

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, | OAH CASE NO. 2011091066 |
| SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2012021053 |

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on May 29, 30, 31, and June 4, 5, 6, and 7, 2012, in Santa Monica, California.

N. Jane DuBovy and Mandy Favoloro, Attorneys at Law, represented Student. Student's mother (Mother) attended all seven days of hearing, and Student's Father (Father) attended the first, fourth, and fifth days of hearing.

Sundee Johnson, Attorney at Law, represented the Santa Monica-Malibu Unified School District (District). District's representative, Dr. Sara Woolverton, director of special education, attended all seven days of hearing.

Student filed his request for due process hearing (complaint) on September 29, 2011 (Student's case). On November 9, 2011, for good cause shown, OAH granted the

parties' joint request for continuance. On February 21, 2012, Student filed an amended complaint (Student's amended case). On February 24, 2012, District filed a complaint (District's case). On March 5, 2012, OAH consolidated the cases, and designated the timeline associated with Student's amended case as the operable timeline for these proceedings. On March 28, 2012, for good cause shown, OAH granted the parties' joint request for continuance. On June 7, 2012, at the close of the hearing, the parties were granted an additional continuance to file written closing arguments by June 25, 2012. Upon the timely receipt of the written closing arguments, the record was closed and the matter was submitted.

ISSUES

STUDENT'S ISSUES¹

1. Did District commit procedural violations that resulted in a denial of a free appropriate public education (FAPE) by:
 - a. failing to consider the concerns of Student's parents (Parents) during the development of the September 27, 2011 individualized education program (IEP) relating to the funding of further non-public agency (NPA) behavior services, transition services, and the recommendations of Student's NPA provider;

¹ At hearing, Student withdrew Issue (a)(1), as enumerated in the order following prehearing conference, which alleged that District failed to provide proper written notice of its decision to cease non-public agency aide services after September 30, 2011. Student's also withdrew Issue (a)(7), which alleged that District failed to assess Student in all areas of suspected disability by failing to appropriately evaluate his educational needs and required related service needs by the time of the September 27, 2011 IEP.

- b. predetermining its offer of placement and services in Student's September 27, 2011 IEP;
- c. unilaterally implementing a change in Student's May 4, 2011 IEP² without parental consent;
- d. unilaterally deciding to prohibit an NPA aide from returning to campus to provide one-on-one aide services to Student after two incidents on October 6, 2011 where the aide restrained Student; and
- e. failing to appropriately assess Student in all areas of suspected disability in the 2011-2012 school year through November 16, 2011, by failing to conduct a functional behavioral assessment (FBA),³ and then by failing to conduct an appropriate FBA on November 17, 2011?

2. Did District deny Student a FAPE for the 2011-2012 school year by failing to offer Student an appropriate placement and services to meet Student's unique needs by:

- a. failing to offer a self-contained placement with more intensive specialized instruction and teacher supervision from autism specialists throughout Student's school day in the September 27, 2011 and November 22, 2011 IEP's;

² Student's complaint mistakenly referenced the September 27, 2011 IEP; however, the evidence, as well as Student's arguments, demonstrates that the operative IEP at issue was the May 4, 2011, as amended by the May 20, 2011 settlement agreement, as Parents never, at any time, provided consent to the September 27, 2011 IEP.

³ At hearing, Student's counsel clarified that the only area of suspected disability in which District failed to assess Student was in the area of behavior, specifically an FBA.

- b. failing to offer appropriate NPA behavior services in Student's September 27, 2011 and November 22, 2011 IEP's; and
- c. failing to amend Student's positive behavior support plan following the November 22, 2011 IEP to address Student's pica and elopement issues?

DISTRICT'S ISSUE

3. Did District offer Student a FAPE in the least restrictive environment in the May 4, 2011 IEP, as amended on September 27, 2011 and February 14, 2012?⁴

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND INFORMATION

1. Student is a nine-year-old boy, who, at all relevant times, resided within the boundaries of the District. Student is eligible for special education under the eligibility category of autistic-like behaviors.

2. Mother testified at hearing and provided background information concerning Student. Student was diagnosed with autism in December 2004, when he was 29 months old, and began receiving behavior therapy shortly thereafter. He was nonverbal and engaged in self-stimulatory behaviors instead of structured play activities. He also had behavioral issues, including elopement behaviors, and was unusually attracted to ceiling fans.

3. Student began his education in a collaborative preschool classroom with 15 typical peers and five special needs students, in a general education environment for

⁴ At hearing, the parties stipulated on the record that District offered appropriate adaptive physical education and occupational therapy services in Student's May 4, 2011 IEP, as amended on September 27, 2011 and February 14, 2012.

most of his school day, and a special education setting for the balance of his day.

Student also had a one-on-one behavioral aide for his entire school day.

4. Student began kindergarten in the 2008-2009 school year at his home school, Will Rogers Elementary School (Will Rogers), located at 2401 14th Street in Santa Monica. At Will Rogers, Student remained in the general education setting for most of his school day, with support from a special education teacher, as well as an aide from Stepping Stones, which was an NPA that provided behavioral services. Stepping Stones also worked with Student at his home in the afternoons, four days a week for behavioral therapy using applied behavior analysis (ABA) methodologies and techniques.

5. On one occasion in kindergarten, Student eloped from campus, and got as far as 14th Street, which was a major thoroughfare, before a staff member caught up to him. Student also occasionally ran away from his kindergarten class while on the playground, in order to get to a place on the playground where he could observe spinning ceiling fans located in a nearby apartment building. Student's elopement behavior was a universal problem, in that he would elope from anybody, including Mother, Father, the nanny, the teachers, and the aides, and from any location.

6. At the end of kindergarten, Student began exhibiting signs of pica (i.e., an appetite for non-food items), such as leaves, flowers, and other items he found on the ground. Consequently, Parents had to remove two trees and numerous plants from their backyard. In addition, Mother has had to call the poison control center on three or four occasions for Student's ingestion of non-food items, after which she had to induce vomiting, or had to wait for the items to pass through his bowels.

7. When Student began first grade at Will Rogers in the 2009-2010 school year, he was in a general education setting 100 percent of his school day. Although his IEP called for two hours a day of specialized academic instruction, District failed to provide Student with that service. Student received one-on-one behavioral aide services

from a District aide. During first grade, Student began eloping more frequently. By spring of 2010, Student eloped a few times per week within campus, but not outside the campus.

8. During first grade, Mother noted that Student began seeking out many types of materials to consume, such as glue sticks, tips of marking pens, paper, erasers, rubber and plastic items, shampoo, soap, hand sanitizers, and sunscreen. Consequently, Student's home therapy began addressing his pica issues. One day after school, Student's bowel movement included a six inch piece of an exercise band, and another day, there was a plastic doll's arm in his feces.

9. On one occasion in 2010, Student, who was in the care of his nanny, eloped from his home. When the nanny could not locate him, she resorted to calling the police. After 45 minutes, the police found Student in a neighbor's backyard staring into their sliding glass door at a ceiling fan.

10. Beginning in second grade, in the 2010-2011 school year, Student attended a charter school, WISH Charter School (WISH), co-founded by Mother. However, Student's teacher quit after a month, resulting in Student experiencing significant stress. Consequently, after a total of six weeks at WISH, Student returned to Will Rogers for the remainder of the 2010-2011 school year. Upon his return, Student remained in the general education setting, with a plan for specialized academic instruction in a resource room for at least two hours per day. However, the special education teacher was on maternity leave, so Student did not receive specialized academic instruction. In addition, District did not have a permanent District one-on-one aide to work with Student upon his return to Will Rogers, which resulted in seven different District aides working with Student during a three week period. Student regressed. Consequently, District re-engaged Stepping Stones to provide behavioral aide services for 100 percent of Student's school day.

LINDAMOOD-BELL (LMB) ASSESSMENT

11. On April 29, 2011, Student underwent a Learning Ability Evaluation at Lindamood-Bell (LMB) to determine Student's levels of literacy skills, his sensory-cognitive processing, and his potential for further development in those areas at Parents' expense and initiative. Specifically, Student took the Peabody Picture Vocabulary Test – 4 (PPVT-4), which evaluated Student's comprehension of the spoken word, and measured Student's receptive vocabulary. Student received a raw score of 57, meaning he answered 57 questions correctly, and a standard score of 50, which represented less than the 0.1 percentile, a mental age of 3.8, and a grade equivalency of less than kindergarten.

12. Student took the Word Opposites subtest of the Detroit Tests of Learning Aptitude – 4 (DTLA-4), which assessed Student's expressive oral vocabulary. Student received a raw score of zero, and a standard score of one, representing less than the 1st percentile, and a mental age of less than six years old. Student also took the Verbal Absurdities subtest of the Detroit Tests of Learning Aptitude (DTLA), which assessed Student's oral language comprehension and expression, which LMB used for instructional planning purposes. Student received a raw score of zero, representing a mental age of less than 5.3 years. Student also took the Oral Directions subtest of the Detroit Tests of Learning Aptitude -2 (DTLA-2), which assessed Student's ability to mark visual oral directions that have been given in entirety, which LMB used for instructional planning purposes. Student received a raw score of zero, and a standard score of one, representing less than the 1st percentile.

13. Student took the Woodcock NU Word Attack subtest of the Woodcock Reading Mastery Test-NU (WRMT), which assessed Student's ability to decode nonsense words composed of one to four syllables. The subtest provided information about Student's ability to phonetically process unfamiliar words. Student received a raw score

of zero, and a standard score of 71, representing a percentile of three, a mental age of five years, and a grade equivalency of kindergarten.

14. Student took the Slosson Oral Reading Test – R3 (SORT-R 3), which assessed Student’s ability to decode lists of real words, out of context, to provide information about Student’s word recognition ability. Student received a raw score of zero, and a standard score of less than 63, representing less than the 1st percentile, a mental age of six years, and a grade equivalency of 0.1.

15. The assessor administered the Word Reading, Spelling, and Math Computation subsets of the Wide Range Achievement Test – 4 (WRAT-4) to assess Student’s academic progress in the areas of word recognition, sentence comprehension, written spelling, and math computation. In the Word Reading subset, which measured Student’s word recognition ability, Student received a raw score of 14, and a standard score of 55, representing less than the 1st percentile, and a grade equivalency of less than kindergarten. In the Spelling subset, which measured Student’s spelling readiness and/or written spelling ability, Student received a raw score of zero, and a standard score of 55, representing the 0.1 percentile, and a grade equivalency of less than kindergarten. In the Math Computation subset, Student received a raw score of three, and a standard score of 55, representing the .01 percentile, and a grade equivalency of less than kindergarten.

16. For instructional planning purposes, the assessor administered the Gray Oral Reading Test (GORT) to assess Student’s paragraph reading rate and accuracy. However, despite the assessor’s efforts, Student would not, or was unable to, begin the test. Similarly, when the assessor administered the Gray Oral Reading Test – 4 (GORT-4) to assess Student’s ability to comprehend reading, including reading rate, reading accuracy, and overall passage decoding ability, Student would not, or was unable to, attempt the test.

17. In order to assess Student's phonemic awareness by requiring him to use colored blocks to show the identity, number, and order of patterns of isolated sounds and sounds within words, the assessor administered the Lindamood Auditory Conceptualization Test-3 (LAC-3). Despite the assessor's efforts, Student would not, or was unable to, begin the test.

18. In order to assess Student's letter and sound associations and nonsense spelling ability, the assessor administered the Symbol to Sound subset of the Informal Tests of Writing, where Student received a raw score of 20 out of 50. The assessor also administered the Nonsense Spelling subset, but Student would not, or was unable to, begin the test.

19. Finally, the assessor administered the Symbol Imagery Test to assess Student's symbol imagery for single and multi-syllable words. Student began the test, was not able to complete it, so he received a raw score of zero, and a standard score of 55, representing less than the 1st percentile, and the mental age of six years.

20. Overall, the evaluation demonstrated that Student scored below the normal range in receptive and expressive vocabulary, oral and written language comprehension, word attack/decoding, sight word recognition, spelling, and math computation.

21. On May 3, 2011, LMB's center director, Jessica Corinne, wrote a letter to District advising that Student would benefit from intervention to develop his phonemic awareness, symbol imagery, and concept imagery skills, and recommended that Student receive daily instruction from LMB, four hours a day, five days a week, for an initial period of 200 to 400 hours. Ms. Corinne, who provided testimony at hearing, received her bachelor's degree in psychology in 2002 from the University of the Pacific. She had been a center director since 2011, where her duties included, but were not limited to, supervising, planning and implementing programs for all students attending LMB's

Westwood Learning Center; collaborating with parents, teachers, learning specialists, and administrators; and managing, generating, and instructing a variety of employee development and training programs. Prior, she was the associate center director for the Menlo Park Center, a consultant for Menlo Park and Monterey Learning Centers, and an interim and general manager for Barnes and Noble. She was not a credentialed teacher, but she received extensive training at LMB on how to conduct LMB assessments, which consisted of reviewing information provided by parents, administering tests, discussing assessment results, and meeting with parents concerning the recommendations. She has been involved with approximately 200 assessments per year for the last three years.

22. In her letter, Ms. Corinne specifically recommended that Student participate in LMB's Seeing Stars program, designed to develop an individual's sensory-cognitive function of symbol imagery, such as the ability to create mental imagery for sounds and letters within words. In addition, she recommended LMB's Visualizing and Verbalizing for Language Comprehension and Thinking (Visualizing and Verbalizing) program, designed to provide sensory cognitive development of concept imagery, such as the ability to create an imaged gestalt (whole) from oral and written language. She also recommended that Student participate in the Visualizing and Verbalizing for Oral Language Comprehension and Expression program (Talkies), designed as a primer to the Visualizing and Verbalizing program. Finally, Ms. Corinne recommended that LMB reevaluate Student after 10 weeks to assess his progress.

23. Ms. Corinne did not assess Student, but met with the evaluator who did assess Student, and discussed behavior observations, as well as assessment results. During Student's assessment, he put a stone and an eraser in his mouth. Ms. Corinne also reviewed a psychological assessment concerning Student, as well as his IEP's, before making a recommendation for Student.

MAY 4, 2011 IEP

24. On May 4, 2011, when Student was in the second grade, the IEP team met for Student's annual review. The attendees included Mother; Father; Victoria Hurst, who was District's administrative designee; a general education teacher; a special education teacher; an adapted physical education (APE) teacher; a behavior intervention specialist and other District service providers; representatives from Stepping Stones; a principal; an assistant principal; and Dr. Woolverton, who was the director of special education. Ms. Hurst and Dr. Woolverton alternated turns typing IEP notes during the course of the meeting, which were included in the IEP document.

25. District members offered Parents a notice of procedural safeguards, which they declined.

26. The team discussed Student's present levels of performance in the areas of reading, writing, math, communication development, gross and fine motor development, social-emotional and behavioral functioning, and adaptive and daily living skills. Specifically, in the area of reading, Student could identify some letters and sounds, and could orally combine some words. In writing, Student could trace his name and could recall letters while tracing. In the area of math, Student worked on identifying numbers and counting objects.

27. In communication development, Student presented with significantly delayed receptive and expressive language skills, and regressed in his receptive language skills from the previous year, approximately from the 3.0 to 5.11 age range to the 2.6 to 4.11 age range. Student's specialized academic instruction teacher noticed an increase of language use, and use of brief sentences without prompting (i.e., asking to go to the bathroom, asking to read a book, and telling how he felt). In the area of adaptive and daily living skills, Student was able to use some words when needed, such as requesting to use the restroom.

28. In the area of gross and fine motor development, Student presented with decreased body awareness and position in space, and had needs in gross motor development in locomotor (jumping), and object control (overhand throwing).

29. In the area of social-emotional functioning and behavior, Student exhibited biting behavior, including biting his shirt or the hand weight he used for writing, self-stimulatory behavior, noncompliance, a lack of independent initiation of verbal exchanges with peers, and failure to typically maintain play with peers for more than one minute. In addition, the IEP noted that Student's behavior impeded his learning, in that Student engaged in tantrum behavior, which consisted of screaming, eloping from assigned areas and rooms, dropping to the ground, hitting, crying, and refusing to follow instructions. Student also engaged in aggressive behaviors, such as biting, pinching, slapping, and kicking.

30. Student's behavior team from Stepping Stones shared a report dated April 27, 2011, that indicated that Student's maladaptive behaviors (i.e., tantrums, biting, hitting, repetitive vocalizations, and crying) had decreased since the onset of behavioral services at school earlier in the school year. In addition, Student's self-stimulatory behaviors, particularly hand and object flapping, had decreased. The reduction of these behaviors resulted in the increase of the amount of time Student attended to classroom tasks, as well as adaptive behaviors necessary for Student to experience success in the school environment, such as complying with instructions. Student also showed a slight increase in his ability to attend to the teacher and activities. However, the Stepping Stones team did not see large improvement in peer interactions, as Student did not independently initiate and maintain conversation or play with peers.

31. The team developed goals, including short-term objectives, in the area of fine motor skills, praxis, sensory processing, social skills, task attention, academics, and speech and language skills. Specifically, the team developed two math goals that

addressed number sense; two written language goals; three reading goals that addressed word recognition, phonemic awareness, and decoding; a locomotor goal to address jumping; two object control goals to address overhand throwing and striking a ball; four occupational therapy (OT) goals to address visual motor/bilateral coordination, fine and visual motor skills, praxis, and typing sentences; one articulation goal; four expressive language goals to address spontaneous comments, answering yes or no questions, using a simple sentence to express negation (e.g., "don't," "can't"), producing a one sentence description for a pictured emergency or an unusual event; and six behavior goals that addressed self-stimulatory behavior, attending, on-task behavior, peer interactions, peer play, and self-advocacy skills.

32. The IEP included a statement of how Student's disability affected his involvement and progress in the general curriculum. Specifically, the IEP stated that Student met the requirement for special education due to autistic-like behaviors. He had an inability to use oral language for appropriate communication, had a history of withdrawal and relating to people inappropriately. The IEP also stated that Student had a history of engaging in self-stimulating behaviors, had a limited range of interests, and had difficulty with transition, as well as with motoric skills (mannerisms). Finally, the IEP stated that Student's disability had adversely impacted his educational performance in all areas of development.

33. The IEP noted that Student required a small group setting where there were fewer distractions, and a lower student to teacher ratio. The IEP also noted that District members had recommended for years that Student receive more specially designed instruction to address his delays, but Parents had refused to agree to Student spending more time in a special education environment, believing the instruction was lacking or substandard.

34. The IEP also adopted a positive behavior support plan (BSP) to address Student's behaviors, which was attached to the IEP.

MAY 4, 2011 BSP

35. The BSP noted a moderate need for the plan, and indicated that Student's problem behaviors that impeded learning were off-task activities, physical aggression, ritualistic/stereotypic behavior, tantrum behavior, and crying.

36. Specifically, the BSP described the tantrum behavior as the occurrence to two or more of the following behaviors occurring more than 15 seconds: screaming, eloping from assigned areas and rooms, dropping to the ground, hitting, crying, giggling, and refusing to follow instructions. Student engaged in approximately five episodes of tantrum behavior per day for less than three minutes per day, in all campus settings.

37. The BSP described the crying behavior as the shedding of tears and/or the making of sobbing/moaning vocalizations for at least 15 seconds. Student had some instances of crying lasting more than five minutes, but, two weeks prior to the BSP, had crying episodes of less than one minute per day.

38. The BSP described Student's aggressive behaviors as (1) biting (i.e., attempted biting, biting inanimate objects, biting himself, and biting others); (2) mouthing (i.e., putting non-food objects into his mouth, licking, gnawing, or chewing non-food items, and putting the arm of another individual in his mouth, distinguished from biting by the minimal force applied and the absence of protest behaviors); (3) pinching (i.e., using nails or a pincher grasp on another individual as an act of protest or aggression); (4) swiping (i.e., using an open hand to touch another person, distinguished from slapping by the absence of behaviors such as crying and yelling); (5) slapping (i.e., using an open hand to strike another person, often in a form of protest); (6) hitting (i.e., using a closed fist to intentionally strike another individual); (7) kicking (i.e., using one or

both feet to strike another individual with force; (8) grabbing (i.e., grabbing someone's person or their belongings, especially when they have flesh exposed around their midsection or bare arms, or when someone wears nametags, jewelry, or other interesting appendages on their clothing or handbag); (9) yelling (i.e., using a voice above the speaking voice of an adult after he has been asked to use a quieter voice); and (10) elopement (i.e., leaving classroom or crossing the threshold from the campus to public property, regardless of distance traveled, without the verbal permission of a staff person or without following verbal instructions from a staff person during the regular school day).

39. The BSP noted as of April 2011, Student exhibited biting behavior a total of 13 times over the past six weeks of school, with the majority of these occurrences involving Student attempting to bite his shirt or hand-weight he used for writing. The BSP also indicated that Student's pinching, slapping, hitting, and kicking occurred infrequently, less than once a month. The BSP noted that Student's behavior impeded learning because it disrupted instruction, impacted peer relationships, and affected time on task. The perceived antecedents or triggers of these problem behaviors were transitions, non-preferred or difficult tasks, disruption in routines, over stimulation, lack of predictability, unclear expectations, and negative attention patterns. The perceived consequences of these negative behaviors were to ignore behavior, adult or peer attention, redirection to task, and the gaining of access to preferred location or item. The perceived function of the problem behavior was to get sensory input, get attention, get a desired tangible item or activity, and to escape or avoid non-preferred, too long, or too easy tasks.

40. The BSP listed positive replacement behaviors for Student to do instead of the problem behaviors, such as verbally requesting his needs (e.g., breaks, squeezes, time outside, etc.). The BSP also listed the environmental factors that would support

Student's positive replacement behaviors, such as breaking down tasks into smaller parts, providing breaks, interspersing preferred/mastery level tasks with non-preferred, difficult, or novel tasks, utilizing consistent routines, proximity to the teacher or peer role model, instructional tasks matched to ability, hands-on learning, high-interest materials, priming for upcoming activities and expectations, using a timer, previewing materials whenever possible, teacher and peer modeling, using calm, de-escalating language, staff's avoidance of using the words "no" and "don't", structured choices, and providing clear expectations.

41. The BSP included teaching strategies that would support Student's positive replacement behaviors, such as pre-teaching and re-teaching, conflict resolution and problem solving, sensory strategies, and requesting breaks, help, or an activity. The reinforcement strategies to increase, maintain, and generalize Student's positive replacement behavior were adult and peer praise, and access to a preferred activity or item.

42. The BSP included a description of the procedures of the reinforcement system. Specifically, the BSP provided that Student would earn access to reinforcers throughout the school day by demonstrating appropriate behaviors, such as completing work and assignments, attending during rug time, walking appropriately to assigned locations, and initiating and interacting with peers. In that regard, the BSP indicated that District staff would provide Student with clear expectations of what was required to earn a reinforcer, provide several options of what he would like to work for, and once Student completed a task or fulfilled an expectation, staff would provide him with access to the reinforcer, as well as specific praise. If Student failed to meet the expectation to earn the reinforcer, the BSP provided that District staff would need to remind Student of what he could do next time to earn the reinforcer.

43. The BSP provided strategies to implement should Student's problem behaviors occur again. Specifically, District staff should prompt Student to use the replacement behavior by reminding Student to ask for what he wanted, as well as what he was working for. In addition, District staff should provide Student with firm and clear directions, as well as minimal attention, such as limited eye contact, short, repetitive directions, and no conversation or discussion. In the case of elopement or non-compliance outside of the classroom, District staff should also have Student demonstrate the appropriate behavior, by taking Student five to 10 steps back to where the problem behavior occurred and repeat the appropriate behavior three times, each time with increased independence. In the case of elopement or noncompliance inside of the classroom, District staff should, if possible, follow the same procedures as those for elopement or noncompliance. However, if employing those procedures inside of the classroom would cause too much of a disruption, District staff should provide Student with firm and clear directions in a neutral tone, provide minimal attention, and require Student to demonstrate an appropriate behavior or follow instructions by performing a simple, neutral task, such as returning crayons to the container, sitting for 15 seconds, etc. After completing a short task, Student may then request a short break, however, District staff should not provide Student access to highly preferred reinforcers during this time. Finally, District staff should have a positive discussion with Student after the behavior ends, by asking Student what he was supposed to do in the situation.

44. The BSP provided that the method of communication, and the method of measurement of Student's behavior, would be set forth in home-school logs, during monthly team meetings, and in progress reports. The BSP listed Student's teacher, behavior intervention specialist, and behavioral aide as the individuals responsible for communicating and monitoring Student's behavioral progress with Student's parents.

OFFER OF PLACEMENT AND SERVICES

45. District offered Student a placement in a Specialized Academic Instruction (SAI) classroom for 750 minutes per week at Student's school of residence, Will Rogers. District also offered a District behavior intervention aide for 1,800 minutes per week and behavior intervention supervision and consultation services from a District behavior intervention specialist. Moreover, the IEP unambiguously provided that from August 30, 2011 to September 30, 2011, NPA behavioral aide services would transition to District behavioral aide services. The IEP also provided that "by the end of September 2011, the team [would] reconvene to determine if more transition time between [the] NPA and District behavior aide [was] required." The team did not discuss how, specifically, the transition would proceed, however, District considered the transition service as a temporary one, and not an ongoing service. Mother believed the September 30, 2011 date was a recommended date, and not an absolute deadline.

46. District also offered OT services three times a week for 30 minutes each session, OT clinic services for one 50-minute session per week, individual speech and language services of three 25-minute sessions per week, APE services of two 30-minute sessions per week, transportation, and extended school year (ESY) for summer 2011. District also offered accommodations, modifications, and supports, such as a continuum of prompting, preparatory prompts, visual start and stop times, wait time for responses, speech model and gestural prompts, Student's use of receptive language to respond to oral prompts, sensory breaks, and access to computer software. The IEP noted that Student would spend 47 percent of his time in a special education setting, and 53 percent of his day in a general education setting and in extracurricular and non-academic activities.

47. Mother advised the team that she believed the special education program at John Muir Elementary School (Muir) within the District had a superior program than

that of Will Rogers, and wanted Student placed there. In addition, Mother requested that Student receive services from LMB during summer of 2011, as opposed to ESY, to compensate for the previous two years in which Student did not receive specialized academic instruction.

48. Parents did not consent to the IEP at that time.

MAY 20, 2011 SETTLEMENT AGREEMENT

49. On May 20, 2011, Parents and District, through Dr. Woolverton, entered into a settlement agreement, in order to resolve the issue Parents expressed concerning their doubts that Student could be adequately served in the special education program at Will Rogers, as well as to accommodate their request to compensate Student for an alleged loss of specialized academic instruction over the prior two years.⁵ District agreed to change Student's SAI program placement to Muir, effective August 30, 2011, to fund 200 hours of LMB instruction during the summer of 2011, and to provide Student with one-on-one aide services by Stepping Stones while Student received LMB services. In exchange, Parents agreed to provide written consent to implement the May 4, 2011 IEP beginning August 30, 2011, and to waive all claims for any and all actual or potential violations by District concerning the offering or making available of a FAPE in the least restrictive environment up to and including the end of ESY 2011.

50. On May 23, 2011, Parents signed the May 4, 2011 IEP.

LMB SERVICES

51. Student received LMB services from June 2011 through August 2011. At the beginning of his instructional services, Student tried to elope several times by trying to get to the lobby of the office building in which LMB was located, or to the back door

⁵ The settlement agreement included no confidentiality clause.

of the building. Student's one-on-one aide, Wesley Lin, who attended LMB sessions with Student, prevented Student from leaving the LMB premises. Mr. Lin also prevented Student from eating inedible items.

52. On August 29, 2011, LMB retested Student using the same tests it administered to Student on April 29, 2011. On the PPVT-4, Student received a raw score of 78, representing a 21 point increase since his April 29, 2011 testing, and a standard score of 50, representing a 10 point increase. Student's scores also demonstrated an increase in mental age from 3.8 years to 4.10 years. His grade equivalency remained at less than kindergarten.

53. On the DTLA-4, Student received a raw score of six, representing a six point increase since his April 29, 2011 testing, and a standard score of two, representing a one point increase. Student's percentile remained at less than one, and his mental age equivalency remained at six years. On the DTLA, Student's raw score remained the same at zero, as did his mental age of 5.3 years. On the DTLA-2, Student's raw score of zero remained unchanged, as did his standard score of one, and his percentile equivalence of less than one.

54. On the WRMT, Student's raw score increased from zero to one, his standard score increased from 71 to 74, his percentile increased from three to four, his mental age increased from five years to 6.8 years, and his grade equivalency increased from kindergarten to first grade.

55. On the SORT, Student's raw score remained at zero, and his standard score decreased from less than 63 to less than 57. He remained at the first percentile, a mental age of six years, and at the grade equivalency of less than 0.1.

56. On the Word Reading subset of the WRAT-4, Student's raw score increased from 14 to 15, his standard score increased from 55 to 58, his percentile increased from 0.1 to 0.3, and his grade equivalency increased from less than

kindergarten to kindergarten. On the spelling subtest, Student's raw score remained at zero, his standard score remained at 55, he remained in the 0.1 percentile, and his grade equivalence remained at less than kindergarten. On the Math Computation subset, Student's raw score increased from three to six, his standard score remained at 55, his percentile remained at 0.1, and his grade equivalency remained at less than kindergarten.

57. On the GORT, the GORT-4, and the LAC-3, as on April 29, 2011, despite the assessor's efforts, Student would not, or was unable to, begin these tests.

58. On the Symbol to Sound subset of the Informal Tests of Writing, Student received a raw score of 30 out of 50, representing a 10 point increase. Despite the assessor's efforts, Student would not, or was unable to, begin the Nonsense Spelling subset.

59. On the Symbol Imagery Test, his raw score was zero, his standard score was 52, his percentile remained in less than the first, and his mental age remained at six years.

60. Overall, the evaluation showed that Student scored below the normal range in receptive and expressive vocabulary, oral and written language processing, word attack and decoding, sight word recognition, spelling, and mathematical awareness.

61. Ms. Corinne of LMB summarized Student's August 29, 2011 scores in a letter to District dated September 12, 2011. Specifically, Ms. Corinne explained that Student's scores on the August 29, 2011 evaluation were below the normal range, which showed that Student had difficulty with reading, spelling, comprehension, and math. In addition, the diagnostic learning evaluation demonstrated that Student could benefit from intervention to develop his phonemic awareness, symbol imagery, and concept imagery skills. As such, Ms. Corinne recommended that Student receive daily LMB

instruction of four hours a day, five days a week, totaling 200 to 400 hours over a 10 to 20 week period. Specifically, Ms. Corinne recommended LMB's Seeing Stars, Visualizing and Verbalizing, and Talkies programs.

2011-2012 SCHOOL YEAR

62. Prior to the start of the 2011-2012 school year, Student's nanny took him to his speech therapist's office, which was located in a 12 story building, with three floors of parking. Student ran out of the office and onto an elevator. After approximately 30 minutes, Student was found on the ninth floor.

63. On August 30, 2011, Student began the 2011-2012 school year in the third grade at Muir, located at 2526 6th Street in Santa Monica, at the corner of Ocean Park Boulevard. Student attended the SAI classroom, as well as the general education classroom. Specifically, he attended the general education classroom at the beginning of his school day, as well as the end of his school day, and participated with his general education peers for physical education, library, and music. He spent a total of 53 percent of his school day in the general education setting. Student received one-on-one behavioral aide services from two Stepping Stones behavior aides (i.e., Mr. Lin and Megan Costello), who alternated days or portions of the day, as well as a District behavior intervention aide, Mia, to overlap with the Stepping Stones aide on duty. The District aide shadowed the Stepping Stones aide. There was some confusion about how to effect the transition from the NPA to the District behavior aide, as neither the Stepping Stones aides nor the District aide knew exactly how the transition would take place, and neither had received any specific instructions.

64. On August 30, 2011, and September 1, 2, and 6, 2011, the daily home-school-home logs showed Student had one mouthing incident on those days, which required a prompt for Student to stop.

65. On September 7, 2011, the daily home-school-home log showed that Student had one elopement incident on campus during a transition period, which required a prompt for Student to stop running.

66. On September 7, 2011, Ms. Hurst, who was District's special education coordinator, sent Mother an email advising that she would like to meet with Mother, District's behaviorist, Brianne Huff, and a supervisor of Stepping Stones, collectively. Ms. Hurst, who provided testimony at hearing, earned her bachelor's degree in liberal arts in 1998 from Pepperdine University, and her master's degree in special education in 2003 from California State University, Dominguez Hills. She attended the Writing Workshop Institute at Columbia University's Teacher's College in the summers of 2005 and 2007, and received a master's degree in administration from California State University, Northridge, in 2007. She received her credential to teach English learners in May 1998, her professional clear multiple subject teaching credential in 2002, became a national board certified teacher in 2002, and received her administrative service preliminary credential in 2007. She has served as District's special education coordinator since 2010, and her duties include facilitating IEP meetings, ensuring IEP compliance, collaborating with parents and staff about students' needs, leading bimonthly special education teacher professional development sessions, and modeling instructional techniques, including behavior modification. Prior, Ms. Hurst served District in several other capacities, such as an assistant principal from 2007 to 2010, a family literacy specialist from 2006 to 2007, a summer school intensive intervention teacher, and as a second and third grade teacher from 2003 to 2006. From 1998 to 2002, and from 2002 to 2003, Ms. Hurst served as an inclusion teacher for first grade, and fifth grade, respectively, at Richland Avenue Elementary School in Los Angeles. She is currently assigned to District's Muir, Grant Elementary School, Will Rogers, and SMASH schools. Ms. Hurst first became

familiar with Student in October 2010, when she received word from Will Rogers that Student would be attending Muir.

67. Ms. Hurst wanted the meeting to ensure a smooth transition from NPA aides to District aides, as well as to discuss clearly defined roles for the transition. On September 9, 2011, Mother advised Ms. Hurst, via email, that she would be first attending a monthly team meeting for Student scheduled for September 13, 2011, and then would be meeting with Ms. Hurst, Ms. Huff, and the Stepping Stones supervisor on September 14, 2011. Mother advised that in the September 13, 2011 meeting, she wanted to specifically discuss the transition process as it related to the establishment of professional protocols for observation, overlap, questions and answers, and the training and coaching of District behavioral aides. Mother attached to her email, to serve as an example of a transition plan, a portion of a December 1, 2008 settlement agreement between Student and District which outlined a four-week transition plan Student and District had used in the past.

68. On September 8, 2011, the daily home-school-home log showed Student had one mouthing incident, which required a prompt for Student to stop.

Proposed Transition Plan

69. On September 13, 2011, Mother with the assistance of Nicci Gorham, a case supervisor of Stepping Stones, developed a written transition plan to assist with the transition from Stepping Stones behavior aides to District behavior aides.

70. Ms. Gorham, who provided testimony at hearing, received her bachelor's degree in child development and family studies from California State University, Long Beach, in 2003. She received her master's degree in social work with a concentration on children and families from the University of Southern California in 2007, and also earned her pupil personnel service credential. In 2009, she completed her course work in ABA at California State University, Northridge, and became eligible to sit for the examination to

become a board certified behavior analyst. At the time of the hearing, she had not taken the examination. She has served as a case supervisor for Stepping Stones since June 2011, where she develops, implements, and directs ABA programs in a variety of settings. Specifically, she develops student program goals and objectives for IEP's; monitors, supervises, and modifies ABA programs; reviews and reports on student performance, progress, and behavior; provides modeling, coaching, and overlap training to staff; provides an ongoing series of trainings regarding autism and interventions; provides support and training to general and special education teachers, parents, and tutors regarding the implementation of visual, behavioral, social, and/or communication strategies and ABA principles; builds, organizes, maintains, and reviews student program notebooks; collaborates with school districts and NPA's; supervises, trains, and monitors ABA teams; observes, analyzes data, and modifies curriculum; and provides consultation and classroom support. Prior, she was a clinical social worker from 2007 to 2011, a behavior therapist with Stepping Stones from 2008 to 2011, a behavior therapist with the Elliott Institute, a master of social work intern from 2005 to 2007, and was a special education teacher at Elliott Institute from 2003 to 2005.

71. Ms. Gorham participated on Student's behavior team in both the school and home settings, along with other Stepping Stones behaviorists. Ms. Gorham understood that the Stepping Stones aides would train the District's aide during the transition process.

72. Ms. Gorham intended for the proposed transition plan that she developed with Mother to be a draft, to be later modified with District's input. The plan consisted of six phases. In the first phase, which was designed to orient Student, the District aide was to observe the Stepping Stones aide for how prompts and interventions were delivered to Student. In addition, the District aide was to learn the established prompting hierarchy regarding Student's self-stimulatory behaviors, and to notice when

Student needed a break to avoid meltdowns. The plan did not include a timeline for phase one.

73. In the second phase, where the plan focused on safety and health, the District aide was to recognize when Student needed to go to the restroom, and learn prompts to help Student wipe correctly. In addition, the plan set forth the need to monitor Student's pica disorder, as well as his elopement issues. The plan also mentioned bully prevention, and addressed Student's appropriate use of equipment. The plan provided that once the District aide mastered data collection in this area, and that inter-rater reliability (i.e., two raters rating behavior at the same time, and then comparing the notes to see if both rated the behavior the same) was at 80 percent, the District aide could then take on the responsibility of providing behavioral aide services for Student during the second half of Student's day. Thereafter, the aides could move to the next phase of the plan.

74. In the third phase, where the plan focused on peer interactions, specifically initiating and responding to peers and engaging in peer play in the classroom and on the playground, the plan provided that once the District aide mastered data collection in this area, and that inter-rater reliability was at 80 percent, the District aide could take on the responsibility of providing behavioral aide services for Student during the second half of Student's day. Thereafter, the aides could move to the next phase of the plan.

75. In the fourth phase, where the plan focused on attending and on-task behavior, the District aide would need to learn to follow the prompt hierarchy, while ensuring that Student maintained a low level of self-stimulatory behaviors. The plan provided that once the District aide mastered data collection in this area, and that inter-rater reliability was at 80 percent, the District aide could take on the responsibility of providing behavioral intervention aide services for Student during the second half of Student's day. Thereafter, the aides could move to the next phase of the plan.

76. In the fifth phase, the plan provided that when the District aide achieved 80 percent inter-rater reliability in all phases, the District aide would begin taking responsibility of Student during the first half of the day, and the Stepping Stones aide would be responsible for Student during the second half of the day. During this phase, supervision and data analysis would be established to maintain quality standards for efficacy and consistency in reporting.

77. In the sixth and final phase, the plan provided that the Stepping Stones aide and the Stepping Stones supervisors would step back and observe the new District team, and be available to the District aide to answer questions, to provide consultation, and establish relapse prevention if necessary. The Stepping Stones team would fade out of the school setting once the new District team demonstrated effectiveness, and Student's behavior was steady.

MONTHLY SERVICE PROVIDERS TEAM MEETING

78. On September 13, 2011, Student's team of service providers met for its first monthly meeting of the 2011-2012 school year. The attendees included Mother; Catherine Cammarota, Student's special education teacher; Ms. Hurst; Andy MacDonald, Student's speech and language pathologist; Brianne Huff, a behavior intervention specialist; Ms. Corinne from LMB; Ms. Gorham; and Renata Gusmao-Garcia Williams, who was Student's general education teacher.

79. At the meeting, Ms. Cammarota reported that Student had been doing well in her SAI class, but had moments where he giggled inappropriately. The general education teacher also reported that Student had been doing well, but had to be excused early that day because of his giggling behavior. Mother advised that the giggling could be associated with digestive issues or task avoidance. Mother also reported that Student had sensory issues which resulted in him pinching fleshy upper arms, or mouthing books, especially when he was bored.

80. The speech and language pathologist reported that Student had been very compliant thus far.

81. Stepping Stones reported that they had begun data collection on the targeted behaviors set forth in Student's IEP. Mother advised that every week, she would make photocopies of the raw data collected, to which Ms. Cammarota asked that she be the one who received the photocopies. Ms. Cammarota would, in turn, make copies and give them to Brianne Huff, who was District's behavior intervention specialist.

82. Ms. Corinne from LMB reported that Student had made great progress during the 10 weeks of intensive remedial instruction Student received during the summer, especially in the area of receptive language. Ms. Corinne also advised the team that Student needed to continue the momentum created over the summer.

83. Mother reported to the team that eloping was a big problem for Student, and advised the team that he had eloped from his speech therapy office during the summer. Mother also advised that he had eloped in the past from Will Rogers, but that it was not likely to be a problem if someone was right there with him. Mother also reported that Student had pica issues, and advised that Student liked putting inedible objects into his mouth, like erasers, hand sanitizer, sunscreen, baby shampoo, and markers.

BEHAVIOR INTERVENTION TEAM MEETING

84. On September 14, 2011, Student's behavior intervention team met. The attendees included Mother; Sharon Venezio from Stepping Stones; Ms. Hurst; and Ms. Huff. The purpose of the meeting was to discuss the transition from Stepping Stones to the District's behavior team, entitled Behavioral Learning through Instructional Support Services (BLISS). Ms. Hurst advised that the May 4, 2011 IEP contemplated a transition completion date of September 30, 2011. Parent expressed a concern about discussing a transition timeline at that time, given the ineffectiveness of the current plan. Mother

wanted an effective plan in place before a transition could take place, and expressed that an "arbitrary timeline" as set forth in the IEP would not be the most effective for Student. Mother felt that there should not be a set timeline, that transition should occur when it was the best for Student, and when District had demonstrated mastery of the standards set by Stepping Stones and Parents.

85. At the meeting, Mother presented the proposed transition plan she developed with Ms. Gorham. Ms. Venezio from Stepping Stones brought a hard copy of the proposed plan to the meeting. Mother believed District would consider it, and then discuss it further to come up with something agreeable to everybody. Although she did not express it at the meeting, Ms. Hurst had concerns about this proposed transition plan, as it included no timeline associated with the phases, and each phase needed to be mastered before proceeding to the next phase. Ms. Hurst advised Mother that District would need to review the plan before any decisions could be made regarding transition, and would get back to Mother shortly.

Prior Written Notice of September 16, 2011

86. On September 16, 2011, District sent Mother prior written notice of its refusal to change the May 4, 2011 IEP to eliminate the transition from NPA aide services to the District aide services. District advised that it would implement the IEP as written, to which Parents consented on May 23, 2011, and that the NPA behavioral aide would end services on September 30, 2011, unless following an IEP team discussion, the District offered to extend the overlap between District and NPA aides. The prior written notice also indicated that on October 1, 2011, District would provide Student with a District behavior aide, and would no longer fund an NPA aide unless District offered to extend the overlap between District and NPA aides after an IEP team discussion. Finally, the prior written notice indicated that an IEP meeting had been scheduled for

September 27, 2011, pursuant to the May 4, 2011 IEP, to discuss the transition of NPA behavior aide services to District aide services.

87. On September 20, 2011, at 9:11 a.m., Mother took a picture, with her iPhone, of the unlocked front gate at Muir, located at the corner of 6th Street and Ocean Park Boulevard in Santa Monica, where people passed freely in and out of the gate. She took the picture from the parking lot where the bus unloaded the students. She also took a picture of the inside gate looking into the parking lot, where it depicted a latch that could be accessed from either side of the gate. Mother estimated that it would take Student approximately 10 seconds to get from the gate to the street.

88. On September 21, 2011, the daily home-school-home log showed that Student had an elopement incident on campus.

89. On September 21, 2011, Parents hand-delivered a letter to District indicating that they were partially revoking their previous consent of the May 4, 2011 IEP. Specifically, Parents agreed to the NPA behavior intervention aide and supervision services, but disagreed with the termination of NPA services by September 30, 2011. In addition, Parents disagreed to District providing District aide services to Student, as they felt that District services interfered with NPA aide services and supervision. Parents also requested that District conduct a formal functional behavioral assessment (FBA) by a mutually agreeable independent assessor prior to making any changes to the behavior services.

90. District continued to provide District aide services. In September 2011, several new District aides provided on-on-one services to Student because Mia was absent.

SEPTEMBER 27, 2011 AMENDED IEP

91. On September 27, 2011, the IEP team met to discuss Student's academic goals and the transition of NPA behavior aide services to District behavior aide services.

The attendees included Mother; Father; Ms. Gorham; Ms. Corinne; Ms. Hurst; Ms. Cammarota; Andy MacDonald, Student's speech therapist; Ms. Huff; Dr. Woolverton; and Tristan Komlos, who was the principal of Muir. Ms. Hurst typed IEP notes during the course of the meeting, which were included in the IEP document. District members offered Parents a notice of procedural safeguards, which they declined.

92. At the meeting, Student's speech pathologist, Ms. MacDonald, who provided Student with individual speech therapy, expressed concerns about Student not being in a social language group. Ms. MacDonald considered social language a significant area of need for Student. Mother then advised the team that she only wanted Student to attend individual speech therapy sessions, and that she would work on the social aspects at home, and advised that there were other opportunities where Student could have social experiences. Mother further expressed that Student's safety was of upmost importance, specifically as they pertained to his elopement and pica issues, rather than social goals.

93. Dr. Woolverton then led a discussion about the transition from NPA behavior aide services to District behavior aide services. Dr. Woolverton, who provided testimony at hearing, had been District's Director of Special Education since 2009. She earned her bachelor's degree in special education and in anthropology in 1983 from Western Washington University, as well as her teaching certificate. She earned her master's degree in special education from the University of Washington in 1992, as well as her doctorate in educational leadership and policy studies in 1996. In 2001, Dr. Woolverton completed the Danforth educational leadership program at the University of Washington, where she earned her educational administrator's certificate. As the Director of Special Education for District, her duties include overseeing District's special education program; supervising five administrators and two behavior intervention specialists; providing staff training, including in the area of special education law and

procedures; attending IEP meetings; and developing and staffing programs to serve students with special needs.

94. Prior, Dr. Woolverton was the Director of Special Education for Everett public schools from 2006 to 2009, a special education program manager for Seattle public schools from 2004 to 2006, and an administrative intern for Seattle public schools from 2000 to 2001. She also has held positions at several universities from 1992 to 2000, and was a special education teacher from 1984 to 1990. Dr. Woolverton has also published books, made presentations, and conducted research on multicultural education.

95. Dr. Woolverton received training in working with children with autism before coming to District, and while at District, has attended teachers' training on autism and on children on the autism spectrum. She has also provided training to District's teachers demonstrating how general education teachers can support students with special needs. She also has experience with pica, as one of her students in her class in Seattle had pica.

96. At the time of the IEP meeting, the transition had been in progress for approximately four weeks. Dr. Woolverton asked how the transition had been going. Ms. Huff advised that the transition had been rough, because the roles of the aides had not been explained, and because the transition had not been well-defined. In addition, the District aide, Mia, who had been collecting data and who had been trying to get data, had more difficulty working with Mr. Lin than with Megan. Mr. Lin had previously expressed to Mother that he was annoyed by the close proximity of the District aide.

97. Dr. Woolverton advised that Parents did not have the right to partially revoke their consent of the May 4, 2011 IEP after signing the settlement agreement where they agreed to provide consent, including consent for the transition, and to implement the IEP in full. In addition, Dr. Woolverton believed, based on information

she had received from the California Department of Education on another case in 2009, that parents could always consent to portions of the IEP, but they could not revoke portions of the IEP. Despite this, Dr. Woolverton conceded that if the team felt the District aide required more time with Stepping Stones to transition, then the team could agree to this.

98. Dr. Woolverton asked the team if the District aide needed more time, to which Ms. Huff opined that an additional one to two weeks would be helpful. Ms. Huff, who provided testimony at hearing, received her bachelor's degree in general psychology in 2008 from Azusa Pacific University, and her master's degree in educational psychology from California State University, Long Beach, in 2011, as well as her pupil personnel services credential. She is also a board certified behavior analyst. She has served as a behavior intervention specialist with District since August 2011, where she supervises the behavior aides, consults with teachers, inputs data, reviews data, consults on a social skills class, and consults on a preschool class. She also trains District behavior aides in a three week program, where she teaches them how to observe and collect data. Each new aide receives 60 hours of training.

99. Prior, Ms. Huff was a program supervisor at Sage Behavior Services in 2010, where she supervised behavior interventionists. From 2010 to 2011, Ms. Huff was a school psychologist intern with the Downey Unified School District, and with the Los Angeles County Office of Education. She has training and experience in working with children with autism. Specifically, she worked with 15 to 20 students with autism in both the home and school settings when she was a one-on-one aide before coming to District. She has attended training sessions on autism, and has given trainings on autism. Since she has been with District, she has conducted four trainings. She is a member of the National Association of School Psychologists, the California Association of School

Psychologists, the Psi Chi National Psychology Honor Society, the Alpha Chi National College Honor Society, and the Phi Kappa Phi National Honor Society.

100. Ms. Huff felt a one to two week transition period was appropriate based on her observations of Student, which occurred once a week for 30 minutes to two hours, as well as on her experience with transition plans. She felt that one to two weeks was sufficient for overlap time between the NPA aide and the District aide, and it provided sufficient time to establish inter-rater reliability. In Ms. Huff's experience, in other cases involving special needs children, there was no need for written transition plans, because there was better communication between the NPA and District entities. Transition plans differed from fade-out plans, which were often in writing, because in fade-out plans, a student had completed all or most of his goals, and there was a pulling away of aide services for the child, as opposed to replacing aide services with a different aide, as found in transition plans. Similarly, in Dr. Woolverton's experience, no formal written transitions plans were necessary. Specifically, since Dr. Woolverton had been with District, there had been six to 10 transitions from NPA aides to District aides, and none of those required a written plan beyond the language contained in Student's May 4, 2011 IEP.

101. Also, Ms. Cammarota, the SAI teacher, agreed that the District aide needed more time. Ms. Cammarota, who provided testimony at hearing, received her bachelor's degree in Christian education from LIFE Pacific College in 1997, and her master's degree in the area of organizational leadership and education from Azusa Pacific University in 2007. She earned her mild-to-moderate special education credential in 2008, her clear credential in 2012, her autism specialist certificate in 2012, and her California preliminary multiple subject credential in 2012. By summer 2012, she will complete the requirements for an autism certificate, which will demonstrate she is highly qualified to teach students with autism. She has been an SAI academic instructor for District since September 2009,

as well as a resource specialist. As an SAI instructor, her duties include teaching specialized academic instruction for a non-categorical class (i.e., a class comprised of students with a myriad of disabilities, as opposed to just one specific disability); assessing students; collaborating with school psychologists, mental health therapists, autism specialists, District behaviorists, social skills groups, and the SAI team on assessments; teaching strategies; and implementing IEP's and goals.

102. Prior, she was an ABA therapist with Autism Intervention and Resources from 2007 to 2008, and taught homeless students in Georgia from 2006-2007. Before that, she was a substitute teacher and student teacher with a different school district.

103. Ms. Cammarota had been Student's SAI teacher since August 30, 2011. There were 10 students in her class, and six adults, including Ms. Cammarota. The District aide, Mia, had been absent quite a bit because of medical issues. Student had made a nice transition to her class, appeared very happy, had been performing well in her class, and had been behaving appropriately. She felt her class was appropriate for Student, because academically, it was meeting Student's needs, and the class was small. She, the assistants, and aides knew that Student had pica issues, and made it a point not to leave items around that Student could put into his mouth, but she did not make any major adjustments to the class. Ms. Cammarota herself had pica as a child, so she was familiar with the disorder, and had conducted additional research on it before Student joined her class. She, the assistants, and the aides also knew that Student had elopement issues.

104. The principal, Ms. Venezia, who was the Stepping Stones supervisor, and Ms. Gorham also agreed that the District aide needed more time. When Dr. Woolverton asked Ms. Gorham when she believed would be a good date for the District aide to transition full time as Student's behavior aide, Ms. Gorham advised she could not state a specific date, but would have more data on October 11, 2011. When the principal asked

Ms. Gorham how long, in general, was a typical transition period, Ms. Gorham advised that she could give no specific timeline, as each student was different. A District member advised the team that two to four weeks was a typical transition period. Mother shared that she could not quantify when she believed Student would be ready for a transition, but that when he became ready, she would call an IEP meeting. Based on this discussion, Dr. Woolverton proposed an offer providing for an additional three weeks to complete the transition from NPA aides to District aides, one week longer than the maximum period recommended by Ms. Huff. Dr. Woolverton felt the additional week would ensure a complete and smooth transition. Dr. Woolverton advised that the transition should continue to progress so that by October 21, 2011, the NPA aide would no longer be involved, and the District aide would be fully responsible for Student. District members agreed with the offer.

105. Mother disagreed with the three week extension offer, and expressed that District should not interfere with the NPA aides at all, given the multiple transitions between District staff, and given, what Mother described, as their "lack of professionalism."

106. Immediately following the meeting, Ms. Cammarota shared her concerns about Mia's absences with Ms. Huff, Dr. Woolverton, and Muir's principal at an informal meeting. Specifically, Ms. Cammarota advised that if District wanted a smooth transition, Mia should not remain on Student's case, as her absences had resulted in a number of substitute aides. At this informal meeting, Dr. Woolverton learned that some felt Mr. Lin had been too rough with Student, but they provided Dr. Woolverton with no specific examples.

PRIOR WRITTEN NOTICE OF SEPTEMBER 27, 2011

107. On September 27, 2011, District sent Parents prior written notice of its proposal to change Student's May 4, 2011 IEP to extend the services of the NPA

behavior aide for an additional three weeks to allow a smoother transition to a District behavior aide. As such, the NPA behavior aide would be extended through October 21, 2011. The prior written notice indicated that the reason District proposed such action was because the IEP team believed that, due to some confusion at the beginning of the transition period in early September 2011, the District aide had not had an opportunity to complete her transition to full support of Student during the school day. The notice also stated that the IEP team believed that the aides required two additional weeks to complete the transition, and that District had offered three to ensure the transition was fully complete before the NPA aide left.

108. The prior written notice also provided that Parents could not revoke consent to the IEP in part, that the law allowed parents to revoke consent in full to the IEP, but District did not interpret Parents' September 21, 2011 letter as a full revocation of consent. District did not accept the premise that Parents could revoke consent specifically and solely to the portion of the IEP that addressed the transition from the NPA behavior aide to the District aide, and that District intended to go forward with the implementation of the transition from the NPA aide to the District aide, consistent with the IEP, except that District would extend the timeline three weeks pursuant to the consideration of the IEP team member input.

109. The prior written notice also indicated that Mother had come into Student's classroom subsequent to her September 21, 2011 letter revoking partial consent of the May 4, 2011 IEP, and told District staff members that they were not allowed to work with her son. Consequently, the notice indicated that Parents did not have the right to direct school staff members not to work with Student, and if Parents did, in fact, come onto school grounds and told a staff member that they could not work with their son, Parents' behavior would be considered disruptive, and Parents would be asked to leave the campus.

110. The document further provided that District could assign a different behavior aide to Student as District feels appropriate, and that District had clearly communicated to the NPA that they must cooperate with the transition to the District behavior aide, including stepping back and allowing the District behavior aide to work with Student and refraining from insisting on the use of NPA data collection forms and procedures.

111. Finally, the prior written notice addressed Parents' request that District fund an independent FBA prior to implementing any change in service. District contended that although it had not seen any behaviors that would warrant an FBA, the District would agree to conduct its own FBA. The document indicated that District would not fund an independent FBA because District had not had the opportunity to conduct its own FBA. District included an assessment plan with its prior written notice, and indicated that the FBA would be completed within 60 days of the District's receipt of the assessment plan signed by Parents. District also advised that because it had not seen any significant behavior problems from Student, especially regarding transition to the District behavior aide, District would continue with the transition to the District aide, and would not delay the transition pending the completion of the FBA.

112. On September 27, 2011, the daily home-school-home log showed that Student had an elopement incident on campus.

113. On September 28, 2011, District contacted Stepping Stones to extend the period of the contract to October 21, 2011, and to discuss concerns regarding Mr. Lin relating to perceived roughness Mr. Lin used when interacting with Student, and his failure to cooperate fully with the transition to the District's aide. District asked that Stepping Stones not send Mr. Lin back to Muir, and to provide a different aide in his place. However, Stepping Stones advised that it did not have another aide to send.

114. On September 29, 2011, Parents, on behalf of Student, filed a request for due process in the instant matter, and filed a request for stay put requesting, among other things, that District be ordered to continue providing NPA behavioral services.

115. On October 3, 2011, Parents provided their consent for District to conduct an FBA.

116. On October 3, 2011, District assigned Ivan Carillo, a District behavior intervention aide, to Student 100 percent of the school day to work with Student's NPA aide. Mr. Carillo received 60 hours of training from Ms. Huff before working with Student.

OCTOBER 6, 2011 INCIDENTS

117. On October 6, 2011, Mr. Lin became involved in two incidents at Muir concerning Student. Mr. Lin, who provided testimony at hearing, had been a behavior therapist for Stepping Stones since 2008. His duties include providing behavior intervention services using ABA techniques, attending monthly training on ABA methodologies, and participating in the development and modification of behavior plans. He is certified in crisis prevention intervention (CPI) and applying proper restraints, and in cardiopulmonary resuscitation (CPR). In 2008, he received his bachelor's degree in psychology from the University of California at Davis, and will be attending graduate school in September 2012 in New York to begin a master's program in psychology. He has worked with children with autism since 2006 at a different NPA, where he provided behavior intervention services at students' homes using ABA techniques and methodologies, and participated in the development and modification of behavior plans.

118. He had worked with Student since August 2008 at his home, at summer camp, at community outings, at LMB, and in school placements. He was Student's primary Stepping Stones aide, although another Stepping Stones aide, Ms. Costello,

worked with Student at school as well. From the beginning, Student had exhibited elopement and pica behaviors, as well as other negative behaviors. Regarding elopement, Student would either attempt to leave the instructional area, leave the classroom, or leave the school. Because of Student's elopement behaviors, Mr. Lin followed a behavior plan to curb Student's elopement, and on those occasions when Student attempted to elope, Mr. Lin would intervene before Student would leave the room. Regarding pica, Student often put non-food items into his mouth. At one time, during summer camp, he ingested some leaves. In school, he would attempt to mouth items like toys and pencils, requiring Mr. Lin to block the item from reaching Student's mouth.

119. In the first incident, while Mr. Lin, and Student's District aide, Mr. Carillo, stood in the school's parking lot before school waiting for Student to exit the bus, Mr. Lin heard Student grunting on the school bus, which was a sign that Student was agitated. When the bus driver unbuckled Student's seat belt, Student became aggressive and resistant to the bus driver's request for him to exit the bus. When Student exited, he came toward Mr. Lin to grab him. When Student was unsuccessful in grabbing Mr. Lin, Student pinched and hit himself. Mr. Lin became concerned, given Student's elopement issues, namely that Student would run off into the street, as it was an open area. Consequently, Mr. Lin restrained Student by holding him. At hearing, Mr. Lin explained that he was not sure if he complied completely with CPI procedures, because of the way Student twisted his body, but felt he needed to use the restraint because Student was a danger to himself or others. He believed he used an appropriate amount of force when restraining Student, and Student was not hurt as a result (i.e., no scratches, no bruising, etc.). A parent, who had witnessed the incident, intervened by asking Mr. Lin what he was doing, and then reported the incident to Muir's principal.

120. The second incident occurred later on that day in the classroom. Mr. Lin had to go to the restroom, and asked Mr. Carillo to take care of Student. When Mr. Lin returned from the restroom, Student, who was sitting in a chair, started to engage in tantrum behavior, and leaned over to towards Mr. Carillo to bite him. Consequently, Mr. Lin tried to block Student's hands, which resulted in Student bucking while sitting in his seat. Mr. Lin then moved Student to a more open area, approximately two or three feet away from Student's chair and table, and restrained Student.

121. On October 6, 2011, District sent a letter to Stepping Stones concerning the two incidents involving Mr. Lin, and described Mr. Lin's actions as the rough handling of Student. The letter described the bus incident, and stated that Mr. Lin's actions were severe enough that a parent intervened and reported the incident to the principal. The letter then described the classroom incident, and stated that both incidents involved inappropriate holds Mr. Lin performed on Student. As such, District would no longer permit Mr. Lin to come onto its campus.

122. On October 6, 2011, Mother sent the principal of Muir, Tristan Komlos, an email in response to her telephone call advising Mother of the incidents involving Mr. Lin. Mother expressed in the email that Student's behavior could be unexpected and extreme at times, and because his tantrums were intermittent, people tended to forget how intense and potentially dangerous they could be, to both Student and to others. Mother expressed gratitude for the behavior team at school, including Mr. Lin, who quickly intervened. Mother also advised that she checked Student's arms when he returned home from school, and noticed no marks. His mood had improved, as well.

123. On October 7, 2011, District prepared a behavior emergency report concerning the incident that occurred upon exiting the school bus. Specifically, the report stated that Student lunged at the NPA aide after exiting the bus, which resulted in the NPA aide grabbing Student by the wrists. Although Student said, "okay, stop,"

several times, the NPA aide would not release the hold. A parent observer attempted to intervene while the NPA aide continued to hold Student, until Student calmed down and was able to attend class. The episode lasted three to five minutes. The report noted that Student had white pressure marks on his wrists when the NPA aide released them, and Student's hands had turned red during the restraint.

124. On October 7, 2011, District also prepared a behavior emergency report concerning the incident that occurred in the classroom. Specifically, the report stated that Student had become agitated, and tried to bite, kick, and pinch the NPA aide, who had restrained Student from behind. Student had gotten into a standing position, and continued to struggle, which resulted in the NPA aide lifting Student's legs, and moving him into a seated position. Student struggled, protested, and cried. The NPA aide and the District aide moved Student out of the classroom to the restroom. While there, Student bit his clothing, and rocked back and forth. The NPA aide and the District aide escorted Student from the restroom to the break area in the classroom, where Student threw himself onto the floor, and flailed his limbs and head. The NPA aide moved him to the carpet for safety, and calmed Student with a squeeze toy. No injuries occurred.

125. On October 7, 2011, Ms. Venezia, the regional manager of Stepping Stones, conducted an investigation, interviewed Mr. Lin, and prepared a statement. Mr. Lin advised Ms. Venezia that when Student exited the bus, Student was agitated and "went at" him and Mr. Carillo, the District aide. Student scratched and hit Mr. Lin, so Mr. Lin held Student's hands to prevent further hitting and to prevent self-injury, as Student was also hurting himself. In addition, there were cars nearby, so Mr. Lin also held Student, who was trying to get away, to prevent Student from running away. Student squirmed and used a lot of strength. While this happened, a woman approached Mr. Lin and Student, and then after discovering who Mr. Lin was, introduced herself as "Lupe." After the introduction, Student calmed down, and they walked into the classroom. Dr.

Woolverton did not recall receiving this statement prepared by Ms. Venezio in October 2011, but rather saw it for the first time when the parties exchanged evidence binders prior to the hearing in this matter.

126. Ms. Venezio's statement also addressed the restraint practice, and noted that Mr. Lin received training on September 12, 2009 and August 13, 2011 in CPI and proper restraints. Although restraint was always a last resort and preventative measures were used to diffuse crisis situations to avoid the need for restraint, there had been occasions where Student had been a threat to himself, and Mr. Lin had to use restraint to protect Student. In kindergarten, Mr. Lin had to use CPI techniques to prevent Student from headbanging, from running into traffic, and to prevent him from hitting himself.

127. Finally, Ms. Venezio's statement noted that Mr. Lin had been an outstanding employee for nearly three and one-half years, that he had been one of Stepping Stones' leading behavior therapists, and had worked with many different children through Stepping Stones in both the home and school environments. He had worked closely with families while doing parent training, had worked closely with school staff while training aides in various districts, and had worked closely with other Stepping Stones staff while training new employees. District's accusations had been the first ever raised against Mr. Lin.

128. On October 7, 2011, pursuant to District's request, Stepping Stones replaced Mr. Lin as Student's primary NPA aide at school, with Laura Perez. Shortly thereafter, Ms. Costello resigned from the school site, but remained as a Stepping Stones employee. Stepping Stones replaced Ms. Costello with Brigid Torres.

STEPPING STONES OCTOBER REPORT

129. On October 11, 2011, Ms. Gorham and Ms. Venezio prepared a report using baseline data collected by Stepping Stones aides from August 30, 2011 to

September 28, 2011, as well as behavioral observations at school, and reports from Parents and behavior therapists. The report addressed behavior targets, such as reduction of repetitive vocalizations, hitting, tantrums, and crying; attending to teacher; attending to task; peer interaction for conversation; peer intervention for play; self-advocacy; compliance with adults in charge; and classroom compliance.

130. The report noted that Student engaged in self-stimulatory behavior on average of 22 occasions between 8:20 a.m. to 11:30 a.m., and on 11 occasions between 11:45 a.m. to 2:35 p.m. He attended to the teacher for an average of 60 percent of the time and attended to task for an average of 61 percent of the time. He had independently initiated a verbal exchange with a peer, but did not independently attempt to initiate a play activity with peers or respond to peer interactions to play. He had independently requested to use the restroom on average of 39 percent of the time. Student complied with approximately 69 percent of instructions given to him by his Stepping Stones or District aide over the course of the day, and with approximately 61 percent of instructions given to Student by his general education teacher, SAI teacher, APE teacher, or speech therapist over the course of the day. He exhibited repetitive vocalizations for a total duration of 5.6 minutes per day, and over the previous four weeks, had exhibited biting behavior on two occasions, hitting behavior on one occasion, two tantrums with each occurrence lasting from five to 14 minutes, and crying behavior on approximately six occasions.

POST-FILING EVENTS

131. On October 14, 2011, OAH issued an order granting Student's request for stay put, and ordered District to continue to provide Student with an NPA behavioral aide during the pendency of this matter. District continued to fund NPA behavioral aide services for Student, but also kept Mr. Carillo as Student's District aide.

132. On October 21, 2011, Ms. Venezio sent Parents a letter advising that Stepping Stones had completed its investigation, which involved interviewing Mr. Lin, reviewing documentation of the conversation that took place with the bus driver, as well as the parent who initiated the complaint, and determined that in the opinion of Stepping Stones, Mr. Lin had acted in Student's best interest and did not use an inappropriate restraint. Ms. Venezio indicated that because Mr. Lin had been cleared by Stepping Stones, and was the primary interventionist on Student's team, Mr. Lin would continue to work with Student in the home program.

133. On October 22, 2011, Parents sent Dr. Woolverton and District's superintendent a letter complaining of discriminatory and retaliatory actions they believed were in direct response to their advocacy efforts on behalf of Student, in an attempt to coerce or intimidate Parents. Specifically, Parents alleged that District made accusations against Mr. Lin to retaliate for Parents' decision to file a due process complaint, to make a request for stay put, and to strenuously object to District's desire to eliminate NPA behavioral services. Parents reiterated that Mr. Lin had worked with Student for three years and two months, and made it clear to District that they wanted to ensure stability and continuity in Student's program. As such, Parents believed that District was fully aware that taking away Student's long-time one-on-one aide would be objectionable to Parents and contrary to the concerns they had previously noted. Further, Parents advised that District chose to ignore the stay put order in that District unilaterally elected to continue to implement the services of a District aide, despite the fact that the order did not include the District aide as stay put. Parents stated that District had been fully aware that Parents have disagreed with the District aide's presence in the classroom, as Parents felt that it caused disruption and interference with the appropriate implementation of behavioral supports and strategies. Parents also stated that Student had suffered behavioral regression as a result of the significant

change effected by removal of Mr. Lin, as well as due to the disruption to his program on a daily basis caused by the "interfering presence" of the District aide. Parent also stated they were considering legal action under civil rights laws.

134. On October 24, 2011, District filed a motion for reconsideration and clarification of OAH's October 14, 2011 order granting stay put. Specifically, District sought clarification, among other things, about whether the presence of a District aide for transition purposes was permitted.

135. On November 1, 2011, the Santa Monica Police Department issued an investigation report in connection with an allegation that Mr. Lin had abused Student on October 6, 2011 when he restrained Student before school. The investigative officer concluded that Mr. Lin did not excessively restrain Student. The report indicated that although it was unclear whether Mr. Lin had used an appropriate, approved control-hold to restrain Student, it was clear that Mr. Lin had acted in Student's best interest. Specifically, Mr. Lin had a clear safety concern that Student could harm himself or run off into the parking lot, and it was imperative that Mr. Lin keep Student safe. The report also noted that the second holding incident involving Mr. Lin appeared appropriate to restrain Student who had had a violent outburst in class.

BLISS PLAN

136. On November 8, 2011, District prepared a BLISS plan stemming from a BLISS team meeting held on that day. The BLISS team met for the purpose of establishing an informal means by which to measure the progress of Student's behavior program. Based on data collected by Mr. Carillo between October 12, 2011 and November 3, 2011, the report noted that Student had made slow progress toward the reduction of self-stimulatory behavior, and that Student engaged in self-stimulatory behavior 65.03 percent of opportunities. Student also attended to whole group lessons or activities with two or fewer redirections an average of 26.08 percent of the time. In

addition, Student, when provided with explicit directions and modeling, worked for 10 minutes with no more than three prompts or redirections an average of 15.5 percent of the time. Student could respond to or initiate peer interactions with support, but Student required more work to increase his ability to independently initiate or respond to peer interactions. Student initiated a play activity or responded to a peer interaction to play and maintained that interaction for an average of .53 exchanges with an average of .56 prompts during the exchanges. Student also demonstrated the ability to request his needs consistently, but had difficulty consistently requesting in a complete sentence.

137. The BLISS plan only addressed Student's behavior goals set forth in his IEP. Because there were no goals addressing elopement or pica, the BLISS plan did not address those behaviors.

138. The BLISS plan provided that the District behavior aide would continue to collect data using duration recording, partial interval, and frequency charting, overseen by the behavior intervention specialist. The data sheets would be revised and updated according to Student's behavioral progress and identified needs. The BLISS plan also provided that the behavior intervention specialist, behavioral aide, teacher of record, as well as Student's "significant others" would have monthly BLISS meetings to discuss Student's behavioral program. In addition, during the informal BLISS plan review meetings, which would occur every four to eight weeks, the behavior intervention specialist would facilitate discussions associated with Student's behavioral progress as it related to his education program, including helping to make minor revisions to Student's positive BSP when necessary. Finally, the BLISS plan noted that the ultimate goal was for Student to achieve his IEP goals independently, and if Student mastered his current IEP behavior goals, and was able to maintain and generalize these skills across at least three different situations for at least two consecutive months, the IEP team would meet to determine whether Student continued to require BLISS services. If the IEP team

determined that Student's behaviors no longer significantly impacted his or others' learning, behavior services would be gradually and systematically faded. The behavior intervention specialist's consultative services would continue until the team determined that Student's acquired skills were maintained and generalized for at least six months after direct behavior services were completely faded.

139. On November 8, 2011, OAH issued an order granting District's request for reconsideration and clarification of stay put order, and ruled that District was not entitled to have its own behavior aide in the classroom or to continue with a transition of aide services from the NPA to District during the pendency of this action. Consequently, District removed Mr. Carillo as Student's District aide, and maintained Mr. Carillo in Student's classroom as a general aide for all of the students. The BLISS team held no further meetings concerning Student.

STEPPING STONES NOVEMBER REPORT

140. On November 8, 2011, Ms. Gorham and Ms. Venezio prepared a report using baseline data collected by Stepping Stones aides from October 3, 2011 to October 31, 2011, as well as behavioral observations at school, and reports from Parents and behavior therapists. The report noted that numerous extraneous variables occurred during the month, including the arrival of a new District aide, Mr. Carillo, and his continued presence on a daily basis in addition to Student's Stepping Stones aide. The report also noted the abrupt removal of Mr. Lin, who had been Student's lead behavioral aide for the past year, and an increase in stress by personnel due to the allegations of child abuse made against Mr. Lin. The report also noted that Ms. Costello had resigned from the school site, and that Mr. Lin and Ms. Costello had been replaced with Ms. Perez and Ms. Torres, respectively.

141. The report noted that during October of 2011 Student engaged in self-stimulatory behavior on average of 15.5 occasions between 8:30 a.m. to 11:30 a.m.,

representing a 6.5 average occasion decrease from the previous month, and on 13.5 occasions between 11:45 a.m. to 2:35 p.m., representing a 2.5 average occasion increase. The report noted an increase in the self-stimulatory behavior of giggling in the afternoon. Specifically, Student exhibited repetitive giggling on 17 out of 21 afternoons. He attended to the teacher for an average of 58 percent of the time, representing a two percent decrease from the previous month, and attended to task for an average of 62 percent of the time, representing a one percent increase. Like in the previous month, he had independently initiated a verbal exchange with a peer; however, no data was collected concerning Student's attempts to initiate a play activity with peers or respond to peer interactions to play. He had independently requested to use the restroom on average of 49 percent of the time, representing a 10 percent increase from the previous month. Student complied with approximately 62 percent of instructions given to him by his Stepping Stones or District aide over the course of the day, representing a seven percent decrease, and with approximately 61 percent of instructions given to Student by his general education teacher, SAI teacher, APE teacher, or speech therapist over the course of the day, representing no change since the previous month.

142. Over the previous four weeks, he exhibited biting behavior on six occasions, representing a four occasion increase; no hitting behavior, representing a one occasion decrease; nine tantrums, representing a seven occurrence increase, with each occurrence lasting from two to nine minutes, representing a three to five minute decrease; and crying behavior on approximately three occasions, representing a three occasion decrease. In addition, Student displayed pinching and grabbing on six occasions, head butting on two occasions, urination accidents on seven occasions, and one elopement attempt on October 6, 2011 when Student exited the school bus. He also put non-food items in his mouth on nine out of 21 days, and ruminative speech of

approximately 15 incidents per day. The pattern of ruminative speech began on October 7, 2011.

143. During this reporting period, Parents got a new roof on their house, which required the family to move out of the house for two days.

FBA

144. On November 17, 2011, District school psychologist, Sandra R. Baral, prepared a FBA report concerning Student. Ms. Baral, who provided testimony at hearing, has worked as a school psychologist for District since 1993. Prior, she worked as a school psychologist consultant for the Monrovia Unified School District and the Simi Valley Unified School District from 1990 to 1993. She also worked as a school psychologist for the Alhambra Unified School District and the South Pasadena Unified School District from 1983 to 1986, and 1981-1983, respectively. She received her bachelor's degree in psychology in 1978 from the University of California at Los Angeles (UCLA), and her master's degree in counseling in 1980 from California State University, Los Angeles (CSULA). She also attended the Applied Behavioral Analysis in Educational Setting certificate program in 1980, and received her Pupil Personnel Services credential in school psychology in 1981 from CSULA. In 1989, Ms. Baral became a nationally certified school psychologist. In 2005, Ms. Baral received her certification as a Behavior Intervention Case Manager (BICM), pursuant to a two-day training sponsored by District. In 2006, Ms. Baral received follow-up BICM training sponsored by District. She is also a member of the California Association of School Psychologists and of the National Association of School Psychologists.

145. Ms. Baral's duties as a school psychologist include conducting assessments of students; providing direct intervention to students such as counseling, behavior plans, and participating in the development of IEP's; providing consultation and training; participating in professional practice and development; implementing a school

psychology program; and teaching communication and relationship skills. During the course of her career, she has conducted approximately 1,000 psychoeducational assessments, including 75 to 100 for students who were on the autism spectrum. She has conducted four FBA's over the course of her career, all four of them as an employee of District.

146. The purpose of the FBA, in addition to responding to Mother's request for District to fund an independent FBA, was to acquire current data regarding Student's behavior and to provide suggestions to Student's IEP team as they update Student's positive BSP.

147. In preparation for the FBA, Ms. Baral reviewed Student's school records and noted that District first developed a positive BSP in May 2009 to address Student's elopement issues (i.e., leaving an assigned area or staff member), and non-compliance issues (i.e., giggling, non-responsiveness, ignoring instructions, and dropping to the ground). District revised Student's positive BSP in May 2010 to address Student's physical aggression (i.e., biting, pinching, slapping, hitting, and kicking). In May 2011, District developed a third positive BSP to address Student's tantrum behaviors, such as screaming, eloping, dropping to the ground, hitting, crying, giggling, and refusing to following instructions; crying behaviors, such as shedding tears and making sobbing or moaning vocalizations; and aggressive behaviors, such as biting, mouthing, pinching, swiping, slapping, hitting, kicking, grabbing, yelling, and eloping. Ms. Baral noted that since August 30, 2011, four NPA aides and one district aide⁶ had worked with Student,

⁶ Although the evidence shows that several district aides had worked with Student by the time she began conducting the FBA, this inconsistency is not material for the purposes of this Decision.

and indicated that the FBA would look at the transition of staff to determine how it had impacted Student's behavior.

148. Ms. Baral also reviewed a list of the "Top things you should know about [Student]" submitted by Parents on October 8, 2011, which included Student's pica issues (i.e., taking pills and flavored liquid medicines within his reach, and non-food items); diet and digestive problems; toileting issues (i.e., difficulty getting bowel movements started while sitting, reminders to wipe, and a need to get to the bathroom within 30 seconds after Student's announcement of his need to go); and behavior issues. The list also included a discussion about rewards and soothers, and an email submitted by Mother advising that a token economy had been implemented when Student received services from LMB, which had been successful.

149. Ms. Baral administered rating scales to Parents, Ms. Cammarota, the District aide, and the NPA aide. Specifically, Ms. Baral administered the Childhood Autism Rating Scale 2-Standard Version (CARS2-ST), the Questionnaire for Parents or Caregivers (CARS2-QPC), the Gilliam Autism Rating Scale-2 (GARS-2), and the Autism Spectrum Rating Scales (ASRS). Ms. Baral also conducted seven observations of Student from October 5, 2011 to November 10, 2011, for a total of four hours, and interviewed Ms. Cammarota, his previous District aide, and the NPA aide.

150. Ms. Baral administered the CARS2-ST to identify unusual behavior patterns characteristic of autism and developmental disorders. All four raters indicated that Student had severe symptoms of autism spectrum disorder. His one-on-one aides described Student's nonverbal communication as severely abnormal, while Mother described Student's nonverbal communication as normal to mildly abnormal. The categories that received a higher rating from school staff and the NPA aide, showing more dysfunctional behavior, were in relating to people, body use, visual response, verbal communication, and general impression. The categories that received a higher

rating from Mother were relating to people, emotional response, body use, object use, adaptation to change, taste, smell, and touch response, verbal communication, activity level, level and consistency of intellectual response, and general impressions.

151. Ms. Baral reviewed Mother's responses to the CARS2-QPC, which asked about behaviors relating to autism that posed problems. Mother indicated that self-stimulatory behaviors, such as flapping and repetitive touching, were a big concern. Other areas of concern included pica, which Mother indicated had been very resistant to interventions, and elopement, which Mother described as an intermittent problem. Mother also indicated that Student would ask "How are you?" to another person, would not wait for an answer, and then say "good" a few seconds later; did not show interest in other people's interests; liked the company of others, but could not generate meaningful conversation; inappropriate in expressing his emotions; lacked empathy, but was generally kind and non-aggressive; was easily distracted; was rigid about his routine and the support people in his life. When things changed abruptly, Student would often thrash about, tantrum, scratch, or pinch himself, and, at times, would bang his head.

152. Ms. Baral administered the GARS-2 to help identify whether Student was a child with autism as opposed to a child with other severe behavioral problems. All four raters frequently observed Student laughing and giggling inappropriately, using toys or objects inappropriately, flapping hands or fingers in front of his face or at his sides, and not initiating conversations with peers or adults. Mother advised that Student would slap, hit, or bite himself, or attempt to injure himself in other ways, and that these behaviors would increase during times of stress. Overall, the results of the GARS-2 demonstrated that the probability of autism in Student was very likely.

153. Ms. Baral administered the ASRS to measure behaviors associated with autism spectrum disorders. All four raters' responses revealed "very elevated" scores in social communication, unusual behaviors, peer socialization, atypical language, and

stereotypy. Mother also rated behavioral rigidity as “very elevated”, while the other three raters scored Student’s social-emotional reciprocity in the “very elevated” range. In addition, both aides scored Student’s sensory sensitivity and attention in the “very elevated” range, the District aide rated Student’s self-regulation in the “very elevated” range, and Ms. Cammarota rated Student’s adult socialization in the “very elevated” range. Mother’s responses revealed “elevated” scores in social-emotional reciprocity and sensory sensitivity, while Student’s aides indicated that his adult socialization was in the “elevated” range. Also, Ms. Cammarota rated Student’s attention in the “elevated” range. Both Ms. Cammarota and the NPA aide rated behavioral rigidity in the “elevated” range, and the NPA aide also rated self-regulation in the “elevated” range.

154. Ms. Baral noted from the information gathered from Ms. Cammarota, his previous District aide, and his NPA aide, that Student had strengths in appearing very happy and friendly at school, greeting people who were familiar to him, beginning to blend sounds to make words when reading, and was independent at snack and lunch time.

155. Ms. Baral observed Student in his SAI classroom, his general education classroom, at recess, during the general education physical education class, APE class, an OT session, and in his general education classroom. During each observation, Student required prompting to do a task or resume a task, especially in the SAI class, where he required prompting and redirection to begin a task, stay on task, and transition to another task or activity 90 percent of the time. He was on task an average of six seconds and off task an average of two seconds. When he was off task, Student looked away from his task, tapped his fingers on his desk or on any object near him, or giggled. Ms. Baral also saw those behaviors during recess, in Student’s APE class, in his general education class, and during his OT session. When working with Ms. Cammarota, he rarely verbalized on his own, and maintained minimal eye contact. When prompted,

Student responded with correct or appropriate responses six out of 10 times. The words Student used consistently were "water," "bathroom," and "squishy toy." His aides used prompts like "listening ears," "quiet body," and "quiet hands" to remind him to calm his body. He responded to their prompting, but would need to be prompted again soon thereafter. On four occasions during a 20 minute period when Student was out of his seat and moving around the room, the District aide required Student to look at him, repeat back what he was supposed to do and where he was supposed to do it. Student did not get upset or agitated and followed what his aide told him to do. Ms. Baral noted that when Student moved around the classroom, it was usually because he sought attention or to escape a task.

156. On November 8, 2011, during one of Ms. Baral's observations, Student flopped his body around, giggled, got up from his seat four times, ran around the room, and then went to the classroom door and opened it. He then stopped and turned around to see who was watching him. When the NPA aide came towards him, Student exited the classroom. Upon his return, the aide asked Student where he should be. Student answered, "with Ms. Cammarota," went to her table and then got up again and ran towards the bathroom. Student stopped and waited to see if the NPA aide would come after him. When the aide did not, Student came back into the room, and then the aide asked him where he should be. These events occurred over a six minute period.

157. During an observation on November 10, 2011, Student was having his snack in his classroom with his NPA aide next to him. The aide directed Student to get a drink from the classroom fountain. Student then ran off, looked to see if the NPA aide was going to follow him. When the aide did not follow, Student returned on his own, giggling.

158. Ms. Baral also noted other behaviors in which Student engaged, although less frequently than the others, such as twirling his hair, falling off his chair, and

attempting to bite his aides. She also noted that during her observations, District staff was consistent, while NPA staff rotated. She observed that the District aide was also consistent with his tone, prompting, directions, and reinforcements. She noted that the NPA aides were also consistent, but each one had a different approach to deal with Student's eloping and giggling.

159. Ms. Baral noted that the problem behavior that occurred on a daily basis was giggling, in all school environments, which could last from five minutes to 45 minutes. Ms. Baral's report did not include the frequency in which Student giggled. Ms. Baral concluded that Student engaged in that behavior to avoid tasks or to escape when demands were placed on him in the school environment. She also noted that Student's staring, twirling objects, high-pitched sounds, flapping hands and fingers in front of him, and tapping also occurred throughout his school day. Student's pinching, biting, and grabbing a peer or an adult next to him when he was upset diminished over the previous five weeks. Ms. Baral also noted that no consistent reinforcement system appeared to be in place, and verbal praise and breaks were given inconsistently. Student preferred his squishy toy when he had a break.

160. Ms. Baral discussed elopement in the FBA report, and though she did not include a definition for elopement, staff had reported to her that Student would leave his seat or the classroom. During her observation, she noted that Student would run to the door of the classroom, stop to see who was watching him, and if anyone got close to him, he would continue to run. However, no one chasing after him would encourage him to return on his own.

161. Ms. Baral concluded that the antecedents that triggered Student's behaviors were unstructured times, transitions from one activity to another, and during work time when he has chosen not to work, or when he could not do what was asked of

him. These behaviors disrupted instruction, time on task, and the learning of other students.

162. Ms. Baral noted that Student had not put a non-food item into his mouth to eat during her observation, and she advised the team that the teacher, District aide, and NPA aide had not seen Student eating anything inappropriate. However, at hearing, Ms. Baral could not recall whether she asked the NPA aides or the District aide about Student's pica issues, and was not aware that the NPA aides had been taking data about Student putting non-food items into his mouth. She was aware that Student had ingested items in the past that caused him to get sick, which could have impacted his education, especially because Student had missed school in the past about this issue.

163. Ms. Baral indicated that the positive replacement behaviors were Student quieting his body and hands, which he could do, but required prompting; asking for a break, which he could do with prompting; and asking for a preferred toy, which was his squishy toy. She listed the strategies to support the positive replacement behavior, which included a visual schedule for transitions around school and for his work tasks at his desk; providing a structured activity even during unstructured time by giving Student two choices for what he could do; providing Student with a preferred activity, such as playing with his squishy toy; and implementing a token board.

NOVEMBER 22, 2011 AMENDED IEP AND BSP

164. On November 22, 2011, the IEP team met for the purpose of reviewing the FBA. The attendees included Parents; Ms. Baral; Ms. Cammarota; Ms. Huff; Ms. Hurst; Dr. Woolverton; and the general education teacher. Dr. Woolverton typed IEP notes during the course of this meeting, which were included in the IEP document.

165. Ms. Baral summarized her report, noted that giggling and elopement behaviors were current, as well as some aggressive behaviors, and advised that neither

Ms. Cammarota nor the aide reported to her that they had seen Student eating anything inappropriate or hitting.

166. The November 22, 2011 amended IEP included a positive BSP prepared by Ms. Baral. The BSP noted a moderate need for the plan, and indicated that Student's problem behaviors that impeded learning were off-task activities, physical aggression, ritualistic/stereotypic behavior, and giggling.

167. Specifically, the BSP described the giggling behavior as random laughing or giggling throughout the school day, in all campus settings. Student engaged in approximately one to two episodes of the giggling behavior per day, with the total duration averaging 10 minutes per occurrence.

168. The BSP also listed elopement as a problem behavior, and described it as any time Student left the classroom, or crossed the threshold from the campus to public property, regardless of distance traveled, without the verbal permission of a staff person or without following verbal instructions from a staff person, during the regular school day, in all campus settings. Student engaged in the elopement behavior once per week, lasting approximately three to four minutes per occurrence.

169. The BSP described Student's aggressive behaviors as (1) biting (i.e., attempted biting, biting inanimate objects, biting himself, and biting others); (2) mouthing (i.e., licking, gnawing, or chewing in order to seek sensory information inappropriately); (3) pinching (i.e., using nails or a pincher grasp on another individual as an act of protest or aggression); (4) swiping (i.e., using an open hand to touch another person, distinguished from slapping by the absence of behaviors such as crying and yelling); (5) slapping (i.e., using an open hand to strike another person, often in a form of protest); (6) grabbing (i.e., grabbing someone's person or their belongings, especially when they have flesh exposed around their midsection or bare arms, or when someone wears nametags, jewelry, or other interesting appendages on their clothing or handbag);

and (7) yelling (i.e., using a voice above the speaking voice of an adult after he has been asked to use a quieter voice).

170. The BSP noted that since October 12, 2011, Student exhibited biting twice, grabbing twice, pinching four times, and yelling twice. The BSP also indicated that Student's mouthing, slapping, and swiping occurred infrequently, less than once a month.

171. The BSP noted that Student's behavior impeded learning because it disrupted instruction, impacted peer relationships, and affected time on task. The perceived antecedents or triggers of these problem behaviors were transitions, non-preferred or difficult tasks, disruption in routines, over stimulation, adult and peer attention, less structured activities, lack of predictability, unclear expectations, and negative attention patterns. The perceived consequences of these negative behaviors were the ignoring of the behavior, adult or peer attention, redirection to task, and the gaining of access to preferred location or item. The perceived function of the problem behavior was to get sensory input, get attention, get a desired tangible item or activity, and to escape or avoid non-preferred, too long, or too easy tasks.

172. The BSP listed positive replacement behaviors to do instead of the problem behaviors, such as Student verbally requesting his needs (e.g., break, squeezes, time outside, etc.). The BSP also listed the environmental factors that would support Student's positive replacement behaviors, such as breaking down tasks into smaller parts, providing breaks, interspersing preferred/mastery level tasks with non-preferred, difficult, or novel tasks, utilizing consistent routines, proximity to the teacher or peer role model, instructional tasks matched to ability, hands-on learning, high-interest materials, priming for upcoming activities and expectations, using a timer, previewing materials whenever possible, teacher and peer modeling, using calm, de-escalating language,

avoidance of using the words “no” and “don’t”, structured choices, and providing clear expectations.

173. The BSP included teaching strategies that would support Student’s positive replacement behaviors, such as pre-teaching and re-teaching, conflict resolution and problem solving, sensory strategies, and requesting breaks, help, or an activity. The reinforcement strategies to increase, maintain, and generalize Student’s positive replacement behavior were adult and peer praise, access to a preferred activity or item, and a token economy.

174. The BSP included a description of the procedures of the reinforcement system. Specifically, the BSP provided that Student would earn access to reinforcers throughout the school day by demonstrating appropriate behaviors, such as completing work and assignments, attending during rug time, walking appropriately to assigned locations, and initiating and interacting with peers. In that regard, the BSP indicated that District staff would provide Student with clear expectations of what was required to earn a reinforcer, provide two options of what he would like to work for, and once he completed a task or fulfilled an expectation, would provide him with access to the reinforcer, as well as specific praise. If Student failed to meet the expectation to earn the reinforcer, the BSP provided that District staff would need to remind Student of what he could do next time to earn the reinforcer.

175. The BSP provided strategies to implement should Student’s problem behaviors occur again. Specifically, District staff should prompt Student to use the replacement behavior by reminding Student to ask for what he wanted, as well as what he was working for. In addition, for non-compliance outside of the classroom, District staff should provide Student with firm and clear directions, as well as minimal attention, such as limited eye contact, short, repetitive directions, and no conversation or discussion. Also, District should have Student demonstrate the appropriate behavior

with or without adult support. In the case of non-compliance inside of the classroom, District staff should, if possible, follow the same procedures as those for noncompliance outside of the classroom. However, if employing those procedures inside of the classroom would cause too much of a disruption, District staff should provide Student with firm and clear directions in a neutral tone, provide minimal attention, and require Student to demonstrate an appropriate behavior or follow instructions by performing a simple, neutral task, such as returning crayons to the container, sitting for 15 seconds, etc. . . After completing a short task, Student may then request a short break, however, District staff should not provide Student access to highly preferred reinforcers during this time. Finally, District staff should have a positive discussion with Student after the behavior ends, by asking Student what he was supposed to do in the situation.

176. The BSP provided that the method of communication, and the method of measurement of Student's behavior, would be set forth in home-school logs, during monthly team meetings, and in progress reports. The BSP listed Student's teacher, behavior intervention specialist, and behavioral aide as the individuals responsible for communicating and monitoring Student's behavioral progress with Student's parents.

177. Ms. Baral opined that the implementation of the BSP would result in a reduction of problem behaviors, because the BSP included positive reinforcements, which have worked with Student in the past.

178. On November 23, 2011, the daily home-school-home log showed that Student attempted to elope from the classroom, but teacher and therapist blocked his escape.

179. At one time, Student ran out of the inside door of Ms. Cammarota's classroom, and went around the perimeter of the building. By the time Ms. Cammarota reached Student, Student was playing with debris on the ground, but his one-on-one aide was already there to intervene. Ms. Cammarota's class was located at the back of

the campus, near the yard and cafeteria. Her classroom doors opened out to the playground. Muir was enclosed with a fence, and individuals could only gain entry through the front gate, which Ms. Cammarota described as locked part of the day from the inside. People could exit a small gate near the front gate that did not require a key to get out.

STEPPING STONES DECEMBER REPORT

180. On December 13, 2011, Ms. Gorham and Ms. Venezio prepared a report using baseline data collected by Stepping Stones aides from November 2, 2011 to November 30, 2011, as well as behavioral observations at school, and reports from Parents and behavior therapists. The report noted that in November of 2011, Student engaged in self-stimulatory behavior on average of 52 occurrences between 8:30 a.m. to 11:30 a.m., representing a 36.5 average occurrence increase from the previous month, and on 28 occurrences between 11:45 a.m. to 2:35 p.m., representing a 14.5 average occasion increase. He attended to the teacher for an average of 52 percent of the time, representing a 6 percent decrease from the previous month, and attended to task for an average of 42 percent of the time, representing a 20 percent decrease. Student had 17 opportunities to initiate or respond to peer interactions, but continued to need support to produce one to two exchanges. He had two opportunities to initiate a play activity or respond to peer interactions, but needed one prompt to engage in the activity. He had independently requested to use the restroom on average of 54 percent of the time, representing a five percent increase from the previous month. Student complied with approximately 62 percent of instructions given to him by his Stepping Stones or District aide over the course of the day, representing no change since the previous month, and complied with approximately 61 percent of instructions given to Student by his general education, SAI teacher, APE teacher, or speech therapist over the course of the day, representing a 10 percent increase since the previous month. Student exhibited

repetitive giggling on 13 out of 16 school days, representing a four out of five school days decrease.

181. During November of 2011, he exhibited biting behavior on six occasions, representing no change from the previous month; five occasions of hitting behavior, representing a five occasion increase; no tantrums, representing a nine occurrence decrease; and crying behavior on approximately two occasions, representing a one occasion decrease. In addition, Student displayed pinching and grabbing on 29 occasions, representing a 23 occasion increase; head butting on one occasion, representing a one occasion increase; no urination accidents, representing a seven occasion decrease; 31 elopement attempts, representing a 30 occasion increase; putting non-food items in mouth on 16 occasions, representing a seven occasion increase; and ruminative speech of approximately 71 incidents per day, representing a 56 incident increase.

182. District personnel had not observed Student engage in pica or elopement behaviors nearly as often as described by Stepping Stones in this report.

183. Student's routine at home had not changed during this reporting period.

LMB RETEST

184. On December 22, 2011, LMB retested Student using the same tests LMB administered to Student on April 29, 2011 and August 29, 2011. On the PPVT-4, Student received a raw score of 66, representing a 12 point decrease since his August 29, 2011 testing, and a standard score of 60, representing a 10 point decrease. Student's scores also demonstrated no change in mental age of 4.1 years. His grade equivalency remained at less than kindergarten.

185. On the DTLA-4, Student received a raw score of four, representing a two point decrease since his August 29, 2011 testing, and a standard score of one, representing a one point decrease. Student's percentile remained at less than one, and

his mental age equivalency remained at less than six years. On the DTLA, Student's raw score remained the same at zero, as did his mental age of 5.3 years. On the DTLA-2, Student's raw score of zero remained unchanged, as did his standard score of one, and his percentile equivalence of less than one.

186. On the WRMT, Student's raw score decreased from one to zero, his standard score decreased from 74 to 66, his percentile decreased from four to one, his mental age decreased from 6.8 years to five years, and his grade equivalency decreased from first grade to kindergarten.

187. On the SORT, Student's raw score increased from zero to four, his standard score increased from less than 57 to 58, and he remained at the first percentile, a mental age of six years, and at the grade equivalency of less than 0.1.

188. On the Word Reading subset of the WRAT-4, Student's raw score remained at 15, his standard score decreased from 58 to 57, his percentile decreased from 0.3 to 0.2, and his grade equivalency remained at kindergarten. On the spelling subtest, Student's raw score increased from zero to nine, his standard score remained at 55, he remained in the 0.1 percentile, and his grade equivalence remained at less than kindergarten. On the Math Computation subset, Student's raw score increased from six to nine, his standard score remained at 55, his percentile remained at 0.1, and his grade equivalency remained at less than kindergarten.

189. On the GORT, the GORT-4, and the LAC-3, as on April 29, 2011 and August 29, 2011, despite the assessor's efforts, Student would not, or was unable to, begin these tests.

190. On the Symbol to Sound subset of the Informal Tests of Writing, Student received a raw score of 28 out of 50, representing a two point decrease. Despite the assessor's efforts, Student would not, or was unable to, begin the Nonsense Spelling subset.

191. On the Symbol Imagery Test, his raw score remained at zero, his standard score remained at 52, his percentile remained in less than the 1st, and his mental age remained at six years.

STEPPING STONES JANUARY REPORT

192. On January 10, 2012, Ms. Gorham and Ms. Venezio prepared a report using baseline data collected by Stepping Stones aides from December 1, 2011 to December 20, 2011, as well as behavioral observations at school, and reports from Parents and behavior therapists. The report noted that during December of 2011, Student engaged in self-stimulatory behavior on average of 43 occurrences between 8:30 a.m. to 11:30 a.m., representing a nine average occurrence decrease from the previous month, and on 19 occurrences between 11:45 a.m. to 2:35 p.m., representing a nine average occasion decrease. He attended to the teacher for an average of 37 percent of the time, representing a 15 percent decrease from the previous month, and attended to task for an average of 45 percent of the time, representing a three percent increase. Student had 21 opportunities to initiate or respond to peer interactions, and independently initiated verbal exchanges with a peer approximately two times per week. He had five opportunities to initiate a play activity or respond to peer interactions, and maintained play with peers for an average of five minutes and needed one to five prompts to appropriately play with a peer. He had independently requested to use the restroom on average of 54 percent of the time, representing a five percent increase from the previous month. Student complied with approximately 67 percent of instructions given to him by his Stepping Stones or District aide over the course of the day, representing no change since the previous month, and complied with approximately 69 percent of instructions given to Student by his general education teacher, SAI teacher, APE teacher, or speech therapist over the course of the day,

representing a nine percent increase since the previous month. Student exhibited repetitive giggling on seven out of 12 school days, representing a slight decrease.

193. From December 1 to December 20, 2011, he exhibited biting behavior on four occasions, representing a two occasion decrease from the previous month; two occasions of hitting behavior, representing a three occasion decrease; no tantrums, representing no change since the previous month; and crying behavior on approximately five occasions, representing a three occasion decrease. In addition, Student displayed pinching and grabbing on two occasions, representing a 27 occasion decrease; head butting on one occasion, representing no change since the previous month; no urination accidents, representing no change since the previous month; eight elopement attempts, representing a 23 occasion decrease; putting non-food items in mouth on 13 occasions, representing a three occasion decrease; and ruminative speech of approximately 149 incidents per day, representing a 78 incident increase.

194. During this reporting period, Student's home routine had changed, in that, after school closed for winter break, Student's family visited relatives in Georgia. They returned on January 3, 2011, and then Student visited Bridgeport Academy for a three day visit.

INDEPENDENT PSYCHOEDUCATIONAL ASSESSMENT

195. On January 17, 2012, Jeffrey J. Wood, Ph.D., who was a licensed child psychologist hired and paid by Parents, provided District with a psychoeducational assessment report concerning Student, which he conducted on November 23, 2011, December 6, 2011, December 19, 2011, and January 9, 2012.

196. Dr. Wood, who provided testimony at hearing, is an associate professor at UCLA, with appointments in the UCLA Geffen School of Medicine (Division of Child and Adolescent Psychiatry), and in the UCLA Department of Education (Division of Psychological Studies in Education). In his capacity as an associate professor, he teaches,

among other things, an annual course about the Individuals with Disabilities Act (IDEA), and is familiar with the concepts of FAPE, least restrictive environment, and the continuum of placement options. He has reviewed 10 school-based programs, six private school programs, and has visited non-public schools.

197. Dr. Wood earned his bachelor's degree in 1995 in psychology from the University of California at Berkeley, and his doctorate in clinical psychology in 2003 from UCLA. Since 2004, he has served as a clinical therapist, diagnostician, and clinical supervisor of cognitive behavioral therapy services for children with emotional disturbance, trauma, and autism spectrum disorders in UCLA clinical trials. He has also, since 2004, served as a consultant in private practice for differential diagnosis, psychoeducational assessments, and cognitive behavioral treatment for children and adolescents with emotional disturbance, abuse and trauma history, attention deficit hyperactivity disorder, and autism spectrum disorders. From 1997 to 2003, he served as a trainee/intern therapist and diagnostician in a UCLA Ph.D. clinical psychology graduate program and clinical internship. He has earned academic honors, scholarships, and fellowships since 1995. His most recent award in 2012 acknowledged Dr. Wood's research in psychotherapy and clinical psychology. He has received 18 grants to research the treatment of autism symptoms in children and adolescents, as well as anxiety in children. He has published 34 articles on subjects such as child development, autism, anxiety disorders, and cognitive behavioral therapy, written a book on child anxiety disorders, has been an invited conference presenter on 17 occasions since 2005, and has made academic conference presentations on 24 occasions since 1999.

198. The purpose for the assessment was to address Parents' concern about Student's academic and intellectual progress, and Student's safety in his current school placement. Parents wanted an evaluation that took into account recent testing from various sources, as well as Student's current functioning in the classroom at Muir.

Parents were particularly concerned about Student's basic communication and language and literacy skills, as well as his lack of self-regulation or safety awareness, and the resulting danger to himself.

199. Dr. Wood used the following assessment tools: (1) developmental history and parent interview; (2) records review, including Student's previous IEP's, testing reports, and NPA reports; (3) behavioral observations at Muir on December 6, and 13, 2011; (4) observation at Bridgeport Academy on January 9, 2012; and (5) Woodcock Johnson Scales of Academic Achievement Version III (WJ-III).

200. Student's medical history showed that between the ages of two and one-half and three years old, Student began having digestive problems, which resulted in frequent bowel movements and diarrhea. After dietary changes that eliminated dairy, gluten, and yeast from his diet, Student showed some improvement at first, but by the end of Student's kindergarten year, Student began suffering from intermittent constipation, and showed signs of pica.

201. Parents reported that in spring and summer of 2011, Student's pica issues intensified, and Student consumed portions of bathroom deodorizers at summer camp. On September 26, 2011, Student consumed something that made him sick to his stomach. On October 2, 2011, Student retrieved a bottle of ear wax remover from a high shelf and consumed the whole bottle before Parents could get it away from him. Consequently, Parents called the poison control center, and Parents induced vomiting in Student.

202. At the time of the assessment, Student continued to present with the full spectrum of autism symptoms, including highly impaired verbal and nonverbal social communication and language abilities. He also continued to exhibit repetitive behaviors, such as hand flapping, giggling, and tapping. Parents described Student as very rigid,

with strong preferences for certain routines, such as driving a certain way, or not making stops to certain destinations.

203. Mother reported to Dr. Wood that Student's temperament had generally been pleasant, with notable exceptions. Specifically, beginning in first grade, Student demonstrated evidence of a mood disturbance that had become a catalyst for behavior problems, such as tantrums, self-harm, aggression, and elopement. His physician prescribed Vivance, a stimulant, but it was discontinued after six weeks, as it caused Student heightened anxiety. When Student started second grade at WISH Charter, Student transitioned well, but many changes occurred during the first six weeks, such as his teacher quitting, his aides leaving, his schedule shifting to accommodate building and safety issues, that sent Student into depression. Student's mood brightened briefly after returning to Will Rogers, but then spiraled down when his routine, teachers, and aides failed to stabilize. He rebounded within a few months after his situation at school had become more stable, and he was assigned familiar, experienced behavior support. After Student's mood stabilized, Student's physician prescribed Lexapro in an attempt to further alleviate his anxiety, but it did not, resulting in a discontinuation of the Lexapro. From early spring of 2011 until the beginning of October 2011, Student's mood and anxiety remained stable. Since school began in fall of 2011, Student had exhibited elopement, biting, pinching, grabbing, putting non-food items in his mouth, head butting, crying, yelling, dropping to the ground, hitting, slapping, tantrums, and ruminative speech.

204. Mother advised Dr. Wood that Student began eloping away from caregivers during the spring of 2009, when he was in kindergarten, at home and at school. The elopement increased in first grade, continued into second grade, and that during the current school year (2011-2012), while he has been at Muir as a third grader, Student has had four elopement attempts in September, one in October, 31 in

November, and eight in December. Mother reported to Dr. Wood that the entrance and exit gates at Muir were not locked, that people moved on and off campus frequently without question, and that Parents were concerned that Student could elope unnoticed, and exit the school.

205. Mother reported to Dr. Wood that following the removal of Mr. Lin as Student's primary aide, Student began exhibiting clinical mood disturbance again, with ruminative speech, insomnia, tantrums, more elopement attempts, toileting accidents, and increased aggression at home and at school. Student also did not maintain the academic progress he had made over the summer at LMB in his third grade classroom. Parents had expected Student to maintain his progress in school, because his school day was over six hours per day, and LMB was only four hours per day.

206. Dr. Wood observed Student on December 6, 2011, from 12:30 p.m. to 2:00 p.m., at Muir, in his special education classroom, and was accompanied by Ms. Hurst. Student giggled frequently throughout Dr. Wood's observation. Periodically, his NPA aide gave him a token for good work, and reminded him that he would get to have time with his squeeze toy upon earning enough tokens. At one point, Student got out of his chair, smiling, and ignored repeated requests to return to his seat. He attempted to open a shape game, but spilled the pieces onto the floor, prompting the aide to request Student to pick them up, which he did. Student left his chair two more times, and then he sat, leaned far over his chair, and laughed. When prompted, Student sat up, left his chair again, and walked out of the classroom, giggling and babbling. His aide trailed behind him, waited about a minute, escorted Student back, and then had Student practice sitting down three times in a row. Later, after he finished his classwork with repeated prompts, the aide allowed Student to play with his squeeze toy. Student stretched the toy, put it in his mouth to chew, laughed, and did so for over 20 seconds while his NPA aide had her eyes off of him briefly. After computer time, Student earned

more toy time, and again repeatedly put it in his mouth, even after his aide prompted him to desist. The next time he earned a squeeze toy, he again chewed on it, so the aide gave him a chew toy instead that was acceptable for him to bite. Later, when he earned the squeeze toy, he again continually put it in his mouth whenever his aide was not looking, and failed to desist after repeated prompting to do so.

207. Dr. Wood observed Student on December 13, 2011, from 9:15 a.m. to 11:05 a.m. at Muir, and was accompanied by Ms. Hurst. Student's affect seemed constricted, and he did not respond quickly when spoken to. Later, while he was at the computer table to begin an activity on a reading program, he fidgeted with his hands and feet, wiggled his body, hardly focused on the screen, and yawned several times. His NPA aide did not cue him to increase his attention. The aide also did not use the token system. Consequently, the NPA supervisor reminded the aide to use the token system. After a while, Student earned enough points for his squeeze toy, but he was not outwardly enthusiastic about it. Outside, he transitioned to kickball accompanied closely by his aide, but Student still had low energy and affect. He did not approach, nor was he approached by, a peer. He often stared off in the distance without moving much. During snack, he sat next to several other children. Several aides, including Student's NPA aide were about six feet away from Student, and did not help the social interaction. Student ate quietly, while some of his peers spoke to each other as they ate. Student was the only child in the group who did not participate in conversation, and no effort was made to engage or include him. Later when he earned more time with his squeeze toy, neither that, nor praise from his aide, elicited a positive affect from him.

208. On January 9, 2012, Dr. Wood observed the Bridgeport Academy (Bridgeport) at the HELP Group in Sherman Oaks, from 10:00 a.m. to 11:00 a.m., one week after Student had visited the school for three days. Dr. Wood had not been intimately familiar with Bridgeport prior to his observation. Bridgeport personnel had

confirmed that Student fit in appropriately during his three day visit, and did not engage in any tantrumming, pica or elopement activity. The classroom was approximately 15 feet long and 15 feet wide, with desks for 13 students in Student's age group. The class was comprised of two credentialed special education teachers with autism specialization, and three to four behavioral aides, with a minimum staff to student ratio of one to three at any given time. An observation room with a one-way mirror was available for parents and clinicians to observe student learning activities at any time.

209. Per the school staff, all students in the classroom had a diagnosis of autism, and IQ's in the moderately delayed range. The language level of the children ranged from little intelligible spoken language to simple English sentences used for achieving personal needs or interacting socially. The staff used ABA methodologies throughout Dr. Wood's observation, and they awarded points to the students for targeted behaviors towards personalized incentives. A student store, which the students ran, was one of the options for redeeming token economy points. The class as a whole also had its own behavioral reinforcement system, leading to class-based social rewards, such as pizza parties, that increased incentives for cooperative and interactive behaviors. Teachers and aides were effusive in their interactions with the children, encouraged them, smiled frequently and laughed pleasantly as a social reward for on-task behavior. Bridgeport staff advised Dr. Wood that it had a daily social skills curriculum for the children jointly as a group, using evidence-based curriculum. Bridgeport used a tether system to transition the children from place to place in the school, in which each child had a loop to hold in order to keep the group together and properly spaced.

210. Bridgeport staff collected behavioral targeted data on the children during Dr. Wood's observation, and staff advised Dr. Wood that they collected data on a daily basis as part of the overarching ABA intervention model that guided the program. In addition, Bridgeport individualized instruction and materials to the students' ability

levels and interests. Sensory breaks were incorporated into the daily curriculum for about 15 minutes, and developing computer skills was a daily aspect of the curriculum, as well as vocational skills such as counting money, community trips to local stores, and life skills.

211. Dr. Wood noted that there were multiple locked gates throughout the school to separate areas from each other (e.g., playground, classroom, hallways, entryway, etc.), posing significant barriers to elopement attempts. The playground was equipped with several types of climbers, slides, monkey bars, other age-appropriate gym equipment, swings, balls, tricycles, and had soft padding on the ground. Bridgeport staff advised Dr. Wood that the campus was specifically designed for students who struggled with pica. It did not contain wood chips or loose materials that could be easily consumed by students with pica.

212. When Dr. Wood tested Student, Dr. Wood noted that Student had an affable and pleasant demeanor, with some social responsiveness when he engaged in a preferred activity. He appeared to be developing his expressive language abilities, as seen in his efforts to pronounce words that he recognized in the testing. However, the most concerning behavior Student exhibited was pica. Student repeatedly attempted to put objects in his mouth, including Dr. Wood's pen, an eraser, a chunk of silly putty, and a piece of paper. Dr. Wood estimated that in the three hours he spent one-on-one with Student, Student put things in his mouth 80 to 100 times per hour. Even though Dr. Wood watched Student during the entire testing session, Student's speed still enabled him to touch his lips with several of the objects, and he was clearly in the process of beginning to chew when Dr. Wood pulled Student's hand back from his mouth, and asked for and/or took the item. Student was calm about this, and giggled most of the time, though he mildly resisted in one instance (i.e., with the silly putty) by stiffening his muscles to try to keep the item on its path to his mouth.

213. Student made clear efforts to use communication to achieve his desires some of the time, such as asking for food, to go to the bathroom, to see out of the window, and to move on to a new page of tests when he was tired. Student also showed signs of coping emotionally with the frustrations of testing, as opposed to throwing tantrums, biting, or pushing. Instead, Student usually dealt with frustrating testing materials by avoidance (i.e., looking or moving away) rather than confrontation or self-harm. He also attempted to leave the testing room and walked away from Dr. Wood repeatedly, and thus required structural accommodations and rewards, such as seating him in the corner of the room, and offering access to food or toys as a reinforcer to encourage ongoing task compliance. Student had difficulty sustaining his attention on task. In general, throughout cognitive testing, Student needed more prompting and support than was the standard for administration of the test. Dr. Wood administered the test in the spirit of the standard test instructions in order to achieve valid normative scores.

214. On the letter-word identification subset of the WJ-III, Student received a raw score of 12, and a standard score of 40, representing less than 0.1 percentile. On the understanding directions subset, he did not receive a raw score, and received a standard score of 46, representing less than 0.1 percentile. On the story recall, calculation, math fluency, spelling, and writing fluency subsets, Student received a raw score of zero, and received no standard scores or percentiles. In the word attack subset, Student received a raw score of three, and a standard score of 63, representing one percentile. In the picture vocabulary subset, Student received a raw score of six, and a standard score of 44, representing less than 0.1 percentile.

215. Dr. Wood concluded that overall, Student's academic performance was markedly below grade level across the core domains of reading, mathematics, and writing. He evidenced challenges with mastery of basic skills in these academic areas, as

well as in his fluency and application of the fundamentals. Student demonstrated an underdeveloped and inconsistent understanding of applying basic letter-sound relationships for nonsense words, and had limited letter recognition skills, recognizing letters up to "h", but not "t", "b", "car", or "on". His declarative verbal memory was very compromised, and he did not articulate any words clearly enough to show he recalled the content of the first or second stories in the story recall subset. His picture vocabulary was in the very low range. In the mathematics area, Student was able to count a small number of items in the practice problems, but sums were difficult for him. He did not recognize the structure of simple addition problems and how to answer them. In the spelling subtest, Student failed to accurately copy a vertical mark, a scribble, or a line connecting dots. In the understanding directions subtest, Student successfully responded to simple problems, but had difficulty integrating two pieces of information.

216. Dr. Wood found that testing consistently demonstrated that Student exhibited poor adaptive skills in multiple areas, including communication, daily living, motor, and social skills. Of particular concern was Student's low level of expressive language, and his tendency to become escalated, throwing tantrums and engaging in aggressive behaviors, as well as running off without communicating where he was going or seeking permission. Dr. Wood opined that it was highly likely that Student's language impairments were at the root of Student's pattern of maladaptive, unsafe behaviors. Dr. Wood noted that Student's pica was also of great concern as it could lead to severe medical problems should he ingest a toxic item. Dr. Wood also concluded that Student was often nonresponsive to the social bids of others, and did not learn communication and academic skills unless they were directly taught to him, and opined that modeling was not sufficient for Student to learn. Dr. Wood explained that Student had been around typically developing children for years, yet his academic scores were way below grade level. In addition, studies have shown that students do not improve their

academic performance simply through exposure to typically developing peers. Studies have also shown that socially, simply exposing children to social peers in the form of typical peers was not enough for them to model social behavior. Rather, students required structured social strategies, sufficient preparation, and modeling from an adult. Dr. Wood believed that practicing social skills in the real world was good, but those skills must first be developed and rehearsed in a structured program.

217. In addition, Dr. Wood found that Student perseverated in certain stimuli and became escalated or avoidant when encouraged to move on, which interfered with his ability to learn and adapt appropriately in non-specialized settings. Dr. Wood concluded that because of Student's multiple impairments, Student clearly required specialized educational programming suited to his abilities, and did not have the skills to succeed in a general education environment. Also, Dr. Wood noted that Student's safety could not be assumed with any level of confidence in a general education setting.

218. Dr. Wood concluded that Student's frustration tolerance was weak, and he was prone to becoming easily overwhelmed and fatigued when working. In addition, Student's attention span was highly compromised, except when he was provided very highly structured learning situations tailored to his needs. In other words, Student needed an enclosed space with few distractions and frequent presentation of both higher and lower interested stimuli designed to maintain Student's motivation while providing him with exposure to skill-building exercise suited for his development.

219. Dr. Wood concluded that although the special education classroom at Muir had a number of strengths, it was not appropriately matched to Student's capacity for self-management or his learning needs. Dr. Wood based this conclusion on Student's failure to improve on or even maintain gains from his intensive language intervention over the summer at LMB after an additional three months of public schooling. He also based his conclusion on his observations of the educational practices employed at Muir.

Specifically, Muir did not consistently use autism-specific evidence based principles. For example, at times the aides and teachers used the token economy, and at times they did not. Also, aides and teachers rarely employed an engaging interactive style to increase Student's responsiveness and motivation. In addition, the reinforcers the aides and teachers set up for Student had no variability and seemed at times to minimally interest Student. Also, the teachers and aides rarely implemented discrete trials.

220. Dr. Wood also felt the Muir program was inappropriate for Student because it did not employ the intensive language and literacy methods employed at LMB in much of the curriculum, despite Student's positive response to that program over the summer. Also at Muir, the teachers and aides made very little effort to promote Student's social engagement with peers, and, while Dr. Wood observed, no teacher or aide facilitated or prompted Student's interaction with peers, in spite of Student's failure to initiate or respond to peers. Dr. Wood also noted that Student was listless and unengaged during recess in spite of being athletic when he engaged in activities he enjoyed at home and in the community. Dr. Woods considered this another example of an apparent failure of the teachers and aides to find motivating activities for Student to engage in that would increase his participation in the curriculum and in social interactions.

221. Dr. Wood also noted the Muir program did not prevent Student from repeatedly putting non-food objects in his mouth during the observation, and did not prevent him from leaving the classroom without permission. Dr. Wood noted that although the elopement incidents did not raise safety concerns during his three hours of observation, elopement incidents and their frequency had been documented previously, and the fact that Muir was on a campus with an unlocked front gate near a busy street represented a significant danger to Student's safety, given his long, severe history of elopement, which included leaving the campus of Will Rogers. At hearing, Dr. Wood

acknowledged that Student's classroom exited onto the school campus. However, Dr. Wood noted that Student's elopement, which Dr. Wood believed was in reaction to Student observing an aide he apparently did not feel comfortable working with (i.e., Mr. Carillo), led to the need for a physical restraint on October 6, 2011, also suggested to Dr. Wood that some personnel assigned to Student may have failed to form a sufficient relationship with him to effectively teach and support him at school.

222. Dr. Wood opined that Student's level of intellectual functioning also put him at a significant disadvantage for learning when not taught by special education teachers with expertise in autism best practices in a setting geared toward students with autism at Student's level of development. Given Student's consistently low scores in most academic areas and his failure to maintain intellectual gains achieved over the summer in his current District placement, Dr. Wood opined that Student required a more specialized educational setting that was designed specifically for the learning needs of children with autism at this point. Dr. Wood emphasized that the probability of Student making adequate yearly progress at Muir was low, and noted that various permutations of support on a general education campus had been tried over the past four years, but at present, a structured teaching environment using evidence-based educational interventions for students with autism at Student's developmental level was the only type of school placement with a likelihood to achieve measurable progress in the cognitive, academic, behavioral, and social communicative realms, given his level of disability. Due to Student's safety issues associated with his pica and elopement, Dr. Wood also opined that Student would require ongoing one-on-one behavioral support from a trained aide with expertise in autism intervention until these behaviors were effectively treated and managed within a school setting.

223. Dr. Wood opined that the Bridgeport classroom appeared to be an appropriate setting that had many desirable features, such as (1) a well-locked, safe

campus, where elopement was a very low probability due to the multiple locked gates throughout the school; (2) an autism-specific classroom with peers at around the same intellectual age as Student, in which ABA-based practice principles were consistently employed, such as specific goals for each child, prompting for skill practice, immediate reinforcement using a flexible and intensive reinforcement system including a token economy and a classroom-level reward program, aides and teachers who frequently employed an engaging interactive style to increase responsiveness and motivation, daily group social skills training, and daily data collection on IEP and task analysis goals; (3) use of technology as an alternative to pencil-and-paper writing in the language arts curriculum; (4) emphasis on promoting social engagement with peers, including consistent facilitation of group interaction and prompting and assisting unengaged children to interact with peers; (5) careful monitoring of behavioral problems, such as elopement, which were well-contained in the setting; and (6) the program tailored academic instruction materials and method of presentation to the child's individual learning style and needs.

224. Dr. Wood made four recommendations. His first recommendation provided that Student should receive intense and specialized instruction and teacher supervision from autism specialists throughout the day. This instruction should occur in a school setting that had specific accommodations for his autism-specific needs, including language delays, abstract thinking challenges, perseveration on special interests, social skills deficits, problems with attention, concentration, and organization, as well as his strengths, including his skills in using technology and his athletic abilities. In addition, the class should be on a self-contained campus, taught by experts in autism who could design wrap-a-round programs to address Student's myriad needs, including ABA-based practices, autism-specific social skills groups, and autism-specific communication training, as well as appropriate parental support. The school should be

familiar with positive behavioral approaches to address not only problem behavior, but to increase motivation and participation. For example, the school should have a plan for increasing independence around classwork in appropriate incremental steps, with positive behavioral consequences for success. In addition, the school should have the capacity to tailor-make lessons right down to the text presented in order to make material accessible to Student as indicated. The academic program should be appropriately challenging and be designed to promote Student's expressive language and intellectual functioning. Dr. Wood indicated that Bridgeport would be an example of this type of program.

225. The second recommendation involved the providers at the new school setting to perform a FBA for a positive behavior support plan that focused not only on Student's behavior, but also on the necessary skills to function independently in settings that might be problematic. The positive behavior support plan needed to be developed to increase Student's motivation, attention, and engagement in activities, even in the absence of maladaptive behavior.

226. Dr. Wood's third recommendation addressed one-on-one aide services. Specifically, Student should receive 100 percent one-on-one aide coverage to address Student's significant safety issues, namely pica and elopement. Dr. Wood indicated that Student's pica was severe, based on its emergence on two of the three observations he made of Student, and was documented in his records. Dr. Wood noted that if Student ingested even one harmful item it could be deadly, and given how Dr. Wood observed Student repeatedly put a toy in his mouth without being detected, a more effective monitoring plan, coupled with an effective ABA-based plan to reduce and eventually eliminate pica, were essential in the context of 100 percent time one-on-one aide. The aide should have the training to carry out ABA-based programs effectively and should be regularly supervised by an expert with a BCBA license and autism expertise. Similarly,

Dr. Wood indicated that Student's elopement behavior was a serious safety concern, which further necessitated 100 percent time one-on-one aide.

227. Dr. Wood's final recommendation was that Student should receive significant intervention for his language deficits. Specifically, he needed ongoing speech and language services, including individual and group formats to increase Student's language abilities, and better understand the pragmatics of social communication. The speech and language therapist needed to be familiar with the special communication needs of children with autism, and also needed to work with Student's caregivers to facilitate his communication across environments.

228. At hearing, Dr. Wood opined that the goals set forth in Student's May 4, 2011 and February 14, 2012 IEP's could be implemented at Bridgeport, including the ones addressing peer interaction and peer play, even though Bridgeport has no typically developing peers for Student. Dr. Wood saw children working on similar goals during his observation of Bridgeport. In addition, Bridgeport could implement the November 22, 2011 BSP. Dr. Wood opined that in the Los Angeles area, Bridgeport was one of only a few placements that would meet his recommendations for Student.

BRIDGEPORT

229. Andrea Watkins, who was the vice principal of the Help Group in Sherman Oaks, which included Bridgeport, provided testimony at hearing. Ms. Watkins received her bachelor's degree in sociology from UCLA in 1987, and her master's degree in special education from National University in 2011. She earned her preliminary level one California State teaching credential, was certified as a behavioral intervention case manager, was TEACCH certified, Pro-Act certified, and trained in ABA techniques and in the Picture Exchange Communication System (PECS). Prior to becoming vice principal, Ms. Watkins was a mentor teacher and a classroom teacher with the Help Group, on the Sunrise School campus. Before that, she was a teacher at another NPS. As a vice

principal, her duties include training and supervising teachers and teacher's assistants, providing formative and summative feedback on academic work, curriculum development, admissions and intakes, and website and grant writing.

230. Bridgeport uses an integrated collaborative model, such that the Bridgeport team, along with the parents, develops and modifies a student's program. Bridgeport utilizes curricula aligned with state standards, research-based, and considered best practices. Bridgeport also provides services, such as speech and language therapy and OT, and low-tech equipment, such as AlphaSmarts, calculators, iPads, iPods, Lightwriter, and Dinowriter. There are four to five staff members in each classroom, with 10 to 12 students in each room. If a student requires a one-on-one aide, an additional trained staff member will be provided to the student. At Bridgeport, the staff attends weekly training sessions in ABA, and other theories to help implement effective strategies for the students. Student's proposed class would have three credentialed teachers, who have received additional autism training.

231. Bridgeport utilizes a social skills program throughout the day, which is a collaborative model, sponsors monthly movies, weekly and biweekly community outings, addresses social expectations, practices scripts, and learns social cues.

232. Bridgeport uses school-wide behavior plans, such as a token economy where the students earn Bridgeport bucks for reinforcement behavior, where the students can spend the bucks at the school's store. In addition, students can have classroom parties for perfect attendance, as well as engage in other incentive planning events that target goals.

233. Bridgeport has procedures in place to address elopement issues, including BSP's setting forth clear triggers and antecedents; staff members, who have radios (walkie-talkies) that follow students who elope, keep them within their sight, and call for help using their radios; and staff members use of crisis communication methods, such as

using a certain tone of voice to help deescalate a situation, or using diversion techniques. Bridgeport is a two-story locked facility, where the gates are locked, therefore it would be impossible for Student to leave the facility. There are two security guards at the school, and staff must use a key to get in and out of gates. The campus is comprised of four major schools (i.e., Bridgeport, Village Glen, Sunrise School, and the Autism Center), on eight acres, and Bridgeport is located the farthest away from the entrance. The school has a number of students with elopement issues. Bridgeport serves a moderate to severe population, ages three to 22 years old.

234. Many of the students at Bridgeport have dietary restrictions, such as gluten-free diets, casein-free diets, and nut-free diets, which staff monitors closely during recess and lunch, and there are systems in place to address a student's dietary needs. Bridgeport also has two full-time nurses that are trained in CPR.

235. Ms. Watkins is aware of Student's pica issues, so at Bridgeport, he would be supervised 100 percent of the time. In addition, Bridgeport is a pica friendly environment, in that the play yard is lined in state of the art rubber, with no foliage. In the classroom, staff would use strategies to replace pica behaviors pursuant to a BSP to extinguish or replace the behavior with something more functional. In addition, Bridgeport staff would write goals designed to address replacement behaviors.

236. When Student visited Bridgeport for three days, Ms. Watkins observed Student in his classroom, to see if he had the ability to access the curriculum in that environment. Ms. Watkins also spoke with the teacher, and both concluded that Student was a good fit. Student's teacher at Bridgeport has been teaching for 19 years, and has been at Bridgeport for five years. Ms. Watkins, who attends approximately 200 IEP meetings per year, reviewed Student's IEP and his goals, and felt that Bridgeport could implement his goals. Ms. Watkins advised that should Student attend Bridgeport, he

would have an aide assigned to him who would have a lot of experience, education, diligence, and a commitment to addressing Student elopement and pica issues.

237. Student's classroom at Bridgeport would participate in community-based instruction consisting of short trips, such as walking to the paramedic station located at the corner near the school. If a student is unable to go on a community outing because it is not safe for him to do so, the student would remain at school with a highly qualified teacher who would supervise him.

238. Mother observed Student at Bridgeport through a mirror where Student could not see her, for over two and one-half hours over a three day period. Mother noted the individual attention given to the students, the ABA techniques the staff used, and the consistent engagement of all of the students. Mother observed the teacher, as well as the one-on-one aide assigned to Student, re-engage Student when he drifted off task. He did not seem bored, and seemed very happy. He also had no reports of pica or elopement incidents while he was there. At hearing, Mother explained that when Student engaged in preferred activities, his self-stimulatory, elopement, and pica behaviors decrease significantly. Student was tentatively accepted to the program at Bridgeport, on the condition that he had a one-on-one aide, which Bridgeport would provide at an additional cost. Bridgeport also provided speech and language and OT services at the school for an additional cost.

239. Ms. Gorham also visited the Bridgeport program, and noted that the classrooms were secure, the classrooms were within another building, and the building was secure in terms of preventing Student from eloping to the outside of the building.

240. On January 18, 2012, District sent Parents prior written notice of its proposal to convene an IEP meeting for the purpose of discussing the results of the psychoeducational assessment report prepared by Dr. Wood, and to determine whether any changes to the IEP were warranted based on the report.

241. On January 25, 2012, the daily home-school-home log showed that Student attempted to elope from the classroom, but teacher and therapist blocked his escape. He also eloped within the classroom twice, which required a prompt for him to go back to his desk.

FEBRUARY 14, 2012 AMENDMENT IEP

242. On February 14, 2012, the IEP team convened for the purpose of reviewing Dr. Wood's psychoeducational assessment report, which the team members read the day prior to the IEP meeting, with the exception of a student teacher and a school psychologist intern who attended the meeting. The attendees included Parents; Ms. Cammarota; Ms. Huff;⁷ Ms. MacDonald; Ms. Baral; a school psychologist intern; District's OT; the general education teacher; a general education student teacher; Mallory Marek, a special education teacher; Ms. Hurst; and Dr. Woolverton. Ms. Hurst and Dr. Woolverton alternated turns typing IEP notes during the course of the meeting, which were included in the IEP document. District members offered Parents a notice of procedural safeguards, which they accepted.

243. At the meeting, Ms. MacDonald, District's speech and language pathologist, discussed proposed social language goals she wanted added to Student's IEP. Ms. MacDonald, who provided testimony at hearing, received her bachelor's degree in communication disorders from the University of New Hampshire in 2004, and her master's degree in speech and language pathology from Southern Connecticut State University in 2007. Ms. MacDonald has worked as a speech and language therapist for

⁷ By the time of this IEP meeting, Ms. Huff had married, and had begun using her married name, Brianne Umana. However, for the purpose of consistency, this Decision will continue to use the name of Huff.

District since September 2010, where she is responsible for a caseload of 50 students, provides speech and language therapy for preschool and school-age children, conducts speech and language assessments, writes daily progress notes, and provides recommendations and strategies to teachers. Prior, she provided speech and language therapy services for NPA's, the Los Angeles Unified School District, and for healthcare facilities.

244. Ms. MacDonald began providing speech and language therapy services to Student at the beginning of the 2010-2011 school year, which he attended with his one-on-one aide. Student's behaviors fluctuated depending on the session, but his primary behavior was giggling. Student also screamed, cried, grabbed, used a little bit of profanity, and eloped one time. She worked on four goals with Student (i.e., sentence completion, articulation, negation, and spontaneous speech). Student made progress on his sentence completion and articulation goals, but did not make progress on his negation and spontaneous speech goals.

245. At the IEP meeting, Ms. MacDonald specifically proposed goals to address Student initiating and responding to peers more appropriately, answering various social language questions (e.g., Where do you live? What's your teacher's name? How old are you?), and performing various social language skills (e.g., greet, reply, request). She also proposed a new articulation goal, as well as a comprehension goal to answer who, what, and where comprehension questions. Ms. MacDonald proposed these goals because she considered them the most significant area of need for Student in the area of speech, and because she had been working with Student since September 2011, and felt she had a good handle on Student's present levels of performance, and his ability to learn.

246. Ms. MacDonald also proposed that Student, who had been receiving three 25-minute individual sessions of speech and language therapy per week, should begin receiving two 25-minute group sessions to practice social skills, and one 25-minute

individual session. Ms. MacDonald felt that the group sessions would help Student with his social interactions, and were necessary to implement the social language goals and objectives.

247. Ms. Cammarota, Student's SAI teacher at Muir, commented that Student should be in a setting designed to work extensively on social skills and language. Student participated in the general education setting for morning meetings, music, art, library, and for P.E. In the general education setting, Ms. Cammarota observed Student once or twice, and noted that he needed frequent prompting by his one-on-one aide to engage with his typically developing peers. At the meeting, Ms. Cammarota advised the team that Student made progress on his academic goals. However, because her SAI class was a non-categorical one, and was comprised of students with a variety of disabilities, she felt that Student would benefit more in a program with an autism focus. Ms. Cammarota also proposed a spelling goal to replace a writing goal that Student had previously met. In addition, the IEP included a new written language goal to address sentence structure, and a written expression goal to address spelling.

248. The team discussed Dr. Wood's recommendation for an FBA if Student's placement was changed. District members advised that there had been no new behaviors or changes in environment that would warrant the completion a new FBA. Moreover, District members felt that Student's pica and elopement behaviors had not occurred enough to be measured. In addition, District members, like Ms. Huff, did not define elopement as leaving the area of instruction, as Stepping Stones did, but rather as exiting the classroom.

249. The team also discussed Dr. Wood's placement recommendation. District members concluded that District had a program that met the conditions described by Dr. Wood, with the exception of the program existing on a separate campus. Specifically, District members recommended the Specialized Academic Instruction-Social Skills (SAI-

SS) program, which was a new program, at Grant Elementary School (Grant), comprised of students with autism. Ms. Hurst requested Ms. Marek, who was the SAI-SS teacher, to describe the SAI-SS program at the meeting, because Ms. Hurst felt that the program was similar to the one set forth in Dr. Wood's report.

250. Ms. Marek, who provided testimony at hearing, received her bachelor's degree in elementary and special education in 2010 from Saginaw Valley State University, and began working for District in August 2011 as a special education teacher in the SAI-SS program. Prior, she was a resource specialist from November 2010 to June 2011 at a different school district, and prior to that, she was a student teacher in a program for the mildly cognitively impaired. Before coming to District, Ms. Marek had experience in working with students with autism from the previous school district in which she was employed. She is credentialed to teach mild-to-moderate, and moderate-to-severe students.

251. Ms. Marek explained that the SAI-SS program included daily social language and social skills instruction. The program also included a social skills curriculum and a self-regulation curriculum, which was embedded within its curriculum. A typical day began with the students coming into the SAI-SS class to greet the teachers, and then the students would go to the general education setting for approximately 30 minutes to spend time with their typically developing peers. When the students returned to the SAI-SS class, they would work on self-regulation using a curriculum designed to help the students identify emotions. Thereafter, they would go to receive their respective services, such as speech and language, and OT, and then the students would return for social skills direct instruction, followed by recess, and then social skills instruction with the school psychologist. Next, the students would work on writing, and then would rotate through four centers, two of which were independent centers (e.g., computers and work folders), and two were teacher-based centers (e.g.,

manipulatives and one-on-one with the teacher). The students would then go to lunch, and then return to go to math centers, two of which were independent and two were teacher-based. Thereafter, the students would go outside to play, and then return for science and social studies. Her class included a sensory section, which consisted of items such as large balls, stretchy bands, a small bouncy ball, and weighted vests. The students would use the sensory section when they needed a sensory break, or as a reward. The SAI-SS class also used a token economy, where the students would earn pennies for good behavior, and then shop at the classroom store at the end of the week.

252. In addition to using a curriculum designed to identify emotions, the SAI-SS class also used the social skills improvement system (SSIS) as the curriculum for the social skills component of the class. The class also employed four curricula for reading (i.e., Read Naturally, Language!, Edmark, and SRA's), and two curricula for math (i.e., Touch Point, and Envision). All of the curricula were research-based programs. In addition, the SAI-SS included community-based instruction as part of its curriculum, with the parents' consent. Ms. Marek felt the curricula were appropriate for the students in her classroom, as they included proper visuals, broke down tasks into manageable chunks, and included videos to which the students could relate.

253. The SAI-SS class included one teacher (Ms. Marek), one classroom assistant, and two one-on-one aides. The aides met every Tuesday morning with the school psychologist and the behavior intervention specialist to receive additional guidance on how to better serve each student in the class. The classroom assistant had been employed with District for at least six years.

254. District developed the SAI-SS program with the assistance of Autism Spectrum Therapies (AST), which was a company that employed ABA methods to craft therapy programs to address the needs of individuals with autism. AST provided training to Ms. Marek, the one-on-one aides, and the classroom assistant. In addition, AST

provided weekly classroom consultations, where the consultants would observe the class, and then help Ms. Marek facilitate activities, and help the students join in the activities.

255. Each aide actively provided support of students during recess and lunch to improve their social skills. The students were mainstreamed in the general education setting as often as possible, so that they would have access to typically developing peers. Ms. Marek also consulted with the school psychologist that came to the class every day to work with students during social skills training, as well as the speech therapist, the OT, and the APE teacher.

256. The Grant campus was located at 2368 Pearl Street in Santa Monica. The SAI-SS classroom at Grant was located at the front of the campus, adjacent to Pearl Street, which is a two-lane street (one lane in each direction), enclosed by a fence that surrounded the perimeter of the school, with two gates located near the classroom, which, at hearing, Ms. Marek described as closed, locked from the outside, and unlocked from the inside. At hearing, Dr. Woolverton also advised that the gates at Grant were not open after the start of each school day, but are unlocked in compliance with fire codes. Ms. Marek described gates by the parking lot near the playground, located at the rear of the school, which remained closed, locked from the outside, and unlocked from the inside.

257. At the meeting, District recommended that Student receive the same amount of general education mainstreaming set forth in the May 4, 2011 IEP. District team members expressed that a setting where Student would have no access to typically developing peers would not be appropriate. Mother expressed that she now felt that the time he had spent in the general education setting over the previous school years had not worked for Student.

258. District's offer of placement and services included 950 minutes in the SAI-SS classroom at Grant, one-on-one behavior aide services throughout Student's entire school day, 120 minutes per week of supervision from District's behavior intervention specialist, 140 minutes per week of OT, one 25-minute session of individual speech and language therapy, two 25-minute sessions of group speech and language therapy, two 30-minute sessions of APE, and ESY.

259. Mother requested to observe the SAI-SS program at Grant before deciding whether to consent or not to the IEP.

260. At hearing, Ms. Baral opined the SAI-SS program at Grant was an appropriate placement, because it could address Student's social skills issues. Specifically, the SAI-SS could work on his social skills in a group setting, where Student would have contact with peers and peer models. Also, she felt Student would benefit from exposure to age-appropriate typically developing peers at Grant, because his peers could model behavior for Student, and disagreed with Dr. Wood's conclusion that Student could not learn social skills through modeling. She also disagreed that Bridgeport was an appropriate placement for Student, as Student would not have an opportunity to interact with typically developing peers there. Ms. Baral acknowledged she only saw Student around typically developing peers on three occasions, and that was during her FBA observations of Student during his general education class for approximately 20 minutes, his general education P.E. class for approximately 20 minutes, and during recess for approximately 15 minutes. She also acknowledged she was not very familiar with the Bridgeport program, and did not gather information about Bridgeport prior to the February 14, 2012 IEP meeting.

261. At hearing, Dr. Woolverton also opined the SAI-SS was appropriate for Student. Dr. Woolverton was instrumental in developing the SAI-SS program at Grant, and worked closely with AST. Grant followed the same basic rules and procedures

concerning locked doors and gates that Bridgeport did. She also felt the curriculum in the SAI-SS at Grant was similar to that offered at Bridgeport, as well as a similar teacher to student ratio, but the Bridgeport program offered no opportunity for Student to interact with typical peers. She felt the SAI-SS program, along with the other services, would provide Student with a FAPE.

262. At hearing, Ms. MacDonald opined the SAI-SS program at Grant was appropriate, as she was familiar with the program. She believed the program would give Student an opportunity to work on his social skills. She also felt that the recommendation from three times per week of individual therapy to two times a week of group therapy, and one time a week for individual therapy, could be implemented at Grant. However, she acknowledged that Student's behaviors, such as grabbing, giggling, and profanity could impact other children in the group.

263. At hearing, Ms. Marek explained that although she had not met Student prior to this IEP, she had reviewed the proposed goals and objectives that Ms. Cammarota had sent to her prior to the meeting, as well as the behaviors described in Dr. Wood's report, and noted that she had been dealing with similar goals and behaviors with other students in her class. She also felt, although she had not had any children in the class with pica, that she could deal with Student's pica issues, as she had conducted research on pica. She also felt that she could handle his elopement issues by keeping Student very engaged, monitoring activities, giving him choices, closing the door, and by keeping an adult between Student and the door. She agreed with the team that Student should be placed in the SAI-SS program.

264. At hearing, Ms. Cammarota explained that she recommended the SAI-SS because, in her class, she did not have direct instruction of social skills, and felt that Student's social skills needs were not getting met in her class. She felt that based on her three hours of observation of the SAI-SS program at Grant, that she took in January

2012, the SAI-SS would provide more one-on-one experience with students than she could give in her class, and believed that Student's goals could be implemented in the SAI-SS program. She acknowledged she did not know very much about the Bridgeport program, but did not believe that an autism-specific NPS was appropriate, because she believed Student, like many autistic students, needed to be with typically developing peers where he could experience typical peer interaction. In an autism-specific NPS, Student would not have an opportunity to have behavior modeled for him by typically developing peers. However, Ms. Cammarota acknowledged that she did not know whether Student had previously benefitted from exposure to typically developing peers.

265. At hearing, Ms. Huff also opined that the SAI-SS class was appropriate for Student, because he would have access to typically developing peers, which would provide opportunities for Student to practice his social interactions, which she considered an integral part of Student's program. She had observed Student out at recess, and noted that interacting with typical peers was difficult for Student, and that Student required adult support. She was not familiar with Bridgeport, but understood there was no access to typical peers. She considered the improvement of Student's social skills as a significant area of need for Student, which made important the presence of typically developing peers.

266. At hearing, Ms. Hurst explained that she believed the SAI-SS program at Grant could address Student's needs, including pica, because a one-on-one aide would be with Student at all times, and because the ratio of staff to students was high. In addition, Ms. Hurst felt that the SAI-SS program at Grant could adequately address Student's elopement issues, because he would have a one-on-one aide with him, and because the gates at Grant were always kept closed. She also believed that Student did not belong in a NPS, because he needed access to typical peers, and the SAI-SS program would facilitate Student's social skills acquisition.

STEPPING STONES FEBRUARY REPORT

267. On February 14, 2012, Ms. Gorham and Ms. Venezio prepared a report using baseline data collected by Stepping Stones aides from January 9, 2012 to January 31, 2012, as well as behavioral observations at school, and reports from Parents and behavior therapists. The report noted that Parents had, on several occasions during the month, reported to the behavior intervention team that Student's resistance to going to school, mood, decreased frustration tolerance, and aggression had become increasingly problematic. The report indicated that on January 19, 2012, Student refused to get off of the bus when he arrived at school, resulting in Father boarding the bus to coax Student off. The report also noted that on January 27, 2012, Mother advised Stepping Stones of her intention to seek medical help for Student for these issues.

268. The report noted that during January of 2012 Student engaged in self-stimulatory behavior on average of 32 occurrences between 8:30 a.m. to 11:30 a.m., representing an 11 average occurrence decrease from the previous month, and on average of 24 occurrences between 11:45 a.m. to 2:35 p.m., representing a five average occasion increase. He attended to the teacher for an average of 36 percent of the time, representing a one percent decrease from the previous month, and attended to task for an average of 46 percent of the time, representing a one percent increase. Student had 34 opportunities to initiate or respond to peer interactions, and independently initiated verbal exchanges with a peer approximately two times per week. He had 10 opportunities to initiate a play activity or respond to peer interactions, and maintained play with peers for an average of three minutes and needed one to five prompts to appropriately play with a peer. He had independently requested to use the restroom on average of 41 percent of the time, representing a 13 percent decrease from the previous month. Student complied with approximately 51 percent of instructions given to him by his Stepping Stones or District aide over the course of the day, representing 16 percent

decrease, and complied with approximately 44 percent of instructions given to Student by his general education teacher, SAI teacher, APE teacher, or speech therapist over the course of the day, representing a 25 percent decrease since the previous month. Student exhibited repetitive giggling on 13 out of 16 school days, representing a six day increase.

269. During January of 2012, Student exhibited biting behavior on 16 occasions, representing a 14 occasion increase from the previous month; six occasions of hitting behavior, representing a four occasion increase; four tantrums, representing a four occurrence increase; and crying behavior on approximately six occasions, representing a one occasion decrease. In addition, Student displayed pinching and grabbing on 30 occasions, representing a 28 occasion increase; no head butting incidents, representing a one occurrence decrease; no urination accidents, representing no change since the previous month, however, Student had lowered his pants and urinated outside during APE on January 31, 2012; 32 elopement attempts, representing a 24 occasion increase; putting non-food items in his mouth on 31 occasions, representing a 18 occasion increase; and ruminative speech of approximately 104 incidents per day, representing a 45 incident decrease.

OBSERVATION OF SAI-SS PROGRAM AT GRANT

270. On February 21, 2012, Mother decided to drive to the Grant campus to take a look at the school from the outside. She arrived at 11:05 a.m., after school had been in session for nearly three hours, and observed that the main front gate to the school was wide open. Mother took a picture, with her iPhone, of the opened gate from the sidewalk, which was approximately 20 feet away. The sidewalk was approximately five feet from the street. The picture also depicted a second opened gate that led straight back to the play yard.

271. Thereafter, in the same month, Parents, accompanied by Ms. Hurst, observed the SAI-SS classroom at Grant. Upon their visit, Mother became concerned about Student's safety on Grant's campus, given his continued issues with elopement. Furthermore, she became concerned that the program did not include all of the components recommended by Dr. Wood. Consequently, she made arrangements for Dr. Wood to observe the SAI-SS placement at Grant.

272. On March 20, 2012, Dr. Wood observed the SAI-SS classroom at Grant, and was accompanied by Ms. Hurst. The class was comprised of five or six students who, according to Ms. Hurst's representation to Dr. Wood, were children with autism. Some were non-verbal, while others were talkative. The curriculum was similar to the one used at Muir, and he observed that it was used for all of the children in the class, whether they were verbal or not. In other words, he did not observe very much individualized activity. The SAI-SS class used a token economy system, and the children earned points for making progress. Dr. Wood noted that the aides in the class took their eyes off of the children for more than 30 seconds at a time, which would pose a serious safety issue for someone with pica. He also observed a successful elopement incident, where either the teacher or an aide failed to keep his or her eye on a student, and the student ended up leaving the class. It took over a minute and a half before they found the student. The class had a good social skills curriculum, but during lunch time, the children and the staff did not verbally engage with each other very much. The staff did not encourage more talking during the lunch period, and did not arrange the children so they could sit across from each other and talk. The aides also did not give all of the children encouragement to play. There was dirt, trash, grass, and other small objects on the yard that Student could put into his mouth, and there were paperclips around the classroom. Dr. Wood concluded that Student's safety was at risk within the SAI-SS program, given

Student's elopement and pica issues, and that the program was not sufficient to meet his needs.

STEPPING STONES MARCH REPORT

273. On March 13, 2012, Ms. Gorham and Ms. Venezio prepared a report using baseline data collected by Stepping Stones aides from February 1, 2012 to February 29, 2012, as well as behavioral observations at school, and reports from Parents and behavior therapists. The report indicated that Parents advised that Student's doctor had started Student on two medications on February 6, 2012, in response to the spike in Student's anxiety behaviors, aggression, and his decreased frustration tolerance during the month of January. Parents further reported that the doctor increased the dosages after two weeks, following an incident at school where Student became agitated and began banging on everything around him, slapped four first-graders on the play yard, and then pulled the fire alarm. Parents also reported that Student refused to get on the school bus on February 16 and 28, 2012, and had to be escorted to school by Father. Finally, Parents reported that Student resisted going to school on February 2, 13, 14, and 27, 2012, and required prompting to board the bus.

274. The report noted that during February of 2012 Student engaged in self-stimulatory behavior on average of 38.5 occurrences between 8:30 a.m. to 11:30 a.m., representing a 6.5 average occurrence increase from the previous month, and on 31.1 occurrences between 11:45 a.m. to 2:35 p.m., representing a 7.1 average occasion increase. He attended to the teacher for an average of 51 percent of the time, representing a 15 percent increase from the previous month, and attended to task for an average of 39 percent of the time, representing a seven percent decrease. Student had 32 opportunities to initiate or respond to peer interactions, and independently initiated verbal exchanges with a peer approximately four times. He had 24 opportunities to initiate a play activity or respond to peer interactions, and maintained

play with peers for an average of four minutes and needed one to four prompts to appropriately play with a peer. He had independently requested to use the restroom on average of 50 percent of the time, representing a nine percent increase from the previous month. Student complied with approximately 72 percent of instructions given to him by his Stepping Stones or District aide over the course of the day, representing 21 percent increase, and complied with approximately 55 percent of instructions given to Student by his general education teacher, SAI teacher, APE teacher, or speech therapist over the course of the day, representing a 11 percent increase since the previous month.

275. Between February 1 and February 29, 2011, Student exhibited repetitive giggling on 12 out of 21 school days, representing a one out of five school days increase. He exhibited biting behavior on five occasions, representing an 11 occasion decrease from the previous month; nine occasions of hitting behavior, representing a three occasion increase; nine tantrums, representing a five occurrence increase; and crying behavior on approximately 10 occasions, representing a four occasion increase. In addition, Student displayed pinching and grabbing on 23 occasions, representing a seven occasion decrease; one head butting incident, representing a one occurrence increase; no urination accidents, representing no change since the previous month; 22 elopement attempts, representing a 10 occasion decrease; putting non-food items in mouth on 14 occasions, representing a 17 occasion decrease; and ruminative speech of approximately 195 incidents per day, representing a 91 incident increase.

RESPONSE TO FEBRUARY 14, 2012 AMENDMENT IEP

276. On March 22, 2012, Student's attorney, Mandy Favaloro, wrote a letter to District's attorney explaining that neither Mother nor Dr. Wood felt the SAI-SS program at Grant was appropriate to address Student's unique needs. However, in order to continue the IEP process, Ms. Favaloro explained that Parents were willing to consent to

the change to the SAI-SS program for the present time. However, Parents were not consenting to any other changes included in the February 14, 2012 IEP, including the change to a District behavioral one-on-one aide. Therefore, given the current stay-put order, the NPA aide and other portions of Student's program would continue to be stay-put. Ms. Favaloro also explained that the presence of Student's current NPA aides would be appropriate when transitioning to the new setting (i.e., Grant), given the safety concerns noted by Parents, and in order to provide Student with some continuity between the Muir and Grant programs. Finally, Ms. Favaloro advised that Parents expected the change in setting to occur by Monday, March 26, 2012.

277. On March 23, 2012, Dr. Woolverton sent Parents a letter advising that in order to ensure a smooth and successful transition to Grant, District would require a few days to put some transitional activities into place. Dr. Woolverton also advised that after the following week, District would be closed for two weeks for spring break. As such, District would not be prepared to serve Student at Grant in the SAI-SS program until the Monday District returned from spring break, April 16, 2012. Dr. Woolverton advised that in the meantime, the Grant SAI-SS teacher would observe Student at Muir and would consult with the Muir team. Also, she advised that the Grant instructional team wanted to meet with Parents to get to know them and to become familiar with Student's IEP before he began at Grant, if possible. Finally, Ms. Woolverton requested clarification whether, in consenting to the placement in the SAI-SS program at Grant, Parents were also consenting to the group speech and social skills sessions recommended by the IEP team. She also sought clarification whether Parents were consenting to the academic goals subsequently developed between Parents and the special education teacher, as well as to the three new social language goals developed at the February 14, 2012 IEP meeting.

278. On March 27, 2012, Ms. Favaloro sent District's attorney a letter stating that Parents were not consenting to the change in Student's speech and language services from three individual 25-minute sessions to one individual and two group sessions. However, Parents were willing to consent to a group session that focused on social skills and pragmatics, but not at the expense of one of Student's individual speech and language sessions. In addition, Parents would consent to one of the three new social language goals, namely the one addressing social language skills (e.g., greet, reply, request).

279. However, Parents had concerns regarding the remainder of the goals within the February 14, 2012 IEP. Specifically, Parents would not consent to the written expression goal addressing spelling, as Student had met a writing goal regarding sentence structure, and Parents felt that developing a goal that would continue to address skills related to that area would be more appropriate, rather than a spelling goal that focused on words Student was already able to spell. In addition, Parents would not consent to the social language goal addressing Student initiating and responding to peers more appropriately, as Parents felt Student was already able to initiate or respond to a greeting. Also, they would not consent to the social language goal requiring Student to answer various social language questions (e.g., Where do you live? What's your teacher's name? How old are you?), as they believed Student was already able to answer various social language questions such as the ones written within this goal. Furthermore, Parents would not consent to the articulation goal as it related to the production of the /r/ sound in all positions, as Student was in track to achieve the skill with higher accuracy pursuant to a goal written in Student's May 2011 IEP. Finally, Parents would consent to the comprehension goal, but believed the goal should be more specific to require Student to answer in full sentences.

280. As for the academic goals, Ms. Favaloro advised that those goals had been provided in draft form and that several changes had been suggested by Parents, as well as by District staff. As such, Ms. Favaloro advised that it would be impossible for Parents to provide a blanket consent for these goals. Consequently, Ms. Favaloro proposed that District present the goals at the annual IEP scheduled to be held in the upcoming weeks.

281. On April 16, 2012, Student began attending the SAI-SS program at Grant. Student's class was comprised of eight students, including Student, with autism. Prior to starting in her class, Ms. Marek received a note from Parents concerning Student's behavioral issues. Consequently, Ms. Marek conducted research concerning pica, and reorganized her classroom to ensure that targeted items that Student liked, such as markers, hand sanitizer, and glue sticks were out of his reach. In addition, Ms. Marek made a note to ensure Student did not enter the court yard, where plant materials existed, such as leaves and flowers. Ms. Marek acknowledged that she did not find a way to keep small toys and elastic bands from Student, as all the children had access to those items, which were contained in a community box in the sensory section of her classroom. However, Ms. Marek believed Student's one-on-one aide would keep Student from putting non-food items into his mouth.

282. As for Student's elopement behavior, Ms. Marek did not implement any specific strategies to address it, as Student's one-on-one aides were always with Student to address Student's elopement behavior. Student eloped twice from her classroom, and Ms. Marek witnessed him stand up and leave the place of instruction approximately 10 times.

283. On April 23, 2012, at 1:59 p.m., Mother took a picture of an open gate leading directly to Student's classroom, located approximately 25 feet from the open gate.

284. On April 27, 2012, at 10:11 a.m., Mother took a picture of the outside hallway containing Student's class. The classroom door was wide open, as well as a gate located at the end of the hallway. Mother estimated that Student could elope from his classroom out of the gate in approximately five seconds.

285. On May 6, 2012, Dr. Wood observed Student at the SAI-SS classroom at Grant, and was accompanied by Ms. Hurst. Student had a one-on-one aide. Dr. Wood noted that the programs between Muir and Grant were similar in that they both used a token system, engaged in breaks, and used rewarding activities to gather points during the day. The difference between the two was that Grant had children with autism, while Muir had children with a variety of disabilities. When observing lunch and recess, Dr. Wood noted that when the children had finished eating, the teacher and aides made an effort to engage the children in a game of kickball with typically developing peers. In addition, the teacher and aides encouraged the children of the SAI-SS class to ask questions of the typically developing peers as all of them played on the climber.

286. Dr. Wood concluded that the SAI-SS program at Grant was not an appropriate program for Student, given the apparent lack of attention the aides paid to the students at all times, coupled by Student's constant tendency to elope and to put non-food items into his mouth. If staff at Grant were able to lock multiple doors and provide pica-proofed classrooms, Dr. Wood would be less concerned about Student's safety, but even then, it would pose a higher risk for escaping than the Bridgeport facility. In addition, Grant had a lot of foliage and more access to non-edible substances, whereas Bridgeport was more pica-proofed.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. As the petitioning party, Student has the burden of persuasion on all issues alleged in Student's amended complaint. District has the burden of persuasion on the issue alleged in District's complaint. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

ISSUE ONE: STUDENT'S CASE - PROCEDURAL VIOLATIONS

2. Student contends that District committed a number of procedural violations during the 2011-2012 school year that resulted in a denial of FAPE. Specifically, Student contends that District failed to consider Parents' concerns at the September 27, 2011, IEP meeting, relating to the continued funding of NPA behavior services provided by Stepping Stones, transition services, and the recommendations of Stepping Stones personnel (Issue 1(a)), and by predetermining its offer of placement and services at that meeting (Issue 1(b)). Student also contends that District committed a procedural violation by unilaterally implementing a change in Student's May 4, 2011, IEP, without parental consent, by continuing to provide District behavior services after Parents withdrew their consent, without first filing a request for due process and obtaining an order permitting District to do so (Issue 1(c)). In addition, Student contends that District committed a procedural violation by unilaterally deciding to prohibit Mr. Lin from returning to campus to provide one-on-one aide services to Student after the October 6, 2011 incidents where Mr. Lin restrained Student (Issue 1(d)). Finally, Student contends that District failed to appropriately assess him in all areas of suspected disability in the 2011-2012 school year through November 16, 2011, by failing to conduct a functional behavioral assessment (FBA), and then by failing to conduct an appropriate FBA on November 17, 2011 (Issue 1(e)).

3. District disagrees and contends it committed no procedural violations in connection with the September 27, 2011, IEP, and conducted a timely and appropriate FBA.

Definition of a FAPE

4. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability...." (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

5. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an

interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

Parental Participation and Predetermination

6. A procedural violation constitutes a denial of FAPE if it impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (“*Target Range*”).) If a procedural violation is found to have significantly impeded the parents’ opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892-895 (“*Amanda J.*”) [school’s failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents right to participate in the IEP process, resulting in compensatory education award]; *Target Range, supra*, 960 F.2d at pp.1485-1487 [when parent participation was limited by district’s pre-formulated placement decision, parents were awarded reimbursement for private school tuition during time when no procedurally proper IEP was held].)

7. In general, when developing an IEP, the IEP team must consider: the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic,

developmental, and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).) The IEP team is required to include one or both of the student's parents or their representative, a regular education teacher if a student is, or may be, participating in the regular education environment, a special education teacher, a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a) (2006)⁸.) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, can participate as an IEP team member. (34 C.F.R. § 300.321 (a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a).)

8. The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) "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., supra*, 267 F.3d at p. 882.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th

⁸ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 ("*Fuhrmann*") [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].)

9. An education agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 2007 WL 1989594 [107 LRP 37880, 48 IDELR 31]; see also, *S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification," citing *Target Range, supra*, 960 F.2d at p. 1484].)

Implementation Without Consent

10. If a student's parent consents in writing to the receipt of special education and related services for the child, but does not consent to all components of the IEP, those components to which the parent has consented shall be implemented so as not to delay providing instruction and services of the child. (Ed. Code, § 56346, subd. (e).) If the public agency determines that the special education component to which the parent does not consent is necessary to provide a FAPE to the student, a due process hearing shall be initiated in accordance with Section 1415 (f) of Title 20 of the United States Code. (Ed. Code, § 56346, subd. (f).)

Assessments and FBA's

11. A child must be assessed by a school district in all areas related to the suspected disability including, if appropriate, social-emotional status and no single procedure may be used as the sole criterion for determining whether the child has a disability or for determining an appropriate educational program for the child. (20 U.S.C. § 1414(a)(2), (3); 34 C.F.R. § 300.304(c); Ed. Code, § 56320, subd. (f).) Assessments must be conducted by qualified persons who are knowledgeable of the student's disability, who are competent to perform the assessments, as determined by the local educational agency, and who give special attention to the student's unique educational needs, including, but not limited to, the need for specialized services, materials, and equipment. (Ed. Code, §§ 56320, subd. (g), and 56322.) The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 and 56329.) The report shall include, but not be limited to, the following: (1) whether the student may need special education and related services, (2) the basis for making the determination, (3) the relevant behavior noted during the observation of the student in an appropriate setting, (4) the relationship of that behavior to the student's academic and social functioning, (5) the educationally relevant health and development, and medical findings, if any, (6) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate, and (7) the need for specialized services, materials, and equipment for students with low incidence disabilities. (Ed. Code, § 56327.)

12. Assessments must be conducted in a way that: (1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; (2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and (3) uses technically sound instruments that may assess the

relative contribution of cognitive behavioral factors, in addition to physical or developmental factors. The assessments must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; (3) used for purposes for which the assessments are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) and (b), 56381, subd. (h).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F. Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficiency in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) and (e).)

13. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

14. The general purpose of an FBA is to provide the IEP team with additional information, analysis, and strategies for dealing with undesirable behavior, especially when it is interfering with a child's education. The process involves some variant of identifying the core or "target" behavior; observing the student, preferably in different environments, and collecting data on the target behavior, antecedents, and consequences; formulating an hypothesis about the cause or causes of the behavior; developing an intervention or interventions to test the hypothesis; and collecting data

on the effectiveness of the interventions in changing the behavior. The information should be presented in a manner useful for future work on the child's behavioral issues. (*Independent School Dist. No. 2310* (SEA MN 1998) 29 IDELR 330.)

15. If an FBA is used to evaluate an individual child to assist in determining the nature and extent of special education and related services that the child needs, the FBA is considered an evaluation under federal law. (*Letter to Christiansen* (OSEP 2007) 48 IDELR 161.) Consequently, an FBA must meet the IDEA's legal requirements for an assessment, such as the requirement that assessment tools and strategies provide relevant information that directly assists in determining the educational needs of the child. (34 C.F.R. § 300.304(c)(7).)

16. "Behavior intervention" means the systematic implementation of procedures that result in lasting positive changes in the student's behavior. "Behavior intervention" means the design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavior instruction, to produce significant improvements in human behavior through skill acquisition and the reduction of problematic behavior. "Behavioral interventions" are designed to provide the student with greater access to a variety of community settings, social contacts and public events; and ensure the student's right to placement in the least restrictive educational environment as outlined in the student's IEP. (Cal. Code Regs, tit. 5, § 3001, subd. (b).)

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

Analysis of Issue 1(a): Parental Concerns at September 27, 2011 IEP Meeting

18. Student failed to demonstrate by a preponderance of the evidence that District failed to consider Parents' concerns at the September 27, 2011 IEP meeting, relating to the continued funding of NPA behavior services provided by Stepping Stones, transition services, and the recommendations of Stepping Stones personnel. The evidence showed that the IEP team discussed, at length, issues concerning the transition from NPA aide services to District services, and that Dr. Woolverton, who led the discussion, requested input from various members of the IEP team, including from Mother and Ms. Gorham from Stepping Stones. Specifically, according to the credible testimony of Dr. Woolverton, which was corroborated by the testimony of Ms. Huff and Ms. Cammarota, as well as by Ms. Gorham, she solicited information from the team about how well the transition had been going during the approximately four weeks it had been in effect. After learning that the transition had not run smoothly, Dr. Woolverton asked the team whether the transition required more time, to which Ms. Huff, Ms. Cammarota, the principal, the Stepping Stones supervisor (Ms. Venezia), and Ms. Gorham advised that the transition required more time.

19. Specifically, the evidence showed that Ms. Huff recommended an additional one or two weeks based on her frequent observations of Student, which occurred once a week for 30 minutes to two hours, as well as on her experience with transitions plans as a behavior intervention specialist. The evidence also showed that Dr. Woolverton specifically requested Ms. Gorham to advise of a good date for the District aide to transition full-time as Student's behavior aide, to which Ms. Gorham responded that she could not give a specific timeline, as each student was different. Another District member shared that two to four weeks was a typical transition period, while Mother expressed that she could not quantify when she believed Student would be ready for a transition, but would call an IEP meeting when she felt he was ready. Mother

further expressed that District should not eliminate the NPA aides at all, given the multiple transitions between District staff, and given their “lack of professionalism.” Thus, given her opportunity to share her opinions concerning the transition, Mother was afforded an opportunity to participate in the IEP meeting in a meaningful way. District’s failure to agree with Mother’s position did not constitute a failure to consider her opinions and concerns. Similarly, District’s decision to quantify a period of transition (i.e., an additional three weeks) did not constitute a failure to consider input from Stepping Stones personnel, who could not provide a specific timeline for transition. Given these factors, Student failed to prove that District committed a procedural violation by failing to consider Parents’ concerns regarding the continued funding of NPA behavior services, transition services, and the recommendations of Stepping Stones personnel. Having failed to demonstrate a procedural violation, Student was not deprived of a FAPE on this ground. (Factual Findings 1–286; Legal Conclusions 1–9, 18–19.)

Analysis of Issue 1(b): Predetermination of Offer at September 27, 2011 IEP Meeting

20. Student failed to prove that District committed a procedural violation by predetermining its offer of three additional weeks of NPA services to complete the transition from NPA behavioral aide services to District behavioral aide services. As established above, Dr. Woolverton solicited the input from the IEP team members concerning an appropriate period in which to complete the transition, and received varying opinions as to how much time was required, and in the case of Stepping Stones, received no opinion concerning a specific timeline. The evidence, through the credible testimony of Dr. Woolverton, Ms. Huff, Ms. Cammarota, Ms. Gorham, and even Mother, as well as the IEP notes themselves, demonstrated that the team discussed the issue at length. Based on the balance of information presented at the meeting, Dr. Woolverton advised that District would offer an additional three weeks to complete the transition, to

which the other District members, including Ms. Huff and Ms. Cammarota, agreed was an appropriate period in which to complete the transition. Student presented no credible evidence demonstrating that District members, individually or collectively, made a predetermination concerning the amount of additional NPA transition time District would offer prior to the commencement of the meeting. As such, Student failed to demonstrate that District predetermined its offer of three additional weeks of NPA aide services. (Factual Findings 1–286; Legal Conclusions 1–9, 18–20.)

Analysis of Issue 1(c): District’s Unilateral Change in Student’s Program

21. Student failed to demonstrate by a preponderance of the evidence that District committed a procedural violation by unilaterally continuing to provide District aide services to Student, despite Parents’ revocation of consent of that service. Student contends that District should have filed a request for due process and obtained an order permitting District to continue providing District aide services, and that its continued implementation of District aide services, absent an order, resulted in District significantly impeding Parents’ opportunity to participate in the decision-making process. This position is not supported by the law or the evidence. First, the IDEA does not mandate that school districts file requests for due process when a disagreement arises between a parent and a school district concerning components of an IEP. While it is true that the Education Code creates an affirmative duty for school districts to file a due process complaint when there has been a component of an IEP to which the parent has not consented, and District believes the IEP provides a FAPE, the statute contemplates that the parents have already participated in the process at an IEP meeting. (See Legal Conclusion 10 citing Ed. Code, § 56346, subd. (f).) In other words, the right arises to consent or not consent to an IEP, or to portions thereof, is pursuant to an IEP meeting in which the school district has presented its offer of placement and services to the parent. Here, the evidence show that Parents actively participated in the May 4, 2011, IEP

meeting, that gave rise to the component of the IEP to which they subsequently revoked consent (i.e., implementation of District aide services). Specifically, Mother expressed her disagreement about the IEP, advised the IEP team that she believed that Muir had a superior program than that of Will Rogers, and that she wanted District to fund LMB services for Student.

22. In addition, Parents did not sign the May 4, 2011 IEP at the meeting, but rather pursuant a May 20, 2011 settlement agreement. The evidence showed that in exchange for their consent to the May 4, 2011 IEP, which provided for the transition of NPA aide services to District aide services by September 30, 2011, Student received placement at Muir, 200 hours of summer LMB services, as well as a one-on-one NPA aide to provide services during LMB sessions. When Parents subsequently revoked consent on September 21, 2011, their revocation constituted parental input, as it declared their disagreement with the transition to District aide services. Consequently, there was no deprivation of parent input.

23. There was no denial of FAPE either by District's continued implementation of the District aide services after Parents' September 21, 2011 revocation. The evidence showed that District continued to provide District aide services, in addition to NPA aide services, until November 8, 2011, after Student had filed a request for due process on September 29, 2011, just two days after the September 27, 2011 IEP meeting, and OAH had issued an order clarifying that District was not entitled, as part of Student's stay-put, to continue with a transition of aide services during the pendency of this action. As such, Student received aide services from both the NPA and District, collectively, for approximately six weeks from the date of the revocation, and five weeks from the September 27, 2011 IEP meeting. Despite Student's claims that some of his behavior regressed during this period, Student failed to establish that any purported regression was caused by the presence of a District aide, as opposed to other factors, such as

Stepping Stones' substitution of two of their NPA aides, or Parents getting a new roof on their house, requiring the family to move out of their home for two days. Indeed, the one thing that was constant during this time period was the District aide, Mr. Carillo, who had been Student's only consistent aide since October 3, 2011. In addition, District had engaged in activity to help ensure Student's success, such as developing a BLISS plan to establish an informal means by which to measure Student's progress on his behavior program. Given these factors, Student was not denied a FAPE by District's continued implementation of the District aide until November 8, 2011. (Factual Findings 1–286; Legal Conclusions 1–10, 21–23.)

Analysis of Issue 1(d): Prohibiting Mr. Lin From Returning to Campus

24. Student failed to demonstrate by a preponderance of the evidence that District committed a procedural violation by unilaterally deciding to prohibit Mr. Lin from returning to Muir to provide one-on-one aide services to Student after the October 6, 2011 incidents where Mr. Lin restrained Student. The evidence showed that the operative IEP (i.e., the May 4, 2011 IEP) as it related to NPA aide services, named no specific NPA or NPA aides that were to work with Student. As such, there was nothing in the IEP that guaranteed Mr. Lin's tenure to work with Student. Therefore, a decision by District to prohibit Mr. Lin from working with Student at school, coupled by District's securing of a new NPA aide from the same agency to work with Student in Mr. Lin's stead, does not constitute a procedural violation, as District never changed Student's program by doing so. In addition, District acted properly given the allegations, as it has a duty to its students to maintain their safety.

25. Student contends, however, that District prohibited Mr. Lin from returning to Muir for the purpose of intimidating him from advocating on behalf of Student, in violation of Education Code section 56046, which prohibits district employees from using their official authority or influence for the purpose of intimidating, threatening, or

coercing a person with the intent of interfering with that person's right to assist a parent or guardian of a student with exceptional needs. As such, Student argues that District impeded Parents' meaningful participation in the process. However, Student presented absolutely no credible evidence to support this position. The evidence showed that District had a legitimate reason to request Mr. Lin not to return to Muir, namely after a parent had complained that Mr. Lin had been unnecessarily rough with Student on October 6, 2011 after he had restrained Student after Student exited the school bus. In addition, the credible testimony of Dr. Woolverton established that teachers had expressed concerns over Mr. Lin's rough handling of Student, including the second October 6, 2011 incident that occurred in the classroom, which also resulted in Mr. Lin restraining Student. Although both Stepping Stones and the Santa Monica Police Department conducted investigations, prepared reports, which Dr. Woolverton did not see until the exchange of exhibits in preparation for hearing, and ultimately concluded that Mr. Lin had acted with Student's best interest in mind, it did not mean that District was required to welcome Mr. Lin back to Muir, even if Dr. Woolverton had seen the reports at the time they were prepared. Given these factors, coupled by District's action in securing another Stepping Stones aide to replace Mr. Lin so that Student would have constant NPA aide support, District made no unilateral change in Student's program, and thus, did not commit a procedural violation. (Factual Findings 1 – 286; Legal Conclusions 1 – 10, 24 – 25.)

Analysis of Issue 1(e): Failure to Assess and Inappropriate FBA

26. Student failed to establish by a preponderance of the evidence that District committed a procedural violation by failing to conduct a timely FBA after the commencement of the 2011-2012 school year, and as discussed in more detail below, by failing to conduct an appropriate FBA on November 17, 2011. The evidence showed that between August 30, 2011, which was the first day of school, and November 17,

2011, the date of Ms. Baral's FBA report, Student had engaged in no significant new behaviors that would trigger the necessity of an FBA, particularly behaviors that had not already been addressed in the May 4, 2011 BSP. Nevertheless, District, beginning on October 5, 2011, just 26 school days into the 2011-2012 school year, commenced FBA observations of Student, only two days after Parents signed the assessment plan. These factors establish that District did not delay in conducting an FBA, and as such, Student failed to prove that District committed a procedural violation in that regard.

27. Similarly, Student failed to prove that District committed a procedural violation by failing to conduct an appropriate FBA. A review of the IDEA, the Education Code, and the Code of Regulations reveals no statutes or regulations related to FBA's, or setting forth what FBA's must include, but generally they involve some variant of identifying the core or "target" behavior; observing the student, preferably in different environments, and collecting data on the target behavior, antecedents, and consequences; formulating an hypothesis about the function or cause of the behavior; developing an intervention or interventions to test the hypothesis; and collecting data on the effectiveness of the interventions in changing the behavior. (*See* Legal Conclusion 14 citing *Independent School Dist. No. 2310, supra*, 29 IDELR at p. 330.) The information should be presented in a manner useful for future work on the child's behavioral issues, and because they are used to evaluate an individual child to assist in determining the nature and extent of special education and related services, the FBA must meet IDEA's legal requirements for assessments. (*See* Legal Conclusions 14 and 15.) In the instant matter, Ms. Baral's FBA met these requirements.

28. Specifically, the FBA included the administration of rating scales, records review, interviews, teacher input, and seven observations of Student. Student presented no evidence demonstrating that the assessments were racially, culturally, or sexually discriminatory; were not administered in Student's primary language; and were not

selected and administered to produce results that accurately reflected the factors the tests were purported to measure. In addition, the FBA was conducted by a very qualified individual, Ms. Baral, who had been a school psychologist for 28 years at the time she conducted the FBA, and had conducted approximately 1,000 psychoeducational assessments and four FBA's over the course of her career. Ms. Baral's FBA report was comprehensive in that it identified Student's problem behaviors that she observed, such as giggling, non-compliance, crying, elopement, falling out of his chair, and biting. Although Student argues that Ms. Baral's report should have included Student's pica issues, the fact remains that the resulting product was a BSP that ultimately addressed Student's issues, including his pica issues (i.e., for biting inanimate objects, and mouthing non-food items), which included perceived antecedents and triggers, perceived consequences, perceived functions, and descriptions of positive replacement behaviors. Moreover, Ms. Baral's report offered conclusions outlining the antecedents that triggered Student's behaviors, such as unstructured time, transitions from one activity to another, when Student has chosen not to work, or when Student could not do what was asked of him. In addition, Ms. Baral's report included positive replacement behaviors, such as Student quieting his body and hands, asking for a break, and asking for a preferred toy. Finally, Ms. Baral's report included strategies to support the positive replacement behaviors, such as visual schedules, providing structured activities, providing Student with a preferred toy, and implementing a token board. As such, the FBA provided relevant information to the IEP team that directly assisted in determining the behavioral needs of Student. Given these factors, Ms. Baral's report met the IDEA's legal requirements for assessments, and, as such, established that District committed no procedural violation by conducting an inappropriate FBA. (Factual Findings 1 – 286; Legal Conclusions 1 – 9, 11 – 17, 26 – 28.)

ISSUE TWO: STUDENT'S CASE - SUBSTANTIVE VIOLATIONS

29. Student contends that District denied Student a FAPE by failing to offer Student an appropriate placement and services to meet Student's unique needs in the September 27, 2011 and November 22, 2011 IEP's, by failing to offer Student a self-contained placement with more intensive specialized instruction and teacher supervision from autism specialists throughout Student's school day (Issue 2(a)). In addition, Student argues that District denied Student a FAPE in the September 27, 2011 and November 22, 2011 IEP's, by failing to offer appropriate NPA behavior services for a sufficient amount of time to allow for an appropriate transition between NPA and District providers (Issue 2(b)). Finally, Student contends that District denied him a FAPE by failing to amend Student's BSP following the November 22, 2011 IEP to address Student's pica and elopement issues. District disagrees, and contends that it provided Student with a FAPE at all relevant times.

Applicable Law

30. Legal Conclusions 1, 4 - 5, 7, and 11 – 16, above, are incorporated by reference.

31. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 ("*Gregory K*").) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be

reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

32. School districts are also required to provide each special education student with a program in the least restrictive environment. In order to provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a).)

33. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following 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] had on the teacher and children in the regular class;" and (4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 ("Rachel H.") [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1948-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome.].) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been

mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R.*, *supra*, 874 F.2d at p. 1050.)

34. The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

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

36. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams*, *supra*, 195 F.3d at p. 1149.) "An IEP is a snapshot, not a retrospective." (*Ibid.*, citing *Fuhrmann*, *supra*, 93 F.2d at p. 1041.) Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Adams*, *supra*, 195 F.3d at p.1149.)

Analysis of Issue 2(a): Placement

37. Student failed to establish by a preponderance of the evidence that District denied him a FAPE by not offering him a self-contained placement with more intensive specialized instruction and teacher supervision from autism specialists in his September 27, 2011 and November 22, 2011 IEP's. Phrased another way, Student failed to prove that District denied him a FAPE because it did not offer him an autism-specific

placement. The evidence showed that District's placement offer of the Muir SAI program, pursuant to the May 4, 2011 IEP, modified by the May 20, 2011 settlement agreement changing Student's placement from the Will Rogers SAI classroom to the Muir SAI classroom, and left unchanged in his subsequent September 27, 2011 and November 22, 2011 amendment IEP's, was an appropriate placement in the least restrictive environment.

38. Specifically, first and foremost, the evidence established, at the time of the May 4, 2011 IEP, the May 20, 2011 settlement agreement, and the September 27, 2011 and November 22, 2011 amendment IEP's, that Student was not a candidate for a full-time general education program. Overall, a determination of whether a district has placed a pupil in the least restrictive environment involves the analysis of four factors: (1) the educational benefits to the child of placement full time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the child. (See *Rachel H.*, *supra*, 14 F.3d at p. 1404.) Regarding the first factor, the evidence clearly established through the IEP notes that Student required specialized teaching methods and small group instruction to address his delays. Given the extent of Student's needs, particularly in the areas of academics, communication, behavior, and social-emotional functioning, it is reasonable to conclude that Student's placement in a full-time general education setting, as he had received during his kindergarten, first grade, and second grade years, would have resulted in limited educational benefit, at best.

39. Regarding the second *Rachel H.* factor, although Student could potentially receive a non-academic benefit of interacting with his peers by giving him more opportunity to practice his socialization skills, the third factor, specifically the effect Student's full time presence would have on the teacher and children in the regular class,

poses several problems. The evidence showed that Student's maladaptive behaviors at the time of the May 4, 2011 IEP, were quite significant (i.e., tantrums, biting, hitting, repetitive vocalizations, screaming, eloping, dropping to the ground, noncompliance, pinching, slapping, kicking, and crying), as well as his academic and communication delays. Such factors would have required the general education teacher to focus a significant amount of time and resources on Student to address Student's behaviors, as well as his academic and communication needs, resulting in him taking significant attention away from the other students in the class.

40. Finally, regarding the fourth *Rachel H.* factor, neither party introduced any evidence demonstrating the costs associated with educating Student in a general education setting versus a special education setting. Weighing the above factors, which show that the only potential benefit to Student of a general education placement is social, a full-time general education placement would not be appropriate.

41. The evidence further showed that, given the continuum of placement options, the SAI classroom at Muir was an appropriate placement. At the time of the September 27, 2011 and November 22, 2011 amendment IEP's, Student had been in the SAI program for approximately four and 12 weeks, respectively. According to the testimony of the SAI teacher, Ms. Cammarota, the class was small, comprised of 10 student and six adults, and the class was designed so that Student received specialized academic instruction. The SAI was a non-categorical class, meaning that it was not exclusively comprised of students with autism, Student had been performing well in the class, and the class had been meeting Student's needs. Student had made a nice transition to Ms. Cammarota's class, appeared very happy, and, at the time of the September 27, 2011 IEP, had been behaving appropriately. Although Ms. MacDonald expressed concerns about Student's social language skills at the September 27, 2011 IEP; and Ms. Huff and Ms. Cammarota had expressed concerns about the transition

process between NPA and District aide services, Student presented no credible evidence demonstrating that the SAI program at Muir had not been meeting Student's needs, or that the placement was an inappropriate one. Similarly, in the November 22, 2011 IEP, no team member, including Parents, raised any concerns about the SAI placement. This is significant, given Parents' past insistence that Student spend more time in the general education setting than District IEP team members had recommended. Also, Student presented no credible evidence suggesting the placement was inappropriate to meet Student's needs. Consequently, Student failed to establish that Student required a change of placement at the time of the September 27, 2011 and November 22, 2011 amendment IEP's, and thereby failed to prove that District denied Student a FAPE by offering to change his placement to an autism-specific, self-contained program.

42. Student contends that Muir was not an appropriate placement based on the January 17, 2012 independent psychoeducational assessment report prepared by Dr. Wood. Specifically, Dr. Wood, who began his assessment after the November 22, 2011 IEP, concluded that Student's academic skills in language and literacy had regressed since beginning the SAI program at Muir, citing an assessment report conducted by LMB on December 22, 2011. Dr. Wood also concluded that Student required a more intensive specialized instruction program provided by autism specialists within a NPS setting. While Student concedes that Dr. Wood's report was not available to District at the September 27, 2011 and November 22, 2011 IEP meetings, the evidence showed that neither was the LMB assessment report either, which was conducted three months after the September IEP, and one month after the November IEP. Nevertheless, Student argues that District should have known about the information contained in the report, as "the information was readily available to them to make the necessary and appropriate determination that the program at Muir was not appropriate and that Student required a more intensive autism-specific program." This position is unreasonable, as it requires

the application of a standard that would require school districts to have foresight of the results of independent assessments funded by parents. Instead, it is well established that the IDEA requires that IEP offers of placement be evaluated in terms of what was objectively reasonable at the time they were developed. (See *Adams, supra*, 195 F.3d at p. 1149; *Fuhrman, supra*, 93 F.2d at p. 1041.) Simply put, offers of placement cannot be judged in hindsight. (*Ibid.*)

43. Given the above, Student failed to establish by a preponderance of the evidence that District denied Student a FAPE by not offering Student a placement offer in an autism-specific program in Student's September 27, 2011 and November 22, 2011 amendment IEP's. (Factual Findings 1 – 286; Legal Conclusions 30 – 43.)

Analysis of Issue 2(b): NPA Services

44. Student failed to demonstrate by a preponderance of the evidence that District denied Student a FAPE in his September 27, 2011 IEP and November 22, 2011 amendment IEP, by failing to offer a sufficient amount of NPA behavior services to ensure an appropriate transition from NPA to District aide services. The evidence showed, at the time of the September 27, 2011 IEP, that the transition, which had been in progress for four weeks, had not gone well. Specifically, the roles of the aides had not been explained, the transition had not been well-defined, and because the District aide, Mia, had difficulty working with Mr. Lin, who found Mia's close proximity annoying. Consequently, after a team discussion concerning the length of time the transition period would continue in order to correct those problems, as well as, according to the credible testimony of District's behavior intervention specialist, Ms. Huff, to establish inter-rater reliability and sufficient overlap time, District offered an additional three weeks of NPA services to complete the transition. This offer represented one week more of NPA services than the maximum period recommended by behavior specialist, Ms. Huff, because Dr. Woolverton wanted to ensure a complete and smooth transition.

Although Student argued that NPA services should continue until Mother concluded that Student no longer required NPA services, this position was not persuasive. The evidence showed that District staff was competent to carry out the IEP as written. Specifically, District's behavior team was experienced in working with students with autism. Ms. Huff had worked with 15 to 20 students with autism in both the home and school settings, had given trainings on autism, had supervised behavior interventionists, and had trained the District's behavior aides. Specifically, Ms. Huff provided 60 hours of training to District behavior aides before they were permitted to provide behavior services to students. In addition, Ms. Cammarota was an ABA therapist with Autism Intervention and Resources, was credentialed, had pica as a child, and was helping Student make progress on his goals at the time of the September 27, 2011 meeting. Student presented no credible evidence suggesting that District staff was incompetent or unable to implement the IEP and provide Student with sufficient behavioral aide services. Moreover, District staff had a comprehensive BSP (May 4, 2011) that offered guidance for Student's behavioral support and that addressed his problem behaviors. Given these factors, District's offer at the September 27, 2011 IEP was objectively reasonable.

45. Similarly, Student presented no credible evidence showing that District should have offered additional NPA aide services at the November 22, 2011 amendment IEP. The evidence showed that at the time of the November 22, 2011 IEP, the team developed a BSP that adequately addressed Student's elopement and pica issues, and also included environmental factors that would support Student using positive replacement behaviors, such as breaking down tasks into smaller parts, providing breaks, interspersing preferred/mastery level tasks with non-preferred, difficult, or novel tasks, utilizing consistent routines, proximity to the teacher or peer role model, instructional tasks matched to ability, hands-on learning, high-interest materials,

priming for upcoming activities and expectations, using a timer, previewing materials whenever possible, teacher and peer modeling, using calm, de-escalating language, avoidance of using the words “no” and “don’t”, structured choices, and providing clear expectations. The BSP also included teaching strategies that would support Student’s positive replacement behaviors, such as pre-teaching and re-teaching, conflict resolution and problem solving, sensory strategies, and requesting breaks, help, or an activity. In addition, the BSP included reinforcement strategies, such as adult and peer praise, access to a preferred activity or item, and a token economy. Moreover, the BSP provided strategies to implement should Student’s problem behaviors occur again. Student presented no credible evidence demonstrating that only NPA aides were capable of following the BSP, and that District aides were not qualified to do so. In fact, as established above, District staff was more than capable, given their work experience, as well as their specific experience in working with autistic students, of implementing the BSP. In addition, as established by the BLISS plan District developed on November 8, 2011, safeguards were established to ensure data collection concerning Student’s behaviors, such as revised data sheets and plans to have monthly meetings. Moreover, Mr. Carillo, who was Student’s District behavior aide from October 3, 2011 to November 8, 2011, had received 60 hours of training prior to working with Student, and there was no evidence presented at hearing suggesting a lack of competence on his part. Given these factors, Student failed to establish that District should have offered Student NPA services in the November 22, 2011 IEP.

46. Student contends, however, that District should have been aware that failure to offer continued NPA aide services would cause behavioral regression in Student, because Student had shown signs of regression resulting from the changes in his daily NPA aides. Specifically, at the time of the November 22, 2011 IEP, Mr. Lin was no longer Student’s aide at school, Ms. Costello had resigned from the school site, Ms.

Perez replaced Mr. Lin, Ms. Torres replaced Ms. Costello, and Mr. Carillo arrived as Student's District aide. From October 3, 2011 through November 30, 2011, Stepping Stones' reports indicated that Student's negative behaviors , such as tantrumming, elopement attempts, pinching, grabbing, putting non-food items into his mouth, and ruminative speech, had increased. However, Student failed to establish that any purported increase in negative behaviors resulted from the change in NPA aides. In fact, the evidence showed that by the time of the November 22, 2011, Student's behaviors had fluctuated compared to the previous month, in that some negative behaviors occurred more frequently, according to the Stepping Stones report, such as self-stimulatory behavior, failing to attend to teacher, failing to remain on task, hitting, pinching, head-butting, eloping, putting non-food items into mouth, and ruminative speech, while other problem behaviors decreased, such as requesting to use the restroom, compliance, giggling, tantrums, crying, and urination incidents. Even if Student was able to establish that Student's regression resulted from the multiple changes to NPA aides, as opposed to some other cause, it is unclear how District's failure to offer additional NPA aide services would have remedied the problem.

47. Given the above, Student failed to prove by a preponderance of the evidence that District denied him a FAPE by failing to offer him NPA services in his September 27, 2011 and November 22, 2011 amendment IEP's. (Factual Findings 1 – 286; Legal Conclusions 30 – 36, 44 – 47.)

Analysis of Issue 2(c): BSP

48. Student failed to establish by a preponderance of the evidence that District denied him a FAPE by failing to amend the November 22, 2011 BSP to adequately address his elopement and pica behaviors. The evidence clearly showed that District listed elopement, mouthing, and biting behaviors in the BSP, and presented clear definitions of the three. Specifically, the BSP described elopement as any time

Student left the classroom, or crossed the threshold from the campus to public property, regardless of distance traveled, without the verbal permission of a staff person or without following verbal instructions from a staff person, during the regular school day, in all campus settings. It described mouthing as licking, gnawing, or chewing in order to seek sensory information inappropriately. The BSP also included in its biting definition Student's biting of inanimate objects.

49. In addition, the BSP, with its provision of replacement behaviors, environmental factors, and strategies, provided a systematic implementation of procedures to result in lasting positive changes in Student's behaviors. Specifically, the BSP provided for Student to learn to request breaks, for staff to provide sensory strategies, as well as a reinforcement system to encourage Student to engage in positive behaviors. Moreover, the BSP could be implemented with the services offered at the IEP. Accordingly, Student failed to establish that District denied him a FAPE in that regard. (Factual Findings 1 - 286; Legal Conclusions 30 - 36, 48 - 49.)

ISSUE THREE: DISTRICT'S CASE

50. District contends that its offer of placement and services in Student's May 4, 2011 IEP, as amended on September 27, 2011 and February 14, 2012, constituted a FAPE in the LRE, as it offered Student an appropriate placement in its SAI-SS program at Grant, as well as appropriate services to address Student's unique needs, such as one-on-one behavioral aide services, behavioral supervision, individual and group speech and language therapy, OT and APE services,⁹ and ESY. Student disagrees, and contends that Student required placement and services at an NPS, such as Bridgeport, as recommended by Dr. Wood.

⁹ At hearing, the parties stipulated that District's offer of OT and APE services was appropriate.

Applicable Law

51. Legal Conclusions 8, and 30 – 36, above, are incorporated by reference.

52. When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

53. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) When appropriate, the IEP should include short-term objectives that are based on the child's present levels of academic achievement and functional performance, a description of how the child's progress toward meeting the annual goals will be measured, when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(iii); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, §

56345, subd. (a)(7).) The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code, § 56345, subds. (h) and (i).)

54. In developing the IEP, the IEP team must consider the strengths of the child; the concerns of the parents for enhancing the child's education; the result of the most recent evaluation of the child; and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).)

55. If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the IEP after having consented to those services in the past, the local educational agency shall file a request for due process hearing. (Ed. Code, § 56346, subd. (d).)

Analysis of District's Issue

56. District established by a preponderance of the evidence that its offer of placement and services in Student's May 4, 2011 IEP, as amended on September 27, 2011 and February 14, 2012, constituted a FAPE. Specifically, the evidence showed that the IEP and amended IEP's were procedurally proper. Parents had adequate notice of the meetings, and fully participated in the meetings. In addition, the correct district personnel attended the meetings. Moreover, the IEP met the requirement of including a statement of the special education and related services to be provided to Student. Also, the IEP included Student's present levels of academic achievement and functional performance, including how Student's disability affected his involvement and progress in the general education curriculum. Moreover, as established above, District did not commit any procedural violations, including those related to predetermination and parent participation.

57. District also met the requirement of including in the IEP document a statement of measurable annual goals for Student, including academic and functional goals, designed to meet the Student's needs that result from Student's disability, including short-term objectives, based on Student's present levels of academic achievement and functional performance. Specifically, the May 4, 2011 IEP included goals in the area of fine motor skills, praxis, sensory processing, social skills, task attention, academics, and speech and language skills. The team developed two math goals that addressed number sense; two written language goals; three reading goals that addressed word recognition, phonemic awareness, and decoding; a locomotor goal to address jumping; two object control goals to address overhand throwing and striking a ball; four OT goals to address visual motor/bilateral coordination, fine and visual motor skills, praxis, and typing sentences; one articulation goal; four expressive language goals to address spontaneous comments, answering yes or no questions, using a simple sentence to express negation (e.g., "don't," "can't"), producing a one sentence description for a pictured emergency or an unusual event; and six behavior goals that addressed self-stimulatory behavior, attending, on-task behavior, peer interactions, peer play, and self-advocacy skills.

58. The February 14, 2012 IEP included goals proposed by Student's speech and language therapist, Ms. MacDonald, to address Student initiating and responding to peers more appropriately, answering various social language questions (e.g., Where do you live? What's your teacher's name? How old are you?), and performing various social language skills (e.g., greet, reply, request). She also proposed a new articulation goal, as well as a comprehension goal to answer who, what, and where comprehension questions. Ms. MacDonald proposed these goals because she considered them the most significant area of need for Student in the area of speech, and because she had been working with Student since September 2011, and felt she had a good handle on

Student's present levels of performance, and his ability to learn. The February 14, 2012 IEP also included a spelling goal drafted by Student's teacher, Ms. Cammarota, to replace a writing goal that Student had previously met. In addition, the IEP included a new written language goal to address sentence structure, and a written expression goal to address spelling. Student presented no credible evidence demonstrating that the goals in the May 4, 2011 and February 14, 2012 IEP's were inappropriate.

59. Finally, the evidence showed that District's offer of placement and services set forth in the May 4, 2011 IEP, as amended on September 27, 2011 and February 14, 2012, were appropriate to meet Student's unique needs. Specifically, District, pursuant to the recommendations set forth in Dr. Wood's January 17, 2012 psychoeducational report, offered Student a placement in the SAI-SS program at Grant. According to his report, Dr. Wood, who had conducted a thorough and comprehensive assessment of Student, recommended that Student receive instruction in a more specialized educational setting, on a self-contained campus, designed specifically for the learning needs of children with autism, in order for Student to achieve measurable progress in the cognitive, academic, behavioral, and social communicative realms, given his level of disability. In addition, due to Student's safety issues associated with his pica and elopement behaviors, Dr. Wood recommended that Student receive ongoing one-on-one behavioral support from a trained aide with expertise in autism intervention. The evidence showed that District's offer, with the exception of the self-contained campus, which, as explained below, was nonetheless appropriate, met Dr. Wood's recommendations.

60. Specifically, the SAI-SS program at Grant, according to the credible testimony of the SAI-SS teacher at Grant, Ms. Marek, who had experience working with students with autism, was one with specialized academic instruction, with a focus on daily social language and social skills instruction, designed for students with autism.

District developed the program with the assistance of Autism Spectrum Therapies (AST), which was a company that employed ABA methods to craft therapy programs to address the needs of individuals with autism. AST provided training to Ms. Marek, the one-on-one aides, and to the classroom assistant. In addition, AST provided weekly classroom consultations, where the consultants would observe the class, and then help Ms. Marek facilitate activities, and help the students join in the activities. The SAI-SS class included one teacher (Ms. Marek), one classroom assistant, and two one-on-one aides, who met every Tuesday morning with the school psychologist and the behavior intervention specialist to receive additional guidance on how to better serve each student in the class. All of the curricula used in the class were research-based, addressed areas such as social skills, self-regulation, reading, and math, and included proper visual supports, such as videos to which students could relate. The curriculum was broken down into manageable chunks, consistent with Student's unique needs. Moreover, the class provided for daily and frequent mainstreaming opportunities for the students to interact with typically developing peers, in order for the students to practice their social skills.

61. Ms. MacDonald, Ms. Baral, Ms. Cammarota, and Ms. Huff credibly testified that the SAI-SS program at Grant would be appropriate to meet Student's needs. Specifically, Ms. MacDonald, who had expressed concerns at the September 27, 2011 and February 14, 2012 IEP meetings about Student's significant social skills needs, testified that she was familiar with the SAI-SS program, and believed it would give Student an opportunity to work on his social skills, and improve his social interactions. Like Ms. MacDonald, Ms. Baral believed the SAI-SS program would provide exposure to age-appropriate, typically developing peers, which would be beneficial to Student. Also, Ms. Cammarota, who had observed the SAI-SS class for three hours in January 2012, believed the program would provide Student with more one-on-one instruction than

her SAI class provided Student, and that his goals could be implemented in the SAI-SS class. Moreover, Ms. Huff believed the SAI-SS class would provide Student with opportunities to practice his social interactions, which she considered an integral part of Student's program, as she had observed Student's difficulties interacting with typical peers.

62. In addition, pursuant to Dr. Wood's recommendation, District offered Student one-on-one behavioral aide services for Student's entire school day to provide behavioral support, and to keep Student safe in light of his elopement and pica issues, as well as 120 minutes per week of supervision from District's intervention specialist. District also offered other appropriate services to address Student's unique needs. Specifically, District offered one 25-minute session of individual speech and language therapy per week; and two 25-minute sessions of group and language therapy, pursuant to Ms. MacDonald's recommendation, who based on her experience of working with Student, determined that adding group sessions to Student's program would address Student's social language and social skills needs, and were necessary to implement the social language goals and objectives. Finally, District offered Student 140 minutes per week of OT and two-30 minute sessions of APE per week, which Student, at hearing, stipulated was appropriate. Given the above, District's offer of placement and services was appropriate.

63. Student contends, however, that the program offered by District was inappropriate to address his needs. Specifically, Student argues, in essence, that the SAI-SS program at Grant would not adequately provide for Student's safety, given his pica and elopement issues. Student bases his position on the fact that Grant had foliage and other items on the ground that Student could potentially ingest, and that Student's attempts to elope from instructional areas and classrooms had increased over the months prior to the February 14, 2012 IEP, according to information provided by

Stepping Stones, and that Dr. Wood believed Student's safety was at risk at Grant. In addition, Mother had taken pictures of open gates at Grant, from which Student could potential elope from campus. However, District offered a safeguard to directly address Student's pica and elopement issues, in the form of a one-on-one behavioral aide to help ensure Student's safety, pursuant to Dr. Wood's recommendation. As such, the behavioral aide could implement strategies to help keep Student safe, such as blocking his mouth from access to non-food items, as both Mr. Lin and Dr. Wood described that they had done with Student, and interrupt Student's elopement attempts by blocking his path to exits. In addition, District had developed a comprehensive BSP that teachers and aides could use to address Student's behavioral issues, and to encourage appropriate replacement behaviors. Moreover, the evidence showed that Student had not eloped from campus since his kindergarten year, or ingested any non-food item since first grade, suggesting that the provision of one-on-one behavior aide services at school had been effective in the past.

64. Student further argues that Bridgeport is a better placement because it is located on a self-contained, pica-friendly campus, with more experienced autism specialists. However, as discussed above, District's program, which is implemented with the autism expertise of AST, could provide a FAPE consistent with Dr. Wood's recommendations. In essence, Student's contention comes down to whether he would be provided a FAPE at an NPS like Bridgeport, solely because of differences in the campus layout. However, as discussed above, District's SAI-SS program at Grant can address Student's needs, while ensuring his safety with a one-on-one aide. While Student argues that the pictures taken by Mother of open gates, by definition, rendered the Grant campus unsafe, the evidence did not support this position. The evidence showed that Grant's campus, according to the credible testimony of Dr. Woolverton, followed the same basic rules and procedures concerning locked doors and gates as

Bridgeport did. The evidence also showed a one-on-one aide assigned to Student would help ensure Student's safety, even in those instances when an occasional gate was left open, as it has over the last several years. Similarly, while a pica-proof campus would be ideal, the evidence did not support a finding that Student could not be safeguarded against his pica solely through the use of aides and the continued use of behavioral strategies to try to stop the behavior. While the goal is to keep Student from ingesting non-food items, Student has failed to establish that District's method in doing so was not competent or adequate. In addition, Student has presented no credible evidence demonstrating that District staff in the SAI-SS autistic-specific program were not qualified to provide instruction and services to Student. As established above, Ms. Huff and Mr. Carillo are qualified to provide instruction and services, as well as Ms. Marek, who, along with her classroom staff, received training from AST to address the needs of individuals with autism.

65. Finally, even if Bridgeport was considered a superior program that could better meet Student's needs, case authority provides that a school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (See *Gregory K.*, *supra*, 811 F.2d at p.1314.)

66. The District also met its burden of demonstrating that the placement offer was in the LRE. As established above, Student, in light of the *Rachel H.* factors, was not a candidate for full-time general education placement. The evidence established, as set forth above, that the SAI-SS program at Grant could meet Student's unique needs, while providing him an opportunity to interact with typically developing peers throughout his school day. Specifically, according to the credible testimony of Ms. Huff, Ms. Cammarota, Ms. Baral, and Ms. MacDonald, the SAI-SS program, designed for students with autism, would provide Student with specialized academic instruction to address his

academic needs, while providing social skills instruction to address his social needs. In addition, the program would employ ABA methods to help facilitate Student's learning; and utilize research-based curricula designed to identify emotions, improve social skills, and build reading and math skills. By offering Student an autism-specific class on a comprehensive campus, District met the IDEA's LRE policy, as well as provided Student with an opportunity to practice his social skills on typical peers. By contrast, Dr. Wood's recommendation of a self-contained campus is inconsistent with the IDEA's mandate that special education students be exposed to the maximum extent possible to typically developing peers. The evidence established that the Bridgeport program recommended by Dr. Wood did not have typically developing peers in which Student could interact. This, by definition, makes the Bridgeport placement more restrictive than the SAI-SS program, and inappropriate given the continuum of placement options.

67. Given the above, District met its burden of demonstrating by a preponderance of the evidence that its offer of placement and services, as set forth in the May 4, 2011 IEP, and amended on September 27, 2011 and February 14, 2012, constituted a FAPE in the least restrictive environment. (Factual Findings 1 – 286; Legal Conclusions 51 – 67.)

ORDER

1. In Student's case, Student is entitled to no relief.
2. In District's case, District offered Student a FAPE as set forth in Student's IEP dated May 4, 2011, as amended on September 27, 2011 and February 14, 2012.

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, 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: July 27, 2012

_____/s/____

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings