BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: BAKERSFIELD CITY SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2010110866

DECISION

Charles Marson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 15-17 and April 26, 2011, in Bakersfield, California.

Anahid Hoonanian, Attorney at Law, represented the Bakersfield City School District (District). Shirley Nicholas, the District's Assistant Director of Special Education, was present on behalf of the District throughout the hearing.

There was no appearance for Student.[1]

The District filed its amended request for due process hearing on February 16, 2011. At the hearing, oral and documentary evidence were received. At the close of the hearing, the matter was continued to May 23, 2011, for the submission of the District's

[1] At a prehearing conference on February 16, 2011, Parents informed the ALJ that they did not intend to participate in further proceedings in this matter. On March 15, 2011, Parents confirmed in writing their intent not to participate. Parents have been duly served and afforded an opportunity to participate in all proceedings herein.

closing brief. On that day, the record was closed and the matter was submitted for decision.[2]

ISSUES

1. Did the District provide Student with a free appropriate public education (FAPE) during the 30 days beginning on or about August 23, 2010, when Student transferred into the District, by properly implementing Student's individualized education program (IEP) from the Redding Elementary School District?

2. Did the District's September 22, 2010 IEP (as amended on November 15, 2010, and January 13, 2011) offer Student a FAPE in the least restrictive environment (LRE)?

3. Is the District entitled to assess Student pursuant to the assessment plan presented to Parents on November 19, 2010, without parental consent?

CONTENTIONS

The District contends that, from Student's enrollment in the District's school in August 2010 to his withdrawal in January 2011, he was offered and provided a FAPE. In the first 30 days the District contends it consulted properly with Parents about his temporary program, reasonably adopted his previous IEP from the Redding Elementary School District, and complied with its terms. In September 2010, it offered to adopt the Redding IEP as its own because, although Student's academic and behavioral problems had become apparent, they still could be addressed in general education.

The District further contends that, as Student's behavior worsened in the fall, it became apparent he could no longer be satisfactorily educated in general education

[2] For clarity of the record, the District's brief has been marked District's Exhibit 176.

with supports, and required a small, self-contained, highly structured classroom operated by qualified teachers and aides skilled in addressing behavioral disabilities. It therefore offered Student placement in its Social Emotional Academic Learning (SEAL) Center, which was an appropriate program for him. It made approximately the same offer for the same reasons in January 2011.

Parents' contentions are harder to discern since Parents did not appear at hearing, present evidence, or file a closing brief. However, insofar as those contentions can be drawn from documentary evidence, Parents appear to accept as proper the temporary placement made by the District in the first 30 days. Parents appear to argue, however, that starting on September 22, 2010, the District could only provide Student a FAPE by placing him in a small, self-contained, highly structured classroom. Parents' objections to the placement of Student at the District's SEAL Center do not appear from the record.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student is an eight-year-old boy who, between August 23, 2010 and January 26, 2011, lived with Parents within the boundaries of the District and was enrolled in the District's Cesar E. Chavez Science Magnet Elementary School (Cesar Chavez). During that time he was receiving special education and related services due to emotional disturbance and a speech and language impairment. Student was exposed to several dangerous drugs in utero and was adopted by Parents when he was 21 months old. Student is of average intelligence, has some degree of fine motor difficulties, and has been diagnosed as having Attention Deficit Hyperactivity Disorder (ADHD), Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS), and a conduct disorder. Student cannot control his behavior.

2. During the school year (SY) 2008-2009, Student attended kindergarten in the Panama-Buena Vista Union School District (PBV), and then in the Valley Oaks Charter School in Bakersfield. In or about May 2009, Parents moved to Redding, California. Nothing in the record reveals that Student attended any school until he was enrolled in the Redding Adventist Academy, a private school, in October 2009. In January 2010, he was enrolled in Sycamore Elementary School in Redding. His attendance at these schools was poor.

3. In the summer of 2010, Parents moved back to Bakersfield and into the District, and on August 23, 2010, enrolled Student in Cesar Chavez. School started the next day. Student attended until November 12, 2010, but then stopped coming to school after an incident of violence described below. He did not attend Cesar Chavez again until January 7, 2011, and ceased attending after four school days. On January 26, 2011, Parents withdrew Student from the District and placed him in the Alpha Omega Academy, a private online Christian school.

4. This dispute concerns only the time period between August 23, 2010, and January 26, 2011, during which the District was required to offer or provide Student a FAPE.

FAPE IN THE FIRST 30 DAYS

5. California law allows a school district to create an interim placement for a special education student who transfers into the district from one special education local planning area (SELPA) to another between school years. The interim placement is not an IEP and does not require parental consent. It is intended only as a temporary program to be implemented before the first IEP team meeting, which must be held within 30 days. The District's obligations during that time are to consult with parents about the placement and to provide the student a FAPE. The District may choose to implement a previous IEP.

6. Student arrived in the District in the summer of 2010 having an IEP from the Redding Unified School District (Redding). That IEP, agreed to by Parents on March 10, 2010, placed Student in general education in the first grade with 60 minutes a week of small group speech and language (S/L) instruction in a separate classroom ("pull-out"). It contained an articulation goal and a notation that Parents and Redding agreed that Student did not need any academic goals at that time. When the IEP was signed, Parents and Redding expected to reconvene in an IEP team meeting upon completion of an assessment of Student by the Langley Porter Psychiatric Institute at the University of California at San Francisco (Langley Porter).

7. Student was enrolled in Cesar Chavez on August 23, 2010, by his grandmother at the request of Parents, who spoke to District staff by telephone. The parties agreed that, pending an IEP team meeting within 30 days, the District should adhere to the Redding IEP. The District distributed that IEP to Student's teachers and S/L provider, who implemented it until an IEP team meeting on September 22, 2010.

8. Jeana Brandon was Student's second grade general education teacher throughout his attendance at Cesar Chavez.[3] She testified that Student posed behavioral problems soon after he appeared in her class. At first she thought his behavior was not unlike that of other second-grade boys, but within weeks she learned it was more troublesome than that. Student spoke up in class, could not stay in his seat for long, and approached other students at inappropriate times. However, she was usually able to redirect him, and placed a student teacher next to him to control him.

[3] Ms. Brandon has a California clear multiple subject credential, certifications at Levels I and II from the California Technology Assistance Program, and a Crosscultural, Language, and Academic Development (CLAD) certification. She has taught at Cesar Chavez since 1997, has been designated a Master Teacher, and instructs newer teachers.

During the first 30 days of Student's attendance, Ms. Brandon believed his placement in general education was appropriate.

9. Ms. Brandon was more concerned with Student's academic performance, which was well below grade level. She testified that she worked with him individually at times, and noticed some progress during September. For example, he made progress in his numbers, counting aloud to 25; he could not count to 10 when he arrived. His use of high frequency words grew from very few to 17.

10. Yolanda Blakey delivered S/L services to Student during his first 30 days at Cesar Chavez.[4] She helped him pursue the articulation goal in the Redding IEP, and testified that he made progress on that goal.

11. The evidence showed that although Student misbehaved in second grade in the first 30 days at Cesar Chavez, he could normally be successfully redirected. Although his academic deficits were severe, he could and did make progress in academics in the general education environment. Student's S/L provider properly adhered to the articulation goal in the Redding IEP, and Student made some progress toward that goal. The District consulted with Parents about Student's temporary placement, and its implementation of the Redding IEP met Student's unique needs and was reasonably calculated to allow him to obtain educational benefit. The District therefore provided Student a FAPE in the LRE from August 24 to September 22, 2010.

[4] Ms. Blakey has a master's degree in speech and language pathology, a certificate of clinical competence from the American Speech-Language-Hearing Association, and a clinical or rehabilitative services credential. She has been a speech and language pathologist for the District since 1995, has worked for school districts in that role for 23 years, and has extensive experience helping disabled children. She is licensed by the State to practice privately.

THE SEPTEMBER 22, 2010 IEP OFFER

12. There are two parts to the legal analysis of the validity of an IEP. First, the tribunal must determine whether the district has complied with the procedures set forth in the Individuals with Disabilities in Education Act (IDEA). Second, the tribunal must decide whether the IEP was reasonably calculated to enable the child to receive educational benefit.

Procedural Compliance

NOTICE OF MEETING

13. A district must give parents adequate notice of an IEP team meeting. The notice must indicate the purpose, time and location of the meeting, and identify those who will attend. It must also inform the parents of the right to bring other people to the meeting who have knowledge or special expertise about the student. It also must allow Parents to participate in the meeting as IEP team members and present information, and must consider their views in formulating an offer.

14. On September 8, 2010, the District mailed a notice to Parents of an IEP team meeting scheduled for September 22, 2010. The notice set forth the time, place and purpose of the meeting and described the District staff who would attend. It invited Parents to bring other people to the meeting and enclosed a statement of their procedural rights. Both in timing and content, the IEP team meeting notice complied with all applicable laws.

COMPOSITION OF IEP TEAM

15. An IEP team must include at least one parent; a representative of the local educational agency; an individual who can interpret the instructional implications of the assessment results; other individuals who have knowledge or special expertise regarding the pupil; and, when appropriate, the student. An IEP team must include not less than

one special education teacher or provider of services to the student. If the student will, or may, be exposed to the regular education environment, the team must also include a general education teacher of the student. In addition, others with special knowledge or expertise may attend at the discretion of the parent or the district.

16. Shirley Nicholas is the District's Assistant Director of Special Education and took primary responsibility for dealing with Parents during these events.[5] On or about September 14, 2010, Ms. Nicholas received a call from Student's uncle (Uncle), who stated that he lived with the family and was also the educational advocate for Student and Parents.[6] They discussed Student's history and condition, and Uncle stated that he would attend the IEP team meeting on September 22, 2010.

17. On September 16, 2010, Parents sent a fax to the District authorizing Uncle to represent them and Student as their advocate in their absence. The authorization allowed the District to speak freely with Uncle and share with him any information pertaining to Student, but reserved to Parents the right to review and sign documents.

18. The District convened the September 22, 2010 IEP team meeting as scheduled, and Uncle appeared for Parents and Student. The District was represented

[5] Ms. Nicholas has a master's degree in educational administration, and clear credentials for administrative services, multiple subjects, and teaching the learning handicapped. She has worked with disabled students for the District since 1984, first as a paraprofessional and then as a special education teacher. She was Teacher of the Year in 2000. Ms. Nicholas has also been a program specialist, a program manager, and a principal. She has held her current position since 2006.

[6] On February 15, 2011, Parents notified OAH that Uncle was no longer the advocate for Parents or Student.

by Gary Hayden, a program manger, as the administrator; Ms. Brandon, Student's general education teacher; Ms. Blakey, Student's S/L provider; Ruscel Reader, the principal of Cesar Chavez; Missy Seymour, a school nurse; Cheryl Weinmann, a school psychologist; and Donna Mullen, a mild-to-moderate special education teacher. All persons required to attend the meeting were present.

PARTICIPATION BY PARENTS' ADVOCATE

19. At the September 22, 2010 IEP team meeting, Uncle supplied extensive information about Student, his history and condition, and Parents' desires for his program. Uncle stated that Student engaged in serious and ongoing maladaptive behavior at home, and had sometimes become violent; for example, he had hit Uncle on the head with a cane, requiring Uncle's hospitalization. District team members stated they had not observed such behavior at school. Uncle provided assessments and other information. Uncle and the District team members agreed on new assessments and on a revised articulation goal proposed by Ms. Blakey. Uncle, as Parents' advocate, participated fully in the meeting and was allowed to present information freely. The District members of the team considered the views he expressed.

20. The District informed Uncle about Student's academic and behavioral difficulties, and expressed a need for current assessment information. Uncle and the District agreed that, until certain assessments could be made, Student's IEP should replicate the Redding IEP. The District made its offer in the form of a specific, clear written proposal. The advocate took the proposal back to Parents for their review and signature. Although Uncle had led the District members of the IEP team to believe that Parents wanted to continue the Redding IEP, Parents declined to agree to the offer except for the new articulation goal. When Parents commented in writing on the offer, the District attached their comments to the IEP document.

21. The District complied with all the procedural requirements of the law in convening and holding the September 22, 2010 IEP team meeting and in making an offer of FAPE to Student.

Substantive Requirements

22. An IEP must address all of a student's unique needs that interfere with his access to education, and must be reasonably calculated to allow the student to obtain educational benefit.

23. An IEP is not judged in hindsight; its reasonableness is evaluated in light of a "snapshot" of the information available at the time it was implemented. This is known as the snapshot rule, and it means that the wisdom of the District's September 22, 2010 IEP offer must be determined in light of the information it had available to it at the time it was made, rather than by reference to subsequent developments.

24. The IEP team's decision to continue to adhere to the general requirements of the Redding IEP until it obtained more current assessment information was reasonable when it was made. The District had served Student only for about 20 school days, and knew that it needed substantial additional information about his condition and performance. The District had before it IEPs from BVP and Redding, both of which placed Student in general education with S/L support. It had the advice of Ms. Brandon, Student's general education teacher, that although Student engaged in an increasing amount of maladaptive behavior in class, it was still at a level that could be handled in general education because he was capable of redirection; and in addition that he had made some progress academically. It had the advice of Ms. Blakey, Student's S/L provider, that Student's articulation problems could be addressed by pull-out S/L therapy, and he was making progress in that therapy. And the team was mindful of the strong Congressional preference that disabled students be placed in the least restrictive environment in which they can be satisfactorily educated.

25. The IEP team was aware of Student's academic and behavioral difficulties on September 22, 2010, but it lacked sufficient information to address them decisively. The assessment information available to the District at the time was incomplete and conflicting. Uncle presented to the IEP team an assessment done in February 2009 by Drs. Michael Kirk and Harold Tapley of the Child and Family Psychology Clinic in Bakersfield (Kirk assessment). Drs. Kirk and Tapley diagnosed Student as having ADHD, Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS), and a conduct disorder.

26. Uncle also presented to the IEP team an assessment completed in January 2010 by the M.I.N.D. (Medical Investigation of Neurological Disorders) Institute Clinics at the University of California at Davis (M.I.N.D. Institute), which was done for the purpose of establishing eligibility for assistance from a regional center for the developmentally disabled. The M.I.N.D. Institute assessors doubted that Student was autistic but recommended further assessment for autism spectrum disorder (ASD), and provisionally diagnosed him as having a conduct disorder. It also recommended an occupational therapy (OT) assessment to evaluate his fine motor deficits. Uncle stated that Parents agreed with some parts of the M.I.N.D. Institute assessment and disagreed with other parts.

27. Uncle also mentioned an assessment by Dr. Bryna Siegel's clinic at Langley Porter, but was unwilling to show the IEP team anything but selected excerpts from it.[7] The District members of the team, reasonably suspecting that the excerpts would not provide a complete and accurate picture of Student, declined to consider anything but the full report. Uncle refused to provide it.

[7] Dr. Seigel is a well-known and respected expert on autism.

28. The District also had before it, on September 22, 2010, a multidisciplinary psychoeducational assessment by PVB, a neighboring school district, which was completed in March and April 2009 and was thorough and complete. It recommended placing Student in general education with S/L support. It concluded that Student was eligible for special education due to his S/L deficit, but was not eligible due to any serious emotional disturbance, and was not autistic.

29. Uncle and the District team members agreed that further assessments were necessary and that the District would present an assessment plan to Parents.

30. With Ms. Blakey's guidance, and Uncle's agreement, the IEP team slightly modified the articulation goal from the Redding IEP. The new goal was clear, specific, and based on Student's present level of performance as perceived by Ms. Blakey. It expected that Student, within 12 months, would improve his articulations of /ch/, /sh/ and /r/ words by 70 percent, and set forth corresponding benchmarks for measuring his progress throughout the year. The goal complied in all respects with legal requirements.[8] Until the District had better assessment information, there was nothing before the IEP team that could have formed the basis for appropriate academic or behavioral goals, or any other goals that might have been necessary.

31. Neither the Redding IEP nor the September 22, 2010 District IEP offer contained any accommodations or modifications for Student because there was nothing in his record to suggest he needed any.

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[8] The written IEP offer mistakenly proposed that Student receive 30 minutes of S/L therapy a week instead of the 60 minutes provided in the Redding IEP. Within a few days the District discovered its error and promptly corrected it. The error was not material and had no effect on Student's S/L therapy, his education, or Parents' participatory rights.

32. Given the nature and shortcomings of the information available to the IEP team at the time, the District's September 22, 2010 IEP offer addressed all of Student's unique needs, was reasonably calculated to allow him to obtain educational benefit, and offered him a FAPE in the LRE.

The November 15, 2010 IEP Offer

PROCEDURAL COMPLIANCE

33. Parents declined to accept most of the September 22, 2010 IEP offer, because they believed that Student should be placed in a small, structured, self-contained classroom. In various oral and written communications with the District, Parents expressed extreme displeasure with the District's actions concerning Student. Parents and Uncle (the family) began to communicate with the District by fax two or three times a day, and frequently by email and telephone as well. Father and Uncle obtained the personal cell phone numbers of Ms. Brandon and others and began calling them late at night and on weekends.

34. Parents also expressed their views to the District through other agencies.On October 6, 2010, Parents filed a request for due process hearing with OAH, which was given Case Number 2010100211, alleging that the District had denied Student a FAPE by declining to agree to their placement request following the September 22, 2010 IEP team meeting. On October 27, 2010, Parents withdrew that request. Although they had consented to the assessment plan presented to them on September 27, 2010, Parents, on October 22, 2010, withdrew their consent to any psychological assessments. This caused the District to file its own request for due process hearing to establish its right to assess Student. That matter was given OAH Case No. 2010101039, but was soon dismissed when Parents agreed again to the

assessments.[9] A District team led by school psychologist Cheryl Weinmann then completed a comprehensive multidisciplinary assessment of Student.

35. At some time during October 2010, Parents complained to the Kern County Grand Jury that the District had deprived the family and Student of their civil and statutory rights by intimidating them and violating numerous special education laws. After an extensive investigation in which Ms. Nicholas testified for nearly eight hours over three appearances, the Grand Jury concluded that Parents' charges were baseless.

36. In late October and November 2010, Parents filed three separate compliance complaints with the California Department of Education (CDE). Those complaints alleged at least 13 separate claims of noncompliance with special education laws. In the following weeks CDE investigated those complaints, and with a minor exception discussed below, ruled that Parents' complaints were baseless.

37. During the weeks leading up to the November 13, 2010 IEP team meeting, therefore, the District fulfilled its obligation to communicate with the family.

NOTICE

38. On October 13, 2010, the District wrote to Parents in an effort to arrange another IEP team meeting, and enclosed a notice of a meeting on November 3, 2010. The notice set forth the time, place and purpose of the meeting and described the District staff who would attend. It invited Parents to bring other people to the meeting and enclosed another statement of their procedural rights. Both in timing and content, the notice complied with all applicable law.

39. On October 26, 2010, Parents requested an IEP team meeting. After negotiations, the parties agreed to meet on November 15, 2010. On November 8, 2010,

[9] Official notice is taken of the pleadings and papers on file in OAH Case Nos. 2010110211 and 2010101039.

the District sent Parents another meeting notice that confirmed the November 15 date and contained revised information about attendees. That notice also complied with all applicable laws.

COMPOSITION OF IEP TEAM

40. Student's Mother and Uncle attended the IEP team meeting on November 15, 2010. The District was again represented by Mr. Hayden as administrator, Ms. Brandon, Ms. Blakey, Ms. Seymore, Ms. Reader, Ms. Weinmann and Ms. Mullen, and also by program specialist Tammera Stoner, Cesar Chavez dean Shannon Jenson, and the District's attorney. The meeting included people qualified to interpret each aspect of the District's multidisciplinary assessment.

41. At Parents' request, the District invited Pam Coleman to the meeting. Ms. Coleman is a marriage and family therapist and a contractor for the Kern County Mental Health Department (CMH). Ms. Coleman provides "wraparound" services to eligible students, mostly in the home. The wraparound program is designed to complement CMH's activities in supplying mental health services to students whose IEPs require it under Chapter 26.5 of the Government Code (AB 3632), but it is a separate program. Ms. Coleman, who had been providing therapy to Student outside of school as part of that program, attended the November 15, 2010 IEP team meeting. Ms. Coleman was also qualified to interpret the District's multidisciplinary assessment.

42. The District complied with all applicable laws in staffing and inviting participants to the IEP team meeting of November 15, 2010.

PARTICIPATION BY MOTHER AND THE ADVOCATE

43. Mother and Uncle actively participated in the November 15, 2011 IEP team meeting. The meeting was scheduled to start at 11:00 a.m. but Ms. Coleman was 20 minutes late, so at Mother's request the District waited until her arrival to begin the

meeting. The District presented an agenda that included assessment reports, goals, services and placement, and asked for additional agenda items from Mother and Uncle, who offered none. Ms. Weinmann began to report on the multidisciplinary assessment, but Mother interrupted and claimed that neither she nor Uncle had received the assessment. This claim was false, but the District nonetheless recessed for a half hour so Mother, Uncle and Ms. Coleman could read the assessment.[10]

44. When the meeting reconvened, the District provided Mother and Uncle another notice of their procedural safeguards and Ms. Weinmann resumed her report on the assessment. Mother criticized the assessment because it did not reflect information from Parents, but Ms. Weinmann stated, and the District proved at hearing, that she had sent assessment questionnaires to Parents but Parents had not returned them. Mother requested two changes in the assessment; Ms Weinmann agreed to them and amended her report. Ms. Coleman expressed her views on Student's condition and stated that Student might have ASD or schizophrenia. The District team members agreed that further assessments were necessary to address those concerns.

45. Before the discussion of assessments was finished Mother stated, for the first time, that she and Uncle had to leave the meeting at 1 p.m. Mother demanded that the District skip the rest of the assessment reports, goals, and services, and turn directly to placement. The District team members tried to insist on addressing those subjects, but Mother and Uncle threatened to leave the meeting and stated that the District could send them a placement offer later. The District team members therefore agreed to skip to a discussion of placement.

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[10] Uncle had demanded that the District send him the assessment by noon on November 12, 2010. At hearing the District introduced a fax transmittal report showing it had done so.

46. For reasons described below, by November 15, 2010, the parties agreed that Student could no longer be placed in general education and required specialized instruction in a small, highly structured, self-contained classroom. The parties discussed various placement options, including placement in the District's program at Harris Elementary School for students at emotional risk. Mother proposed for the first time that the District place Student at the Valley Achievement Center (VAC), a small school for autistic children. The meeting was recessed again so that the District team members could discuss a possible VAC placement, but they agreed, and informed Mother and Uncle, that such a placement would be inappropriate because VAC served much lower performing students, many of whom were nonverbal, and presented a curriculum far below Student's abilities. The District instead proposed placement in its SEAL Center, a self-contained classroom for students with serious social, emotional, and behavioral problems.

47. Mother and Uncle were unwilling to discuss the District's offer of the SEAL program, although Mother promised to visit the program. Mother and Uncle asked for a break, left the room, and then decided not to return to the meeting. For this reason, the District team members were unable to complete discussing the assessment reports, discuss draft goals and a draft behavior support plan (BSP) they had prepared, or explain the SEAL program in any detail.

48. The November 13, 2010 IEP team meeting was not completed and did not address all the items on the agenda only because Mother and Uncle left during the break. The District team members were prepared to discuss all matters on the agenda. When the District team members learned that Mother and Uncle were leaving, they gave Mother and Uncle a draft copy of a proposed IEP on their way out, and asked for possible dates to continue the meeting, but Mother and Uncle were unwilling to commit to a date or propose other dates at that time.

49. On November 19, 2010, the District mailed to Parents a lengthy document entitled Prior Written Notice. It described in detail the history of the District's involvement with the family and Student, including the events of the two IEP team meetings. It also enclosed the draft IEP from the November 15 meeting with draft goals, the draft BSP, and a request for permission to have assessments conducted by the California Diagnostic Center (a CDE facility that assesses disabled students) and by an occupational therapist. The notice also proposed four dates for completing the IEP team meeting.

50. At the November 15, 2010 IEP team meeting, Mother and Uncle spoke freely and extensively, and participated in the process as much as they desired. Ms. Coleman also spoke on their behalf. Their views were considered by the District members of the team, and Ms. Weinmann made two changes in her assessment at Mother's request. The District made its offer in the form of a specific, clear written proposal. The District complied with all procedural requirements of law in convening and holding the November 15, 2010 IEP team meeting and in making an offer of FAPE to Student.

Substantive Compliance

THE ASSESSMENT FINDINGS

51. From September 29 to November 3, 2010, school psychologist Cheryl Weinmann led a multidisciplinary team in conducting a comprehensive evaluation of Student and his educational needs, as authorized by the September 27, 2010 assessment plan.[11] Ms. Weinmann was assisted by Ms. Mullen, the resource teacher,

[11] Parents agreed to the September 27, 2010 assessment plan except for a proposed health assessment, which they declined to authorize on the ground that Student's grandfather was a physician.

who did the academic testing, and Ms. Brandon, who tested Student for social skills. Ms. Weinmann reviewed all Student's records; interviewed his teachers, dean and principal; administered standardized tests to him; and observed him several times in class, on the playground, and in the cafeteria. Altogether she worked on Student's assessment over nine different days.

52. The assessment team determined that while Student was in the average range in his ability to learn, his performance in math, reading and written expression was far below that range. This finding was consistent with Student's very low grades, which were principally caused by his attention difficulties and his disruptive behavior. The team determined that the serious discrepancy between his ability and performance qualified him for special education in the category of specific learning disability.

53. On two standardized measurements of behavior, the assessment team found that Student scored at less than the first percentile in relation to his same-age peers. On a test of classroom social skills he attained the lowest possible score, which Ms. Weinmann testified was "rare and extreme." In light of his test scores and reported behavior, the assessment team recommended that he be found eligible for special education due to a serious emotional disturbance. The assessment team also recommended that the IEP team place Student in specialized academic instruction and create a behavior intervention plan.

STUDENT'S ESCALATING MISBEHAVIOR

54. By November 2010 the parties were aware, even without a formal assessment, that Student's behavior at school had become much worse since the September 22, 2010 IEP team meeting. Ms. Brandon, Student's second grade teacher, and Patrick Schneider, a behavioral aide assigned to help with Student, testified that starting in early October Student began to attack and sometimes hurt other students. He routinely disrupted the classroom. He frequently ran around the room, ran away

from adults inside and outside the classroom, left it, and tried to flee the school grounds. (In educational parlance this is "eloping.") He yelled in class, pushed and shoved in line, spat in the faces of other children, and used obscenities. He was essentially uncontrollable. As a result, he made no academic progress.

55. To some extent Student's misbehavior was encouraged by Parents. In early October 2010, Parents were preparing to file their October 6, 2010 request for due process hearing against the District seeking a placement for Student in a small, self-contained classroom. On October 5, 2010, Ms. Brandon walked Student to the sidewalk so Parents could pick him up, and happily told Father that Student had experienced a good day. Ms. Brandon testified that Father, who was obviously displeased by this news, grabbed Student roughly by the wrist and asked him: "You had a good day?" in an angry and menacing tone. Mother then yelled at Father that he should stop talking to Ms. Brandon and get in the car, which he did. This incident caused Ms. Brandon to suspect that Parents, perhaps to support their position in litigation, were instructing Student to misbehave at school.

56. Ms. Brandon's suspicion was then confirmed by Student. At the beginning of each day, Ms. Brandon would chat with Student, ask him how he felt, and express hope that he would have a good day. Student would usually reply that he could not have a good day because he had been told by Parents to have a bad one. Ms. Brandon testified that variations on this conversation occurred on nearly every school day starting in early October, and Student's predictions of his own misbehavior always proved accurate.

57. Although substantial evidence supports the finding that Parents encouraged Student's misbehavior at school, the evidence also showed that Student's behavioral problems were for the most part genuine. Various diagnoses that he had a conduct disorder, the downward trajectory of his behavior that began before October

2010, and his subsequent history (including a psychiatric hospitalization) all showed that his misbehavior was largely the function of his emotional disturbance, although Parents' encouragement undoubtedly made his behavior worse.

The Incident of November 12, 2010

THE ATTACK ON MR. GARCIA

58. On November 12, 2010, Student attacked and seriously injured Albert Garcia, a school counselor who handles disciplinary problems.[12] Student was particularly unruly on that day, would not sit still or attend class, and spent most of the day running around the campus hitting and kicking things. His aide for the day, Christine Bejarano, followed him and tried unsuccessfully to persuade him to stop. She then called for help. Mr. Garcia responded, and persuaded Student to return to his office.

59. Mr. Garcia has received considerable training in properly managing the behavior of Students. The District uses two approved methods of emergency behavior intervention when a child is a danger to himself or others. One is taught by the Crisis Prevention Intervention Institute (CPI); its model relies on proximity and de-escalation, and is largely used in dealing with general education students. A more recent and sophisticated model for behavior intervention is called ProAct, which is intended for use with special education students, especially those with significant cognitive impairments. After being trained in CPI and ProAct, Mr. Garcia was given senior training status and was awarded a certificate from the CPI Institute as an instructor. In that capacity he has

[12] Mr. Garcia has a bachelor's degree in speech therapy and a master's degree in pupil personnel services. He has been a school counselor for the District for 11 years, eight of them at Cesar Chavez. Before that time he was a speech therapist for the Kern County Superintendent of Schools.

for several years trained employees throughout the District in behavioral intervention, using both CPI and ProAct. Ms. Bejarano has also had significant training in CPI and ProAct, and has been a special education teacher's aide in the District for 15 years.

60. Mr. Garcia testified that on November 12, 2010, in response to Ms. Bejarano's request for assistance, he went out on the campus to find Student. He saw that Student had climbed over a chain link fence into a construction area, was throwing pieces of concrete and rock, and was kicking a metal grate on the side of a building. Mr. Garcia persuaded Student to come to his office to play tic-tac-toe, a game he knew Student enjoyed. Once in the office, Student was relatively calm for a time, but soon began roaming the office playing with objects. When Student reached for a telephone, Mr. Garcia put his hand over the buttons. Student dug his fingernails into Mr. Garcia's hand, drawing blood, and then started kicking walls and file cabinets and jumping off furniture.

61. Student then tried to open a fold-out partition door, but Mr. Garcia, fearing Student would get his finger caught between the panels, put his left foot up against the panel so that it would not move. In response, Student punched Mr. Garcia in the chest and repeatedly kicked his left foot and ankle. Mr. Garcia had recently had surgery on that foot, and Student's kicking hurt it so badly that Mr. Garcia was still receiving therapy for the injury at the time of hearing.

62. Using a technique that he had taught and been taught, and that was approved by the District, Mr. Garcia then grasped Student's arms below the elbows, crossed Student's arms in front of his chest, and sat him down in a chair. Mr Garcia kneeled down in front of the chair and held Student there for approximately a minute, speaking quietly, while Student calmed down and stopped struggling. Mr. Garcia then released Student, who for the moment remained calm. Student was not injured in this process.

63. Father, who had been called and asked to take Student home, then arrived in Mr. Garcia's office. Student started yelling, cursed Father, kicked him and spit in his face. Father then grabbed Student's wrists and yanked them high up between Student's shoulders behind his back. Mr. Garcia had not seen that technique used before, suspected it was dangerous and painful, and was quite concerned that it would injure Student. He told Father what had happened, in detail. Father replied that if it happened again the District should call the police, as Parents had repeatedly done when Student behaved that way at home. Father then pulled and carried his struggling son out of the building to the parking lot, put him in a car and drove off, and Mr. Garcia went to the hospital.

64. Ms. Bejarano, who had accompanied Student and Mr. Garcia to the office, also described the incident in her testimony. Her observations were consistent with Mr. Garcia's description. While in the office Student had also hit her repeatedly, and she was concerned about the safety of everyone present. She saw Student kick Mr. Garcia and saw Mr. Garcia place Student in the chair and briefly hold him there, properly using a CPI hold she recognized from her training. She did not think Mr. Garcia hurt Student or that Student was in pain.

65. Ms. Bejarano testified that when Father arrived, Student hit him, kicked him, called him a "fucking asshole" and spat in his face. She also testified that the way in which Father grabbed Student's wrists and lifted them behind his back was not an approved method of behavior control and appeared to cause Student some pain. She confirmed that Mr. Garcia told Father the details of the event, and that Father told them to call the police the next time it happened.

66. Ms. Bejarano left the office for a few seconds during these events to summon SDC teacher Juanita Patino to the office for assistance.[13] Ms. Patino testified that she saw Student curse and attack Father, who responded by twisting his arms high behind his body in a method Ms. Patino would never use and that caused Student pain. Father then lifted his son in a bear hug, took him out of the office and to a car, sometimes carrying him "like a football."

67. In reaction to this event, the family kept Student out of school until January 2011. It accused the District of allowing an untrained staffer to unlawfully apply a prone restraint to Student and put a knee in his back, thereby injuring him and causing him to suffer acute stress disorder. The evidence showed that these charges were false; that Mr. Garcia acted with restraint in placing Student in the chair, using an approved noninjurious technique and releasing him when he calmed down; and that Student was not injured by Mr. Garcia's actions. The evidence also showed that Father's rough handling of Student may have caused any injuries Student suffered from the incident.

THE CDE FINDINGS

68. Acting on numerous compliance complaints by the family, CDE investigated the November 12, 2010 incident and ruled that Mr. Garcia was properly trained and acted properly in the incident, and that the District complied with all applicable laws during the incident itself. The evidence at hearing showed independently that those findings were correct.

[13] Ms. Patino has a mild-to-moderate teaching credential, has taught autistic children in an SDC at Cesar Chavez for seven years, and has been a resource teacher. She too has been trained in CPI and ProAct.

69. CDE did sustain two complaints against the District for its actions in the aftermath of the incident. A district must immediately complete a behavioral emergency report (BER) after an emergency intervention is used, and must also hold an IEP team meeting within two days to review the report and consider further behavior interventions. CDE found the District out of compliance because it did not immediately complete a BER or hold an IEP team meeting about the report with two days after the incident, nor did it address the incident in the documentation of the November 15, 2010, IEP team meeting.

70. The evidence at hearing independently showed that CDE was technically correct in finding the two violations described above. However, it also showed that those violations had no effect on Student's education or Parents' participatory rights in the IEP process. The incident occurred on Friday afternoon. Mr. Garcia gave a full oral report to Father that afternoon. He then went to the hospital for treatment of his foot, and was ordered by his physician not to return to work Monday or Tuesday. He returned on Wednesday, November 17, 2010, and wrote the BER. The District did not try to schedule an IEP team meeting on such a report for Saturday or Sunday, November 13 and 14 because the report did not yet exist, and because it already had a meeting scheduled for Monday, November 15. Since the family had always before resisted and delayed scheduling IEP team meetings, and since they had already agreed to meet on November 15, 2010, there was little possibility that they would appear at a weekend meeting.

71. The District was prepared to discuss behavioral interventions at the IEP team meeting on Monday morning, November 15, 2010. However, Mother and Uncle left the meeting early, during a break, before the District could address the incident or describe the BSP it had drafted. Therefore, there was no discussion of the November 12, 2010 incident at the IEP team meeting that the District could document. By leaving

early, Mother and Uncle prevented that discussion. Moreover, Mother announced at the meeting that Student would not be returning to school unless the dispute over placement was resolved, and he did not in fact return until January 7, 2011. Thus the District's technical violations, as identified by CDE, did not impede Student's right to a FAPE, significantly impede Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or deprive Student of educational benefits. The violations therefore did not result in a denial of a FAPE to Student.

THE OFFER

72. At the November 15, 2010 IEP team meeting, the District proposed changing Student's primary eligibility category to emotionally disturbed and designating S/L impairment as a secondary category. It offered to place Student in its SEAL Center and proposed 10 draft goals to address the unique needs the District had identified in its assessment. The goals were not discussed at the meeting because Mother and Uncle left at the break, but were slightly refined at the January 13, 2011 IEP team meeting and are described and found appropriate below. There was nothing before the IEP team at either meeting that would have demonstrated any need for goals other than the ones offered.

73. The District also offered to continue Student's pull-out S/L therapy for 30 minutes twice a week. Ms. Blakey credibly testified that Student had been making progress on his S/L goal until he stopped attending after November 3, 2010, so the offer of S/L therapy appropriately addressed Student's S/L needs.

74. There was nothing before the IEP team on November 15, 2010, that would have required it to provide additional accommodations and modifications for Student at the SEAL Center.

75. Several District witnesses testified about the program offered at the SEAL Center. Lizbeth Armstrong would be Student's teacher there. Ms. Armstrong is well

qualified to teach the emotionally disturbed[14] and has been the recipient of numerous awards.[15] Her testimony was persuasive and is entitled to substantial weight.

76. Ms. Armstrong explained that her classroom has nine students and six adults trained in behavior management, including herself. It thus has a ratio of adults to students of two to three. The class is highly structured, but the methodologies used vary depending on the needs of particular students. The class operates on a token economy in which students earn credits and are rewarded based on their behavior. Most of the instruction is done individually or in small groups. Ms. Armstrong testified that there are some students in her classroom who will not receive a high school diploma because of cognitive limitations, and other students who are academically capable but whose academic difficulties stem from their behavioral problems. Student

[14] Ms. Armstrong has a bachelor's degree in behavioral science, a master's degree in special education, and a clear level II mild-to-moderate teaching credential. She has been a mental health recovery specialist; a social worker; an instructional aide; and has taught in prison, helping inmates to obtain Graduate Equivalent (GED) degrees. She has worked with emotionally disturbed children for twelve years and is re-certified every year in behavior management techniques such as ProAct. She is now working toward a second master's degree, specializing in Applied Behavior Analysis (ABA), and attends at least 80 hours of additional training every summer. Ms. Armstrong has taught in her current classroom for five years.

[15] Ms. Armstrong's awards include two for innovation in teaching from a unit of the Chevron Corporation. She has received ten funded grants from the Bill and Melinda Gates Foundation to obtain technology for her classroom such as computers, science tools, books, and lab equipment. She has used the grants to equip each student with a computer and herself with an iPad.

would be in the latter group, and would receive core curriculum instruction, including math, science, English, and social studies, designed to qualify him to graduate with a diploma. Although the students range widely in grade and age, they are divided into subgroups. Student would be put in a small group for children who are between kindergarten and third grade.

77. The SEAL Center, Ms. Armstrong testified, is not on a comprehensive campus populated by typical peers. Its size, experience and staff training allow it to address eloping behavior much more effectively than could be done on a larger campus.

78. Ms. Armstrong established, however, that the central purpose of the SEAL Center is to return students to the mainstream school population whenever possible. Some students therefore stay longer than others. Ms. Armstrong has arranged for significant interaction between her students and typical peers. She has an agreement with a nearby private school which brings its nondisabled students to the Center, or hosts her students, so that the children can play and take field trips together, including several trips into the community.

79. In anticipation of Student's placement at the SEAL Center, Ms. Armstrong examined Student's files and attended his IEP team meeting on January 13, 2011. She testified that he would fit in well in her class. Her students, like Student, typically have anger management problems and behavioral outbursts, display physical aggression, and test the limits of adult toleration. She and her staff specialize in addressing such problems. After examining Student's proposed goals, Ms. Armstrong testified persuasively that all those goals can be accomplished in her classroom, and that placement of Student at the SEAL Center would address all his current academic and emotional needs, making it an appropriate placement for him.

80. Among the many providers who support students at the SEAL Center is Christie Ludlow, an experienced school psychologist.[16] Ms. Ludlow testified that the diagnoses of students in the SEAL Center include autism, ADHD, emotional disturbance, bipolar disorder and depression. Some students there, like Student, are potentially strong academically, while others are cognitively challenged. Frequently they engage in behavior just like Student's: they kick, hit, spit, elope, defy adults and throw things. That, Ms. Ludlow testified, is the population the SEAL Center is designed to educate.

81. Ms. Ludlow established that the SEAL program has three teachers and three classrooms, each with a behavior management assistant and an instructional assistant on its staff. The teachers frequently consult with Ms. Ludlow, who talks to students in crisis and reviews and revises their behavior plans. Teachers at the Center also have available supporting providers such as a S/L therapist, a principal, and a site administrator. CMH workers come to the Center to deliver AB 3632 services. The Center has ongoing arrangements with CMH to address the mental health needs of its students, who are usually served without regard to AB 3632 eligibility in one of two programs at a clinic operated by CMH.

82. Ms. Ludlow explained that state-approved core curriculum is used in academic instruction at the SEAL Center. In the beginning a student's material is "scaffolded" down to a level at which the student is no longer frustrated and can address it. The student's curriculum is then built back up, increasing in difficulty.

[16] Ms. Ludlow has a bachelor's degree in psychology, a master's degree in education, and is credentialed as a school psychologist. She has worked for the District in that role since 1999. Before that she was a clinician and case manager at a child guidance clinic, and has worked with troubled children since 1990.

83. Ms. Ludlow reviewed Student's records and attended his November 2010 IEP team meeting. She testified persuasively that the SEAL Center is appropriate and the best placement for him.

84. Dr. Nicanor Garcia, a licensed clinical psychologist, reviewed Student's records in order to evaluate his disabilities and proposed placement.[17] Dr. Garcia testified carefully; he readily recognized the limits of his knowledge of Student since he had not personally assessed him; and he was thoroughly familiar with Student's history. His testimony was credible and is entitled to substantial weight.

85. Although most of Dr. Garcia's testimony addressed the varying diagnoses of Student's disabilities discussed below, Dr. Garcia also testified that placing Student at the SEAL Center would be appropriate for him. Dr. Garcia has visited the Center, has had several patients who have been served there, and believes that its well-developed behavior management system is what Student needs. He also testified that the Center's academic program is taught at Student's level. Program specialist Mr. Hayden, Ms. Nicholas, and Ms. Weinmann also credibly testified that the SEAL Center is an appropriate placement for Student. In addition, Brad Davis, the CMH recovery specialist assigned to Student's case, testified that he was familiar with the SEAL Center because

[17] Dr. Garcia has a doctoral degree in educational psychology, and is a certified behavioral intervention case manager with more than 13 years of experience in assessing troubled children. In the past he has been a school psychologist, a group therapist and social skills facilitator, a behavioral consultant, and a case manager for Kern County Mental Health. He now owns and operates California Spectrum Services, which provides consultation to schools on behavioral issues, conducts social skills groups for autistic and cognitively delayed children, and provides eligibility evaluations for the local regional center.

several of his clients had been placed there, and that he thought that the SEAL Center program and Student's needs were "a match."[18]

86. The evidence set forth above showed that Student can no longer be educated satisfactorily in the general education environment. He does not obtain academic benefit there, does not grow socially, and is extremely disruptive to other students and the District's staff. Student can only be satisfactorily educated in a small, self-contained environment by people familiar with his disabilities and trained to address his behavior. The SEAL Center is such an environment, and with its mainstreaming opportunities, would constitute the LRE for Student.

87. The evidence showed that the District's November 15, 2010 offer to place Student in the SEAL Center was designed to address all his unique needs, was reasonably calculated to allow him to obtain educational benefit, and constituted an offer of FAPE in the LRE.

THE JANUARY 13, 2011 IEP OFFER

Events Leading Up to the January Meeting

88. Parents kept Student at home for almost two months after the November 12, 2010, attack on Mr. Garcia. On November 19, 2010, Ms. Coleman wrote to the District opining that Student was suffering from acute stress disorder as a result of the incident (as Parents falsely described it) and informed the District that Parents, with her

[18] Mr. Davis has bachelor's degrees in liberal arts, science, and business administration, and is now in graduate school seeking a master's degree in counseling. Since 1991 he has been a case manager, a program director, and a rehabilitation specialist. He has been in his current position as a recovery specialist II since 2003. Overall he has 20 years of experience in delivering mental health services to children.

support, now requested a placement at home. Several times the District sent appropriate correspondence to Parents explaining the required procedures for a home educational placement, and enclosing the required forms. The forms were never returned.

89. Parents and the District had agreed that Mother would visit the SEAL Center on November 25, 2010, but Parents cancelled the appointment the day before and did not respond to several District efforts to reschedule it.

90. On November 29, 2010, Student was committed by police to a psychiatric facility under section 5150 of the Welfare and Institutions Code.[19] Ms. Coleman later advised Ms. Nicholas that she had been called to the home on that day because Student was out of control. Student was engaged in a sustained physical assault on Father, and the other children had been removed somewhere by Parents for their safety. Ms. Coleman was so alarmed by what she saw that she telephoned the police, who took Student to Good Samaritan Hospital in Bakersfield. Student remained there for three weeks. On later calls, Ms. Coleman informed Ms. Nicholas that Student's condition was "grave," that on discharge from the hospital she expected he would be enrolled in a program of the Pediatric Psychiatry Unit at the Medical Center of the University of California at Los Angeles (UCLA), and after that would likely be placed in a group home. She did not expect him to return to his family. However, Student was sent home when he was released from the hospital. The District was unaware of that development at the time.

[19] Section 5150 allows confinement of a patient in a psychiatric facility for up to 72 hours, or longer if specific legal procedures are followed, if the patient is determined to be a danger to himself and/or others.

91. In the afternoon of January 6, 2011, Uncle informed Ms. Nicholas that Student would be returning to Cesar Chavez the next morning. Rejecting her request for a medical clearance and recent information about Student's condition, Uncle made the false and disingenuous claim the Student's return to Cesar Chavez was required by order of OAH, and that if Parents did not comply they would be held in contempt of court.[20] Parents delivered Student to school the next morning, warning that if anything happened to Student the District would be liable for the injuries. Given no practical choice, the District accepted him until it could obtain legal relief.[21]

92. Starting on January 7, 2011, Student spent four school days at Cesar Chavez until he was again kept home by Parents. His behavior was similar to his behavior the previous October and November. He refused to do class work, disrupted classes, frequently eloped, and attacked other Students. When Joshua Valverde, an

[20] In one of the due process matters pending between the parties, OAH Case No. 2010110866, Parents made a motion on December 24, 2010, that OAH alter Student's stay put placement by ordering the District to place Student at home or in VAC. OAH denied the motion on December 29, 2010, on the ground that no law supported such a request, and on December 30, 2010, denied a motion for reconsideration. The OAH orders simply declined to order the District to provide the requested relief; they did not order Parents to do anything. Official notice is taken of the pleadings and papers on file in Case No. 2010110866.

[21] At this time both parties correctly understood that the Cesar Chavez placement was inappropriate for Student and somewhat dangerous to him and others. On January 11, 2011, the District filed a request for due process hearing seeking authority to transfer Student to a safer interim placement. That matter was withdrawn after Student was disenrolled from the District in late January.

experienced behavior management assistant assigned to Student, removed him to a quiet classroom on January 12, 2011, and stayed with him so he could work on his assignments and goals, Student threatened to make false charges against Mr. Valverde through his Mother. Student did not return to Cesar Chavez after that day, and Parents later falsely claimed that Mr. Valverde had locked Student in a closet and injured him, thus contributing, in their perception, to his acute stress disorder.

Procedural Compliance

NOTICE OF MEETING

3. Since Mother and Uncle left the November 15, 2010 IEP team meeting before goals, services, and the draft BSP could be considered, the District promptly began attempts to schedule a resumption of the meeting. It eventually persuaded Parents to agree to a meeting on January 13, 2011. On January 3, 2011, the District sent Parents a notice of the meeting by fax and U.S. Mail because several certified mail letters from the District to Parents had been returned with the notation "Refused." The notice was timely, contained all the information required, and complied with all applicable laws.

Composition of IEP Team

94. Mother and Uncle appeared at the January 13, 2011 IEP team meeting. The District was represented by Ms. Nicholas as administrator; Ms. Stoner; Mr. Hayden; a school nurse; Ms. Brandon; Ms. Weinmann; Ms. Blakey and another S/L pathologist; Ms. Armstrong from the SEAL Center; Ms. Ludlow; Ms. Reader; the district's attorney; and Brad Davis, the recovery specialist from CMH. Ms. Coleman also attended. The meeting included people qualified to interpret each assessment that might have been discussed. The District complied with all applicable laws in staffing and inviting participants to the meeting.

PARTICIPATION BY MOTHER AND UNCLE

95. Mother and Uncle participated extensively in the January 13, 2011 IEP team meeting. Ms. Weinmann completed her presentation of the interdisciplinary assessment, and Mother actively questioned her about it. The parties knew that AB 3632 assistance had to be written into an IEP, so Mr. Davis presented a treatment plan that Mother signed, and the IEP proposed mental health services through CMH. Mother argued that Student's spitting on people was a sensory issue and Student should not be disciplined for it. Mr. Davis and others urged her to authorize an OT assessment, which she was unwilling to do. The parties agreed to OT consultation pending agreement on an OT assessment. The parties reviewed the draft BSP and Mother commented on it. Uncle denounced Ms. Nicholas and others for perceived mistakes in handling Student's case, and repeatedly accused the District of violations of laws that were unfamiliar to the District team members and may not exist. Present levels of performance were discussed and a discussion of goals began.

96. Mother and Uncle then requested a break. Outside the meeting room Uncle had a medical emergency, and he and Mother left the site.

97. The District members of the IEP team decided that they needed to finish the meeting in the absence of the family. The draft IEP had lacked completed goals since November, and Mother and Uncle had twice left during a discussion of goals. The team members knew that Student had returned to school and his situation was dire; they had not yet been told that he would not return after the incident of January 12, 2011 with Mr. Valverde. Mental health services had to be authorized in an IEP or Student could not be served. Some District members of the IEP team rightly suspected that it would be difficult or impossible to bring the family to a reconvened meeting within any reasonable time.

98. A district may not conduct an IEP team meeting in the absence of parents unless the district is unable to convince the parents that they should attend, in which case it must keep records of its attempts to arrange a mutually agreed-on time and place for the meeting. At hearing the District introduced substantial documentation of its efforts to persuade Parents to attend IEP team meetings in general and the January 13, 2011 meeting in particular. After Uncle's medical emergency on January 13, the District promptly began sending correspondence to Parents in an attempt to schedule another session of the meeting. Once again, Parents refused correspondence, did not answer telephone calls, and showed no interest in resuming the meeting. The District made many efforts to persuade the family to attend the January 13, 2011 meeting and to schedule another session of the meeting to complete it, and it introduced adequate documentation at hearing to demonstrate that those efforts were made. Therefore, in continuing the January 13, 2011 team meeting after Mother and Uncle had left, the District complied with all applicable laws.

99. On January 24, 2011, the District sent to Parents another lengthy document entitled Prior Written Notice, which enclosed the draft IEP from the January 13, 2011 IEP team meeting with draft goals, and the draft BSP. It also requested Parents' consent to another assessment plan, which included an OT assessment, an assessment by the California Diagnostic Center, and a functional behavior analysis. The notice also proposed possible dates for completing the IEP team meeting. Parents did not consent to the offer, authorize the requested assessments, or respond to the invitation to complete the meeting.

100. On January 26, 2011, Parents requested in writing that the District "un-enroll" Student from Cesar Chavez, and announced that they had unilaterally placed him in the Alpha Omega Academy, a private online Christian school. The District complied with the request.

101. The District properly noticed the January13, 2011 IEP team meeting. At the meeting, Mother and Uncle spoke freely and extensively and participated in the process as much as they desired. Their views were considered by the District members of the team. The District lawfully finished the meeting in Parents' absence because it had to complete its IEP offer. It made many documented efforts to persuade Parents to attend the meeting, and later to return to a continued session of the meeting. The District made its offer in the form of a specific, clear written proposal. The District complied with all procedural requirements of law in convening and holding the January 13, 2010 IEP team meeting and in making an offer of FAPE to Student.

Substantive Compliance

THE OFFER

102. The District's January 13, 2011 IEP offer was to place Student in the SEAL Center; to continue S/L therapy; to provide OT consultation once a month for 30 minutes pending Parents' agreement to an OT evaluation; to provide AB 3632 services and transportation; and to enroll Student in the extended school year.

103. The January 2011 offer originally contained the 10 draft goals presented at the November 15, 2010 IEP team meeting. They were discussed in detail at the January meeting, both before and after Mother and Uncle left the meeting, and refined in minor ways. An 11th goal, which addressed socialization, was added. In final form, all 11 goals were based on present levels of performance derived from the District's assessment and teacher reports.

104. For example, the District's assessment had shown that Student was well below the average range in reading comprehension and word recognition, and that he could correctly read just one out of nine words in a minute, was able to read only nine sight words, and displayed the reading comprehension of a beginning first grader. To address these needs, the District proposed three reading goals. One of them (the

second goal) expected Student to be able to identify letters in words with the endings "es," "ed," and "ing" with 70 percent accuracy in a year. Another (the third goal) addressed word and letter recognition and expected Student to decode 220 target words with 45 percent accuracy within a year. And another (the fourth goal) addressed reading comprehension and expected that within a year Student would restate facts and text from core curriculum materials by a specified percentage of accuracy that increased throughout the year. In addition, goal one addressed speech intelligibility; goal five addressed written expression; goal six addressed spelling; and goals seven and eight addressed math computation and reasoning.

105. The offer proposed three behavioral goals that were similarly designed. To address Student's tendency to become easily frustrated and physically aggressive, goal nine expected Student to learn to address and discuss his negative feelings in a social situation rather than acting on them. Goal ten would require Student to learn to monitor his own behavior by charting it each day. Goal eleven addressed his need to interact better with his peers. The behavior goals were supplemented by a detailed BSP.

106. At hearing, Ms. Weinmann explained each goal individually and opined that all of them were appropriate for Student. Dr. Garcia also examined the goals and expressed the same opinion. Their testimony was persuasive and is given substantial weight here.

107. Student's academic and behavioral goals were built on specific findings of Student's present levels of performance in the District's assessments. The goals were clear and measurable. Each fixed responsibility for implementation and measurement on one or more specified District teachers or providers. Each was appropriate for Student and would enable him to obtain educational benefit. There was nothing before the IEP team that demonstrated any need for goals other than the ones offered.

108. In conjunction with CMH, the District also offered Student mental health services under Chapter 26.5 of the Government Code (AB 3632) consisting of 45 minutes a month of case management, 45 minutes a month of family therapy, and 30 minutes a month of individual psychiatric services. Mr. Davis provided a detailed summary of Ms. Coleman's AB 3632 eligibility evaluation to the team, and a treatment plan to which Mother and the District members of the team agreed. The plan closely parallels the District's behavioral goals and recommends placement in a small, highly structured environment.

109. The January 13, 2011 IEP offer proposed several accommodations for Student, including preferential seating or an alternative work area; extended time for work and tests; time guidelines for tests; and one-to-one assistance for new material. Given the extensive individualized attention Student would have been accorded at the SEAL Center, there was nothing before the IEP team that suggested any further accommodations, or any modifications, would have been necessary or appropriate.

110. For the reasons set forth above, the District's renewed offer to place Student in the SEAL Center was designed to address all his unique needs and reasonably calculated to allow him to obtain educational benefit.

111. Overall, the District's January 13, 2011 offer was designed to address all of Student's unique needs, was reasonably calculated to allow him to obtain educational benefit, and constituted an offer of FAPE in the LRE.

RIGHT TO ASSESS

112. A district may reassess a disabled student if reassessment is warranted by the student's educational or related services needs. Reassessments normally require parental consent, and to obtain that consent, the District must develop and present an assessment plan. However, if parents do not consent to the plan, the District may

conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so.

113. On November 19, 2010, for the first of several times, the District presented to Parents a reassessment plan that they were unwilling to sign. The plan proposed that the District obtain an assessment of Student's fine and gross motor development from an occupational therapist, and a comprehensive assessment of Student's psychiatric, psychological, medical, emotional, and physical needs from the Diagnostic Center.

114. It is undisputed, and was proved at hearing, that Student is emotionally disturbed and has a learning disability. The evidence also showed that his difficulties in focusing and attention are probably the products of ADHD. Beyond that, there is substantial disagreement between the parties about the nature and extent of Student's disabilities. Most notably, Parents have long contended that Student has or may have ASD, while District experts have disagreed.

115. Drs. Kirk and Tapley of the Child and Family Psychology Clinic reported in February 2009 that Student had PDD-NOS, a diagnosis that requires the presence of some but not all of the symptoms of ASD. At the November 15, 2010 IEP team meeting, Ms. Coleman argued that Student could be bipolar in addition to suffering from PDD-NOS, two categories that District witnesses believe are mutually exclusive. It is also known that Student was assessed by Dr. Siegel's group at Langley Porter, which specializes in ASD, but Parents have been unwilling to give the District anything but selective portions of that report.

116. Other assessments have concluded that Student is not autistic, including the PBV assessment in 2009 and the District's multidisciplinary assessment of fall 2010. Dr. Garcia testified that Student lacks the cognitive delays, social evasiveness, and habits of perseverance seen in children with ASD.

117. Parents claim that the incident of November 12, 2010, caused Student to have acute stress disorder. On November 19, 2010, basing her analysis on Parents' inaccurate version of the incident of November 12, 2010, Ms. Coleman wrote to CMH that Student "is currently exhibiting symptoms consistent with Acute Stress Disorder." Dr. Garcia described the symptoms of acute stress disorder and testified that, from his review of Student's records, Student does not display those symptoms. District witnesses who saw Student at Cesar Chavez in January 2011 agreed that he did not display those symptoms.

118. Student's diagnoses are complicated by the fact that, throughout the events examined here, he had been taking mood-altering medications like Focalin, Clonidine and Seroquel in varying combinations and amounts. The notes of the September 22, 2010 IEP team meeting, report Parents' expectation that Student's dosages of these drugs would be increased in the future. The record does not describe Student's medication regime during or after his hospitalization. Dr. Garcia testified that this changing mix of medications could by itself make Student's behavior unstable.

119. The parties agree that Student has fine motor difficulties, which emerge for example from his large and wandering handwriting. Moreover, ASD is characterized by sensory deficits. An OT evaluation would provide significant information about his sensory condition.

120. Finally, Student's conduct has varied considerably over time, a fact that may make previous diagnoses obsolete or inaccurate. He has not been assessed by the District since the fall of 2010, before his psychiatric hospitalization, and his condition at present is unknown. The record does not reveal when, if ever, Student will return to the District and could be assessed.

121. Thus the evidence showed that those making educational programming decisions about Student would benefit significantly from better and more current

information about the nature and extent of Student's disabilities. Dr. Garcia testified credibly that the District's requests for OT and Diagnostic Center assessments were appropriate. The evidence fully supported that conclusion. Student's apparent educational and related service needs therefore warrant reassessment of him by an occupational therapist and by the Diagnostic Center pursuant to the November 19, 2010 assessment plan.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. Because the District filed the request for due process hearing, it has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62 [163 L.Ed.2d 387].)

PROCEDURAL PROTECTIONS

2 Federal and state law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. §1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist*. (9th Cir. 2001) 267 F.3d 877, 882.)

Obligations to a Transfer Student

3. Education Code section 56325, subdivision (a)(1) sets forth procedures for the transfer of a special education student with an IEP from one California district to

another in a different SELPA during an academic year. During the first 30 days that the transferring student is in the transferee district, that district must provide the student a FAPE, including special education and related services "comparable" to those described in his previously approved IEP. Within those 30 days, the transferee district must either adopt the previously approved IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law. (See also 20 U.S.C. § 1414(d)(2)(C)(i)(I).) However, that obligation only applies in the case of a special education student with an IEP who "transfers into a district . . . within the same academic year" that he was in the previous district. (Ed. Code, § 56325, subd. (a)(1); see 20 U.S.C. § 1414(d)(2)(C)(i)(I).)

4. There are no federal or state statutory provisions imposing similar requirements when a student transfers between school years, such as during summer vacation. In that situation the transferee district is only required to consult with parents and to provide a FAPE to the transferring student during the first 30 days. The new district is not required to implement the former district's IEP or give the student comparable services, although it may choose to do so. (*Clovis Unified School Dist. v. Student* (2009) Cal.Offc.Admin.Hrngs. Case No. 2008110569; *Acalanes Union High School Dist.* (2008) Cal.Offc.Admin.Hrngs. Case No. 2007100455, 51 IDELR 232, 108 LRP 55665; Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46682 (Aug. 14, 2006).)

Notice of IEP team meeting

5. A district must take steps to insure that at least one parent attends an IEP team meeting, and must give the parents notice of the meeting early enough to ensure that they have an adequate opportunity to attend. (Ed. Code, §§ 56043, subd. (e); 56341.5, subd. (a), (b).) The notice must indicate the purpose, time, and location of the meeting and who shall be in attendance. (Ed. Code, § 56341.5, subd. (c).) It must also

inform the parents of their right to bring other people to the meeting who have knowledge or special expertise about the student.

6. A parent has meaningfully participated in the development of an IEP when he or she is informed of his or her her child's problems, attends the IEP team meeting, expresses his or her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs*. (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

Required members of an IEP team

7. An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the child if the child is, or may be, participating in the regular education environment; a special education teacher or provider of the child; an individual who can interpret the instructional implications of assessment results; other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district or the parent; and, when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).)

Requirements for Conducting an IEP Team Meeting Without Parents in Attendance

8. A district may not conduct an IEP team meeting in the absence of parents unless it is "unable to convince" the parents that they should attend, in which case it must keep a record of its attempts to arrange a mutually agreed-on time and place. Those records should include detailed records of telephone calls, correspondence, and visits to the parents' home or place of employment. (34 C.F.R. § 300.322(d) (2006); Ed.

Code, § 56341.5, subd. (h); see *Shapiro v. Paradise Valley Unified School Dist.*, *No. 69* (9th Cir. 2003) 317 F.3d 1072, 1077-1078.)

Specific Written Offer

9. A District must present to Parents a formal, specific, written offer of placement that allows them to make intelligent decisions for their child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526, cert. denied 513 U.S. 965.)

Consequences of Procedural Error

10. The Supreme Court has recognized the importance of adherence to the procedural requirements of the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 205-206 [73 L.Ed.2d 690] (*Rowley*).) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a 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 their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

SUBSTANTIVE REQUIREMENTS

Elements of a FAPE

11. Under the IDEA and State law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) The term "free appropriate public education" means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (D) are

provided in conformity with the individualized education program required under section 1414(d) of title 20 of the United States Code. (20 U.S.C. § 1401(9).). "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

12. In *Rowley*, the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at p. 198.) School districts are required to provide a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id*. at p. 201; *J.L. v. Mercer Island School Dist.* (9th Cir. 2009) 575 F.2d 1025, 1035-1038.)

13. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra*, 458 U.S. at pp. 206-207.)

Required Contents of an IEP

14. Federal and State law specify in detail what an IEP must contain. Among other things, it must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within

a 12-month period in the child's special education program. (Letter to Butler, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

15. An IEP must also contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals, and to be involved in and make progress in the regular education curriculum; and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

Least Restrictive Environment

16. Federal and State law require a school district to provide special education in the LRE. A special education student must be educated with nondisabled peers "to the maximum extent appropriate," and may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii) (2006).) In light of this preference, and in order to determine whether a child can be placed in a general education setting, the Ninth Circuit, in *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403, adopted a balancing test that requires the consideration of four factors: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student.

Failure to Implement an IEP

17. When a school district does not perform exactly as called for by an IEP, the district does not violate the IDEA unless it is shown to have "materially failed to implement the child's IEP. A material failure occurs when the services provided to a disabled child fall significantly short of those required by the IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 481 F.3d 770, 773.) A brief gap in the delivery of services, for example, may not be a material failure. (*Sarah Z. v. Menlo Park City School Dist.* (N.D.Cal., May 30, 2007, No. C 06-4098 PJH) 2007 WL 1574569, p. 7.) And a brief delay in the commencement of related services may be justified, depending upon the circumstances giving rise to the delay. (*D.D. v. New York City Bd. of Educ.*(2d Cir. 2006) 465 F.3d 503, 508.)

EMERGENCY BEHAVIOR INTERVENTIONS

18. A district must immediately complete a Behavioral Emergency Report after an emergency intervention is used. (5 C.C.R. § 5052, subd. (h)(5).) It must also hold an IEP team meeting within two days to review the report and consider further behavior interventions. (*Id.,* subd. (h)(7).)

EFFECT OF CDE FINDINGS

19. In lieu of filing a request for due process hearing with OAH, a parent may file a complaint with CDE, which is then required to conduct an investigation within 60 days and file a written report. (Ed. Code § 56500.2; Cal. Code Regs., tit. 5, § 4650 et seq.) If the allegations of the complaint are found to be true, CDE may order a school district to take steps to address the district's violation of special education laws. (Cal. Code Regs., tit. 5, § 4670.)

20. Findings made by CDE after an investigation of a compliance complaint are not binding on OAH, but they are entitled to some weight. (See, *People v. Sims*

(1982) 32 Cal.3d 468, 479; *Student v. Dry Creek Elementary School Dist.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2009060940; *Student v. Los Angeles Unified School Dist.* (2009) Cal.Offc.Admin.Hrngs. Case No. 2009010712 (Order Granting Motion to Dismiss); *Student v. Bellflower Unified School Dist.* (2007) Cal.Offc.Admin.Hrngs Case No. 2005110764.)

ISSUE NO. 1. DID THE DISTRICT PROVIDE STUDENT WITH A FAPE DURING THE 30 DAYS BEGINNING ON OR ABOUT AUGUST 23, 2010, WHEN STUDENT TRANSFERRED INTO THE DISTRICT, BY PROPERLY IMPLEMENTING STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM (IEP) FROM THE REDDING ELEMENTARY SCHOOL DISTRICT?

21. Based on Factual Findings 1-11 and Legal Conclusions 1, 3-4, and 11-16, the District consulted with Parents about Student's interim placement and in fact provided a FAPE to Student between August 23, 2010, and September 22, 2010. Although the District was not required to provide Student a program comparable to his program in Redding, it chose to do so, and it properly implemented that program. Based on the information the District had available to it at the time, and in light of the progress Student actually made during that period, the evidence showed that during Student's first 30 days in the District, the District addressed Student's needs and provided a program reasonably calculated to allow him to obtain educational benefit.

ISSUE NO. 2. DID THE DISTRICT'S SEPTEMBER 22, 2010 IEP (AS AMENDED ON NOVEMBER 15, 2010, AND JANUARY 13, 2011) OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

22. Based on Factual Findings 1-6, 12-21, and Legal Conclusions 1-2 and 5-16, the District's September 22, 2010 offer was made in compliance with all procedural requirements. It addressed Student's needs, provided a program reasonably calculated to allow him to obtain educational benefit, and, if implemented, would have provided him a FAPE in the LRE. Based on the information available to it at the time, the District

reasonably concluded that Student's behavioral difficulties had not yet escalated beyond the District's ability to manage him in general education, and that further development of a program to meet his academic and behavioral needs required further assessment.

23. Based on Factual Findings 1-4 and 33-50, and Legal Conclusions 1-2 and 5-16, the District's November 15, 2010 offer, was made in compliance with all procedural requirements. It addressed Student's needs, was reasonably calculated to allow him to obtain educational benefit, and, if implemented, would have provided him a FAPE in the LRE. By that time the District had available substantial new assessment information. It also had teacher reports that Student's conduct had substantially worsened, making him essentially unteachable in the general education environment where his presence was disruptive to all. The SEAL Program constituted an appropriate placement for him, and with its mainstreaming opportunities, also constituted the LRE for him.

24. Based on Factual Findings 1-4 and 51-111, and Legal Conclusions 1-2 and 5-20, the District's January 13, 2011 offer, was made in compliance with all procedural requirements. It addressed Student's needs, was reasonably calculated to allow him to obtain educational benefit, and, if implemented, would have provided him a FAPE in the LRE. Student's need for a program like the SEAL Center was even more clear after his hospitalization than before. In light of the information available to it at the time, the District's proposed goals and services and its provisions for Student's mental health needs were adequate and appropriate to provide Student a FAPE.

RIGHT TO REASSESS

25. In evaluating a child for special education eligibility, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 414(b)(3)(B)(i); Ed. Code, § 56320, subd. (f).) A reassessment may be performed if warranted by the child's educational or related services needs. (20 U.S.C. § 1414(a)(2)(A)(i); Ed. Code, § 56381,

subd. (a)(1).) Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain that consent, the District must develop and present an assessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).)

26. If parents do not consent to a reassessment plan, the District may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(a)(3)(i), (c)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

ISSUE NO. 3. IS THE DISTRICT ENTITLED TO ASSESS STUDENT PURSUANT TO THE ASSESSMENT PLAN PRESENTED TO PARENTS ON NOVEMBER 19, 2010, WITHOUT PARENTAL CONSENT?

27. Based on Factual Findings 1-4 and 112-121, and Legal Conclusions 1-2 and 25-26, Student's educational and related service needs warrant reassessment as proposed in the November 19, 2010 assessment plan.

ORDER

1. The District provided Student a FAPE in the LRE between August 23 and September 22, 2010.

2. The District's IEP offers of September 22 and November 15, 2010, and January 13, 2011, offered Student FAPE in the LRE.

3. If for any reason the District again becomes responsible for providing special education and related services to Student, it may implement the January 13, 2011 IEP without parental consent.

4. If for any reason the District again becomes responsible for providing special education and related services to Student, it may assess Student according to the November 19, 2010 assessment plan without parental consent. Parents shall cooperate with those assessments.

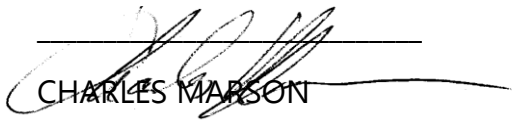
PREVAILING PARTY

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, the District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: June 7, 2011



CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings