juvenile Court proceeding, Student received three psychological evaluations. These evaluations, in totality, identified deficits in reading, writing, math, expressive language, receptive language, pragmatic language, sensory seeking, handwriting, behavior, and intermittent explosive disorder, PTSD, serious emotional disorders, and suggested fetal alcohol syndrome.

11. At the December 2012 IEP meeting, the County determined that Student required a BSP. However, the IEP team has never provided Student a BSP. As more fully discussed below, given his pervasive and systemic behavior difficulty, Student required a BSP to access his education and to receive an educational benefit.

12. Evidence also overwhelming showed that Student experienced substantial and pervasive sensory processing issues. Each witness who had spent any amount of time with Student reported that he fidgeted constantly, either shaking an arm or leg wildly, required a fidget ball for his hands, and frequent movement breaks. Although the 2012 occupational therapy assessment did not assess in the area of sensory processing, the County's occupational therapist, Ms. Linnet, suggested that this was an area which required assessment. Given these circumstances, Student required an occupational therapy assessment in the area of sensory processing.

13. In May 2013, the County agreed to provide Student IEE's the areas of neuropsychological, speech and language, vision therapy, functional behavioral analysis, and occupational therapy. Since then, the County has provided IEE's in the area of neuropsychological, vision therapy, and has contracted with Ms. Rozenberg to perform the speech and language evaluation. Regarding the remaining IEE's for functional behavior analysis and occupational therapy, the County was waiting for the Student to choose an assessor, which the County would then contract with for the IEE. At any rate, there was no evidence, or allegation, provided that the County would refuse to fund these IEE's, or to reimburse Ms. Rozenberg for the speech and language evaluation. Consequently, Student's claim that the County failed to assess him in areas of suspected deficit was limited to autism.

14. The County did not commit a procedural violation by not performing an assessment of Student for autism. Although Ms. Rozenberg and Dr. Passaro provided persuasive testimony that Student manifested autistic-like characteristics, this information had not yet been made available to the IEP team. None of the County's various assessors suggested that Student presented with autism, and Mother had not requested the County to assess for autism, nor did any person, who attended the 2011, 2012, and 2013 IEP meetings.

Consequently, during the school years in dispute, the County did not have an obligation to assess Student for an autism spectrum disorder.

ISSUE 1(B): FAILING TO USE PROPERLY TRAINED INDIVIDUALS TO CONDUCT APPROPRIATE ASSESSMENTS OF STUDENT;

15. Assessments[18] must be conducted by individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), 56322; 20 U.S.C. § 1414(b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).) In assessing a possible language or speech disorder, a student's "difficulty in understanding or using spoken language shall be assessed by a language, speech, and hearing specialist ...." (Ed. Code, § 56333.)

16. As noted in Legal Conclusion 4, as the petitioning party, Student had the burden of proving each issue that he alleged.

17. The County did not commit a procedural violation by failing to use properly trained individuals to assess Student. Ms. Linett, who had over 35 years of experience as an occupational therapist, had the requisite experience, training and credentialing required of her role. Ms. Eugene had been a speech and language therapist for the County for 36 years and possessed the requisite experience, training and credentialing required to assess Student in the area of speech, language and hearing. The evidence also established that the County's psychologist, Dr. Fitzgerald, was a licensed educational psychologist and possessed the requisite experience, training and credentialing required to perform a psychological assessment. Finally, Ms. Farrar, as a dually credentialed teacher in both general education and special education, lawfully performed the academic testing. The County established that its assessors were qualified by their education, experience, and training to administer the test instruments and questionnaires in the academic, occupational therapy, speech and language, and psychoeducational assessments, and properly administered these assessment tools.

18. In response, Student failed to present any evidence, documentary or testimonial, which elicited that any County assessor was improperly trained to conduct the type of assessment which he or she conducted for Student. Therefore, Student failed to substantiate his claim that the County committed a procedural violation by failing to provide trained individuals to assess him.

[18] An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

ISSUE 1(C): FAILURE TO OFFER APPROPRIATE BEHAVIOR SUPPORTS;

19. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324; Ed. Code, § 56341.1, subd. (b)(1).) California law defines behavioral interventions as the "systematic implementation of procedures that result in lasting positive changes in the individual's behavior," including the "design, implementation, and evaluation of individual or group instructional and environmental modifications . . .designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual's right to placement in the least restrictive environment as outlined in the individual's IEP." (Cal. Code Regs., tit. 5, § 3001, subd. (d).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

20. The evidence overwhelmingly established that Student had significant behavioral deficits and required a behavior support plan to attend school. The July 13, 2011 IEP team reported that Student had difficulty controlling his temper and had resultant behavior difficulty with peers and staff. The IEP team found that Student required a "tightly structured environment," even for Juvenile Hall, and required 100 percent of his school day in special education "to monitor behavior, not for academics." This IEP provided two behavior goals, each designed to diminish Student's anger and outbursts. Although the goals were designed to be attained by the next annual IEP, these goals were repeated at the July 13, 2012 IEP, and each IEP since then during the time frame at issue. However, Student has never met these goals.

21. Each of the 2011-2012 and 2012-2013 school year IEP's continued to find that Student's behavior impeded his learning and, as a result of Student's behavior, offered 100 percent of instruction in SDC. The evidence therefore established that Student's behaviors impeded his access to his education. Yet each IEP relied on the same two behavior goals, rather than a systematic implementation of behavioral interventions.

22. The January 26, 2012 IEP team recognized Student's need for additional behavior support and the County agreed to Mother's request for an individualized behavior support plan. Yet, one was never provided to Student.

23. The Department of Probation recorded that serious and obstructive behaviors occurred on an almost daily basis. These reports cataloged daily incidents from December 2011 through the end of May 2013. Student had outbursts and tantrums, displayed inappropriate and defiant behavior and had numerous peer issues. He required constant redirection and frequently disobeyed rules and staff directives. He used profanity towards staff, pushed students, and kicked doors and walls. He had numerous "meltdowns" in class and was frequently suspended or removed from class to de-escalate.

24. Dr. Wesson and Ms. Vessey testified that Student's behaviors had improved, particularly during the 2012-2013 school year. However, this testimony was not consistent with the Probation records. During the month of September 2012, Juvenile Hall staff reported that Student had meltdowns, acted aggressively towards peers and staff, had uncontrollable behavior, was sent to BCS on three occasions, and was suspended or removed from the classroom due to behaviors six times. During the months of October through December 2012, behavior logs reported daily social, emotional and behavioral issues. Student had difficulty communicating with peers and often misunderstood their comments, which agitated Student. Student was easily angered and reacted inappropriately, including being frequently aggressive towards peers and staff, and was suspended from class due to behaviors. During the months of January through the end of May 2013, behavior logs recorded almost daily social, emotional and behavior difficulty. Student still had difficulty communicating with peers and often misunderstood their comments, was easily angered and reacted inappropriately, was aggressive towards peers and staff, he experienced in-class outbursts, and he was suspended or removed from all or a part of class due to behaviors on 19 occasions.

25. Student has met his burden of proving that when he attended Southwest and Butterfield, the IEP team knew that that Student needed an individualized behavior support plan to access his curriculum due to his behavior problems; especially in light of his inability to interpersonally communicate with peers and staff, frustration and anger which resulted when he misunderstood others, and outbursts and tantrums which occurred when he became angry or frustrated. This conduct impacted Student's ability to access general education and to benefit from his special education. It also impacted his safety. Older, larger, and sometimes violent peers had told staff that Student would be targeted if his behaviors did not improve. Nonetheless, despite Student's lengthy history of behavior problems, the County failed to implement a behavior support plan, failed to provide comparable services, and failed to demonstrate that his behavioral problems were not intertwined with his educational needs.

26. The County's failure to provide a BSP was a procedural violation which deprived Student of an educational benefit, and as discussed more fully below, contributed to the IEP's failure to confer a meaningful educational benefit. Therefore, Student established that the County procedurally and substantively denied him a FAPE by failing to implement an individualized behavior support plan.

ISSUE 1(D): FAILURE TO OFFER AN APPROPRIATE PLACEMENT AND SERVICES IN STUDENT'S IEP'S;

THE COUNTY DID NOT PROPERLY CONSIDER A RTC PLACEMENT

27. Student complains that he was denied a FAPE because the County failed to discuss a continuum of placement options, particularly a RTC placement, during the various IEP meetings. Student asserts that the IEP's only considered placement at Juvenile Hall.

Rather, Student alleges that he required a RTC placement to meet his unique social, emotional, and academic needs.

28. A LEA is required to have a continuum of program options available for a child. (Ed. Code, § 56360.) The continuum of program options includes, but is not limited to regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools (including RTC placements); state special schools; specially designed instruction in settings other than classrooms; itinerant instruction; and instruction using telecommunications in the home or hospitals or institutions. (Ed. Code, § 56361.)

29. The County contends that Student's posture, as one who had not yet been released from Juvenile Hall, abrogated the IEP team's obligation to consider an RTC placement. This argument fails for lack of legal foundation; there is no law which delays the County's duty to consider a continuum of placements, including an RTC placement, until after Student had been sentenced or released from Juvenile Hall; or which abrogates the County's obligation to provide Student a FAPE. In fact, in its closing brief, the County agreed that it was not legally prohibited to provide an RTC placement for Student: "if, in fact, a student could not receive educational benefit in court schools, [the County] would be required to work with the persons or agencies involved in protecting the student. In that hypothetical situation, [the County] would have to coordinate with the student's defense counsel, the Probation Department, the District's Attorney's office, and the Court to determine how and where student could be educated." (District's Closing Brief, p. 4, fn. 2.)

30. Moreover, this contention would not justify the IEP team's refusal to consider a RTC placement following January 14, 2013, when it was informed that Student had been found guilty of premeditated murder. Upon his conviction, the County was informed that Probation was investigating placement options for Student outside of Juvenile Hall, with an emphasis on nonpublic RTC's, and based upon Student's mental health issues, psychological evaluations, academic needs, and behaviors. Subsequently, the Department of Probation and the Department the Department of Mental Health considered RTC placements. Yet, the IEP team, the agency charged with considering placements based upon a disabled child's unique academic, mental health, psychological and behavior needs under the IDEA, refused to engage in this area of consideration.

31. Dr. Wesson testified that the IEP team would have considered an RTC for Student, had it been requested by Student or by the Juvenile Court. This assertion fails on several grounds. First, it ignores the County's duty, as the LEA, to consider an RTC placement based solely on Students unique needs. Student had serious social, emotional, behavioral, and academic delays, which, when combined, required the County to consider a therapeutic RTC placement. Next, Mr. Figueroa persuasively testified that he, along with the Student's attorney, had each requested for the County to consider a RTC placement at both the April 8, 2013, and the May 16, 2013 IEP meetings. The April 2013 IEP meeting notes reflect this request. Finally, during a March 2013 hearing which was monitored by the County, the Juvenile Court requested, from any party, placement recommendations. The

party most responsible for considering an RTC placement was the IEP team. Yet, the IEP team failed to take any steps to discuss, investigate, or consider any placement outside of Juvenile Hall.

32. The County also argues that a RTC was not considered (1) due to public safety concerns, and (2) because Student's deficits did not warrant consideration of a RTC placement. Regarding public safety, the County's argument is important but not well founded. Dr. Wesson and Ms. Vessey each testified that public safety, while necessary, was not a consideration of the IEP team. Rather, after the IEP team selected a RTC placement based upon the pupil's unique educational needs, it was Probation's role to determine whether the facility could protect the public from Student. In the event that it could not, the IEP team recommendation was voided, and a new placement had to be determined. Following Probation's approval of an IEP selected placement, the Juvenile Court would then approve, or disapprove, the placement. Given this protocol, the County IEP team has provided several minors under its care locked residential treatment center placements. Hence, public safety was not a factor in the County's decision to refuse consideration of a RTC placement. Next, as discussed more fully below, the facts of this case and Student's deficits warranted consideration of a RTC placement by the IEP team.

33. For the foregoing reasons, the County IEP team committed a procedural violation of the IDEA by not considering an RTC placement for Student. As discussed below, this procedural violation impeded Student's right to a FAPE.

THE IEP TEAM ERRED BY NOT FINDING THAT STUDENT SHOULD BE PLACED AT A RTC

34. Student avers that the IEP team should have placed Student in a RTC in that his mental health needs directly impacted his education, as demonstrated by the majority of evidence provided during the hearing. The County counters that Student did not require an RTC as he has not demonstrated serious emotional problems which warrant a RTC placement, and that his problem behaviors had become more manageable in the school setting.

RESIDENTIAL PLACEMENT

35. A school district must provide a residential placement to a student with a disability, if such a placement is necessary to provide the student with special education and related services. (34 C.F.R. § 300.104.) The test for determining whether an RTC placement provides FAPE is whether the placement is necessary to provide special education and related services to meet the student's educational needs. (Ashland School District v. Parents of RJ (D. Or. 2008) 585 F. Supp.2d 1208, 1231, affirmed, (9th Cir. 2009) 588 F.3d 1004.) The analysis for determining whether a RTC placement is appropriate hinges on whether the placement is necessary for educational purposes. (Clovis Unified School District v. California Office of Administrative Hearings (9th Cir. 1990) 903 F.3d 635, 643.) The Clovis Court identified three possible tests for determining when a school district is responsible for

the cost of a residential placement: (1) when the placement is "supportive" of the child's education; (2) when medical, social or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement primarily aids the student to benefit from special education. (903 F.3d at 643.)

36. 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.)

37. Student has met his burden of establishing that the County should have offered him placement at a RTC. The information possessed by the IEP teams at the February 11, 2013, April 8, 2013, and May 16, 2013 IEP's, clearly demonstrated that Student required placement at a RTC for the following reasons: (a) Student's history of pervasive behaviors and emotional frustration during spring 2011 and fall 2012, and spring 2012 and fall 2013, demonstrated that he required a more therapeutic environment than an SDC in a court school. Student's de minimis success at Southwest and Butterfield, failure to attain any emotional, behavior, or academic annual goals, and history of abuse and emotional trauma evidences Student's need for a highly structured and therapeutic milieu to benefit from special education. Ms. Falkinburg and Mr. Perez each observed that Student exhibited significant emotional and behavioral difficulties at Butterfield as he struggled with attention, impulse control, poor frustration tolerance, and continued to have anger outbursts. Probation reports evidenced that, pervasively over the last two years, on a regular basis, Student had frequent mood irritability, aggressive outbursts, and impulse issues, which impacted his ability to access his classroom.

38. As of the January 5, 2012 IEP meeting, the County was informed that Student was not receiving an educational benefit from the court schools. Mr. McClung's January 2012 report, which he completed in association with Mt. San Jacinto Mental Health Children Services, determined that Student had emotional and behavioral problems which interfered with his ability to learn in the classroom despite specific interventions to assist him. He concluded that the PBIS and classroom accommodations embedded in the court schools were ineffective. Student's school work was still "minimal and he was often distracted, off task, outbursting [sic], defiant, and verbally abusive to others."

39. Evidence demonstrated that over the 2012-2013 school year, Student appeared more irritable, defiant, and struggled academically. At school, Student would attend class but habitually engaged in fidgeting behavior with his legs and hands, which resulted in his teachers and staff providing him a fidget ball to squeeze, and Student required frequent movement breaks. The teaching staff noted that Student was behind academically including reading, math and writing. He had a hard time coping and communicating with his peers, and frequently engaged in derogatory communication including racial epitaphs. Student was easily agitated and would act out aggressively when he felt he was being treated unfairly. Student also regularly engaged in angry outbursts while in his physical education classes.

Mr. Perez and Mr. Moppins each testified that Student required direct one-to-one instruction to receive any educational benefit, yet none of the IEP's for the 2011-2012 and 2012-2013 school years afforded Student one-to-one academic instruction. Mr. Moppins and Mr. Perez tried to provide some level of individual instruction, yet, given the classroom composite, they were unable to provide a level of instruction which they believed was sufficient to meet Student's unique needs. Student's inattention and behavioral difficulty impeded his ability to attend class, and Mr. Perez also took it upon himself to reduce Student's classroom instruction to 15 minute intervals. Even with substantial modifications, Student received only a de minimis educational benefit from his special education placement.

40. The evidence likewise demonstrated that Student's academic progress was de minimis. In addition to Student's failure to attain annual goals, a comparison of the WJ-III academic testing from August 2012 and September 2013, reveals a lack of academic progress. In August 2012, Student was reading at a fifth grade level (standard score 94), completing math at a fourth grade level (standard score 80), spelling at a third grade level (standard score 84), and writing at a fifth grade level (standard score 94). These scores placed Student two-to-four years behind his typically developing peers. In September 2013, Student was still reading at the fifth grade level (standard score 87), computing math at a fourth grade level (standard score 80), spelling at the third grade level (standard score 78), and writing at the fifth grade level (standard score 88). Student demonstrated a lack of progress in almost every area assessed, and was between three-to-five years behind his typical peers. This lack of progress is particularly egregious given Dr. O'Neill's and Dr. Hunter's cognitive testing, which found that Student possessed an average cognitive ability. It is also notable in light of Mr. Moppins, Mr. Perez, and Dr. Passaro's testimony that, if presented an appropriate environment, Student possessed the potential to perform grade level work. Consequently, the IEP's failed to provide Student an educational benefit while in special education.

41. Evidence also established that Student could be provided a FAPE at a RTC placement. In February 2013, Mr. VanCampen of the Department of Mental Health conducted a comprehensive inquiry regarding RTC placements and determined that, given Student's serious and tragic history and academic needs, he would be a good fit for a therapeutic RTC placement. The clinical staff of the RTC Copper Hills reviewed Student's educational, psychological and court file, and concluded that Student was "a perfect fit" for its therapeutic school. The screening committee, made up of representatives from the Department of Probation, the Department of Mental Health, the County, and Social Services, concluded that the RTC Copper Hills could adequately meet Student's needs. Finally, Dr. Passaro persuasively testified that, to receive an educational benefit, Student needed to be placed in a low stimulus, highly structured, therapeutic RTC Placement.

42. Given that Student had failed to receive a meaningful education benefit from the 2011-2012 and 2012-2013 school year IEP's, the County denied Student a FAPE by failing to offer a RTC placement.

THE COUNTY FAILED TO OFFER APPROPRIATE SERVICES

43. Student complains that his IEP's failed to provide adequate related services. During the hearing, Student failed to elicit any testimony or to provide any documentary evidence which supported this allegation other than for speech and language services and counseling. Consequently, this Decision, as it relates to the County's failure to provide appropriate services, will be limited to whether the County failed to offer Student appropriate speech and language services and counseling.

44. As previously noted in Legal Conclusions 2, an IEP must include related services that are required to assist a child in benefiting from special education. Related services are:

> transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) …

(20 U.S.C. § 1401(26)(A).) State law adopts this definition of related services, which are called "designated instruction and services." (Ed. Code, § 56363, subd. (a).) The regulation that defines "mental health services" for the purpose of Chapter 26.5 includes psychotherapy. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

SPEECH AND LANGUAGE SERVICES

45. Student complains that the speech and language services offered in the 2011-2012 and 2012-2013 school year IEP's was inadequate to meet his unique needs. The County asserts that the speech and language services, first offered in the December 7, 2011 IEP, and which consisted of 30 minutes of services, 20 times yearly, was sufficient to assist Student in benefitting from special education.

46. As far back a December 2005, Student was found to demonstrate serious expressive, receptive, and pragmatic language delays, and he first qualified for special education under the eligibly category of speech and language impairment. Upon entering Juvenile Hall, Student immediately manifested serious behavior difficulty, which staff attributed, in part, to his inability to understand what others were saying. Staff also found that Student demonstrated delays in the rate of his speech, articulation, and vocabulary. County assessors also identified serious delays in Student's ability to speak and to understand language. In November 2011, Ms. Ali

found delays in Student's articulation during spontaneous communication and a concomitant delay in his rate of speech production, which increased when he became excited. As a result, Student's speech was difficult to understand. Student also had an immature vocabulary. In August 2012, Dr. Fitzgerald found that Student experienced difficulty in age-level verbal communication and comprehension, which contributed to his behavior difficulty. In November and December 2012, Ms. Eugene identified that Student had profound expressive and receptive language deficits, and areas of delay in in spoken language, picture vocabulary, listening, semantics, morphological comprehension, and speaking, with serious delays in multiple meanings and in relational vocabulary. During testimony, Mr. Perez and Ms. Post each opined that Student's difficulty in interpersonal communication contributed to his social and behavioral difficulty.

47. Additional assessments demonstrated that Student's delays had not been remediated. In September 2012, DJJ assessor Ms. Hill determined that Student was substantially delayed in receptive language, expressive language, and language memory and she found that "Significant pragmatic language deficits became evident during the collection of the language sample." She also observed that Student had difficulty maintaining a conversation, would perseverate on topics he found interesting, and had difficulty maintaining appropriate eye contact. She summarized that Student's greatest area of difficulty was in the area of pragmatics, which contributed to his overall inability to communicate effectively. In November 2013, Ms. Rozenberg determined that Student still had substantial deficits in receptive and expressive vocabulary, spoken language, picture vocabulary, listening, semantics, morphological comprehension, speaking, multiple meanings and relational vocabulary, and he demonstrated a third grade vocabulary. He therefore had severely delayed communication abilities, particularly in the area of pragmatics Ms. Rozenberg was critical of the IEP's and complained that the speech and language services were inadequate. She persuasively testified that the level of services offered did not accord with the level of services Student required to benefit from special education. Rather, Student required speech and language services at least two times per week to benefit from special education.

48. Evidence also demonstrated that these delays created difficulty in inter-personal communication, which frustrated Student, who was also short-tempered and impulsive. Student's behaviors were hence interrelated with his communication difficulties. The combination of these delays created a volatile mix, and Student internalized and externalized these feelings of frustration. Internally, he was anxious and depressed, externally, he was inattentive, misunderstood language, and reacted verbally and physically aggressive towards peers and staff.

49. Given the foregoing, Student met his burden that the IEP's failed to offer adequate speech and language services to assist him in benefitting from special education. This procedural violation deprived Student of his right to appropriate related services and, in part, impeded his ability to benefit from special education. As

a result, Student established that the County denied him a FAPE by failing to offer adequate speech and language services.

COUNSELING SERVICES

50. Student asserts that the IEP's failed to offer adequate counseling for Student to receive a benefit from special education. The County asserts that Student's emotional issues were not serious, and were sufficiently addressed through Department of Mental Health staff which was imbedded in the program at Juvenile Hall.

51. The evidence demonstrated that Student had a long and tragic history which required IEP-based mental health intervention. In October 2006, the IEP team identified Student with Post Traumatic Stress Disorder. In September 2009, school psychologist Mr. Schaefer found Student to be in the clinically significant range for behavior and emotional deficits, that Student heard voices in his head, was anxious, depressed, alone, and cruel. In January 2012, Mr. McClung conducted a mental health assessment for educationally related mental health services, and determined that Student had an emotional disturbance which negatively affected his ability to benefit from his education. In June 2012, neuropsychologist Dr. Geffner found that Student manifested multiple educationally related emotional delays which triggered school problems and impacted Student's ability to access his education. In August 2012, Dr. Fitzgerald observed that Student's emotional outbursts prevented him from attending class. Ms. Post testified that Student displayed a mental psychosis which had yet to be diagnosed. Finally, Ms. Falkinburg reported that she worked with Student to attain his IEP-based mental health goals beginning in May 2011, yet, as of the hearing, he had attained only a 60 percent achievement level in goals related to his social and emotional behaviors. She was concerned that Student still has emotional issues, and appeared to be traumatized from a chaotic and abusive childhood. She persuasively emphasized the need to address Student's mental health needs in his IEP's.

52. The County failed to offer counseling until the January 2012 IEP. Following the January 2012 IEP, the County failed to review or revise the mental health goals or services at the July 2012, August 2012, February 2013, April 2013, and May 2013 IEP meetings, although the evidence established that Student required more intensive services and mental health goals at that time.

53. For the foregoing reasons, Student has met his burden of showing that he required additional counseling services to receive an educational benefit. The IEP's failure to offer Student adequate mental health services, in part, caused his emotional issues and resultant behaviors to remain an obstacle in his ability to access his education. This procedural violation deprived Student of his right to appropriate related services and, in part, impeded his ability to benefit from special education. Therefore, Student established that the County denied him a FAPE by failing to offer adequate counseling services.

ISSUE 1(E): FAILURE TO CREATE APPROPRIATE, OBJECTIVELY MEASURABLE GOALS TO ADDRESS STUDENT'S UNIQUE NEEDS;

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

55. Student required goals in the areas of speech and language, mental health and behavior to receive a FAPE due to his deficits in these areas. Student's need for goals in these areas was established by the 2011 and 2013 speech and language assessments, the 2012 and 2013 psychological assessments, his conduct and behavior while in Juvenile Hall.

56. In addition, Ms. Falkinburg, Dr. Hunter, and Dr. Passaro each testified persuasively that Student required IEP-based counseling goals. However, the only IEP which offered counseling goals was the January 2012 IEP. Subsequently the County failed to review or update these goals at the August 2012, February 2013, April 2013, and the May 2013 IEP meetings. According to Ms Falkinburg, these goals were never attained. In fact, Ms. Falkinburg reported that Student had achieved only a 60 percent baseline for the counseling goals. For these reasons, the evidence demonstrated that the IEP's did not sufficiently provide Student goals for his emotional needs.

57. In speech and language, Ms. Rozenberg testified persuasively that Student required goals sufficient to address Student's areas of serious delay in receptive and expressive language, and pragmatics; with goals specific to spoken language, picture vocabulary, listening, semantics, morphological comprehension, speaking, multiple meanings and relational vocabulary. The evidence established that the two speech goals, which were first offered at the December 2011 IEP, and repeated at each subsequent IEP, were insufficient to meet Student's needs in these areas. Although Ms. Eugene attempted to update the speech and language goals at the May 2013 IEP, she failed to include a statement of how the goals could be measured, and the goals were therefore rejected by the IEP team. Instead, the IEP reoffered the same two goals first offered in the December 2011 IEP.

58. Student's goals in reading, writing and math were repeated year after year and not attained; however, this evidence, along with his inability to attain his two behavior goals, demonstrates the inappropriateness of the placement and behavior supports. Student did not present sufficient evidence that he required additional goals to address his reading, writing math, and behaviors (outside of what may be included in a BSP).

59. Given the foregoing, Student met his burden of establishing that he required goals in the areas of counseling and speech and language, and that the County failed to provide appropriate, measurable goals, in these areas. This procedural violation deprived Student of his right to an educational benefit, appropriate goals, and in part, impeded his ability to benefit from special education. As a result, Student established that the County denied him a FAPE by failing to offer appropriate goals.

ISSUE 1(F): FAILURE TO PROVIDE PROGRESS REPORTS AT REQUIRED INTERVALS TO DOCUMENT STUDENT'S EDUCATIONAL PROGRESS, AND 1(G): FAILURE TO CONVENE AN IEP TEAM MEETING WHEN STUDENT FAILED TO MAKE ANTICIPATED PROGRESS;

60. The County did not commit a procedural violation by failing to provide Student progress reports or by failing to convene an IEP meeting when Student failed to make anticipated progress. The County established that it provided progress reports in a regular basis. Mr. Perez provided progress reports every two weeks, and the County provided educational assessments which documented Student's progress in 2011, 2012, and 2013.

61. The County also documented Student's present levels of performance and progress at annual IEP meetings held on July 13, 2011, and on July 13, 2012. In addition to the annual IEP meetings, the County convened an addendum IEP meeting on October 24, 2011, specifically to discuss that Student was not making anticipated progress. The County convened additional addendum IEP meetings on December 7, 2011, January 26, 2012, and August 28, 2012, to review educational assessments and to report on Student's progress.

62. In response, Student failed to offer any documentary evidence, or to elicit any testimony, that supported his contention that he required additional progress reports or additional IEP meetings. The Student therefore failed to substantiate this issue.

ISSUE 1(H): FAILURE TO INCLUDE STUDENT'S PARENT IN IEP TEAM MEETINGS AND IN ALL IEP DETERMINATIONS;

63. Student contends that the County interfered with Mother's right to be part of the IEP decision-making process by failing to include her in the February 11, 2013 IEP, and by refusing to consider Mother's request for an RTC placement at the April 8, 2013, and May 16, 2013 IEP meetings. The County contends that Mother was not denied participation in the IEP decision making process in that Mother was an active participant in all areas of the IEP and was given an opportunity to share her thoughts.

64. The development of an IEP is a collaborative activity accomplished by an IEP team convened by the school district. A parent is an integral and required member of the IEP team. (20 U.S.C. § 1414 (d)(1)(B)(i); 34 C.F.R. § 300.321(a)(1)(2006); Ed. Code, § 56341,

subd. (b)(1).) A school district is required to conduct, not just an IEP team meeting, but also a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485; *Fuhrman v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.) The standard for "meaningful participation" is an adequate opportunity to participate in the development of the child's IEP. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133.)

65. In determining educational placement, a school district must ensure that the placement decision is made by a group of persons including the child's parents. (34 C.F.R. § 300.116 (a)(1) (2006)).[19] Parents must have the 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 such child." (20 U.S.C. § 1415(b)(1).) In this regard, an educational agency must ensure that one or both of the parents of a child with a disability is present at each IEP team meeting. (34 C.F.R. § 300.322(a); Ed. Code, §§ 56341.5, subd. (a), 56342.5.) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904]. Parental participation in the IEP process is also considered "(a)mong the most important procedural safeguards." (*Amanda J. ex rel Annette J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 882.)

66. The evidence demonstrated that Mother was denied meaningful participation in the IEP process, including as to the issue of placement. The County failed to take reasonable steps to include her at the February 11, 2013 IEP meeting. The County asserts that it was unable to provide her written notice because she had recently moved from California to Spokane, Washington. However, Mother had moved prior to the August 28, 2012 IEP, which she attended after receiving a written notice from the County, which it diligently sent to her Spokane, Washington address. It is not reasonable to believe that the County was able to contact Mother in writing in August 2012, but unable to contact her at the same address in February 2013. The County also asserts that it tried several attempts to contact her by telephone, but was unable to do so because she had recently changed her telephone number. This argument fail because Dr. Wesson testified that he had Mother's correct phone number and actually contacted her by telephone just prior to the IEP meeting. Mother told him that she was unable to participate due to lack of notice and a preexisting family matter. Yet, the County refused to reschedule this meeting and convened the February IEP without parental participation. For these reasons, the County committed a procedural violation by failing to provide Mother an adequate opportunity to attend the February 11, 2013 IEP meeting.

67. This procedural violation was exacerbated by the County's refusal to discuss a RTC placement at the April 2013 and May 2013 IEP meetings, despite Student's repeated requests for this consideration.

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[19] See also 34 C.F.R. §§ 300.327 and 300.501(c).

68. As noted in Legal Conclusion 7, a procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits.

69. Here, the County's procedural violation significantly impeded Student's parent opportunity to participate in the decision making process regarding the provision of a FAPE, which is a substantive violation.

Issue 2: Did the County deny Student a FAPE by failing to provide a program in which Student could gain meaningful educational benefit?

70. As noted in Legal Conclusion 35, 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.

71. For a school district's IEP to offer a student a substantive FAPE, the proposed program must be specially designed to address the student's unique needs, must be reasonably calculated to provide the student with educational benefit, and must comport with student's IEP. (20 U.S.C. § 1401(9).) Educational benefit is not limited to academic needs but includes social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*).) In measuring educational benefit, the question is whether the child had made progress toward the annual goals set forth in the IEP. (*Ibid.*)

72. The Student asserts that, based upon a combination of factors, he was not provided a meaningful educational benefit during the 2011-2012 and 2012-2013 school years. The County argues that (1) Student's pervasive emotional and behavioral difficulty was unrelated to the learning process, and (2) Student received some educational benefit, which was appropriate given the unique and tragic circumstances of this case.

73. First, the District's position that Student's pervasive emotional and behavioral difficulty was unrelated to the learning process was not supported by the evidence. Student's mental health needs including behavioral manifestations of his social and emotional needs including his compulsive and self-destructive behaviors, and his inattentiveness and impulsivity at school, as well as his communication challenges in terms of expressive and receptive language skills as well as social interaction, are all intertwined and inseparable from his ability to access his educational program.

74. Next, in regard to Student's position that he did not make meaningful progress while in juvenile hall, the County points to Student's difficult upbringing, sporadic education prior to Juvenile Hall, emotionally related education delays, and argues: "in this case, such a position ignores the difficult situation in which this young man finds himself. His 'peers' are other incarcerated youth. He was going through the Juvenile Court system, accused of a

serious offense. He missed school at times, not because of illness, but because he was literally being tried before a Superior Court Judge; he was repeatedly being assessed by experts hired by defense counsel, the District attorney's office and RCOE. He was living in a locked room. In addition, [Student] presents with a disability in the area of attention with difficulties in speech and language. The progress [student] made under such circumstances should be praised, not diminished." (County's Closing Brief, pp.12, 13.)

75. The ALJ acknowledges the unique and tragic circumstances presented in this case, however, the County's difficulties in providing Student a meaningful educational benefit highlights the IEP's failure to consider a therapeutic, locked RTC placement, and to provide more intensive behavior supports and related services.

76. As described in Legal Conclusions 18-55, the Student met his burden of showing that he was denied a FAPE by the County's failure to provide a program in which Student could gain an educational benefit. Given the 2011-2012 and 2012-2013 school year IEP's failure to offer adequate behavior support, speech and language, counseling, and to consider and to offer a RTC placement, the County failed to offer IEP's designed to address his unique needs and to confer a meaningful benefit from special education. As a result, Student failed to appropriately progress in areas of academics, behavior, language and mental health, each which was inextricably intertwined in contributing to Student's educational development. For these reasons, Student was substantively denied a FAPE.

Issue 3: Did the County deny Student a FAPE by failing to comply with the assessment plan signed by Student's parent on May 28, 2013, to timely provide the agreed-upon assessments and convene an IEP meeting to review those assessments?

77. Student complains that the County failed to timely provide the independent assessment which was conducted by Dr. Fuentes. The County asserts that the assessment was delayed due to Dr. Fuentes' own scheduling conflicts and not as the result of inaction by the County.

78. Reassessments of a pupil with special needs require parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(i); Ed. Code, § 56381, subd. (f)(1).) To obtain parental consent for a reassessment, the LEA must provide proper notice to the student and his parents. (20 U.S.C. §§1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56329.) The notice consists of the proposed written assessment plan and a copy of the procedural safeguards under the IDEA and state law. (20 U.S.C § 1414(b)(1); Ed. Code, §§ 56321, subd. (a).) The assessment must be completed and an IEP team meeting held within 60 days of receiving consent, 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).)

79. On April 29, 2013, the County agreed to Student's request for an independent educational evaluation by Dr. Fuentes to reassess Student in the area of psycho-educational needs, and provided Mother an assessment plan. On May 28, 2013, Mother signed and

returned the assessment plan, which began the 60 day timeline in which the County had to complete the assessment and the IEP meeting to review the assessment. Almost immediately, on that same day or the next, through its counsel, the County retained Dr. Fuentes to conduct the independent evaluation. At that time, Dr. Fuentes represented to the County's attorney that he could complete his assessment within the following month. However, Dr. Fuentes testified that he was unable to do so because of his workload at the hospital, which he did not foresee when he was first approached by the County. He was not able to complete his assessment until September 13 and 14, 2013, which fell beyond the 60 day timeline.[20] The County admits in its closing brief that it was unable to complete the assessment within the statutory time frame. (County's Closing Brief, pg. 14.)

80. However, it would be inequitable to hold the County liable for delays caused by an independent assessor, whom they had no direct control over. The County took reasonable steps to quickly retain Dr. Fuentes. It was also reasonable for the County to rely on Dr. Fuentes' initial representation that he could timely assess Student. For these reasons, the County did not commit a procedural or substantive violation based upon Dr. Fuentes' failure to timely complete his independent evaluation.

REMEDIES

81. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) In remedying a denial of a FAPE, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra,* 471 U.S. at p. 374.). An IEE at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-23.)

82. Appropriate equitable relief, including compensatory education, can be awarded in a decision following a due process hearing. (*Burlington*, *supra*, 471 U.S. at p. 374; *Puyallup, supra,* 31 F.3d at p. 1496).) The right to compensatory education does not create an obligation to automatically provide day-for-day or session-for-session replacement for the opportunities missed. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033 citing *Puyallup, supra,* 31 F.3d at p. 1496).) An award to compensate for past violations must rely on an individualized fact-specific analysis, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid*.) Compensatory education is an

[20] The County convened an IEP meeting in October 2013, to review the results of Dr. Fuentes' assessment.

equitable remedy designed to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra,* 31 F.3d 1489, 1497.)

83. A hearing officer may not render a decision which results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school if the school has not been certified pursuant to Education Code section 56366.1. (Ed. Code, § 56505.2, subd. (a).)

JUVENILE COURT JURISDICTION

84. While a child is under the jurisdiction of the Juvenile Court, all issues regarding his custody are heard by the Juvenile Court, which retains exclusive jurisdiction over its orders. (Welf. & Inst. Code, §§ 245.5, 304; *In re William T.* (1985) 172 Cal.App.3d 790, 797.) Pursuant to California Rules of Court, rule 5.651(b)(2), "at the disposition hearing and at all subsequent hearings … the juvenile court must address and determine the child's general and special education needs, identify a plan for meeting those needs …."

85. The Juvenile Court has the authority join in the Juvenile Court proceedings any agency that has a legal obligation to provide services to a dependent child. The Juvenile Court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. (Welf. & Inst. Code, § 362, subd. (b)(1).)

86. Pursuant to Legal Conclusions 43-49, the County failed to provide Student adequate speech and language services. As a compensatory remedy, the County shall provide Student a total of 78, 30 minute sessions of individual speech and language services. This amount is consistent with the recommendations of Ms. Rozenberg, minus what had been provided to Student through the IEP's, and accords with the speech and language deficits established by the evidence. Student will be allowed to access these services until he turns 22 years of age or graduates with a high school diploma, whichever occurs first.

87. Pursuant to Legal Conclusions 19-42, 50-59, 63-69, and 70-76, the County failed to provide Student appropriate behavior supports, counseling, goals, and placement, and significantly impeded Mother's opportunity to participate in the IEP process. As compensation, the County shall investigate and recommend an appropriate locked residential treatment center placement for Student. He is entitled to receive special education as well as related counseling, behavior, and speech and language services that will assist him in overcoming years of trauma and abuse, develop interpersonal communication, and participate in an academic program. In order to access his educational program, Student established that he requires a residential treatment center. Given his related emotional and treatment needs, Student required a placement in a locked residential treatment center specifically designed for students who are seriously emotionally disturbed, with educational providers and mental health clinicians experienced in childhood trauma.

88. As determined in Legal Conclusions 84 and 85, the Juvenile Court makes all placement orders concerning Student and must develop a plan for meeting his educational

needs. The County shall, within 30 days of this Decision, petition the Juvenile Court to be joined as a related agency required to provide services to Student and appear in the Juvenile Court proceedings to explain the services it is required to provide and identify to the Juvenile Court, locked residential treatment center placement options consistent with this Decision.

ORDER

1. The County shall provide Student a total of 78, 30 minute sessions of compensatory speech and language services by a clinician experienced in serving students with severe pragmatic communication delays. Student shall be allowed to access these services until he turns 22 years of age or graduates with a high school diploma, whichever occurs first. If Student is moved to a different LEA (such as the DJJ) the County shall take reasonable steps to secure the cooperation of the LEA to provide the services ordered herein at the location where Student is situated. The County may retain the services of a nonpublic agency to provide the compensatory speech and language services.

2. The Decision finds that the County denied Student a FAPE by its failure to offer a locked residential treatment center placement. The County is ordered to immediately begin a search for an appropriate locked residential treatment center placement for Student which specializes in behavior modification and is experienced in treating children with emotional injury due to abuse.

3. The County shall, within 30 days of this Decision, petition the Juvenile Court to be joined as a related agency required to provide services to Student and appear in the Juvenile Court proceedings to explain the services it is required to provide and identify to the Juvenile Court a locked residential treatment center placement that is consistent with this Decision.

4. The County shall provide a copy of this Decision to the Juvenile Court.

5. All other requests for relief are denied.

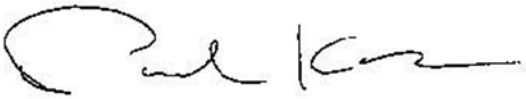
PREVAILING PARTY

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(c), 1(d), 1(e), 1(h), and 2. The County prevailed on Issues 1(a), 1(b), 1(f), 1(g), and 3.

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: January 24, 2014



PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings