

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2013010475

v.

COMPTON UNIFIED SCHOOL DISTRICT
AND LOS ANGELES COUNTY OFFICE OF
EDUCATION.

DECISION

Elsa H. Jones, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter on May 7, 8, 9, 15, and 16, 2013, in Compton, California.

Pamela K. Daves, Attorney at Law, of Adams Esq., appeared on behalf of Student and Mother (sometimes collectively Student.) Student did not attend the hearing. Mother attended all days of hearing.

Daniel L. Gonzalez, Attorney at Law, of Littler Mendelson, appeared on behalf of Compton Unified School District (District). Jennifer O'Malley, a District administrator, attended the hearing on May 7, May 15, and May 16, 2013. Sean Andrew, a District program specialist, attended the hearing on all other hearing days.

Courtney M. Brady, Deputy General Counsel, appeared on behalf of the Los Angeles County Office of Education (LACOE). William S. Gee, Ed.D., and Frederick J. Carpio, LACOE administrators, attended the hearing on May 7. Mr. Carpio also appeared

on all other hearing days, except on May 15, 2013, when Pamela G. Gibson, a regional director for LACOE, attended.¹

Student filed his request for due process hearing (Complaint) on January 15, 2013. OAH granted the parties' joint request for continuance on February 26, 2013.

Sworn testimony and documentary evidence were received at the hearing. The parties requested the opportunity to file written closing briefs, and the matter was continued until 5:00 p.m. on June 10, 2013, for the filing of such briefs. The parties timely filed their written closing briefs on June 10, 2013, at which time the record was closed and the matter was submitted.

ISSUES²

1. Whether District and LACOE denied Student a free appropriate public education (FAPE) by:

(a) Failing to assess Student in all areas of suspected disability from January 2011 to the time of filing the Complaint, by failing to perform behavior, speech and language (LAS), occupational therapy (OT), and transition and vocational assessments;

¹ District and LACOE are sometimes collectively referred to herein as Respondents.

² As a result of discussions with the parties at hearing, the issues as stated in this Decision were modified from those that were stated in the Prehearing Conference (PHC) Order, to better reflect the allegations of the Complaint. After hearing, Student withdrew Issue 7, regarding whether the statute of limitations was tolled because Respondents failed to timely provide Student his educational records.

- (b) Failing to conduct appropriate psychoeducational and adapted physical education (APE) assessments from January 2011 to the present; and
- (c) Failing to timely conduct an APE assessment subsequent to the May 27, 2010, individualized education program (IEP) meeting.

2. Whether the IEP of May 27, 2010, was defective so as to deprive Student of a FAPE during the 2010-2011 school year because:

- (a) The IEP did not offer: (i) sufficient LAS services; (ii) a structured social skills program; (iii) behavior services, including a behavior support plan (BSP) or a behavior intervention plan (BIP);
- (b) The IEP failed to include: (i) appropriate statements of present levels of performance; (ii) appropriate measurable goals; (iii) a statement of supplementary aids and services to be provided; (iv) a statement of necessary and appropriate accommodations; (v) the projected date for beginning services; and (vi) a statement of the anticipated frequency, location, and duration of services, including OT services and the services of Student's one-to-one aide; and
- (c) The speech and language therapist (SLP), occupational therapist, and Student's aide did not attend the IEP meeting.

3. Whether the IEP of May 25, 2011, was defective so as to deprive Student of a FAPE during the 2011-2012 school year because:

- (a) The IEP did not offer: (i) sufficient LAS services; (ii) a structured social skills program; and (iii) behavior services, including a BSP or a BIP;
- (b) The IEP failed to include: (i) appropriate statements of Student's present levels of performance; (ii) appropriate measureable goals; (iii) a statement of the supplementary aids and services to be provided; (iv) an explanation of the extent to which Student would not participate at school with nondisabled

- children; (v) a statement of necessary and appropriate accommodations; (vi) the location at which all services would be rendered; and (vii) the anticipated frequency, location, and duration of OT services; and
- (c) The SLP, occupational therapist, and Student's aide did not attend the IEP meeting.

4. Whether the IEP of May 29, 2012, was defective so as to deprive Student of a FAPE during the 2012-2013 school year through the date of filing the Complaint because:

- (a) The IEP did not offer: (i) a specific placement; (ii) an appropriate placement; (iii) sufficient LAS services; (iv) a structured social skills program; (v) behavior services, including a BSP or a BIP; and (vi) a one-to-one aide;
- (b) The IEP failed to include: (i) appropriate statements of Student's present levels of performance; (ii) appropriate measureable goals; (iii) a statement of the supplementary aids and services to be provided; (iv) an explanation of the extent to which Student would not participate at school with nondisabled children; (v) a statement of necessary and appropriate accommodations; (vi) the location at which all services would be rendered; (vii) the amount and frequency of OT services; and (viii) an appropriate transition plan; and
- (c) The occupational therapist and Student's aide did not attend the IEP meeting.

5. Whether the District and LACOE failed to implement the Student's IEP's from January 2011 to the time of filing the Complaint in the following respects, so as to deprive Student of a FAPE:

- (a) Failing to provide the OT services and LAS services offered in the IEP's of May 27, 2010, May 25, 2011, and May 29, 2012; and
- (b) Failing to convene additional IEP's as provided for in Student's May 25, 2011, and May 29, 2012, IEP's.

6. Whether the District and LACOE predetermined Student's placement in September 2012, so as to deprive Student of a FAPE.

FINDINGS OF FACT

BACKGROUND AND JURISDICTIONAL MATTERS

1. Student is a 15-year-old boy, who, at all relevant times, has been eligible for special education and related services under the category of autism. Student was diagnosed with autism before he was three years old, and he is severely developmentally delayed. At all relevant times Student has resided in a group home in the District under the care of Kendra Nelson. Mother has held educational rights for Student at all relevant times.

2. Upon referral by a school district, LACOE provides specialized instruction and services to children, such as Student, who reside in Los Angeles County. As a result of such a referral by District, Student was enrolled in programs administered by LACOE for several years, beginning in elementary school, and continuing through middle school. During the 2010-2011 school year, when Student was 13 years old and in eighth grade, Student attended a LACOE special day class (SDC) at Davis Middle School (Davis), a school located in the District. During the 2011-2012 school year, when Student was 14 years old and in ninth grade, Student attended a LACOE SDC at Dominguez High School (Dominguez), also located in the District. While Student was enrolled in these LACOE programs, LACOE assumed the responsibility for convening Student's IEP's, as well as for providing his LAS services. District remained responsible for providing Student's OT services.

3. In July 2012, District discontinued Student's enrollment in programs administered by LACOE, and undertook the sole responsibility for Student's entire educational program and services for the 2012-2013 school year, when Student was 15

years old and in tenth grade. During the 2012-2013 school year, including through the time of the hearing, Student was enrolled in a moderate-severe SDC at Compton High School (Compton High).

MAY 27, 2010, IEP

4. On May 27, 2010, when Student was 12 years old and in seventh grade in the LACOE SDC at Davis, LACOE convened Student's annual IEP meeting. Mother, Ms. Nelson, Patricia Enenmoh (Student's special education teacher), Jason Cotcher (Student's one-to-one aide), Victor Orona (Student's APE teacher), and a District representative attended the meeting. The SLP and occupational therapist were not present.

5. The IEP did not state Student's current grade, or the school he was attending. The IEP team noted Student's eligibility as autism, and that he continued to qualify for special education.

6. The team noted that Student's strengths were sorting and matching, and he understood the consequences of inappropriate behavior. Mother expressed concern to the IEP team regarding Student using his words to communicate. The IEP notes stated that Mother was provided her procedural safeguards and educational rights documents.

7. Student's teacher presented Student's present levels of performance. In the category of pre-academic/academic/functional skills, Student matched colors with 100 percent accuracy; he could also match shapes and pictures. He was working on alphabet recognition and numbers 1 through 20. He worked with staff and independently, and he could work for at least 20 minutes. He could complete an inset puzzle of 100 pieces. He could color within the line, and trace lines, the alphabet, numbers, and his name. In the area of communication development, Student rarely used verbal language, except to request highly desired objects, such as food and, when

prompted, water. He had to be continuously reminded to use his words. Under the category of gross/fine motor development, the team noted that Student liked APE class, and he could participate for about 5 minutes in a game of catch. He could trace, as described above. Under the category of social emotional/behavioral, the team noted he tended to cry a lot, and he threw tantrums when he did not get his way. He did not scratch staff anymore. Under the vocational category, the team noted that Student knew his way around the campus, and he could walk to the classroom from the cafeteria without assistance. He obtained his own food at the cafeteria and cleaned up after himself. He recognized his name. He could sort according to colors, shapes, and sizes. In the area of self-help, the team noted that Student could feed himself and drink with a cup. He could dress himself with minimal assistance. He could put on his shoes, but he needed help with his belt and tying his shoe laces. Student did not communicate his need to use the restroom. He wore diapers, but he assisted in changing his diaper and dressing. He washed and dried his hands with minimal assistance.

8. The team determined that Student did not require assistive technology, and that Student's behavior did not impede the learning of himself or others. He would participate in the California Alternate Performance Assessment (CAPA), because his disabilities required an alternate core curriculum.

9. The team discussed goals and objectives. A pre-academic/academic math goal involved Student matching groups with equal numbers of objects. A language/communication goal involved Student following two-step requests that were sequential but not necessarily related, without prompting. Another language/communication goal involved Student turning to look at an object when named without prompting. A pre-academic/academic math goal required Student to identify "day" and "night" from a set of pictures without prompting. Another language/communication goal addressed Student's display of appropriate emotions in

an interpersonal situation with adults. A pre-academic/academic math goal involved Student classifying objects by category, such as food, clothing, and animals, when given visual/picture cues. Two APE goals were set. The first involved Student participating and cooperating in an activity related to the daily lesson plan with minimal prompts and cues. The second APE goal involved Student controlling a ball by dribbling it with his feet. All of the goals included baselines, and criteria by which the goal would be met and by which progress on the goals would be measured, such as "5 out of 5 trials, as measured by observation record," and objectives which led to the performance of the annual goal.

10. The team decided that Student's previous speech goal would continue, and that an addendum IEP meeting would be held to discuss a new speech goal. The team noted that the occupational therapist would be contacted, and that OT services would continue. Parent signed consent to assess for APE.

11. The team determined that Student's behavior continued to require a one-to-one aide. The team noted that Student was on a certificate track, and was eligible for transportation.

12. The team considered a range of placements, and decided that the LACOE SDC at Davis was the most appropriate least restrictive environment (LRE) for Student. The team agreed that Student would have a one-to-one aide during the entire school day. The IEP stated that Student would have LAS two times per week, on an individual basis, for 30 minutes each time, and OT was to be determined. The team agreed that Student would have APE six times per month, for 30 minutes each time. The IEP also offered round-trip home to school transportation. All services were to be provided at the school site. The team offered extended school year services (ESY), at a LACOE SDC. The ESY section stated that services would be continued during ESY unless indicated otherwise, and there was no contrary indication in the IEP.

13. The IEP stated that Student would be in the general education environment 20 percent of the time, and would not be in the general education environment for California core content standards-based curriculum, because his disability required an alternate core curriculum. Promotion criteria were described as "age appropriate." .

14. There was no occupational therapist or SLP present at the IEP meeting, and Mother had not waived their attendance at the meeting. There was no evidence that Mother had invited them. Neither LACOE nor the District convened an addendum IEP to discuss Student's speech goals, or to determine the level of OT services. Neither LACOE nor the District conducted an APE assessment of Student until May 18, 2011, as is discussed below. At hearing, Victor Orona, the APE specialist, testified that he proposed the goals in the May 2009-2010, IEP. He based the goals on his knowledge of Student's skills as his APE teacher, and on a previous assessment. Mother signed her consent to the IEP.

2010-2011 SCHOOL YEAR

15. During the 2010-2011 school year, Student attended the moderate-severe multiple disabilities SDC at Davis, pursuant to the May 27, 2010, IEP. His teacher was Ms. Enenmoh. Ms. Enenmoh received her bachelor's degree in Nigeria, and a master's degree in Nigeria in administrative education. She holds a clear special education credential level 2, and she has been employed by LACOE as a special education teacher since approximately September 1998. LACOE provided Student a one-to-one aide throughout the school day, also pursuant to the IEP. Jason Cotcher was Student's one-to-one aide during the 2010-2011 school year and ESY. Mr. Cotcher has been employed by LACOE as a paraeducator since December 2005. From 1999-2004 he was employed as a paraeducator with San Diego Unified School District (SDUSD). He did not obtain a college degree. He served in the military for four years. He has received in-service

training for his position from both SDUSD and LACOE. This training included crisis training. In 2012 he received a certificate to work with children with autism based upon passing certain classes offered by LACOE.

16. Student's class included not only children with autism, but also children with other disabilities. All of the children, including Student, were low-functioning. Student functioned in class at approximately the level of a two-year old.

17. Mr. Cotcher, Student's one- to-one aide, worked with Student on all of his goals. Mr. Cotcher had also been Student's aide during the 2009-2010 school year and ESY. When Student and Mr. Cotcher started working together, at the beginning of the 2009-2010 school year, Student would engage in frequent self-stimulating behaviors, he was reclusive, and he would pinch himself sometimes, when Student was really angry. Student would often push his own hand against his own chin. He had tantrums perhaps two to three times per week. The teacher kept a daily log of his behaviors. By the end of the 2009-2010 school year, the frequency of Student's tantrums had declined to one time a week or less. During the 2010-2011 school year, the frequency of Student's tantrums declined further. They reduced to perhaps once or twice per month, and his behavior problems subsided such that Student's teacher no longer logged his behaviors. Mr. Cotcher did not observe Student displaying aggressive behaviors toward others, except one time when Student unintentionally scratched Mr. Cotcher.

18. Ms. Enenmoh, Student's teacher, also testified at hearing. In her opinion, Student's behaviors were impeding his learning at the time of the May 27, 2010, IEP. Modifications and accommodations were incorporated into the LACOE SDC program. They included flexible seating, class work adapted to his level, and modified assignments. Material was re-taught, and repeated, and was presented in multiple ways. The curriculum was modified to the Student's level. She believed that accommodations

and modifications should have been included in Student's IEP's, and did not know why they were not.

19. Ms. Enenmoh and Mr. Cotcher had few difficulties managing Student's behavior during the 2010-2011 school year. They controlled his behavior by redirection. By the end of the school year, Student's self-stimulating behaviors had diminished. He no longer engaged in head-banging, pinching, or self-abusive behaviors, but he occasionally pounded on his chin with his hand. He did not demonstrate many uncooperative behaviors. Student's focus improved, he spoke more frequently, he could say his alphabet, he would say please and thank you, and he could be prompted to give "high-fives." He would ask if he needed something. His tantrums were reduced to approximately one time every two-to-three months, he cried less, and he scratched his one-to-one aide less. He still needed prompting, but Ms. Enenmoh considered this to be typical of children with autism. Ms. Enenmoh also believed that Student's behaviors impeded his learning during the 2010-2011 school year. His social interactions improved by the end of the 2010-2011 school year, and he was beginning to be part of a group, conform to what the other children were doing and interact with his peers in class. He participated in the morning circle time, with prompts. Ms. Enenmoh believed that Student had made progress in pre-academic skills. He knew his colors. Mr. Orona, Student's APE teacher, observed that Student's focus had improved, and he required fewer prompts and cues. Student could remain focused on APE tasks during the entire class period, and was better able to wait for Mr. Orona's directions.

20. In Ms. Enenmoh's opinion, Student did not make progress in toileting, which she attributed to Student's gastrointestinal problems. In this regard, Student has experienced gastrointestinal difficulties from 2007 through the time of the hearing, which Mother largely attempted to control by diet. Mr. Cotcher considered Student to have made progress in toileting. He and Ms. Enenmoh established a toileting schedule

for Student, and Student eventually progressed from wearing diapers to going to the toilet on his own. He still wore diapers, but he wore them mostly in the event of an accident. At hearing, Mother acknowledged that Student had made progress in Ms. Enenmoh's class.

21. Student also received OT during the 2010-2011 school year. Student also received LAS services during the 2010-2011 school year, but LACOE was unable to locate the speech logs for the period from January 2011 through the end of the year, and there was no specific evidence as to whether Student missed any LAS sessions and, if so, the reasons for any such missed sessions. Ms. Enenmoh did not observe progress in Student's communication skills, but Mr. Cotcher did.

ASSESSMENTS

22. LACOE conducted a psychoeducational assessment and an APE assessment of Student in May 2011, in anticipation of Student's triennial IEP. The consent forms for these assessments were not offered into evidence. LACOE performed no triennial LAS assessment, and District performed no triennial OT assessment. There was no evidence that Mother had refused consent to these assessments, or of any circumstances under which Mother had waived the right to have Student assessed in these areas.

PSYCHOEDUCATIONAL ASSESSMENT

23. Student's psychoeducational assessment was performed by LACOE school psychologist Eduardo Bonilla, Jr., who wrote a report of the assessment dated May 25, 2011. The other members of the assessment team were Ms. Enenmoh and the school nurse. Mr. Bonilla has been employed as a school psychologist by Inglewood Unified School District since November 2011. Prior to that time, including during spring 2011 when he assessed Student, Mr. Bonilla was employed by LACOE as a school

psychologist. Mr. Bonilla received his Bachelor of Arts in sociology and psychology in 1995 from California State University, Long Beach (Cal. State, Long Beach.) He received his M.Ed. in special education in 1999, also from Cal. State, Long Beach. He received his pupil personnel services credential in 2001. While employed by LACOE, he conducted approximately 50 psychoeducational assessments per year.

24. Mr. Bonilla's report contained identifying information pertaining to Student. The report named Mother as the Parent/Guardian, but did not note that Student was living with Ms. Nelson. The report stated that the purpose of the assessment was to determine evidence of continued disability, to determine Student's present levels of functioning as they related to educational needs, to determine whether Student continued to require special educational services, and to make recommendations for additions and/or modifications to Student's present program. The report noted that assessment information came from a variety of sources, including record review, interviews, observations, and formal and informal testing. The report noted that the test instruments were selected with consideration of the student's racial, cultural, and language background, including the norming population of standardized tests, and were validated for the specific purposes for which they were used. The report commented that the assessment findings were considered to be a valid, fair, and accurate representation of Student's present abilities. The report also noted that environmental, cultural, language, and economic factors or lack of access to educational opportunity were not considered to be the cause of Student's present learning delays.

25. The report briefly described a classroom observation of Student that occurred on May 18, 2011. Student was working quietly on classroom tasks. He engaged in only minimal interaction with others. During testing, Student exhibited finger play, which the report noted was usual for children with autism. Student did not speak and

communicate with the examiner. Student did not respond to directions, but played with objects placed in front of him.

26. Under the heading of "Learning Ability," Mr. Bonilla reported that a record review had shown that Student's prior evaluation reflected a pattern of performance in the learning ability area at the well below average range. The report mentioned that Mr. Bonilla had administered the Developmental Assessment of Young Children (DAYC) to Student, and he had attained an age-equivalency score of 26 months. The report noted that Student's classroom teacher had completed the Gilliam Autism Rating Scale-Second Edition (GARS-2). Student was rated as having an autism index of 96, which the report correlated to a very likely probability of autism.

27. In the area of language and communication the report concluded that Student's language comprehension was at an age equivalency of 4 years, 2 months. Student's language expression was at an age equivalency of 1 year, 9 months. The report explained that age equivalencies were an estimate of Student's abilities compared to his peers. At hearing, Mr. Bonilla clarified that the age equivalencies estimated Student's abilities compared to his typical peers.

28. In the area of social-emotional/behavioral functioning, Mr. Bonilla noted that he gathered information from Student's classroom teacher, one-to-one aide, review of records, observations, and testing. He determined that Student exhibited moderate to severe behavior problems. He was hurtful to himself (head banging); had repetitive habits (twirling fingers); socially offensive habits (placing his hand in diaper), and uncooperative behavior (refusing to obey). Student's behaviors had improved from the past, but he still required a one-to-one aide to assist with his behavior problems. The report suggested that attempts be made to help Student become more independent so that he did not rely too heavily on his aide.

29. Mr. Bonilla administered the Scales of Independent Behavior-Revised (SIB-R) to Student's classroom teacher, to obtain information in the area of Adaptive Behavior. The information provided in the SIB-R was cross-validated with records and classroom observations. Mr. Bonilla concluded that in general, Student functioned at a low level, at times requiring significant support for community, academic, and judgment situations. Student required supervision for basic self-care. Mr. Bonilla reported Student's scores on the SIB-R predominantly in terms of age equivalents. In the Broad Independent cluster, Student obtained an age equivalent score of 2 years, 5 months. In the Motor Skills cluster, Student's overall score was 4 years, two months, with a score of 3 years, 10 months in fine motor skills, and a score of 5 years, 5 months in gross motor skills. Student's overall score in the Social/Communications cluster was 2 years, 3 months, with scores ranging from 1 year, 9 months in the area of Expressive Language, to 4 years, 2 months in the areas of Language Comprehension. Student obtained an overall age equivalent score of 2 years in the Personal Living cluster, with scores ranging from less than 0-9 months in Self-Care, to 7 years, 10 months in the area of Eating. Student's overall age equivalent score in the Community Living cluster was 1 year, 8 months, with subscale scores ranging from less than 1 year in Work Skills, to 3 years, 2 months in Time and Punctuality.

30. In the area of Academic Achievement, Mr. Bonilla summarized Student's classroom teacher's report that Student could count up to 10, trace, sort, complete puzzles, and do matching. The report referred to the teacher's report for further details, but no such report was attached to the psychoeducational assessment report that was offered into evidence.

31. The report included a summary of the school nurse's report that Student had a diagnosis of autism and was in good health. Mr. Bonilla's report referred to the

school nurse's report for details, but no such report was attached to the psychoeducational assessment report that was offered into evidence.

32. In summary, Mr. Bonilla reported that Student continued to meet criteria for special education services under the category of autism, which manifested itself with autistic-like behaviors. Mr. Bonilla listed the behaviors as including: inability to use oral language for appropriate communication; a history of extreme withdrawal or of relating to people inappropriately; continued impairment in social interaction through early childhood; an obsession to maintain sameness; extreme preoccupation with objects, inappropriate use of objects; extreme resistance to controls; peculiar motoric mannerism in motility patterns; and self-stimulating, ritualistic behavior. Mr. Bonilla summarized that, when presented with age-level tasks, Student's motor skills were below average. His Broad Independence, an overall measure of adaptive behavior, was comparable to that of the average individual at age 2 years 5 months. His functional independence was commensurate with his ability level. When presented with age-level tasks, Student's motor skills were approximately at the 4 years, 2 months level. His social interaction and communication skills, personal living skills, and community living skills were approximately at a 2 year level.

33. Mr. Bonilla reported that Student's nonverbal cognitive ability was in the low average range. His social interaction and communication skills were in the 2 to 4 year old range. His academic skills were pre-academic. Mr. Bonilla also reported that Student's ability to care for his needs and his gross motor ability were weaknesses.

34. Mr. Bonilla's report suggested that Student's current placement was the LRE for Student. The report recommended that Student continue with related services pursuant to the recommendations of the service providers, and that Student's parent and teachers continue to focus on Student's ability to communicate his thoughts and feelings with others.

35. Mr. Bonilla testified at hearing. He had almost no recollection of Student or of his assessment of Student. He did not recall attending the triennial IEP meeting in May 2011, at which his assessment report was reviewed. Mr. Bonilla did not recall how long he observed Student, or the prior evaluations he reviewed in performing his assessment.

36. Mr. Bonilla did not recall interviewing Mother or Ms. Nelson (Student's caregiver) as part of his assessment. The report did not mention that he contacted either of them as part of the assessment. He conceded that his report did not indicate the frequency or duration of Student's behaviors described in the report. He agreed that the report did not contain information regarding Student's educational history, or describe the tasks Student could or could not perform under the various subcategories of the SIB-R. Based on his review of the assessment report, he considered Student to be low-functioning, with global areas of need.

37. Mr. Bonilla acknowledged that typically, a triennial assessment would include assessments in the areas of the related services the child was receiving.

APE Assessment

38. On May 18, 2011, Mr. Orona, Student's APE teacher during the 2009-2010 and 2010-2011 school years, as well as during the 2012-2013 school year, conducted an APE assessment of Student and wrote a report of his findings. As an APE specialist, his job was to supervise physical activities for children with special needs, using adapted equipment. Mr. Orona has been employed by LACOE since fall 2001. Mr. Orona received his B.A. in physical education from California State University, Los Angeles, and he received his APE specialist credential from California State University, San Bernardino.

39. Mr. Orona's report stated that Student was able to complete most items of the Motor Assessment, with assistance, prompts, and cues. He was cooperative, understood basic instructions, and followed directions "up to a point." The report noted

that Student was fully ambulatory, and was capable of performing physical tasks, such as put a ball through a hoop, volley a ball over a net, and jump a rope while others turned the rope, but Student showed little interest in fully complying with directions. Student would join the group when instructed, but would not follow specific directions, such as throw, catch, and dribble. He would drop a ball given to him instead of dribbling it, or knock a ball away instead of catching it.

40. The report noted that the nurse's report showed Student had good attendance during the school year. He appeared fit, and liked to walk around the school track.

41. Mr. Orona administered the Adapted Physical Education Assessment Scale (APEAS II) to Student. The report described the APEAS II as a standards-based test that measures motor skills of secondary students ages 11 to 17, in the areas of Perceptual Motor Function, Object Control, Locomotor Skills, and Physical Fitness. The report included a print-out of Student's scores on all areas of the APEAS II, including standard scores, standard deviation, and percentile rank. Student's standard scores (in those activities upon which a score was obtained) ranged from 45 in the Standing Long Jump to 1 in catching quality. All standard scores below 55 corresponded to a percentile rank of less than 1.

42. Based on Student's scores on the APEAS II, the report stated that Student was at, or below, age levels in the majority of items. The report noted that Student had a weakness in Object Control (eye-hand/eye-foot coordination and accuracy-proficiency), primarily due to Student's lack of interest in sports and games rules and tasks.

43. The report commented that Student had made good progress improving his fitness level. He was at age level in aerobic capacity, and was able to complete a one and one half mile walk-jog in under the 13 minute age level requirement. The report noted that since Student would not use some equipment for its intended purpose (he

would drop a ball instead of throwing it), he had not developed certain techniques and strategies. For example, Student did not envision or understand the technique of tossing a football or Frisbee ahead of a moving person.

44. The report concluded that Student was at age level in some areas such as endurance fitness, and had good gross motor capability such as running, jumping, and leaping. Student did not perform tasks such as jumping a self-turned rope, because he did not show interest in doing so. Student was capable of throwing and kicking at a specific direction or distance, and of controlling a bouncing or rolling ball, but Student did not complete these tasks. Mr. Orona's report recommended that Student continued in APE, so that Student could pursue and understand the purpose and benefit of sports and games.

MAY 25, 2011, IEP

45. On March 25, 2011, when Student was 13 years old and in the eighth grade, LACOE convened Student's triennial IEP. The IEP team consisted of Mother, Ms. Nelson (Student's caregiver), Mr. Orona, the school nurse, Mr. Bonilla (the school psychologist), and a District administrator. The signature page did not contain the signature of a special education teacher, but the IEP notes state that Student's special education teacher was present. No SLP or occupational therapist was present. Student's one-to-one aide was not present. Mother had not waived the presence of these individuals. There was no evidence that Mother had invited the SLP, OT, or one-to-one aide to the meeting.

46. The team noted Student remained eligible for special education as a student with autism, and that he was attending a LACOE program at Davis. The IEP notes stated that Mother accepted the parental rights and procedural safeguards document. The team agreed to continue to provide Student with a one-to-one aide, because Student was not toilet trained, and could not follow directions without frequent

verbal and physical prompts. The team noted Student required a small class size. The team stated that Student did not require assistive technology devices or services. The team noted that Student's behavior did not impede his learning or the learning of others. The IEP stated that Student would take the CAPA. The team also checked the box on the IEP indicating that Student was on a diploma track, but that was a typographical error, since he was not on a diploma track.

47. The team considered Student's present levels of performance. The team noted that Student enjoyed doing puzzles, sorting, and matching, and understood the consequences of inappropriate behavior. Mother expressed concerns about Student's toilet training.

48. The team listed Student's preacademic and functional skills as matching pictures to the correct weather and day and night, with some help, and saying the words. He could match colors and shapes with 100 percent accuracy. He was working on alphabet recognition and numbers 1 through 20. He worked with staff as well as independently. He could work for at least 20 minute intervals. He could complete an inset puzzle of 100 pieces. Student was able to color within the line, and could trace lines, alphabet and numbers. The IEP team's comments on Student's present levels of performance in the areas of communication development, gross/fine motor development, vocational, and self-help, echoed those of the previous IEP. Under the area of social emotional/behavioral, the team noted that Student's relationship with peers and staff was better. He could play with other students. His crying had decreased. He would have a tantrum when staff prevented him from picking up food items off the floor to eat. Under the area of self-help, the team noted that Student could feed himself and drink with a cup. He could dress himself with minimal assistance, and he was able to put on his shoes. However, he needed help with his belt and with tying his shoe laces. Student did not communicate the need to use the restroom, and he wore diapers, but

he did assist in changing his diaper and dressing. He washed and dried his hands with minimal assistance. Student understood that he was lactose intolerant, and he would refuse milk. With respect to health, the team referred to the nurse's report. None of the present levels of performance referred to the triennial psychoeducational assessment.

49. The nurse's report noted that Student received no medications during school hours. Student was ambulatory but not toilet trained. He had a regular diet, and could feed himself. He had a good appetite. He was non-verbal, but understood simple commands. The nurse's report also noted that Student consistently attended school. The report also stated that Student would benefit from bladder training and from more involvement with his own hygiene.

50. The team discussed goals and objectives for Student, and all of the pre-academic/academic, functional academic, and social emotional goals were more advanced than Student's previous goals. The team set a pre-academic/academic math goal which required Student to sort items by two common attributes, given a written prompt, with 80 percent accuracy each time as measured by observation record. The team stated that the baseline for this goal was that Student could sort according to color. The team set another pre-academic/academic math goal which required Student to match quantity to numerals, given a verbal prompt, with 80 percent accuracy each time, as measured by observation record. The baseline for this goal was that Student could count from one to 10. In the area of functional academics, the team set a goal by which Student would identify a picture by function when given a verbal prompt, with 80 percent accuracy each time as measured by observation record. The baseline for this goal was that Student was able to repeat after the teacher most times, without looking at the object. In science, Student's goal was to identify pictures of animals, given a verbal prompt, with 80 percent accuracy each time as measured by observation record. The team stated no baseline for this goal. The social/emotional goal required Student to

engage in interactive play, given a verbal prompt, with 80 percent accuracy each time, as measured by observation record. The baseline for this goal was Student's ability to play a game for approximately 3 minutes. The team also formulated a goal by which, given a verbal prompt, Student would not be reminded more than once a day not to pick-up food off of the floor, as measured by observation. The team stated no baseline for this goal. Each goal had three objectives which led up to the annual goal.

51. The team also adopted APE goals, which were the same as the APE goals it had adopted at the IEP meeting of May 27, 2010. At hearing, Mr. Orona explained that Student had not made progress on his APE goals, so they were repeated from the prior year.

52. The IEP notes state that the services of the one-to-one aide were reviewed, and that the services should be continued. The team noted that Student's "medication regime" included Risperdal. The team noted that Student was not toilet trained, could not follow directions without frequent verbal and physical prompts, and he required a small class size. The team discussed Student's toilet training skills. The IEP notes reported the school psychologist's comment at the meeting that Student understood more than he could express. The caregiver noted serious self-abusive behaviors such as head banging and pinching himself. Antecedents of the behavior included giving Student a task that interfered with a preferred activity. Student also engaged in tantrums.

53. Student's teacher reported that Student met his previous goals except the goal of controlling his emotions. The teacher noted that Student rarely used verbal language unless prompted to do so or to request preferred activities. Music and dancing were noted as preferred activities. The APE teacher presented his report, and a proposed goal. The team decided to continue APE services.

54. The notes reflect that the team discussed Student's transition to high school. The team considered a range of placements and determined that Student would move to a LACOE high school SDC for the 2011-2012 school year, as that would be the LRE. The team determined that Student continued to be eligible for special education services based upon the results of the current multi-disciplinary assessment report as a student with autism. The IEP notes state that accommodations and modifications were reviewed and accepted by the team. The team reviewed Student's services and determined that they were appropriate. The notes reflected that Student's LAS and OT providers were not present at the meeting, and that an addendum IEP meeting would be scheduled to document goals, progress, and services. Until then, these services would continue at their present level. The team recommended that Student participate in ESY.

55. The service grid stated that Student would attend the SDC for 300 minutes per day. It did not indicate what percentage of time Student would spend in the general education environment. The service grid also provided that Student would receive APE six times per month for 30 minutes each time at the school site; group LAS two times per week for 30 minutes each time at the school site; and school-based OT services at a level to be determined. The IEP included APE as an ESY service at 240 minutes for the month. The IEP document did not include an offer of any LAS or OT during ESY. However, the service logs reflected that Student received LAS services three times during ESY 2011, for 30 to 44 minutes each time.

56. Mother consented to the IEP. Mother had not waived the presence at the meeting of the SLP and the OT.

57. The IEP did not specifically refer to the triennial psychoeducational assessment in setting forth Student's present levels of performance and goals. Mother

did not recall receiving a copy of the assessment report at the meeting. The IEP also did not offer a specific school or classroom high school placement for Student.

58. Ms. Enenmoh or a paraeducator completed a LACOE form regarding Student entitled End of the Year summary towards the end of the 2010-2011 school year. The form was completed to provide Student's teacher for the 2011-2012 school year information regarding Student. The form consisted mostly of a checklist, and provided information in a variety of categories, including Health, Mainstreaming, Behavior Information, and academic, speech/language, motor, and independent living skills.

59. With respect to behaviors, the form stated that Student interacted appropriately with reminders during group lessons, had difficulty staying focused in one-to-one lessons, had difficulty staying on task with independent work, and was a silent observer with respect to peers. Successful behavior techniques were listed as: time-out; notify parent/guardian; loss of privileges; verbal praise; edible reward; and extra privileges. The form noted that Student was a non-reader with a focus on basic letter recognition; that he wrote on a pre-kindergarten level; that his math was non-academic, with a focus on number recognition; that he had LAS services and APE services; his independent living skills were not age appropriate, and he had no age appropriate awareness in the area of family life/health education.

STUDENT'S SCHOOL PERFORMANCE DURING THE 2011-2012 SCHOOL YEAR

60. During the 2011-2012 school year, Student attended the LACOE SDC at Dominguez. The SDC was a designated autism classroom, and autism was the primary eligibility category for many of the children in the class, but the class included some children with multi disabilities. There were 11 children and five adults in the class, which was taught by Edward Shaiman. Mr. Shaiman has been employed by LACOE as a special education teacher since September 1976. He holds a bachelor's degree in physics, with a

minor in math, and he has an M.Ed. in special education. He holds a variety of teaching credentials, including a life severely handicapped credential, a general education high school credential to teach physics and math, and a Specially Designed Academic Instruction for English Learners credential.

61. During the school year, Student's behaviors including hitting his chin with the heel of his hand when he was upset, when his routine was disturbed, if one tried to take objects away from him, or sometimes if his diaper was wet. He improved on this behavior over the school year. Sometimes he placed his hand in his diaper when his diaper needed changing. He would put his hand in the toilet, and thus could not be left alone in the bathroom. By the end of the year, Student would walk to the restroom on his own and get on the toilet. He had infrequent tantrums. He pinched himself sometimes. At least once per day he refused to obey directions. Mr. Shaiman believed that he and the paraeducators were able to control Student's behaviors in class, because they knew his triggers, knew how to avoid them, and knew how to respond to Student's behaviors. Mr. Shaiman learned about Student's positive reinforcers by talking to Mother and Ms. Nelson.

62. Mr. Shaiman, Student's classroom teacher during the 2011-2012 school year, testified as to his observations. Most of Student's progress during the year was in communication, behavior, and toileting. Student would name foods that he wanted. He used communication cards, and did not usually speak spontaneously. Student used an iPad during his free time, to play games and use applications. Student could perform some activities on the iPad almost independently. As the school year transpired, Student became more flexible, more cooperative, and less ritualistic. Mr. Shaiman believed that Student was learning in his class. Student's standards-based report card during the 2011-2012 school year contained mostly "1"s, indicating that the concept was

presented. Student consistently scored "2"s (partial progress) in APE. Student received no scores greater than "2."

63. Lashun Washington is an assistant principal who has been employed by LACOE for over 15 years. She has a B.A. in law and society, and a B.A. in sociology. She also has an M.Ed. and an M.A. in psychology. She earned all of her degrees at the University of California, Santa Barbara. She holds a multiple subject teaching credential and a math credential for high school, as well as a pupil personnel services credential, which she received from California State University, Dominguez Hills.

64. From March 2011 through June 2012, Ms. Washington was the assistant principal for the administrative unit which included the LACOE program in which Student was enrolled. She first met Student when she was a school psychologist for LACOE in September 2008. She has observed Student during the time that Student was in Ms. Enenmoh's class and in Mr. Shaiman's class. She believed that Student's teachers and one-to-one aide were appropriately dealing with Student's tantrums and self-stimulating behaviors. She felt that Student made much progress in Mr. Shaiman's class as he had fewer tantrums and less head-banging. He spoke more often. He was becoming more social. He interacted minimally with his peers, but more than before, and he also interacted with adults in a simple fashion. He was able to access the curriculum, despite his self-stimulating behaviors. Those behaviors became a positive reinforcer, as he was allowed to engage in self-stimulating behaviors as a reward when he did well. She believed that Student's functional curriculum was appropriate, because he would benefit from learning those skills. She considered Student to be at approximately a three year old cognitive and behavior level while he was in Mr. Shaiman's class, based upon her observations of him, his assessment information, her attendance at his IEP's, and her interactions with Student's teacher and one-to-one aide.

She believed he made the progress one would expect from a student with Student's cognitive level.

65. Cynthia Michelle Dong was Student's SLP during the entire 2011-2012 school year. She has been employed as an SLP with LACOE since 2003. She has a bachelor's degree and a master's degree in communicative disorders from Cal. State, Long Beach. She holds a California clear teaching credential, an SLP license, and a rehabilitative speech/language credential, which qualifies her to be an SLP in the school setting. She has her certificate in clinical competence from the American Speech – Language Hearing Association. She provided services to Student on an individual basis consistently, twice per week, for 30 minutes each time, in conformity with Student's IEP. Ms. Dong recorded on a service log each date she met with Student. She worked on his speech goal, which stated that, when given pictures of objects in a field of three, he would identify the elicited item using pictures of objects or categories. The goal was not contained in Student's IEP, and she did not know who had drafted it. She considered it an appropriate goal, as it addressed an important foundational skill that Student was not able to perform when she first began to render services to him.

66. When Ms. Dong first started working with Student, he was not very verbal. He had difficulty initiating communication. He had difficulty maintaining his focus during his LAS sessions. He would not focus on the pictures of objects on the communication cards Ms. Dong used. He would not listen. At the beginning of the school year, she was asking him to identify the correct picture out of a field of three pictures. By the end of the school year, he could look at a field of nine pictures and point to the one she asked him. She used a Go-Talk communication device for this task. The Go-Talk contains pictures or icons and when the picture or icon was touched, a recorded voice identifies the picture or icon. She also created a communication book for

Student. She made one of these for his classroom, one for him to take home, and one for herself.

67. He made progress on vocabulary. He could consistently identify objects. He did not make much progress in initiating communication. Sometimes he would say one word, but not consistently. He was at a very early language developmental stage.

68. He had receptive language delays. He could follow very short, routine directions, and he could understand comments made in simple language. Mother testified to her observation of Student's communication abilities at home. At home, Student would speak to make requests, usually one to two word utterances. He could utter crude sentences, and could follow directions.

69. At school, Student did not interact much with other students. Ms. Dong would put him in a group setting to promote more interaction. She did not believe that he should be placed in a structured social skills program, because he had no conversational ability, and could not interact on a give-and-take basis. She believed that a teacher or aide could work with Student on social skills by modeling behavior.

70. His behaviors were inconsistent. Sometimes he was very well-behaved, but if there was a change in routine, he sometimes has a difficult time adjusting. He engaged in self-stimulating behaviors. By the end of the year, she could redirect him so that he would focus. Still, he would not be able to maintain his focus for the entire 30-minute session. Therefore, she felt that the 30 minute LAS sessions twice per week were appropriate, and sufficient for him to make progress. She also recommended that he receive speech during ESY, two times per week, for 30 minutes each session.

71. In her opinion, formal standardized testing of Student would be difficult, but she was able to evaluate his communication abilities by working with him and could draft appropriate goals for him. She acknowledged that formal testing should be done

and a formal report should be prepared for a triennial IEP. She noted that she had not been his SLP during the 2010-2011 school year in which his triennial was due.

MAY 29, 2012, IEP

72. On May 29, 2012, when Student was 14 years old and in the ninth grade, LACOE convened Student's IEP meeting. The IEP notes stated that the purpose of the meeting was to conduct an annual and transition IEP. The attendance sheet reflected that the IEP team included Mother, a District representative, Mr. Shaiman (Student's special education teacher), Ms. Dong (Student's SLP), Mr. Orona (LACOE's APE specialist), and a representative of the Regional Center. The IEP notes also reflect that Student's caregiver attended the meeting. No occupational therapist attended the meeting, and Student's one-to-one aide did not attend the meeting. Mother did not waive the attendance of these individuals at the meeting, but she did not invite them to the meeting either.

73. The team noted Student's background information, including his eligibility for special education as a child with autism. The team offered Mother her parental rights and procedural safeguards. The team erroneously recorded that Student attended Caldwell Street Elementary school. The team determined that due to Student's disability and cognitive and developmental delays, his needs would be best served in a small group setting. The team noted that Student did not require assistive technology devices or services, and that his behavior did not impede his learning or that of others. The team reiterated that Student would participate in CAPA testing.

74. The team considered Student's present levels of performance. The team noted that Student was able to do puzzles, and he was very good at sorting. He could learn to identify pictures by pointing and sometimes by verbalizing. He liked to draw and make letter shapes. He could do some matching and puzzle programs on a computer using a mouse. The team noted Mother's comment that she would like

Student to use more verbal language. Mother also felt Student could do better with toileting away from home.

75. In the pre-academic/area, Student could sort by shape and color, put together jigsaw puzzles, write his name, count to 10 by rote, point to written numbers one through three, identify pictures of items in class and food items, and use a computer mouse to engage with programs requiring all of these skills. In the area of cognitive functioning, the team noted that Student's autism masked his intellectual capability. He had splinter skills, such as his use of the mouse and computer, which were above his apparent functioning ability.

76. In the area of communication development, Student was beginning to use picture exchange communication (PECS)-style cards to request things in class. He would repeat words, and would sometimes independently say the names of items or describe actions, in response to "What do you want?" or "What do you want to do." In the area of gross/fine motor development, Student could catch a ball and throw underhanded with two hands. He could walk around the track during APE. He could use a mouse. He wrote using a pencil or crayon, but he did not use a triangle grasp. In the social emotional/behavioral area, the team commented that, in general, Student was happy and followed directions. He became upset when he could not express how he felt or what he wanted.

77. With respect to health, the team noted Student's caretaker's information that Student often had bowel problems that required laxatives. The team commented that Student's bowel problems could have an adverse effect at school, including negative behavior because Student could not express his problems. In the vocational area, the team noted that Student could clean tables in the cafeteria, with prompting. He threw trash in the garbage independently. At Mother's house he loaded the washing machine and dryer, and folded clothes. In the area of self-help, the team recorded that

Student would walk to the restroom when asked, and could complete most of the process independently. He could feed and dress himself. Mother stated that he independently went to the restroom at home, though he was not always dry. On occasion, Student would independently go to the restroom at school.

78. The team noted that Student's areas of need to be addressed by goals and objectives to receive educational benefit were: math applications, pre-vocational skills, self-help skills, and speech and language. The IEP included a page discussing Student's progress on his previous goals. Student had met his goal of sorting items by two common attributes. He had not met his goal of matching quantity to numerals. He had met his goal of identifying pictures by function, in that he could identify food, animals, and clothing. Student had met his goal to identify pictures of animals. Student did not meet his goal to engage in interactive play. He did not initiate activity with other students. He would throw a ball to another student if shown to whom to throw it. He would catch a ball, if prompted. He needed prompting to remain engaged in such an activity. He would take an adult's hands and place it on his head to encourage adults to pat him on this head, and he would allow other children to pat him on his head. He would allow other children to walk with him and guide him to the lunch or breakfast line. In class, he would give an item to a child if directed to that child. Student met his goal of not picking up food from the floor. He would pick up other objects to twirl in front of his face, and he would throw them in the garbage when asked. He would relinquish them even if he did not want to if he was told he could have them back after he performed a task.

79. The team agreed upon a transition plan. The evidence at hearing demonstrated that Mr. Shaiman, Student's special education teacher, formulated the transition plan. Mr. Shaiman stated that he based the plan upon discussions with Mother regarding Student's future, his current abilities, and her desires for his future. At

hearing, Mother denied that she was asked about Student's future except at IEP meetings. Mr. Shaiman considered Student's personal goals, and Student's current abilities in formulating the plan. Mr. Shaiman also based the proposed transition plan upon his own experiences with Student, and upon conversations with Student's one-to-one aide and other paraeducators in Student's SDC. Mr. Shaiman also incorporated information he had obtained from Student's caregiver, Ms. Nelson. The plan stated Mother and Student participated in the formation of the plan, and the plan was also based upon observation of Student. The plan listed Student's post-school preferences, interests, and goals. The plan stated that Student wanted to learn to communicate his needs, and to use his talents to get a job that he liked. He wanted to be able to do what he wanted in his free time, and to eat his favorite foods. His goals were to be happy and to communicate with others.

80. The transition plan noted that Student would complete school with a non-diploma certificate. The plan included three goals relating to Student's life upon exiting the school system. The first goal involved education/training, by which Student would learn to communicate needs, identify pictures, and count objects. The second goal involved employment, and involved Student learning to recognize his name and sort and bag items. The third goal involved independent living, by which Student would learn to recognize his name, give vital information, choose his own food, communicate his needs, identify foods, and use the restroom independently. The plan called for Student to take a vocational course with respect to the employment goal, and to have functional skills training with respect to the other goals.

81. The IEP team developed 13 annual goals for Student. The first and second goals were in the areas of vocational skills and self-care, and involved Student choosing among communication cards to point to his name and his vital information, such as his address and phone number. The third goal involved the areas of

language/communication and self-help. Student was to preview all of his food offerings for breakfast, and then return to his seat and choose his food by selecting the appropriate food card, while saying the name of the item, and placing the card in his card carrier. He would then take the card carrier with him to the cafeteria line, hand his food cards to the server, take his tray, and say "thank you." The fourth goal was the same as the third goal, but referred to lunch foods instead of breakfast foods. The fifth goal was in the area of language/communication, and involved Student placing his traveling communication book in his backpack, upon request, and taking it out, upon request. The sixth goal was a language/communication goal. It involved Student, when an adult asked what he wanted to do with his free time, independently selecting the communication card picturing the activity he chose, while saying "I want [name of activity]", with verbal prompting, and independently giving the communication card to the adult. The seventh goal was a language/communication/pre-academic goal. It involved Student identifying the 25 communication cards that represented words of breakfast foods, by picking up the card and handing it to an adult when the adult asked for the food item. The eighth goal involved the same activity using words of lunch foods. The ninth goal addressed vocational skills. It involved 25 items composed of five each of five different items. Student was to sort the 25 items, using a sorting jig that sorted the 25 items into five sets of five different items, and place each set in a bag. The tenth goal addressed self-care, and involved Student's use of the toilet. Goal 11 involved functional academics, and involved Student correctly counting up to five items placed in front of him and, when asked, pointing to one of three number cards in front of him that corresponded to the number of items. Goal 12 was an APE goal that addressed motor skills development. The goal involved Student following an exercise routine for 20 minutes and participating in all APE class activities, as measured by observation. Goal 13 addressed language/communication, and involved Student handing pictures from his

picture communication booklet to request a desired object or activity, as measured by observation.

82. Each annual goal was accompanied by three benchmarks. All but the toileting goal set forth a standard for success, such as "90 percent accuracy for 10 trials." Only Goal 12 and Goal 13 stated how they would be measured. Many of the goals that were not school-bound were to be worked on at home and in the community as well as at school. The IEP also included an activity matrix by which Student would use his communication cards or language throughout the day, such as for choosing free time activities, choosing foods at meals, requesting to go to the bathroom, and entering and leaving the bus.

83. The IEP notes reflected that Ms. Dong, Student's SLP, reported that Student's previous goal was met and that the newly drafted goal would focus on using a communication book which included pictures for Student to use when requesting items. Ms. Dong had drafted the goal. Parent indicated that Student talked when he felt safe. The SLP reported research that showed that the use of a picture communication system encouraged speech. The IEP notes stated that Parent accepted the new goals.

84. The notes reflected that the team discussed OT services. Parent and teacher both reported that Student had not received OT services for the past academic year. The District representative stated he would contact the occupational therapist and investigate the matter.

85. The team discussed Student's one-to-one aide. The team determined that the service was required for Student's educational benefit and would continue. The team discussed placement, and the District offered placement in the District for fall 2012 instead of the LACOE program. The notes reflect that Parent expressed unhappiness and concerns with this placement decision. To minimize transition concerns, the team

recommended that Student attend the same school, Dominguez, with the same services. The team requested that the two special education teams collaborate.

86. The team reviewed placement and services. The team considered a range of placement options, and determined that an SDC placement was the LRE for Student. The team offered a LACOE class until June 11, 2012, five times per week for a total of 1500 weekly minutes, with LAS services on a group/individual basis twice per week, for 30 minutes each time, APE six times per month for 180 minutes per month, and "Intensive Individual Services" which consisted of a one-to-one aide, five times per week for a total of 1500 minutes weekly. The team offered ESY through July 19, 2012, along with APE for 180 minutes and LAS services on a group/individual basis four times per week. District offered the same amount and frequency of services as above, and an SDC placement in the District, and transportation, for the 2012-2013 school year. The District also offered OT services, but the frequency and duration were not specified. The team determined that an addendum IEP would be scheduled as soon as possible to address the OT, and a 30-day IEP would be scheduled after Student commenced his new District placement. Except for the team's recommendation that Student attend Dominguez and the team's determination that Student be placed in an SDC, the IEP did not specify a school, classroom, or program Student would be attending during the 2012-2013 school year.

87. The team noted that Student did not require assistive technology, and that Student's behavior did not impede his learning or that of others. The IEP team did not discuss a behavior assessment or a behavior support plan.

88. The IEP notes state that Parent accepted the offer, but the documentation did not reflect that Mother signed her consent to the IEP. At the meeting, Mother expressed concerns about the school and program that Student would attend during the 2012-2013 school year. Mother requested that Student remain in the LACOE

program, and, when told that this was not possible, Mother requested that he be placed at Dominguez. Mother also wanted to observe proposed classrooms, and talk to proposed teachers, before consenting to his attendance in a District classroom. She was told that Student would be taught by a teacher who was trained to work with students with autism.

89. Student received two OT sessions in his classroom after this IEP. No OT services were included in the IEP for ESY, but the service log reflected that District provided Student 75 minutes of OT services on July 5, 2012, and 40 minutes on July 12, 2012. The log stated that the service frequency was two sessions per week, at 30 minutes each session. However, District never convened an addendum IEP meeting to determine the level of OT services District would provide Student. LACOE's LAS service log for ESY 2012 reflected that Student did not receive LAS services because Student did not attend ESY 2012.

90. Testimony at hearing established that, at the time of this IEP, Student was no longer wearing diapers but was wearing Depends. Towards the end of the school year, he was staying dry almost every day. Mother acknowledged that Student progressed in Mr. Shaiman's class. His behaviors improved and she thought Student spoke more and that his language was a little more advanced.

91. Mr. Shaiman or a paraeducator completed an End of Year Summary checklist at the end of the school year, for the assistance of Student's new teacher. The End of Year Summary primarily referred the reader to Student's IEP. With respect to behavior, the summary stated that Student had difficulty staying focused in one to one lessons, had difficulty staying on task in independent work, had difficulty with others but chose appropriate tasks in unstructured time and was a silent observer but did not socialize verbally with peers. The summary stated that group lessons were not recommended at this time.

STUDENT'S ENROLLMENT AT COMPTON HIGH

92. In July 2012, District terminated its involvement in the LACOE program which Student had attended, as the May 29, 2012, IEP had contemplated. Mother was surprised to learn that she had to re-register Student in the District for the 2012-2013 school year as a new pupil, as he had been a Student in the District all along, even while attending the LACOE program. When she approached the District to engage in the enrollment process, she learned that the District did not have any records for Student. The school year started on August 27, 2013, but Student was not placed in any class by then and was not enrolled. Ultimately, by letter dated September 4, 2012, the District confirmed to Mother that Student would be placed in an SDC at Dominguez. Ms. Haynes was the teacher of the SDC. Student attended the class for a few days, but Ms. Haynes advised Mother and District Student was too low functioning for her class and it was not an appropriate placement for him. Ms. Haines suggested that an IEP meeting be held immediately to determine Student's placement. The District offered to send someone to Ms. Nelson's group home, where Student resided, to educate Student until a school placement could be determined, but Ms. Nelson decided that her home was not suitable for that situation.

SEPTEMBER 11, 2012, IEP

93. On September 11, 2012, District convened an IEP meeting, which the IEP referred to as a "30-day" IEP meeting. The IEP team included Mother, a District representative, two program specialists, a special education teacher, and the occupational therapist. Most of the contents of the IEP were the same as in the May 25, 2011, IEP, but the team included three transition activities and goals as part of another transition plan. One transition activity involved Student's ability to identify his personal information. The goal to support this activity required Student to trace his name. The

second transition activity was to match coins and bills, and the goal to support this activity required Student to match three coins. A third transition activity was to develop food selection skills, and the goal required Student to order breakfast and lunch at school using PECS.

94. The IEP notes reflected Mother's concerns as to where Student would attend school and how to obtain the services of a one-to-one aide. Mother expressed that Dominguez was not an appropriate placement and the District scheduled an appointment for Mother to visit Compton High the following Thursday at 9:00 a.m. The occupational therapist agreed to present an assessment plan to Mother.

95. The team offered a District placement, without specifying the school or classroom. Mother understood that the placement was to be Compton High, but she was not advised as to the type of classroom into which Student would be placed. The team also offered individual LAS services of 30 minutes one time per week, APE, a full-time one-to-one aide at school, ESY and transportation. Mother checked the box on the IEP stating she agreed with the IEP, but she wrote on the IEP to the effect that her agreement was contingent upon Mother and caregiver approving placement and one-to-one aide and services.

96. Mother consented to an OT assessment so that District could determine the level and type of services Student required. Pending the OT assessment, District provided OT services to Student twice per week, for 45 minutes each session. At that time, Student had no OT goal.

OT ASSESSMENT

97. Heidi E. Hebert, the District's occupational therapist, assessed Student on September 14, and 18, 2012, and October 16, and 19, 2012. Ms. Hebert received a B.S. in exercise science in 2003 from the University of South Florida, and an M.S. in OT in 2006. She has been employed by District since the beginning of the 2012-2013 school year.

She holds a California license in OT, and a national certification in OT. She produced a report dated October 19, 2012.³ Her report noted that Student's eligibility was autism, that he was in a moderate/severe SDC, and he had very limited speech. The report erroneously noted that Student was 16 years old at the time of the assessment, instead of 15 years old.

98. The report stated that the purpose of the assessment was a review for OT, and that Parent wanted OT services to start. The report listed the instruments Ms. Hebert used in the assessment, which were teacher interview, classroom observations, clinical observations, chart review, and review of work samples. The report stated that the testing and assessment materials and procedure were selected and administered so as not to be racially, culturally, or sexually discriminatory. The tests were validated for the specific purpose for which they were used and were administered by trained personnel in accordance with the instructions of the producer. The report also stated that the occupational therapist used an educational model that accounted for the curriculum, the educational environment, and the child's abilities to determine current level of performance. The report commented that Student was cooperative and the assessment results were a valid indicator of Student's performance.

99. The report included background information, stating that Student entered the District in June 2008, and that Student was no longer in the LACOE program. The chart review reflected that Student's vision and hearing were within normal limits, and Student had no current health concerns. The report noted that Student had received OT services previously.

³ The report itself is dated October 19, 2010, but the evidence at hearing demonstrated the date was a typographical error, and that the date of the report should have been October 19, 2012.

100. Ms. Hebert evaluated Student's neuromuscular/postural stability, and reported that overall Student was functional in this area in the school environment. Student's strength and range of motion were within functional limits. He could reach and carry items without difficulty in the classroom, and he demonstrated normal postural stability. He could sit, stand, and walk around the school without tripping and falling.

101. Ms. Hebert evaluated Student's visual perception, which is the ability to use information from the eyes to identify objects. Her report stated that, due to Student's very limited speech, she could not assess his ability to name pictures of familiar objects and to discriminate colors, shapes and sizes. He could match colors and shapes with 100 percent accuracy. He exhibited limited visual attention, limited eye contact, and was unable to visually attend to track a moving object. He demonstrated adequate depth perception.

102. Ms. Hebert evaluated Student's fine motor skills, which consist of the ability to use small muscle groups of the forearm, wrist, and fingers for controlled movement. Her report noted that Student was right-handed. He could use different functional grasps to hold, pick up, and/or manipulate objects. He did not demonstrate simple and complex in-hand manipulation skills, such as picking up small items and moving them into the palm of his hand, stabilizing the item while picking up or placing another item, picking up and positioning a writing utensil, or turning a pencil over to erase. He could turn the pages of a book, but he did not do so using the efficient "true shifting" method. He used a gross grasp to hold a pencil, but if the pencil had an adaptive grip on it, he would use a digital supinate grasp, with all finger pads on the pencil and the pencil passing through the web space.

103. Ms. Hebert assessed Student's visual motor skills, which involve the coordination of eye and hand movements to successfully complete tasks. The report

noted that Student did not attempt to stabilize his paper with his left hand while writing, and he had variable control of pencil pressure. Based upon observations and work samples, Student did not stay within the borders or lines to color a picture. He could imitate basic pre-writing strokes, including vertical and horizontal lines, a circle, and a cross. He could copy his first and last name and all uppercase and lowercase letters. He could not always form the letters properly, including top to bottom and left to right sequencing. He was unable to write between the parallel lines on classroom paper, but he could copy information within the confines of a 3/4 inch block 70 percent of the time with maximum prompts when he was visually engaged. Student had difficulty with proper alignment and sizing. He could cut a piece of paper in half but could not cut along a line.

104. Ms. Hebert assessed Student's sensory modulation/sensory processing skills, which involve the registration, regulation, and interpretation of sensations. She reported that Student's ability to transition during school varied day to day, according to the teacher. He consistently had significant difficulty adapting to changes when his class schedule was changed. The teacher reported that he would have a "meltdown" including screaming and crying, and would refuse to go into the building. His teacher also reported that food typically calmed him, but the staff had not been unable to identify everything that "sets [Student] off" within the classroom. Student's teacher also reported that Student could handle transitions from one activity to another within the classroom.

105. The report noted that Student did not demonstrate excessive seeking or avoiding behaviors with regard to his tactile system. According to teacher report, Student did not demonstrate aversion during activities involving different textures, such as glue. Based upon teacher report and Ms. Hebert's observation, Student did not display overly seeking or avoiding proprioceptive behaviors, such as walking on toes,

excessive hugging, or avoidance of hugs. However, when Student was upset and unable to communicate his feelings, he would bang his head, or try to “head butt” or pinch another person. He inconsistently provided the appropriate pressure when using writing utensils. The report noted that Student engaged in overly seeking vestibular behaviors, such as excessive rocking and moving his head in circles. He demonstrating functional vestibular discrimination by being able to cross midline and use both hands during an activity. Teacher reported on Student’s auditory system, stating that Student demonstrated signs of avoiding noises, but he was able to recover quickly. Student also sought auditory input by making noise for the sake of making noise, but the report did not find that Student did this to excess.

106. Ms. Hebert assessed Student’s praxis/motor planning ability, which is the ability to have an idea, motor plan the actions, and then perform the actions. Student was able to negotiate around obstacles within the school environment, such as the table, chairs, and individuals. Student understood and could follow basic commands. The report noted that auditory processing challenges might be a factor in Student’s inability to follow more complex commands.

107. The report commented on Student’s self-help skills. Student was independent in the cafeteria with respect to obtaining his own food, opening his own packets and containers, eating and drinking, and cleaning up after himself. Per report, Student could dress himself. The report noted that Student wore diapers and was on a toilet training schedule. Ms. Hebert learned that Student could communicate his need to go to the restroom by occasionally bringing the picture of the restroom to his one-to-one aide. Alternatively, he would attempt to remove his diaper and walk to the classroom door. He independently removed his diaper, but required maximum assistance to fasten it. Ms. Hebert learned that Student was independent with toileting hygiene and hand washing.

108. The report concluded that Student had the following areas of need: visual motor (regarding alignment and sizing), visual perception skills (letter formation), and fine motor (regarding pencil grasp.) The report recommended that Student be provided adapted paper and an adapted grip. The report concluded that Student required OT to assist him to benefit from his education.

109. Subsequent to the assessment, the District scheduled an IEP meeting to discuss the assessment. Upon learning from Mother that Mother had been advised not to sign any documents, Ms. Wilson cancelled the meeting at the last minute. The meeting was not rescheduled. Through the time of the hearing, District did not convene any IEP meeting to discuss the OT assessment.

110. Ms. Hebert provided OT services to Student from September 14, 2012, throughout the 2012-2013 school year. She knew of no reason why he should not have received services prior to the 2012-2013 school year. Since the assessment, she has provided direct, one-to-one services for 30 minutes, one time per week. She believed this level of service was sufficient, based upon her assessment. She found it difficult to keep his attention during the 45-minute sessions and he needed redirection.

111. Ms. Hebert worked with Student on his pencil grip and on the visual motor aspects of his handwriting, such as alignment, spacing, and sizing letters. She believed he made much progress. He could copy a full sentence, including appropriate spacing and letter sizing. As of the time of the hearing, she believed he had plateaued with his handwriting and could not do any more at this time. In her opinion, he did not need direct OT services now. He only needed consultative services, such that an occupational therapist would come into the classroom and observe him, and consult with the teacher regarding his skills.

112. After the September 11, 2012, IEP meeting, Mother observed the moderate/severe SDC at Compton High in which District proposed to place Student.

Michele Wilson was the classroom teacher. Ms. Wilson has been a District employee for seven years. She received her bachelor's degree in business from Vanguard University in 1991. She is a special education teacher, who holds a special education moderate/severe teaching credential which she obtained from California State University, Dominguez Hills. She took classes pertaining to autism as part of her studies for her credential, as well as in-service training regarding issues in autism from the District. Ms. Wilson was a credible witness, in view of the fact that much of her testimony was critical of her employer, the District.

113. Mother conversed with Ms. Wilson about the placement. Ms. Wilson told Mother that Student was the lowest functioning student Ms. Wilson had ever seen. Mother observed no other classroom, as District offered no other classroom.

114. Student enrolled in Ms. Wilson's class on September 12, 2012. The class had seven children and four adults, including Student's one-to-one aide. Ms. Wilson acknowledged that District's attendance report stated that Student was enrolled on September 25, 2012, but she remembered that he was in her classroom on September 12.

115. The class was not designated as a program for children with autism, and Student was the only child with autism in the class. The other children in the class fell into the intellectual disability (ID) eligibility category. There was no evidence as to the one-to-one aide's qualifications, training, or experience. Mother observed the class three or four times. She observed Student sitting in the back of the class, with a computer and his aide, but he was not doing schoolwork.

116. Ms. Wilson believed that her class was not an appropriate class for Student. He was the lowest functioning child in the class. Ms. Wilson did not believe that she had sufficient skills to teach Student. District did not provide her a copy of Student's May 29, 2012, IEP until September 25, 2012, and she did not have the materials to help

him meet the educational goals in his IEP's of May 29, 2012 and September 11, 2012. By e-mails she sent to District personnel in September and October 2012, she requested a number of supplies for Student, including PECS software, puzzles, squeeze balls, Velcro strips, and a weighted vest. She never received the supplies she requested. She improvised the materials required for some of his goals. For example, there were no coins for the matching goal, but she used shapes instead.

117. By e-mail dated October 19, 2012, to a variety of District personnel, she summarized her concerns regarding Student's severe behaviors, and that Student did not have a one-to-one aide who was experienced in working with children such as Student who were on the low end of the autism spectrum. This e-mail documented that a District administrator, Ms. McWilliams, had called Ms. Wilson on October 16, 2012, and agreed that her classroom was not appropriate for Student, but that Ms. McWilliams's opinion had been overruled by a senior administrator. Ms. Wilson's e-mail also reflected that she had not received the PECS system and other materials she had ordered. She also expressed her frustration that she had not been trained on working with Students who were as low functioning as Student. Beginning in late October or early November, District sent a person from Autism Spectrum Therapy (AST) to her classroom several times, and the individual gave her some techniques and materials, including communication icons for Student. By e-mail dated October 20, 2012, Ruth Dickens, a District administrator, advised Ms. Wilson that AST would provide support on a regular basis, but there was no evidence as to whether that occurred.

118. Student had behavioral difficulties, especially towards the beginning and the end of the 2012-2013 school years. His behaviors were unpredictable and sporadic. He had severe tantrums, and his behavior could escalate rapidly. His tantrums did not occur every day, but sometimes they occurred up to three times per week. Sometimes he screamed, cried, yelled, head-butted, punched, scratched, and hit. In the beginning of

the semester, he had "meltdowns" an average of three times per week. Ms. Wilson has attempted to control Student's behaviors by giving him choices and removing him from the classroom. After November and December, his behavior was better. He still needed to be removed from the classroom occasionally, but he did not have extreme tantrums, he did not disrupt the classroom, and his behaviors were not physically injurious. He had several tantrums and had three major meltdowns in a two-week period around the time of the hearing. He was engaging in more scratching, to the point of drawing blood, he pinched, and he hit. Some individuals visited the school nurse because of injuries Student had inflicted. Some of the aides had been absent from school because Student had scratched them so severely. His SLP had refused to work with Student due to his aggressive behaviors, and he had been receiving services from a speech and language assistant, who was not a certified SLP. Student has pinched, scratched, and hit his classmates. When he engaged in escalated behaviors, Ms. Wilson would attempt to calm him, but if the behavior was severe, she would request his one-to-one aide to remove him from the classroom. The day before Ms. Wilson testified at hearing, Student had such a severe behavioral meltdown that Ms. Wilson called security, and she also called Student's caregiver to take him home. She believed that a behavioral assessment was necessary, and that his IEP should contain behavioral supports and goals. She was surprised by his recent behaviors, and she did not know what the triggers were.

119. Ms. Wilson asserted that Student had received his LAS services during the 2012-2013 school year. The service logs support her assertion, while noting that LAS sessions were missed from time to time. Sometimes, the log noted that the LAS sessions were missed due to Student participating in field trips with his class, or due to Student's absence from school, or due to a school holiday. The logs also reflected that the services were mostly group services, rather than individual services.

120. Ms. Wilson believed Student had expressive and receptive language disorders, and believed an assessment should be performed. Ms. Wilson worked on the three goals in Student's September 11, 2012, IEP, and he made progress on his goals. He participated in the class routine for obtaining food at the cafeteria. His grade report for the 2012-2013 school year reflected that he obtained B's and C's in his functional curriculum through April 18, 2013.

121. Mr. Orona was the only witness who testified about Student's APE performance at Compton High during the 2012-2013 school year. In Mr. Orona's opinion, Student continued to make progress in APE while at Compton. He no longer needed prompts and cues, and he knew that when Mr. Orona appeared, it was time for APE. He was cooperative, and he stayed with the group and with Mr. Orona. Student was fully focused and attentive for the entire class time. Mr. Orona wanted Student to increase his participation in non-preferred activities.

122. Mother observed that Student's behaviors had regressed since attending Compton High. He yelled and screamed more than before. He regressed from wearing Depends to wearing diapers. He engaged in self-abusive behavior, such as pinching his arms from his fingers to his shoulders so deeply that he had wounds.

123. A. Tod Overton, a District program specialist, wrote a letter to Mother dated May 2, 2013, in which the District offered to fund Student's placement at a nonpublic school (NPS) for the 2013-2014 school year. The letter stated that Tobinworld was the certified NPS that was able to provide an appropriate program for Student, as specified on his IEP. The letter notified Mother that to be enrolled in an NPS, the parent and the child must have an interview with the NPS and the child must meet the NPS's admission criteria. The letter requested that Mother promptly contact Tobinworld to arrange for an interview.

124. At hearing, Mother expressed her desire that Student attend Tobinworld. There was no evidence that Tobinworld had accepted Student for admission, or that Student had begun the admission process to be accepted at Tobinworld. No specific evidence was presented as to Tobinworld's programs or how Tobinworld would meet Student's needs. In its closing brief, District asserted that the parties had "unconditionally agreed" that Student would be placed at Tobinworld. Student's closing brief mentioned that District had offered placement at Tobinworld as of the beginning of the summer, and Student requested an Order that Student be placed at Tobinworld, with a one-to-one aide.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The petitioner in a special education due process hearing has the burden of proving his or her contentions at the hearing by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-57 [126 S.Ct. 528].) As the petitioning party, Student has the burden of persuasion in this case.

SPECIAL EDUCATION AND FAPE

2. Pursuant to California special education law and the Individuals with Disabilities in Education Act (IDEA), as amended effective July 1, 2005, 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.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the state involved, and conform to the child's IEP. (20 U.S.C. § 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to

meet the unique needs of the student. (20 U.S.C. § 1401(29).) Similarly, California law 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.) The term “related services” includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).) In California, related services may be referred to as designated instruction and services (DIS). (Ed. Code, § 56363, subd. (a).)

3. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student’s educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) (*Target Range*) Citing *Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (*Rowley*), the court also recognized the importance of adherence to the procedural requirements of the IDEA, but determined that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.) This principle was subsequently codified in the IDEA and Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

4. For purposes of the IDEA, the term “parent” means a biological or adoptive parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (20 U.S.C. § 1401(a)(23); 34 C.F.R. §

300.30(a)(1) & (b) (2006).)⁴ With respect to parental participation, the IDEA and California law state that the parents of a child with a disability must be afforded an opportunity to participate in IEP meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child. (34 C.F.R. § 300.501(b), (c); Ed. Code, § 56341.) Written notice must be given to the parents of a child with a disability a reasonable time before a public agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415 (b)(3); Ed. Code, § 56500.4.)

5. In *Rowley, supra*, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the substantive requirements of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at 201.) In *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, the court acknowledged that there had been confusion in the Ninth Circuit regarding whether the IDEA required school districts to provide special education students with "educational benefit," "some educational benefit" or a "meaningful educational benefit." The court found that, under *Rowley*, all three phrases referred to the same standard. "School districts must, to 'make access meaningful,' confer at least

⁴ Unless otherwise indicated, all subsequent references to the Code of Federal Regulations (C.F.R.) are to the 2006 version.

'some educational benefit' on disabled students." (*J.L. v. Mercer Island School Dist.*, *supra*, 592 F.3d at p. 951, fn. 10.) Furthermore, educational benefit in a particular program is measured by the degree to which Student is making progress on the goals set forth in the IEP. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.) (*County of San Diego*). In *County of San Diego*, the court specified that educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization. (*Id.* at p. 1467.)

ANALYSIS

Issues 1 (a)-(c): Whether District and LACOE conducted required assessments, and the adequacy of the assessments

6. Student contends that District and LACOE failed to assess Student in all areas of suspected disability from January 2011 to the present, due to Student's failure to perform behavior, LAS, OT, and transition and vocational assessments. In particular, Student contends that his behavior warranted an FAA. Student also contends that the psychoeducational and APE assessments LACOE conducted in spring of 2011 were inadequate, and that LACOE and District did not timely conduct an APE assessment after Mother consented to the assessment at the May 27, 2010, IEP meeting.

7. LACOE and District contend that the psychoeducational and APE assessments they performed were adequate, and that Mr. Bonilla's psychoeducational assessment included behavioral and language assessments. They contend that Student's teachers and aides were able to handle Student's behavior in the classroom, and that he made progress on his behaviors. They contend that Mr. Bonilla had not recommended an FAA in his psychoeducational assessment report, and therefore no FAA or additional

behavioral assessments were required.⁵ They assert that Student made progress in LAS and received appropriate LAS services. They assert that they were not obligated to perform transition and vocational assessments, as such assessments are not required until Student becomes 16 years old, and Student is not yet 16 years old. District also asserts that it assessed Student in OT, and Student had received appropriate OT services. Respondents also assert that Student sustained no harm by their failure to perform an APE assessment after the May 10, 2010, IEP, and that it was sufficient that an APE assessment was performed in spring 2011. Respondents also assert that the claim regarding the timeliness of the APE assessment is barred by the statute of limitations.

Assessments

8. An assessment of a student who is receiving special education and related services must occur at least once every three years unless the parent and the school district agree that such a reevaluation is unnecessary. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a)(2).) The same basic requirements as for an initial assessment apply to re-assessments such as the three-year (triennial) assessment. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303 (2006); Ed. Code, § 56381, subd. (e).) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or whether the student's educational program is appropriate. (20 U.S.C. § 1414(b)(2) & (3); Ed. Code, §

⁵ LACOE's contentions in this regard refer only to the period from January 2011 through the 2011-2012 school year and ESY. As was discussed above, District removed Student from LACOE's program and assumed full responsibility for Student's education beginning with the 2012-2013 school year. Further, as was also discussed above, at no relevant time was LACOE responsible for providing OT services to Student. Therefore, all discussions regarding liability for OT services and assessments apply only to District.

56320, subds. (e) & (f).) The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306.) As part of a reevaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including teacher and related service-providers' observations. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the school district must identify any additional information that is needed by the IEP team to determine the present level of academic achievement and related developmental needs of the student, and to decide whether modifications or additions to the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The school district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

9. Tests and assessment materials must be administered by trained personnel in conformity with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).) Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2),(3); Ed. Code, § 56320, subds. (a), (b).)

10. In conducting the assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent that may assist in determining whether the student is a child with a disability, and the content of the IEP. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).) The personnel who assess the student shall prepare a written report of the results of each assessment. (Ed. Code, § 56327.) An IEP meeting to review the results of the assessment must be held within 60 days, with certain exceptions for vacation days and other circumstances, from the receipt of the parent's written consent to the assessment. Parent may agree, in writing, to an extension of the 60-day period. (Ed. Code, §§ 56043, subd. (f)(1); 56344, subd. (a).)

11. The failure to perform an assessment when an assessment is warranted, as well as the failure to conduct an appropriate assessment, are procedural violations of the IDEA. *Park v. Anaheim Union High School Dist.* (9th Cir.) 464 F.3d 1025, 1031.)

Issue 1(a): Behavioral Assessment

12. As was stated above, Student contends that Respondents should have conducted a behavior assessment of Student. Respondents contend that Student's behavior did not require any greater evaluation than Mr. Bonilla performed in his psychoeducational assessment.

13. Legal Conclusions 8 through 11 pertaining to assessments generally are incorporated herein by this reference. With respect to behavior, when a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies and supports, including positive behavioral interventions, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a)(2)(i), (b); Ed. Code § 56341.1, subd. (b)(1).)

Federal law does not contain a specific definition of “behavioral intervention” and does not impose any specific requirements for how to conduct or implement a behavior assessment or behavior intervention plan. (*Alex R. v. Forrestville Valley Community Unit School Dist., # 221* (7th Cir. 2004) 375 F.3d 603, 615.) Under the IDEA, the Department of Education recommends that school districts be proactive and perform a functional behavioral assessment (FBA), when a child engages in behaviors which interfere with learning. Following the FBA, a school district develops a document called a behavioral intervention plan or behavioral support plan.⁶ (Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46721 (August 14, 2006).)

14. In California, a behavior intervention is “the systematic implementation of procedures that result in lasting positive changes in the individual’s behavior.” (Cal. Code Regs, tit. 5, § 3001(d).) It includes the design, evaluation, implementation, and modification of the student’s individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student’s behavior through skill acquisition and the reduction of problematic behavior. (*Ibid*)

15. Behavioral interventions should be designed to provide the student with access to a variety of settings and to ensure the student’s right to placement in the least restrictive educational environment. (Cal. Code Regs, tit. 5, § 3001(d).) If a student’s behavior impedes learning, but does not constitute a serious behavior problem, the IEP

⁶ In California, the behavior intervention plan that is generated after an FBA is commonly called a behavior support plan (BSP), to differentiate it from the behavioral intervention plan (BIP) that must be generated after a functional analysis assessment (FAA), described herein. As is explained below, under California law, both the FAA and the BIP have stringent requirements which do not apply to FBA’s and BSP’s.

team must consider behavior interventions as defined by California law. An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028.)

16. When behaviors rise to the level of "serious behavior problems," California law imposes more formal requirements for addressing them, even when they have not resulted in formal discipline. "Serious behavior problems" means behaviors which are self-injurious, assaultive, or cause serious property damage and other severe behavior problems that are pervasive and maladaptive for which instructional/ behavioral approaches specified in the student's IEP are found to be ineffective. (Cal. Code Regs., tit. 5, § 3001, subd. (ab).)

17. A functional analysis assessment (FAA) shall occur after the IEP team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective. (Cal. Code Regs., tit. 5, § 3052, subd. (b).) An FAA must be conducted by, or be under the supervision of a person who has documented training in behavior analysis. FAA personnel shall gather information from direct observation, interviews with significant others, and review of available data such as assessment reports prepared by other professionals and other individual records. Prior to conducting the assessment, parent notice and consent shall be given and obtained. An FAA procedure shall include: systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity; systematic observation of the immediate antecedent events associated with each instance of the display of the targeted inappropriate behavior; systematic observation and analysis of the consequences following the display of the behavior to determine the function and communicative intent the behavior serves for the individual; ecological analysis of the settings in which the behavior occurs most frequently; review of records for health and medical factors which may influence behaviors; and review of the history of the behavior

to include the effectiveness of previously used behavioral interventions. (Cal. Code Regs., tit. 5, § 3052, subd. (b)(1).) The failure to perform an FAA when an FAA is warranted may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d at 1032.)

18. Upon completion of the FAA, an IEP team meeting shall be held to review the results and, if necessary, to develop the BIP. (Cal. Code Regs., tit. 5, § 3052, subd. (c).) The BIP is a written document, based upon the FAA, which is developed when the student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP. (Cal. Code Regs., tit. 5, §§ 3001, subd. (f)& 3052, subd. (a)(3).)

19. Respondents did not perform any behavioral assessment of Student from January 2011 through the time of hearing, and Mother never requested one. Mr. Bonilla administered the SIB-R to Student as part of Student's psychoeducational assessment, but it provided no information as to how Student's behaviors, such as tantrumming, self-abusive behaviors, and aggressive behaviors toward others might be handled. The evidence reflected that, during the 2010-2011 and 2011-2012 school years, Student's teachers and his one-to-one aides were able to manage Student's behaviors, based largely upon their training and experience. Thus, although Student's behaviors during those years were challenging at times, especially towards the beginning of the school year, his behaviors consistently improved markedly as those school years continued, and no behavioral assessment and behavioral support plan was necessary. The IEP team reported in the May 27, 2010, and May 29, 2012, IEP's, that Student's behaviors were not interfering with his education. The IEP team of May 25, 2011 did not comment on this one way or the other. Ms. Enenmoh, Student's teacher during the 2009-2010 and 2010-2011 school years, testified at hearing that Student's behaviors were interfering with his education, but she did not report this to the IEP teams in May 2010 and May 2011.

Moreover, she did not testify whether she felt that way at the time of the IEP's. As is stated in Legal Conclusion 50, below, an IEP is considered in terms of what the IEP team knew, or reasonably should have known, at the time of the IEP. Further, Ms. Enenmoh also testified that Student's behaviors had improved from the time Student entered her classroom in 2009 through the end of the 2010-2011 school year. Therefore, Ms. Enenmoh's testimony that Student's behaviors interfered with his education does not carry great weight.

20. The result is not the same for the 2012-2013 school year, however, when Student began attending Compton High after District discontinued the LACOE program. Student's teacher, Ms. Wilson, and his one-to-one aide, attempted to control Student, but they found his behaviors unpredictable and incomprehensible. Moreover, the aggressive nature of Student's behaviors escalated as compared to the previous school years, with service providers and aides finding it difficult to provide services to him as a result of his hitting, scratching, and pinching. Further, towards the end of the school year, he was pinching himself until he created wounds. During this school year, his behaviors were interfering with his education, and they warranted the District performing an FBA and developing a BSP. The District's failure to do so caused Student to be deprived of educational benefits and therefore deprived Student of a FAPE.⁷

21. Student contends that District should have performed an FAA, followed by a BIP. Student did not demonstrate, however, that the prerequisites for performing an FAA were met. The law provides that an FAA is appropriate if a Student has

⁷ Since District had undertaken the sole responsibility to provide Student a FAPE during the 2012-2013 school year, District, and not both Respondents, is responsible for the failure to conduct a behavioral assessment of Student during the 2012-2013 school year.

demonstrated "serious behavior problems," that are pervasive and maladaptive for which instructional/behavioral approaches specified in the IEP have been ineffective. During the 2012-2013 school year, Student's behaviors were unpredictable and sporadic, and many of them were characteristic of autism, such as extreme resistance to controls, self-stimulating behavior, and inappropriately relating to others, as noted by Mr. Bonilla in his psychoeducational assessment. There was no evidence that Student's behavioral problems were sufficiently pervasive, severe, and maladaptive so as to support the administration of an FAA and the development of a BIP. Further, the only behavioral assistance District provided was Student's one-to-one aide, and there was no evidence that the one-to-one aide had training or experience in behavioral techniques. Neither Ms. Wilson nor any other District personnel during the 2012-2013 school year had tried any systematic behavioral approaches at all, whether specified in an IEP or not. Such attempts are a prerequisite to performing an FAA. Therefore, an FAA is not appropriate at this time. However, as discussed above, District should have conducted an FBA and developed a BSP to provide a FAPE. (Findings of Fact 1-37, 45-96, 104, and 113-122; Legal Conclusions 1-21.) To the extent Student is entitled to a remedy, it will be discussed separately, below.

Issue 1(a): LAS Assessment

22. Respondents did not perform any LAS assessments since January 2011, including a triennial assessment in advance of the May 25, 2011, triennial IEP. As was stated in Legal Conclusion 8, the law requires that a Student be reassessed in all areas related to his or her suspected disability at least once every three years, unless the parent and the school district agree that such a reevaluation is unnecessary. There was no such agreement here.

23. Legal Conclusions 8-11 are incorporated herein by this reference. As was stated in Legal Conclusions 3 and 11, the failure to conduct an assessment is a

procedural error that is only actionable if it impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits.

24. Student presented no evidence that the failure to re-assess Student for LAS services from January 2011 onward impeded his right to a FAPE or caused a deprivation of educational benefits. Rather, the evidence demonstrated that Student made progress in his speech and in his ability to interact with others. However, the Respondents' failure to perform a triennial LAS assessment of Student, and to present the results of any such assessment at an IEP meeting, significantly impeded Mother's ability to participate in the decision making process regarding the provision of a FAPE. Mother expressed concerns about Student's speech at both the May 27, 2010, and May 29, 2012, IEP meetings, thereby demonstrating her interest in learning more about Student's LAS needs and services. As there was no triennial LAS assessment, and no SLP at the triennial IEP of May 25, 2011, to discuss Student's progress and language and speech abilities, there was no basis for the IEP team to determine Student's LAS needs and level of services at that IEP, there was nobody to inform Mother of Student's progress and abilities with respect to his LAS services at that IEP, and no means by which Mother could participate in the development of any specific LAS goals. The lack of any information regarding Student's LAS abilities, coupled with the absence of an SLP at the triennial IEP meeting of May 25, 2011, significantly impeded Mother's ability to understand her child's unique needs, and therefore significantly impeded her ability to participate in IEP meetings and to be involved in the development of an IEP that met her

child's unique needs.⁸ (Findings of Fact 1-83, and 119-120; Legal Conclusions 1-11, 22-24.)

Issue 1(a): OT Assessment

25. With respect to OT, District's failure to perform an OT assessment subsequent to January 2011 until fall 2012, also constituted a procedural error that deprived Student of a FAPE. As was discussed above with respect to LAS services, a Student must be assessed in all areas of suspected disability at least every three years unless the parent and the school district agree otherwise. There was no such agreement here. Furthermore, the IEP's of May 27, 2010, May 25, 2011, and May 29, 2012, all stated that Student required OT services, but did not specify the frequency or amount of OT services, probably because the IEP team never had any information on which to base a determination of the frequency or amount of OT services. An OT assessment, and the presence of an occupational therapist to explain the assessment results, would have provided the IEP teams such information. All three of these IEP teams promised to reconvene to discuss the frequency and amount of OT services, but they never did. Furthermore, District failed to provide OT services to Student at all during the 2011-2012 school year, prior to the May 25, 2011, IEP. At hearing, District offered no explanation for this failure, despite all of Student's relevant IEP's identifying OT as a needed related service.

26. Legal Conclusions 1-11 are incorporated herein by this reference.

⁸ There was also no SLP at the May 27, 2010, IEP meeting, but that meeting occurred more than two years before this action was filed, and thus occurred beyond the statute of limitations. There was no evidence that the failure of an SLP to attend that meeting is relevant to this issue of whether the District's failure to perform an LAS assessment since January 2011 resulted in a deprivation of a FAPE.

As was stated in Legal Conclusions 3 and 11, the failure to conduct an assessment is a procedural error that is only actionable if it impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits.

27. Ms. Hebert, the District's occupational therapist, conducted an OT assessment of Student in fall 2012, and wrote a report of that assessment. At no time prior to the due process hearing had District convened an IEP meeting to discuss the report. Mother testified, without contradiction, that she never received a copy of the report.

28. Ms. Hebert was the only witness who testified at hearing regarding Student's OT services. Ms. Hebert provided OT services to Student during the 2012-2013 school year. In her opinion, while acknowledging that Student should have received OT services during the 2011-2012 school year, as the IEP team had determined, the OT services she provided during the 2012-2013 school year were sufficient, and Student no longer needed direct OT services. Rather, she believed that consultative OT services would be sufficient to meet Student's needs.

29. The District's failure to assess Student prior to fall 2012 impeded Student's right to a FAPE and deprived him of an educational benefit, for several reasons. First, the lack of an assessment prevented the IEP team from determining the amount of OT services to which Student was entitled. Further, unlike with the LAS services discussed above, there was no evidence as to the frequency, amount, or type of OT services the District provided Student prior to ESY in July 2012. District's failure to perform an OT assessment of Student prior to fall 2012 also significantly deprived Mother of the ability to participate in the decision making process regarding the provision of a FAPE. The lack of any current information about Student's OT needs and abilities, coupled with the

absence of an occupational therapist at any of the IEP meetings relevant to this matter, significantly impeded Mother's ability to understand her child's unique needs, and therefore significantly impeded her ability to participate in IEP meetings and to be involved in the development of an IEP that met her child's unique needs. These procedural errors were not cured by Ms. Hebert's assessment of Student in fall 2012, because District never provided Mother with a copy of that assessment, and District never convened an IEP meeting to consider the results of that assessment. Consequently, Mother remained as unable to participate in the decision making process regarding the provision of a FAPE to Student as she was before Ms. Hebert conducted her assessment.⁹ Therefore, pursuant to Findings of Fact 1-120, and Legal Conclusions 1-11, and 25-29, District's failure to perform an OT assessment of Student deprived Student of a FAPE.

Issue 1(a): Transition Assessment

30. For each student, beginning with the first IEP to be in effect when the student is 16, the IEP must include a statement of the transition service needs of the student. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) The IDEA defines transition services to require a focus "on improving the academic and functional achievement of the disabled child to facilitate the child's movement from school to post-school activities," which is based upon the child's needs, and considers the child's strengths, preferences, and interests.

⁹ There was also no occupational therapist at the May 27, 2010, IEP meeting, but that meeting occurred more than two years before this action was filed, and thus occurred beyond the statute of limitations. There was no evidence that the failure of an occupational therapist to attend that meeting is related to this issue of whether the District's failure to perform an occupational therapy assessment since January 2011 resulted in a deprivation of a FAPE.

(20 U.S.C. §1401(34).) The IDEA also requires that the IEP include a statement of measurable goals based on transition assessments and an outline of services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII.) The failure of an IEP team to comply with the requirements for transition planning is a procedural violation of the IDEA. (*Virginia S., et al. v. Dept. of Ed., State of Hawaii* (D. Hawaii, January 8, 2007, Civ. No. 06-00128) 2007 WL 80814, *10.) Legal Conclusion 3, regarding procedural violations, is incorporated herein by this reference.

31. District and LACOE correctly assert that the law did not require them to perform transition and vocational assessments until Student reached 16 years of age, and Student is not yet 16. Nevertheless, Mr. Shaiman, Student's SDC teacher during the 2011-2012 school years, developed a transition plan for Student's May 29, 2012, IEP, when he was 14 years old. The plan was based upon his own observations and input from Student's one-to-one aide, Mother, and Student's caregiver, which constituted an informal assessment.¹⁰ The plan included information about Student's abilities and desires, as well as three general goals, which addressed Student's abilities to communicate needs, identify pictures, count objects, recognize his name, sort and bag items, choose his own food, and use the restroom independently. These goals, which did not include measurements, directly relate to the detailed, measurable goals in the

¹⁰ At hearing, Mother testified that she was never asked for information about Student's vocational assessment except at IEP meetings. Student contends this contradicts Mr. Shaiman's testimony that he received information from Mother which he incorporated into the transition plan. This does not necessarily contradict Mr. Shaiman's testimony, as Mother's comments at IEP meetings could have been incorporated into the transition plan, or Mr. Shaiman could have been referring to comments Mother had made on previous occasions.

remainder of Student's IEP regarding Student's abilities to learn and communicate his name and other vital information, choose his own food, sort and bag items, and express and perform his toileting needs. Similar transition goals were included in the September 11, 2012, IEP.

32. Respondents did not deprive Student of a FAPE by reason of the failure to perform a formal transition/vocational assessment. First, the law requires "age-appropriate" transition assessments. It does not prescribe that a formal transition or vocational assessment must be performed, or that any standardized tests be used. The general law with respect to assessments requires that relevant information be obtained from a variety of sources, but it does not require that standardized testing be performed unless it is appropriate to do so. Mr. Shaiman formulated Student's transition plan based upon a variety of sources, including his knowledge of Student as Student's SDC teacher, and interviews and conversations with Student, his aide, his caregiver, and Mother. Student presented no evidence that Mr. Shaiman's efforts to obtain information did not constitute an "age-appropriate" assessment, or was lacking such that the substance of the transition plan were inadequate or inaccurate in any way. Student did not demonstrate that the lack of standardized or more formal transition and vocational assessments impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process regarding Student's education, or caused a deprivation of educational benefits. (Findings of Fact 1-3, 79-88, and 93-96; Legal Conclusions 1-11, 30-32.)

Issue 1(b): Psychoeducational Assessment

33. Student contends that the psychoeducational assessment conducted by Mr. Bonilla was inappropriate because Mr. Bonilla reported scores without explaining Student's abilities in the areas assessed, Mr. Bonilla did not formally assess Student's social-emotional/behavioral functioning, his report failed to detail Student's behaviors

and to discuss the frequency of Student's behaviors, and his report failed to discuss how Student's behavior related to his academic and social functioning as required by Education Code section 56327. Student also contends that Mr. Bonilla failed to conduct any formal testing in the area of Academic Achievement, but only referred to the "teacher report." Further, Student contends that Mr. Bonilla's assessment report failed to include any input from Mother or Student's caregiver, and failed to discuss Student's gastrointestinal issues, which related significantly to Student's toileting needs.

34. Respondents contend that Mr. Bonilla's assessment met all statutory requirements, and that Student offered no evidence that the assessments were administered inappropriately, and that Student was assessed in all areas of need. Moreover, the results of the assessment were consistent with the testimony of other witnesses.

35. Legal Conclusions 1 through 11 are incorporated herein by this reference.

36. Student did not demonstrate that the assessment was inappropriate. Mr. Bonilla, a credentialed school psychologist, was qualified to perform the assessment. He used a variety of instruments, and did not rely upon a single instrument in reaching his conclusions. He assessed and described Student's behavioral and social/emotional functioning, through observation, interviews with the classroom teacher and one-to-one paraeducator, review of records, and the SIB-R. The report described Student's need for a one-to-one aide to assist him with behavior issues, which fulfilled the requirement of discussing how Student's behavior related to his academic and social functioning. He described Student's academic achievement as reported by Student's teacher, and Student's academic achievement was also described and discussed at the May 25, 2011, IEP meeting. Student presented no evidence that Mr. Bonilla did not assess Student in any area of suspected disability, or that the assessment did not comply with statutory requirements. Mr. Bonilla's assessment and report would have been better had he

obtained input from Mother or Student's caregiver, had he included more detail in the report about Student's behavior and abilities, and had he referred to Student's gastrointestinal issues. However, Student did not demonstrate that Mr. Bonilla's assessment results were incorrect or inaccurate. Indeed, based on the evidence at hearing, the assessment results provided an accurate description of Student's abilities. The results of the assessment showed that Student was globally low functioning, with a cognitive level and skills ranging from toddler to pre-school, that he was essentially non-verbal, and that he was a Student with autism. Student presented no evidence that any of these findings were incorrect, and no witness at hearing testified that Student had any skills or abilities that were inconsistent with these findings.

37. At hearing Mother testified that she did not recall receiving a copy of the assessment report. However, the assessment report was discussed at the May 25, 2011, IEP meeting, which Mother attended. In this regard, Mother did not testify that she asked for a copy and did not receive one.¹¹ Under all of these circumstances, pursuant to Findings of Fact 1-36 and 45-71, and Legal Conclusions 1-11 and 33-37, the assessment was not procedurally defective to the extent that it impeded the Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision

¹¹ In his closing brief, Student mentions that, despite record requests, he and his counsel did not receive copies of the test protocols and various other documents. The issue of document production was discussed at the PHC and at various times during the hearing. Student's counsel asserted then that the issue of document production *only* related to the issue of the tolling of the statute of limitations, and Student was requesting no other relief regarding the document production. As was noted above, in Student's closing brief Student specifically withdrew the issue that the Respondents' failure to produce documents resulted in a tolling of the statute of limitations.

making process regarding the provision of a FAPE, or cause a deprivation of educational benefits.

Issues 1(b)-(c): APE Assessment

38. With respect to the triennial APE assessment, Student contends that the assessment was inappropriate because Mr. Orona used only a single test.

39. Legal Conclusions 1 through 11 are incorporated herein by this reference.

40. In fact, Mr. Orona used and relied upon a variety of assessment tools. Mr. Orona assessed Student using a formal standards-based test, the APEAS II, as well as observation and non-standardized testing. Student presented no evidence that the APEAS II was not an appropriate instrument, or that Mr. Orona could have, or should have, used any other standardized test. Student offered no evidence that the assessment results Mr. Orona obtained were not an accurate portrayal of Student's abilities. Under these circumstances, and pursuant to Findings of Fact 1-22 and 38-82, and Legal Conclusions 1-11 and 38-40, the APE assessment was appropriate.

41. Student also contends that District should have conducted the APE assessment within 60 days after May 27, 2010, because Mother signed the request for an assessment and gave the document to the District at the IEP meeting on that date.

42. A request for due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (1).) This limitation does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid*, see 20 U.S.C. § 1415(f)(3)(D).) Common law or equitable exceptions to the statute of limitation do not

apply to IDEA cases. (*D.K. v. Abington School Dist.* (3rd Cir. 2012) 696 F.3d 233, 248. (*Abington*)). In particular, the common law exception to the statute of limitations that applies when a violation is continuing is not applicable in IDEA cases. (*JJ v. Ambridge Area School Dist.* (W.D. PA 2008), 622 F. Supp. 2d 257, 268-269.) A claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action. (*M.D. v. Southington Board of Ed.* (2d Cir. 2003) 334 F. 3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that it has a legal claim. (See *E/ Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

43. The 60-day period for conducting an assessment and holding an IEP meeting after the APE assessment would have occurred in fall 2010. This time period is more than two years before January 15, 2013, when the Complaint was filed. Therefore, this claim is barred by the two-year statute of limitations. (Findings of Fact 1-14; Legal Conclusions 1-11 and 38-43.)

Issue 2(a): Whether the May 27, 2010, IEP was defective so as to deprive Student of a FAPE for failing to offer sufficient supports and services

44. Student contends that he was deprived of a FAPE during the 2010-2011 school year because the May 27, 2010, IEP did not offer sufficient LAS services, a structured social skills program, and behavior services. Respondents contend that these claims are barred by the two-year statute of limitations. Initially, Student contended that the statutory exceptions to the statute of limitations applied so as to toll the statute. In Student's closing brief, he states that he is no longer contending that the exceptions to the statute of limitation apply. Nevertheless, he maintains that these defects in the May 27, 2010, IEP, deprived him of a FAPE during the 2010-2011 school year as of January 15, 2011, which is two years from the date of filing the Complaint and thus within the statute of limitations.

45. The IEP is a written document for each child who needs special education and related services. The IEP is developed by the IEP team, which is composed of the parents, not less than one regular education teacher of the child if the child will be participating in the regular education environment, one special education teacher or provider for the child, and a representative of the local educational agency who is qualified to provide or supervise the provision of specially designed instruction, and who is knowledgeable about the general education curriculum and the availability of resources of the local educational agency. The IEP team may also include an individual who can interpret the instructional implications of evaluation results, and, at the discretion of the parent or the agency, other individuals who have knowledge of the child, including related services personnel, and, when appropriate, the child. (20 U.S.C. § 1414(d)(B)(i)-(vii).)

46. The contents of the IEP are mandated by the IDEA. The IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and non-academic activities; and a statement of the program modifications or supports for school personnel that will be provided. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd. (a)(7).) The IEP must also include an assortment of information, including a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals designed to meet the child's needs that result from his disability to enable the child to be involved in and make progress in the general education curriculum, and, when appropriate, benchmarks or short-term objectives, that are based upon 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, and when

periodic reports of the child's progress will be issued to the parent. (20 USC § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320.) An IEP must contain the projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of those services and modifications. (20 U.S.C. § 1414(d)(1)(A)(VII); Ed. Code, § 56345, subd. (a)(7).) No information need be included in an IEP beyond what is statutorily required, and the IEP team need not include information under one part of the IEP that is already contained in another part of the IEP. (20 U.S.C. § 1414 (d)(1)(A)(ii).)

47. For each area in which a special education student has an identified need, annual goals in the IEP establish what the student has a reasonable chance of attaining in a year. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R. part 300, Question 4 (1999 regulations).) The IEP need not include separate annual goals for related services, as long as the related services are being provided to meet a recognized need for which an annual goal is included in the IEP. (*Letter to Hayden*, 22 IDELR 501 (OSEP 1994).)

48. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results 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. § 300.346(a).) In the case of a child whose behavior impedes the child's own learning or other children's learning, the IEP team shall consider positive behavioral interventions and supports, and other strategies, to address the behavior. (20 U.S.C. 1414(d)(3)(B)(i); Ed. Code, §56341.1, subd.(b)(I).)

49. An IEP team shall offer a student ESY services if he requires special education and related services in excess of the regular academic year. (Cal.Code Regs, tit. 5, § 3043.) Students who are eligible for ESY are those who have disabilities which are likely to continue indefinitely or for a prolonged period, and for whom interruption of their education may cause regression which, when coupled with limited recoupment

capacity, renders it unlikely or impossible that the child would attain the level of self-sufficiency and independence that would otherwise be expected in view of the child's disability. (*Ibid.*)

50. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

51. Additionally, as was stated in Legal Conclusion 42, a request for due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (1).) A claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action. The statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that it has a legal claim. Additionally, the common law doctrine of "continuing violations" does not apply to toll the statute of limitations in IDEA cases.

52. Student's claim that the May 27, 2010, IEP was defective for failing to offer sufficient supports and services is barred by the statute of limitations. The May 27, 2010, IEP occurred more than two years before January 15, 2013, when the Complaint was filed. Mother was present at the IEP meeting, and was aware of the contents of the IEP. Indeed, she signed her consent to the IEP. She may not have known at the time that she had a legal claim based upon the alleged defects in the IEP contents, but the statute of limitations began to run on May 27, 2010, when she attended the IEP and signed her consent to it, and thus knew the contents of the IEP and the facts regarding her claim. Additionally, Student's claim regarding the alleged defects in the May 27, 2010, IEP

would not be viable during the 2010-2011 school year as of January 15, 2011, which would ordinarily be within the two-year statute of limitations, because such a claim would be predicated upon the theory that the alleged defects in the IEP constituted continuing violations. As was stated in Legal Conclusion 42, the IDEA does not recognize exceptions to the statute of limitations based upon the common law doctrine of continuing violations. Therefore, based upon Findings of Fact 1-14, and Legal Conclusions 1-5 and 44-52, Student's claim is barred by the statute of limitations.

Issue 2(b): Whether the May 27, 2010, IEP was defective for failing to include required elements

53. Student contends that the May 27, 2010, IEP was defective because the IEP failed to include appropriate statements of present levels of performance; appropriate measurable goals; a statement of supplementary aids and services to be provided, a statement of necessary and appropriate accommodations, the projected date for beginning services; and a statement of the anticipated frequency, location, and duration of services, including OT services and the services of Student's one-to-one aide. Student contends that these defects deprived Student of a FAPE during the 2010-2011 school year, as of January 15, 2011. For the reasons set forth above with respect to Issue 2(a), and based upon Findings of Fact 1-14, and Legal Conclusions 1-5, and 44-53, Student's claims that the May 27, 2010, IEP was defective for failing to include required elements is barred by the two-year statute of limitations.

Issue 2(c): Whether the May 27, 2010, IEP was defective for failing to include the LAS therapist, occupational therapist, and one-to-one aide at the meeting.

54. Student contends that the LAS therapist, occupational therapist, and one-to-one aide were not present at the May 27, 2010, IEP meeting, and that their absence at the meeting deprived Student of a FAPE during the 2010-2011 school year as of

January 15, 2011. For the reasons set forth above with respect to Issues 2(a), and 2(b), and based upon Findings of Fact 1-14 and Legal Conclusions 1-5, and 44-54, this claim is barred by the two-year statute of limitations.

Issue 3(a): Whether the May 25, 2011, IEP deprived Student of a FAPE for failing to offer sufficient supports and services

55. Student contends that the May 25, 2011, IEP was defective and deprived Student of a FAPE for failing to offer sufficient LAS services, a structured social skills program and behavior services. Student contends that, without a triennial assessment in LAS, the IEP team could not have determined an appropriate level of services, and further that the respondents had no justification for “reducing” his previously individual services to “group services.” Student also contends that he should have received LAS services during summer 2011 ESY, but no such services were offered in the May 25, 2011, IEP, and that Student required a social skills program, in that he was not interacting with other students. Finally, he contends that, without a behavior assessment, Respondents could not, and did not, offer behavior services to meet those needs. LACOE and District contend that the evidence demonstrated that Student’s LAS services were sufficient, and that there was no evidence that Student required a social skills program since he was making progress on his social skills. They also contend that Student’s behaviors were properly addressed through his full-time one-to-one aide and that he was making progress in regulating his behaviors.

56. Legal Conclusions 44-50 are incorporated herein by this reference. As was stated in Legal Conclusion 50, the IEP is a “snapshot” which is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon, supra*, 195 F.3d 1141, 1149.) As was stated in Legal Conclusion 5, a student’s IEP must be reasonably calculated to provide the student with some educational benefit, but the IDEA does not require school districts to provide

special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at 198-200.) As was stated in Legal Conclusion 49, an IEP team may offer ESY when a student has a disability that is likely to continue for a prolonged period, and when it is likely that interruption of the student's educational program may cause regression that a student would be unable to recoup such that a student would not make expected progress.

57. The IEP did not deprive Student of a FAPE with respect to LAS services, a social skills group, and behavioral services. First, the May 25, 2011, IEP offered Student LAS services at the level of two times per week, for thirty minutes each time, in either individual or small group sessions. According to the IEP, the team agreed that Student's LAS services would continue until an addendum IEP meeting could be held at which the SLP could be present to discuss goals, progress, and services. The level of LAS services offered in this IEP was the same as had been offered in Student's May 25, 2010, IEP, with the only difference being that the IEP offered the SLP the option of providing the services as individual or group. There was no evidence that this difference constituted a "reduction" in LAS services, as Student contends. Indeed, Ms. Dong, Student's SLP during the 2011-2012 school year, provided the majority of the services on an individual basis, as she found that Student found it difficult to focus in a group. Ms. Dong also believed that 30 minute sessions were appropriate, as Student would have difficulty focusing for a longer period of time. Additionally, Student presented no evidence that any other level of services would have been adequate or appropriate as of the time of this IEP meeting, or that the IEP team knew, or should have known, that Student would not receive some educational benefit by reason of the level of LAS services offered.

58. Second, although the May 25, 2011, IEP did not specify that Student would receive LAS services during ESY, the service logs reflected that he received LAS services three times during ESY 2011, for at least 30 minutes each time. Thus, as a practical

matter, there was no evidence that the failure of the IEP to specify that Student would receive LAS services during the summer deprived Student of an educational benefit.

59. Third, the May 25, 2011, IEP did not deprive Student of a FAPE by reason of the failure to offer a structured social skills program. The IEP team noted that Student's social relationships with peers had improved, and he was able to play with other students. The evidence at hearing revealed that Student was beginning to interact with his peers in his classroom. Student provided no evidence that, at any time, Student would receive any benefit from a structured social skills program. The uncontradicted testimony of Ms. Dong, Student's SLP during the 2011-2012 school year, established that social skills programs were appropriate for children who could participate in a give and take conversation. There was no evidence that Student could engage in any such conversation during any time period at issue in this matter.

60. Finally, the May 25, 2011, IEP did not deprive Student of a FAPE by reason of the failure to offer behavior services in addition to Student's one-to-one aide. The testimony of Ms. Enenmoh and Mr. Cotcher reflected that Student's behaviors were problematic during the beginning of the 2009-2010 school year, when he first entered Ms. Enenmoh's class. This could be attributed to Student's resistance to change, which is a characteristic of children with autism. However, by the end of the 2010-2011 school year, at or about the time of the IEP meeting, Student's behaviors had improved. His tantrums had diminished to once every two or three months. His self-stimulating behaviors had diminished. He could focus, he cried less often, and he scratched his one-to-one aide less often. Ms. Enenmoh and Mr. Cotcher were also better able to handle Student's behaviors at that time. At hearing, Ms. Enenmoh expressed that Student's behaviors were impeding his education during the 2010-2011 school year, but there was no evidence that she conveyed this information to the IEP team, and she did not specify whether she held this opinion at the time of the IEP meeting or whether this was a

conclusion she came to later. In short, the IEP team had no reason to believe as of the time of the IEP meeting, that Student required any behavior interventions beyond his one-to-one aide to receive some benefit from his education.

61. Based upon Findings of Fact 1-37, 15-21, and 45-71, and Legal Conclusions 1-5, 45-50, and 55-60, the May 25, 2011, IEP did not deprive Student of a FAPE with respect to LAS services, or because of a failure to offer a social skills program, or because of a failure to offer additional behavior services.

Issue 3(b): Whether the May 25, 2011, IEP, was defective for failing to include required elements

62. In his closing brief, Student contends that the May 25, 2011, IEP was defective in a variety of ways, several of which were not included in his Complaint or the PHC Order. To the extent that Student has raised issues that were not included in the Complaint, they will not be considered in this Decision. (Ed. Code, § 56502, subd. (i).)

63. With respect to the defects in the IEP that Student alleged in his Complaint and which were included in the issues to be heard, Student contends that the May 25, 2011, IEP failed to include appropriate statements of present levels of performance; appropriate measurable goals, a statement of supplementary aids and services and of accommodations; the projected date for beginning services, and a statement of the anticipated frequency, location, and duration of OT services and the services of the one-to-one aide. Respondents contend that the IEP contained all required elements.

64. Legal Conclusions 45 through 50 are incorporated herein by this reference. As was stated in Legal Conclusion 3, a procedural violation is only actionable if it impedes the student's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or deprives the child of educational benefits. As was stated in Legal Conclusion 46,

the IEP is required to contain a variety of information, but the information may be included anywhere in the IEP.

65. With respect to the present levels of performance, Student contends that they failed to detail Student's behaviors, as noted in Mr. Bonilla's assessment, and failed to include information on behaviors provided by the caregiver at the meeting. Student also questions the accuracy of Student's academic present levels, because the assessment referred to a teacher report that had not been provided, and Student's teacher did not sign the IEP and thus may not have attended the IEP. Respondents contend that the IEP contained appropriate present levels of performance, and Student presented no evidence that the present levels of performance were incorrect.

66. Student's contentions are unmeritorious. The IEP contains present levels of performance in three sections of the IEP: the pages formally entitled "Present Levels of Academic Achievement and Functional Performance" (Present Levels), the baselines which accompany all but two goals, and the notes. Student's behaviors are discussed on the pages entitled Present Levels as well as in the notes. There was no evidence that any member of the IEP team was unaware of Student's behaviors. Indeed, as Student acknowledged, his caregiver described his behaviors at the meeting. The caregiver's report is contained in the notes, and, because required information can be located anywhere in the IEP as noted in Legal Conclusion 46, the caregiver's report has as much force and effect as if it had been included in the section of the IEP formally denoted Present Levels.

67. Student's academic levels are discussed in the Present Levels, in the benchmarks, and in the notes. There was no evidence that any member of the IEP team did not understand Student's academic levels, or that Student's academic levels were not accurately set forth in the IEP. Further, the weight of the evidence demonstrated that Ms. Enenmoh, Student's teacher, was at the meeting and reported on Student's

academic levels, even though Mother did not specifically recall her being there, and Ms. Enenmoh did not specifically recall the meeting. Not only was Ms. Enenmoh's presence mentioned in the IEP notes, but the IEP notes also recorded her comments at the meeting. Most significantly, Mother attended the meeting and signed her consent to this IEP on the date of the meeting. If Student's teacher had not attended the meeting, such that the IEP notes were fabricated with respect to Ms. Enenmoh's attendance and comments, one would have expected Mother to have mentioned this at the time of the meeting. One would also have expected Mother to have written a comment next to her signature on the IEP to the effect that the IEP notes were not accurate. Based upon Findings of Fact 1-71, and Legal Conclusions 1-5, 45-50, and 64-67, Student did not demonstrate that any deficiencies in the present levels of performance impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process regarding the provision of a FAPE, or cause a deprivation of educational benefits.

68. With respect to goals, Student's contentions are largely derivative of and related to other issues that are discussed elsewhere in this decision. For example, Student contends that the goals were defective because the psychoeducational and APE assessments were inappropriate. As was discussed with respect to Issues 1(b)-(c), the psychoeducational and APE assessments were appropriate. Student also contends that the May 25, 2011, IEP failed to include LAS, OT, behavior, self-help, or vocational goals.

69. Student's contentions that the goals were defective so as to deprive Student of a FAPE also lack merit. First, the IEP did not include LAS or OT goals, but that is because the IEP team decided to convene another IEP meeting to document those goals. The legal consequences of the Respondents' failure to convene that meeting is discussed with respect to Issues 1(a) and 5(b). The failure of the IEP to contain LAS or OT

goals will not be discussed as a separate issue, and, under the analysis contained in Issues 1(a) and 5(b), the failure of the IEP to contain the LAS or OT goals, standing alone, did not deprive Student of a FAPE.

70. The IEP contains six goals, all of which were more advanced than Student's previous goals, plus two APE goals. The goals included a social emotional goal and a behavior goal. The IEP did not contain a goal that directly addressed Student's elevated behaviors. However, the evidence at hearing demonstrated that Student's behaviors were well-controlled by his teacher and his one-to-one aide. The IEP did not contain a self-help goal, but Student's primary self-help need pertained to his toileting, and the evidence was uncontradicted that Ms. Enenmoh and Student's aide had implemented a toileting program for Student. Ms. Enenmoh testified that Student had not made much progress in his toileting, but she attributed that largely to his gastrointestinal disorder. There was no goal labeled "vocational," but, since Student was on a functional curriculum, all of his pre-academic goals, of which there were four, can be considered vocational goals.

71. Ms. Enenmoh, Mr. Cotcher, and Student's Mother all agreed that Student had made progress in his LACOE program during the 2010-2011 school year. Indeed, Mother wanted Student to stay in the LACOE program indefinitely and was displeased when she learned the following year that the District would be discontinuing the program. Based upon Findings of Fact 1-71, and Legal Conclusions 1-5, 45-50, 64, and 68-71, Student did not demonstrate that any deficiencies in his goals impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process regarding the provision of a FAPE, or cause a deprivation of educational benefits.

72. Student also contends that the May 25, 2011, IEP was defective because it failed to include a statement of supplementary aids and services to be provided. The IEP

lists the DIS services to be provided, except the OT services are not sufficiently detailed. As was mentioned above, the IEP team did not specify the frequency of the OT services because the team intended to discuss the OT services at an addendum IEP meeting. The Respondents' failure to convene that meeting is discussed in issues 1(a) and 5(b), and therefore the failure of this IEP to detail the OT services will not be discussed here as a separate issue. With the exception of the failure to set forth the duration and frequency of OT services, and based upon Findings of Fact 1- 71, and Legal Conclusions 1-5, 45-50, 64-72, the May 25, 2011, IEP is not defective on the ground that it failed to include a statement of supplementary aids and services.

73. Student contends that the IEP is defective because it failed to explain the extent to which Student would not participate at school with nondisabled children, and that Mother was prevented from participating in the IEP because she did not know how much time Student would be spending in the general education environment. The IEP states that Student would participate in the SDC for 300 minutes per day, and the IEP specifically refers to Student's walking to the cafeteria and his activities at the cafeteria. The IEP could have been more detailed about the amount of time Student spent in the general education environment, thereby specifying that he would be in the general education environment, but there was no evidence that Mother did not understand that Student was spending the vast majority of his time in special education. There was no evidence that Mother expressed any concern about Student's participation in general education at any time. Based upon Findings of Fact 1-71, and Legal Conclusions 1-5, 45-50, 64, and 73, the failure of the IEP to contain more detail regarding this issue did not impede Student' right to a FAPE, significantly impede Mother's opportunity to participate in the decision making process regarding the provision of a FAPE, or cause a deprivation of educational benefits.

74. Student contends that the IEP was defective because it did not contain a statement of the accommodations to be provided to Student. The evidence at hearing reflected that accommodations and modifications were incorporated into the LACOE program, and included flexible seating, class work adapted to Student's level, and modified assignments. Material was retaught and repeated, and presented in multiple ways. The curriculum was modified to the Student's level. There was no evidence that the failure of the IEP to specify the accommodations and modifications impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. (Findings of Fact 1-71; Legal Conclusions 1-5, 45-50, 64, and 74.)

75. Student contends that the IEP was defective because it only listed "School Site" as the location at which services would be rendered, and did not specify the school. The IEP states in several places that Student would be placed in a LACOE SDC, and the notes state Student would move to a LACOE high school program.

76. The IDEA requires a District to make a formal, written offer of placement in the IEP. (*Union School Dist. v. Smith* (9th Cir. 1994), 15 F.3d 1519, 1526 (*Union*).) In *Union*, the District failed to formally offer a placement that the District deemed appropriate because the parents in that case had expressed unwillingness to accept that placement. In determining that the District had thereby committed a procedural violation of the IDEA, the *Union* court noted that a formal written offer of placement provides a clear record of what was offered, and greatly assists parents in presenting due process hearing complaints. (*Ibid.*)

77. The IEP does not state the precise school at which the LACOE program would be housed, but that does not constitute a violation of the IDEA or of the principle that an IEP team must make a formal offer of placement. There was no evidence that Mother did not understand the type of program Student would receive in the LACOE

program. There was no evidence that the failure to specify Dominguez as the location, where Student attended his LACOE program during the 2011-2012 school year, impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. (Findings of Fact 1-71; Legal Conclusions 1-5, 45-50, 64, and 75-77.)

78. Student contends that the IEP was defective because it did not specify the frequency and duration of OT services. This issue is duplicative of the issue regarding the statement of supplementary aids and services, and derives from District's offer and delivery of OT services in general, as is more fully discussed in Issues 1(a) and 5(b). Therefore, this issue is not discussed as a separate issue.

Issue 3(c): Whether the May 25, 2011, IEP was defective for failing to include the LAS therapist, occupational therapist, and Student's aide at the meeting.

79. Student contends that the SLP, occupational therapist, and Student's aide should have been present at the IEP meeting. Respondents contend that these individuals were not required to be at the IEP meeting, and that their absence did not deprive Student of a FAPE.

80. As was stated in Legal Conclusion 45, the IEP team may include related services personnel, at the discretion of the parent or the agency. (20 U.S.C. § 1414(d)(B)(i)-(vii).) As was stated in Legal Conclusion 3, procedural errors in developing the IEP are only actionable if they impeded student's right to a FAPE, significantly impeded parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits.

81. The issue as to whether the absence of the SLP and the OT at the IEP meetings constituted a deprivation of a FAPE is encompassed within Issues 1(a) and

5(b). Therefore, the issue with respect to the attendance of the SLP and OT at the IEP meetings is hereby combined with Issues 1(a) and 5(b), and is not discussed separately.

82. Student's one-to-one aide, like the SLP and the OT, is a discretionary member of the IEP team. Unless there was a need for him to be at the meeting, he was not required to be at the meeting. Unlike the situation with the OT and SLP, where there were serious questions regarding the goals upon which they were working and the services they provided, there was no specific reason for the one-to-one aide to attend the IEP meeting. There was no issue raised at hearing regarding the services the one-to-one aide provided, and he did not independently develop any present levels of performance or any goals. There was no evidence that, at the time of the IEP meeting, Mother had any questions about the services rendered by the aide. Had Mother wanted him to be present at the meeting, she could have invited him. Based upon Findings of Fact 1-3, 15-21, and 45-59, and Legal Conclusions 1-5, and 79-82, Student did not demonstrate that the absence of the one-to-one aide from the IEP impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits.

Issue 4(a): Whether the May 29, 2012, IEP was defective for failing to offer sufficient supports and services

83. Student contends that the May 29, 2012, IEP did not offer a specific placement, an appropriate placement, sufficient LAS services, a structured social skills program, behavior services, or a one-to-one aide.

84. Legal Conclusions 45 through 50 are incorporated by this reference. Legal Conclusion 3 regarding procedural violations of the IDEA and the Education Code is incorporated by this reference. Legal Conclusion 76, regarding the requirement of a specific offer of placement is incorporated by this reference.

85. Student contends that the May 29, 2012, IEP deprived Student of a FAPE because it did not offer a specific placement. Student contends that this failure deprived Mother of the opportunity to participate in decisions regarding Student's education, and impeded Student's right to a FAPE and caused a deprivation of educational benefits because Student missed almost a month of school as a result. LACOE contended that it was not responsible for offering a placement, as District was discontinuing the LACOE program. District contends that it did not deny Student a FAPE because it responded to Mother's requests for a placement at Dominguez, and then to her request for a placement in Ms. Wilson's class at Compton High.

86. District's placement offer in the May 29, 2012, IEP was insufficiently specific and therefore deprived Student of a FAPE. At the May 29, 2012, IEP, the IEP team documented District's decision that District would no longer participate in the LACOE program. Yet, the IEP team did not offer Student a specific placement in the District. Mother requested that Student remain in the LACOE program, but, if that were not possible, that Student continue to attend Dominguez. Mother also requested the opportunity to visit any proposed classrooms. Based upon Mother's request, the team recommended that Student attend Dominguez. However, except for offering an SDC, the team did not offer a particular school, program, or class. The 2012-2013 school year started on August 27, 2012. District did not offer Student any specific placement until September 4, 2012, when it notified Mother that she could enroll Student in Ms. Haynes's class at Dominguez. Mother then learned that the class was not appropriate, and ultimately enrolled Student in Ms. Wilson's class at Compton High.

87. Based upon Findings of Fact 1-3, and 72-96, and Legal Conclusions 1-5, and 83-87, the IEP team did not develop a sufficiently formal and specific offer of placement at the IEP meeting of May 29, 2012, and thereby deprived Student of a FAPE. The failure to make such an offer of placement deprived Mother of the opportunity to

make decisions regarding Student's educational program, as she had no information as to where Student would be placed prior to the beginning of the 2012-2013 school year, and then she hastily had to find an appropriate program for Student. That District attempted to accommodate Mother's selection of a placement in September 2012 did not fulfill its obligation to offer a specific placement at the May 29, 2012, IEP meeting. Whether there is a remedy for the District's failure to offer a specific placement under the circumstances of this case is discussed below.

88. Student also contends that the May 29, 2012, IEP was defective because it failed to offer an appropriate placement. Technically speaking, the May 29, 2012, IEP did not offer any particular placement, as was discussed above. The District's placement offer occurred in the 30-day addendum IEP of September 11, 2012, when the IEP team offered Student a placement in Ms. Wilson's class at Compton High.

89. Student contends that the placement at Compton High was inappropriate for several reasons. Student was the only student with autism in the classroom, and Ms. Wilson did not have the appropriate supplies to work on Student's goals. Ms. Wilson did not believe that she and Student's aide had sufficient training or experience to work with Student. As a result, Student regressed. District contends that Student made progress in Ms. Wilson's classroom and his behaviors improved after he adjusted to the placement.

90. As was stated in Legal Conclusion 5, to constitute a FAPE, a Student's placement and services must be designed to meet the student's unique needs, and must be reasonably calculated to provide the pupil with some educational benefit.

91. District's placement of Student in Ms. Wilson's classroom was inappropriate, and deprived Student of a FAPE. First, Student was the only child with autism in the classroom. Ms. Wilson was qualified, by virtue of her credentials, to teach children with autism, but her experience never included a Student with autism who was

as low-functioning as Student. Ms. Wilson also did not have the materials she required to assist Student in achieving his goals and controlling his behaviors, such as PECS and a weighted vest. She pleaded with the District's administration on several occasions to provide her with the supports she needed to teach Student, and she received little in response. For example, she testified that she received some visits from an autism consultant, who provided her with some materials. Mother testified that, whenever she visited the classroom, Student was sitting in the back of the room, working on a computer, and not engaged in any class activities. Ms. Wilson testified that Student made progress on his goals, but she did not explain what progress Student made. There was no evidence that Student participated in classroom interactions. By the end of the school year, Student's behaviors, which had improved after he became accustomed to the classroom, just as they had when Student was in middle school, had deteriorated to the extent that they were worse than when he entered Ms. Wilson's classroom. His self-help skills had regressed to the point that he was in diapers by the end of the school year, when he had been in Depends when he was in and Mr. Shaiman's classes. Overall, while Student may have made an unspecified amount of progress on his goals, given his regression in behavior and in self-help skills, Student had not received more than *de minimis* benefit from his placement in Ms. Wilson's class. District's placement did not offer a FAPE. (Findings of Fact 1-96, 112-122; Legal Conclusions 1-5, 83-84, and 88-91.) Whether there is a remedy for the failure to offer a FAPE under the circumstances of this case is discussed below.

92. Student also contends that the May 29, 2012, IEP did not offer sufficient LAS services.

93. Respondents did not deprive Student of a FAPE on this ground. The May 29, 2012, IEP offered LAS service in the amount of two times per week for 30 minutes each time, whether individual or group. Ms. Dong, Student's SLP during the 2011-2012

school year, attended this IEP, and reported on Student's progress in LAS. Ms. Dong testified at hearing to her opinion that LAS services of two times per week, for 30 minute sessions, was appropriate, and that Student had made remarkable progress, exceeding his goal. Student offered no evidence that he required any other level of service. Ms. Dong further testified that Student did not work as well during LAS services in a group as individually. However, the fact that the IEP offered the option of group services did not render it deficient. Student also contends that the IEP did not state the total minutes of Student's speech services for ESY. While this is true, Student did not demonstrate that this relatively minor defect in the IEP significantly infringed upon Mother's participation in the IEP process or that Student's level of speech services would have been different. Based upon Findings of Fact 1-3, and 65-91, and Legal Conclusions 1-5, 45-50, 83-84, and 92-93, the IEP provided a sufficient level of LAS services for Student during the 2012-2013 school year, and the failure to describe the total minutes of LAS the Student would receive in ESY 2012 did not impair Student's right to a FAPE, significantly impede Mother's opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or cause a deprivation of educational benefits.

94. The IEP was not defective for failing to offer a social skills program, for the reasons set forth in Legal Conclusion 59. (Findings of Fact 1-91; Legal Conclusions 1-5, 12-19 45-50, 83-83, and 94.) The failure of the IEP to offer behavior services, other than the one-to-one aide, did not deprive Student of a FAPE. Student had behavioral difficulties in the 2012-2013 school year, which, as discussed above, warranted an assessment. However, the evidence reflected that Student's behaviors during the 2011-2012 school year did not interfere with his education, and were well contained by Mr. Shaiman, Student's teacher, and Student's one-to-one aide. There was no evidence that the IEP team knew, or should have known, in May 2012, that Student's behaviors would regress as they did. Therefore, under the "snapshot rule," the IEP team did not deprive

Student of a FAPE by failing to offer any behavioral services in addition to Student's one-to-one aide. (Findings of Fact 1-91; Legal Conclusions 1-5, 12-19, 45 -50, 83-84, and 94.)

95. Student contends that the IEP was defective because it did not specify that the offer of "Intensive Individual Services" for 1500 minutes, 5 days per week, referred to the services of a one-to-one aide. This contention is unmeritorious. Mother attended the IEP meeting. The IEP notes reflected that "Intensive services" were discussed at the IEP meeting and would be continued. If Mother did not understand that "Intensive Individual Services" referred to a one-to-one aide, she could have asked questions about it at the IEP meeting. There was no evidence that, at the time of the IEP meeting, Mother did not understand that this phrase referred to a one-to-one aide, or that Mother had any doubts regarding whether Student would receive the services of a one-to-one aide, or that Mother could not have asked questions regarding these services at the IEP meeting. Respondents did not deprive Student of a FAPE on this ground. (Findings of Fact 1-3, and 72-88; Legal Conclusions 1-5, 45-50, and 95.)

Issue 4(b): Whether the May 29, 2012, IEP was defective for failing to include required elements

96. Student contends that that May 29, 2012, IEP did not include appropriate statements of Student's present levels of performance, appropriate measurable goals, a statement of the supplementary aids and services to be provided, an explanation of the extent to which Student would not participate at school with nondisabled children, a statement of necessary and appropriate accommodations, the location at which services would be rendered, the amount and frequency of OT services, and an appropriate transition plan. Respondents contend that the May 29, 2012, IEP contained all necessary elements and did not deprive Student of a FAPE.

97. Legal Conclusion 3 regarding procedural violations of the IDEA and the Education Code is incorporated herein by this reference. Legal Conclusions 45-50 are incorporated herein by this reference. As was stated in Legal Conclusion 50, the IEP is required to contain a variety of information, but the information may be included anywhere in the IEP.

98. With respect to appropriate statement of present levels of performance, Student contends that the present levels of performance in the May 2012 IEP were incomplete in the areas of communication, fine motor skills, and behavior. Additionally, since there were no appropriate assessments, the IEP team could not determine appropriate present levels of performance. District contends that the team was aware of Student's present levels of performance, as the IEP stated that the team reviewed Mr. Shaiman's report on Student's educational progress and reviewed Student's progress on his goals.

99. Student's contentions with respect to fine motor skills are related to and derive from the Respondents' failures to perform an OT assessment and to have an occupational therapist present at the IEP meeting, and the impact of those failures are discussed with respect to Issues 1(a) and 5(b). Therefore, the issue as to the adequacy of the present levels of performance with respect to OT subjects is not discussed as a separate issue. Standing alone, the adequacy of the present levels of performance regarding fine motor skills did not deprive Student of a FAPE, rather, it is part of the broader FAPE analysis which is contained in the discussion with respect to Issues 1(a) and 5(b).

100. With respect to Student's remaining contentions regarding the adequacy of the present levels of performance, the IEP contains present levels of performance in three sections of the IEP: the Present Levels pages, the baselines which accompany all but one goal, and the notes. Student's communication skills and behaviors are discussed

in one or more of these areas at the IEP. As was discussed above, the psychoeducational and APE assessments performed were adequate, and thus the present levels of performance covered by those assessments were not defective. There were no LAS assessments, but the SLP was present, and the IEP team members were able to formulate present levels based upon the observations of the teacher, the SLP, and the APE. Overall, there was no evidence that the present levels of performance, did not accurately describe Student's performance as of the time the present levels of performance were formulated, so as to impede Student's right to a FAPE, significantly impede Mother's opportunity to participate in the decision making process regarding the provision of a FAPE, or cause a deprivation of educational benefits. (Findings of Fact 1-3, 60-91; Legal Conclusions 1-5, 46-50, 96-100.)

101. With respect to goals, Student contends the goals were not appropriate because they were not based on assessments, and they did not include goals regarding OT services, social emotional skills, and behaviors, especially the more aggressive behaviors testified to by Ms. Wilson.

102. Student's contentions that the IEP was defective on this ground so as to deprive him of a FAPE are unmeritorious. The IEP contained 13 goals, plus additional goals to apply to four daily activities. The goals addressed social/emotional skills and behaviors, in that they heavily targeted Student's language and communication skills, as well as compliant behaviors. The IEP did not mention the more aggressive behaviors witnessed by Ms. Wilson during the 2012-2013 school year but, at the time of this IEP, in May 2012, those behaviors were not an issue. There was no OT goal, for reasons which have been discussed elsewhere in this Decision. As is explained elsewhere in this Decision, Student was deprived of a FAPE with respect to OT services for other reasons, not for the failure of this IEP to contain an OT goal. The goals were not defective, and

Student was not deprived of a FAPE. (Findings of Fact 1-3, and 60-91; Legal Conclusions 1-5, 45-50, 96-97, and 102.)

103. Student contends that the IEP was defective because it failed to contain a statement of the supplementary aids and services to be provided. The IEP lists the DIS services to be provided, except for the frequency and duration of OT services. As was previously discussed, the IEP did not specify the frequency and duration of the OT services because the team intended to discuss the OT services at an addendum IEP meeting. The Respondent's failure to convene that meeting is discussed in issues 1(a) and 5(b), and therefore the failure of this IEP to specify the OT services will not be discussed here as a separate issue. With the exception of the failure to set forth the duration and frequency of OT services, and based upon Findings of Fact 1 through 122, and Legal Conclusions 1 through 5, 45-50, 96-97, and 103, the May 29, 2012, IEP did not deprive Student of a FAPE on this ground.

104. Student contends that the IEP was defective because it failed to explain the extent to which Student would not participate at school with nondisabled children, and that Mother was prevented from participating in the IEP because she did not know how much time Student would be spending in the general education environment. The IEP stated that Student would be in the SDC five days per week, for 1500 minutes total. The IEP specifically referred to Student's walking to the cafeteria and his activities at the cafeteria. There was no evidence that Mother did not understand that Student was spending the vast majority of his time in special education. There was no evidence that Mother expressed any concern to this IEP team about Student's participation in general education. Under these circumstances, the failure of the IEP to contain more detail regarding this issue did not impede Student's right to a FAPE, significantly impede Mother's opportunity to participate in the decision making process regarding the

provision of a FAPE, or cause a deprivation of educational benefits. (Findings of Fact 1-3, 60-91, Legal Conclusions 1-5, 45-50, 96-97, and 104.)

105. Student contends that the IEP was defective because it did not include a statement of accommodation and modifications. District contends that the IEP is not defective, because the team documented accommodations and modifications, including whether assistive technology was necessary, and a modification of the timing of progress reports. Student is correct that the IEP did not include a statement of accommodations and modifications. This failure is related to the District's failure to specify a placement for Student, which constituted a deprivation of a FAPE, as described elsewhere in this Decision. It is also likely that the failure of the IEP team to include in the IEP a statement of the accommodations and modifications Student would need impaired the ability of the District and Mother to choose an appropriate placement for Student. Under these circumstances, the failure of the IEP to include a statement of accommodations and modifications impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process, and ultimately caused a deprivation of educational benefits. (Findings of Fact 1-3, and 72-93; Legal Conclusions 1-5, 45-50, 96-97, and 105.) Whether Student is entitled to a remedy for this procedural violation given the evidence presented is discussed below.

106. Student contends that the IEP was defective because it only listed "School Site" as the location at which services would be rendered, and did not specify the school. Student contends that this violates *Union, supra*, because it renders the IEP ambiguous and difficult to enforce. The reference to "School Site" when a school site is named in the IEP is ordinarily a sufficient designation of the location of services, as it serves to designate that the services are school-based and will not be rendered in a clinic or somewhere away from school. In this situation, the designation "School Site" is insufficient, even though Student had no clinic-based services, only because no specific

offer of placement, beyond that Student would be placed in a District school and program, was made at the IEP meeting. As is discussed elsewhere in this Decision, under Issue 4(a), the failure of the IEP team to specify Student's placement deprived Student of a FAPE. Under these circumstances, this issue is duplicative of Issue 4(a), and it is hereby combined with that issue and is not discussed as a separate issue.

107. Student also contends that the IEP was defective because it did not specify the frequency and duration of OT services. This issue is duplicative of the issue regarding the statement of supplementary aids and services, and derives from District's offer and delivery of OT services in general, as is more fully discussed in Issues 1(a) and 5(b). Therefore, this issue is not discussed here as a separate issue.

108. Student contends that the transition plan was inappropriate, as it did not include measurable goals. This issue relates directly to Issue 1(a), which involves whether the transition assessment was appropriate. There is no requirement that a transition plan contain goals separate from the remainder of the IEP goals, as long as the contents of the transition plan coordinate with the IEP goals and are designed to further those goals in the post-secondary environment. In this case, as was discussed in Legal Conclusions 30-32, the goals in the transition plan directly related related to the detailed, measurable goals in the remainder of Student's IEP regarding his abilities to learn and communicate his vital information, choose his own food, sort and bag items, and express and perform his toileting needs. Based upon Findings of Fact 1-3, and 72-88, and Legal Conclusions 1-5, 8-11, 30-32, 96-97, and 108, the transition plan was appropriate, and Student was not deprived of a FAPE on this ground.

Issue 4(c) Whether the May 29, 2012, IEP was defective for failing to include the occupational therapist and Student's aide at the meeting

109. Student contends that the occupational therapist and Student's aide should have been present at the IEP meeting. Respondents contend that these

individuals either were not required to be at the IEP meeting, or that their absence did not deprive Student of a FAPE.

110. Legal Conclusion 3 is incorporated by this reference. The issue regarding the absence of the occupational therapist at this IEP meeting is discussed with respect to Issues 1(a) and 5(b), and it will not be discussed separately here.

111. The issue as to the absence of the one-to-one aide at this IEP meeting is subject to the same analysis as was performed with respect to Issue 3(c), above, and as was discussed in Legal Conclusion 82. For the reasons set forth in that Legal Conclusion, the absence of the one-to-one aide at the May 29, 2012, IEP did not deprive Student of a FAPE. (Findings of Fact 1-3 and 60-91; Legal Conclusions 1-5, 45, 79-82, and 109-111.)

Issue 5(a): Whether the Respondents failed to implement Student's IEP's from January 2011 to the date of filing the Complaint by failing to provide the OT and LAS services in Student's IEP's

112. Student contends that Respondents failed to implement his IEP's from January 2011, to the date of hearing by failing to provide the OT and LAS services that the IEP team included in Student's IEP's. Respondents contend that there was no failure to provide SLP services, and District contends that Student received sufficient OT services from Ms. Hebert during the 2011-2012 school year such that Ms. Hebert testified that Student no longer needed direct OT services.¹²

113. Minor failures by a school district in implementing an IEP should not automatically be treated as violations of the IDEA. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811, 821.) Rather, only a material failure to implement an IEP violates

¹² As has been noted elsewhere in this Decision, District was solely responsible for providing OT services to Student, including when Student was attending the LACOE program.

the IDEA. (*Id.* at p. 822.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Ibid.*) This standard does not require that the child suffer demonstrable educational harm for there to be a finding of a material failure. (*Ibid.*) However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. (*Ibid.*)

114. District failed to specify OT services in the IEP's of May 27, 2010, May 25, 2011, and May 29, 2012. Consequently, the issue is not whether there was a failure to implement the IEP's with respect to OT services, because the frequency and duration of OT services were never specified, and thus there was nothing in the IEP to implement. To the extent that Student contends he was deprived of a FAPE due to the failure of the IEP's to include the duration and frequency of OT services, and the failure of the District to provide such services, these issues are discussed in Issues 1(a) and 5(b).

115. The analysis is somewhat different with respect to LAS services, because the evidence reflected that the amount of services were specified in the operative IEP's. Furthermore, Student substantially received the listed services. For example, LACOE was unable to locate service logs for Student's LAS services during the latter part of the 2010-2011 school year, but the testimony of Ms. Enenmoh and Mr. Cotcher, Student's one-to-one aide during that time, established that Student received LAS services then. The evidence demonstrated that Student received LAS services consistently during the 2011-2012 and 2012-2013 school years. Student also received at least some LAS services during ESY 2011, and the log for ESY 2012 reflects that Student was absent during ESY 2012. Overall, the logs reflect that Student missed some LAS sessions, but, for the most part, these sessions were missed due to Student's absence from school, or due to his participating in field trips with his classmates, or due to school holidays. Furthermore, Ms. Dong, the SLP who provided LAS services on a mostly individual basis to Student

during the 2011-2012 school year, believed that Student had far exceeded his speech goal for that year, and had made great progress. In view of the progress Student made in speech therapy, and the evidence that he generally received LAS services on a consistent basis, the evidence did not demonstrate that there was any significant failure to implement Student's IEP's with respect to the narrow issue of Student's receipt of LAS services at the level and frequency set forth in his IEP's. Based upon Findings of Fact 1-122, and Legal Conclusions 1-5, and 112-115, the Respondents did not deny Student a FAPE on this ground.

Issue 5(b): Whether the Respondents failed to implement Student's IEP's of May 25, 2011, and May 29, 2012, by failing to convene addendum IEP's

116. Student contends that the Respondents failed to convene the addendum IEP's to discuss OT and LAS services as the IEP teams agreed to do in the IPE's of May 25, 2011, and May 29, 2012.¹³

117. As was stated in Legal Conclusion 113, a significant failure to implement an IEP may constitute a deprivation of a FAPE. However, although Student contends that the failure to convene the addendum IEP constituted a failure to implement the IEP's, the issue is actually that the IEP's were never completed, and therefore whether the

¹³ The issues stated in the PHC Order, which were discussed at the PHC and further discussed and refined at hearing, did not reference the Respondent's failure to convene an addendum IEP meeting after the May 27, 2010, IEP. No party mentioned that the failure to convene an addendum IEP meeting after the May 27, 2010, IEP should be included in Issue 5(b). Regardless, for the reasons set forth in Legal Conclusions 42, and 51-54, the failure of the Respondents to convene such an addendum IEP meeting would be barred by the statute of limitations.

failure to complete the IEP's with respect to OT and LAS services deprived Student of a FAPE.

118. The IEP's of May 25, 2011, and May 29, 2012, provided that addendum IEP's would be held to determine OT goals and the frequency of OT services. The IEP of May 25, 2011, also provided that an addendum IEP would include a discussion of LAS goals and services. In essence, these IEP's demonstrate that they were incomplete because they did not address all of Student's related service needs.

119. It is undisputed that neither LACOE nor the District convened any of the addendum IEP's that were contemplated. These failures constituted significant failures to complete the IEP's. Each of the subject IEP teams agreed that Student required OT services. The failure to convene these addendum IEP's resulted in Student not having any agreed-upon OT goals, or agreed upon frequency of OT services during the 2011-2012 and 2012-2013 school years. The failure to hold these addendum meetings resulted in the IEP team, including Mother, not having any knowledge of Student's progress in OT during those school years. The failure to hold these addendum meetings resulted in the IEP team, including Mother, not having any awareness of the type of OT services that Student was receiving. The failure to hold these addendum meetings deprived Student of a FAPE with respect to OT services. (Findings of Fact 1-3, 45-122, Legal Conclusions 1-5, 46-50, and 116-119.)

120. A similar analysis applies to the failure to convene an addendum IEP meeting after the IEP meeting of May 25, 2011, to discuss LAS goals and services. However, the Respondents' failure to convene this addendum IEP resulted in Student not having agreed-upon LAS goals, or agreed upon frequency of services from through the 2011-2012 school year. The failure to convene addendum IEP's prevented the IEP team, including Mother, from learning Student's progress in speech and language, or regarding the nature of Student's LAS services. The failure to hold this addendum

meeting therefore deprived Student of a FAPE. (Findings of Fact 1-3, and 45-71; Legal Conclusions 1-5, 46-50, 116-120.)

121. Further, for purposes of this Decision, both District and LACOE are responsible for the failure to convene the addendum IEP meetings from May 2011 until July 2012, as up until that time Student was in the LACOE program. District was responsible for providing Student's OT services during that time, but the evidence reflected that the IEP teams during that period made all decisions as to related services as a single team. There was no evidence that the LACOE employees left the IEP meetings when the IEP teams discussed Student's need for OT services, or of the need to hold addendum IEP meetings to discuss those services. Further, LACOE was responsible for scheduling the IEP meetings while Student was in the LACOE program. There was no evidence that Mother was ever advised that the addendum IEP meetings regarding OT would be scheduled by District and would be District's responsibility, or that District or LACOE had any intention to so divide the responsibility for scheduling the addendum IEP meetings. Subsequent to July 19, 2012, however, which was the date on which ESY 2012 ended and LACOE's obligations to provide a FAPE to Student terminated, District alone is responsible for the failure to convene the addendum IEP meetings.

Issue 6: Whether the Respondents predetermined Student's placement in September 2012, so as to deprive Student of a FAPE

122. Student contends that Respondents predetermined Student's placement by unilaterally deciding to place Student in Compton at the May 29, 2012, IEP meeting, over Mother's objection. LACOE contends that it was not involved in Student's placement in the District, and thus has no liability to Student. District contends that Mother participated in discussions of alternative placements, and was permitted to enroll at Dominguez, as Mother had requested, and to observe Ms. Wilson's class at Compton High.

123. Predetermination of a Student's placement is a procedural violation that deprives a student of a FAPE in those instances in which placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Education* (6th Cir. 2004) 392 F. 2d 840.) To fulfill the goal of parental participation in the IEP process, the school district is required to conduct a meaningful IEP meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusion, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ., supra*, 993 F.2d 1031, 1036 [parent who had an opportunity to discuss a proposed IEP and whose concerns were considered by the IEP team has participated in the IEP process in a meaningful way].) "A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." (*Ms. S. ex rel G. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1131.) However, an IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an "education . . . designed according to the parent's desires."].)

124. Student did not demonstrate that Respondents predetermined Student's placement. First, with respect to LACOE, there was no evidence that LACOE was involved in District's decision to terminate the LACOE program for the 2012-2013 school year, or that LACOE had any obligation to continue to provide a program to District that District no longer desired. Second, with respect to the District, Student cited no authority that District, Student's school district of residence, was legally required to continue to provide a LACOE program to Student indefinitely. Third, at all times, District considered and respected Mother's concerns as to Student's placement in a program administered

by the District in a District school. At the May 29, 2012, IEP meeting, the IEP team tentatively acceded to Mother's request that Student be placed at Dominguez. In fall 2012, District offered enrollment at Dominguez. Mother observed the class at Dominguez, and the teacher, Ms. Haynes, determined that the class was inappropriate for Student. At the September 11, 2012 IEP meeting, Mother was offered the opportunity to visit classrooms in the District, and an appointment was set for her to visit Ms. Wilson's classroom at Compton High, where Student was ultimately placed. District did not ignore Mother's concerns, or present her a placement on a "take it or leave it" basis. Mother was not offered her preferred program, which was the LACOE program, but, under the circumstances of this case, that did not constitute predetermination, and Student was not deprived of a FAPE on the basis of predetermination. (Findings of Fact 1-3, and 72-95; Legal Conclusions 1-5, and 122-124.) As was discussed above, the true problem with Student's placement at Compton High was not that it was predetermined, but that it was not an appropriate placement and did not provide a FAPE.

REMEDIES

125. Student's requested remedies against both District and LACOE include compensatory OT and LAS services to be provided by a non-public agency, independent assessments (IEE's), placement at Tobinworld with an experienced one-to-one aide, and round-trip transportation to the compensatory services and to Tobinworld.

126. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party, and, because they are equitable remedies, the behavior of both the school district and student's parents may be taken into account. "Appropriate relief" is relief designed to ensure that the student is

appropriately educated within the meaning of the IDEA. There is no obligation to provide day-for-day or hour-for-hour compensation. (*Id.* at 1497.) Basing a compensation award on day-to-day or hour-to-hour compensation has been criticized on the grounds that such a mechanical approach may not be sufficiently tailored to the student's unique needs to ensure that the student is appropriately educated. (*Reid, etc. v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 523-524.)

127. An IEE at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. *Los Angeles Unified School Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-823.) An IEE is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).)

128. Student contends that he is entitled to compensatory education in the area of LAS and OT services by reason of the denials of FAPE he has alleged. However, Student produced insufficient evidence upon which to base the awards of compensatory education Student seeks, or, indeed, any awards of compensatory education. The PHC Order issued in this case on May 2, 2013, specifically required that the party seeking compensatory education provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Student failed to produce such evidence with respect to any of the the FAPE violations he has proven and, in particular, with regard to the FAPE violations pertaining to the LAS assessment and to OT services and assessments. Student presented no recent LAS assessments or the testimony of any experts, to demonstrate the appropriate levels of services Student would need to compensate for services he did not receive. There was no evidence as to the specific LAS or OT services Student required, or the frequency of services he required. Ms. Hebert, the District's occupational therapist, provided the only evidence as to an appropriate level of OT services that Student would require currently, and she testified that Student did not require any direct services anymore. Additionally, the OT logs reflect that from

ESY 2012 onward, Student received OT services on a regular basis, and the frequency and duration of such services were greater during the period from September 14, 2012 until November 27, 2012, than the 30 minute per week services that she had recommended, based on her assessment. The services were increased during that period in an attempt to provide compensatory OT for Student. As a result, in her opinion, a small amount of consultative services would be sufficient to serve Student's needs at this time, and no compensatory education services are required. Student presented no evidence to contradict Ms. Hebert's testimony. Student's closing brief suggests only that a compensation award for LAS and occupational therapy services should be based on a day-to-day or hour-to-hour basis, but the law, including *Student W. v Puyallup, supra*, 31 F.3d 1489 at 1497, which Student cites in his closing brief, does not support such an approach. Therefore, Student cannot be awarded such compensatory services in this Decision.

129. Nevertheless, there are other equitable remedies available for Student, some of which Student also requested. For the reasons set forth in the discussion of Issue 1(a), Student is entitled to an IEE at Respondents' expense in the area of LAS, as Respondents were jointly responsible to provide a FAPE to Student regarding LAS services. Student is also entitled to an FBA IEE at District's sole expense in the area of behavior, to be conducted at the school Student ultimately attends during the 2013-2014 school year. Student is also entitled to an IEE in the area of OT. The OT and FBA IEE's are determined to be District's responsibility, because the District has, at all relevant times, been solely responsible to provide OT services to Student. Furthermore, Student's need for a behavior assessment did not manifest itself until the 2012-2013 school year, when Student was no longer in the LACOE program. Additionally, even though Mr. Bonilla's psychoeducational assessment was sufficient, as was discussed above, the circumstances of this case warrant an award of an independent

psychoeducational assessment, at District's expense, as equitable relief. First, Student will, according to the parties' closing briefs, be attending a different school in the 2013-2014 school year. That will be the third change in educational placement in three years for Student. The evidence revealed that the previous changes in educational placement have been stressful to Student, and there is no reason to doubt that the change in placement for the 2013-2014 school year will also be challenging for him. Second, Student's behavior and self-help skills regressed greatly during the 2012-2013 school year, and a psychoeducational assessment may provide information that would assist Student in recouping at least some progress so that he can receive an appropriate education in his new educational placement. Third, Ms. Hebert's OT assessment in fall 2012 suggested, for the first time, that "auditory processing challenges is felt to be a factor" in Student's ability to follow only simple commands and directions. Therefore, an independent psychoeducational assessment is needed to address this new area of suspected disability. Each of the assessments ordered herein shall include the assessor's recommendations as to the frequency and duration of services Student requires. The assessment reports will then be discussed at one or more IEP meetings held within the time frame(s) set forth below. The assessors who conduct the IEE's described in this paragraph shall be invited to appear and present their reports at the IEP meeting or meetings held after the assessments are completed. The assessors shall be paid a reasonable hourly rate, including the time for portal to portal round-trip travel, for their attendance at the IEP meeting(s) ordered herein. For the reasons discussed in this Decision, the expenses for the attendance of the LAS assessor at the IEP meeting(s) shall be jointly borne by Respondents, while the expenses for the attendance of the OT, behavior, and psychoeducational assessors at the IEP meeting(s) shall be borne solely by the District.

130. Furthermore, as some of the Respondents' conduct constituted procedural denials of a FAPE because of their impact on Mother's participation in the decision making process regarding her child's education, it is equitable and appropriate to award remedies which address Mother's ability to participate in decisions regarding Student's education. Therefore, all of Student's service providers during the 2013-2014 school year are to provide Mother true and correct copies of their service logs on a monthly basis, at the expense of District, since the evidence reflects that District, and not LACOE, will be the custodian of those records.

131. The evidence at hearing and the closing briefs filed by the parties reflect that the parties have agreed that District will fund Student's placement at Tobinworld for the 2013-2014 school year, including transportation. There was no evidence that District's offer to place Student at Tobinworld was based upon a decision of an IEP team. Student has requested an Order that he be placed at Tobinworld, with the services of a one-to-one aide. However, there was no evidence that, as of the time of the hearing, Student had applied for admission at Tobinworld, or been accepted there. No evidence was presented at hearing regarding the program offered at Tobinworld or any other placement, and whether any such program would meet Student's needs, or provide him a FAPE, or why he would need a one-to-one aide in such a program. Therefore, there is insufficient evidence upon which to base an order of a specific placement at Tobinworld, or elsewhere, with the services of a one-to-one aide. Nothing in this Decision, however, is intended to affect in any way the agreement between District and Student that the District shall fund Student's placement at Tobinworld for the 2013-2014 school year, with round-trip transportation.

ORDER

1. Student shall have a psychoeducational IEE, to be performed by an assessor selected by Student, at District's expense, consistent with District criteria. The

assessment shall include an auditory processing assessment, and the assessment report shall include recommendations as to the frequency and duration of services Student requires.

- a. Within five business days of District's receipt of this Decision, District shall provide Student with agency criteria for conducting the assessment, including agency criteria, if any, concerning the reasonable cost for conducting the assessment.
- b. District shall pay for the IEE within 30 calendar days of receipt of the independent assessor's written demand for payment.
- c. District shall convene an IEP meeting to discuss the IEE within 30 calendar days of the District's receipt of the assessor's report of the IEE, not counting days between the Student's regular school sessions, terms, or days of school vacation in excess of five school days.

2. Student shall have an OT IEE, to be performed by an assessor selected by Student, at District's expense, consistent with District criteria. The assessment shall include recommendations as to the frequency and duration of services Student requires.

- a. Within five business days of District's receipt of this Decision, District shall provide Student with agency criteria for conducting the assessment, including agency criteria, if any, concerning the reasonable cost for conducting the assessment.
- b. District shall pay for the IEE within 30 calendar days of receipt of the independent assessor's written demand for payment.
- c. District shall convene an IEP meeting to discuss the IEE within 30 calendar days of the District's receipt of the assessor's report of the IEE, not counting days between the Student's regular school sessions, terms, or days of school vacation in excess of five school days.

3. Student shall have an FBA to be performed by an assessor selected by Student, at District's expense, consistent with District criteria. The assessment shall include recommendations as to the frequency and duration of services Student requires. The assessment shall be conducted in the school environment at Student's school placement for the 2013-2014 school year, and shall begin within three weeks after Student begins attending that placement.

- a. Within five business days of District's receipt of this Decision, District shall provide Student with agency criteria for conducting the assessment, including agency criteria, if any, concerning the reasonable cost for conducting the assessment.
- b. District shall pay for the IEE within 30 calendar days of receipt of the independent assessor's written demand for payment.
- c. District shall convene an IEP meeting to discuss the IEE within 30 calendar days of the District's receipt of the assessor's report of the IEE, not counting days between the Student's regular school sessions, terms, or days of school vacation in excess of five school days.

4. Student shall have an LAS IEE, to be performed by an assessor selected by Student, at Respondents' expense, jointly and severally, consistent with District criteria. The assessment report shall include recommendations as to the frequency and duration of services Student requires.

- a. Within five business days of District's receipt of this Decision, District shall provide Student with agency criteria for conducting the assessment, including agency criteria, if any, concerning the reasonable cost for conducting the assessment.
- b. Respondents shall pay for the IEE within 30 calendar days of receipt of the independent assessor's written demand for payment.

- c. District shall convene an IEP meeting to discuss the IEE within 30 calendar days of the District's receipt of the assessor's report of the IEE, not counting days between the Student's regular school sessions, terms, or days of school vacation in excess of five school days.

5. The assessors shall be invited to attend the IEP meetings held with respect to their respective assessments, to present their assessment reports. The assessors shall be paid a reasonable hourly rate, including the time for portal to portal round-trip travel, if they attend such IEP meetings. The expenses for the attendance of the LAS assessor at the IEP meeting(s) shall be borne by the Respondents, jointly and severally. The expenses for the attendance of the OT, behavior, and psychoeducational assessors at the IEP meeting(s) shall be borne solely by the District.

6. Mother shall be provided true and correct copies of all service logs of each of Student's DIS providers during the 2013-2014 school year, on a monthly basis, at the expense of District.

7. All other relief sought by Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter.

Student has prevailed on part of Issue 1(a), part of Issue 3(b)(iii), Issue 3(b)(vii), part of Issue 3(c), Issue 4(a)(i), Issue 4(a)(ii), part of Issue 4(b)(iii), Issue 4(b)(v), Issue 4(b)(vi), Issue 4(b)(vii), part of issue 4(c), and Issue 5(b).

LACOE and District have each prevailed on part of Issue 1(a), Issue 1(b), Issue 1(c), Issue 2(a), Issue 2(b), Issue 2(c), Issue 3(a), Issue 3(b)(i), Issue 3(b)(ii), part of Issue 3(b)(iii), Issue 3(b)(iv), Issue 3(b)(v), Issue 3(b)(vi), part of Issue 3(c), Issue 4(a)(iii), Issue 4(a)(iv),

Issue 4(a)(v), Issue 4(a)(vi), Issue 4(b)(i), Issue 4(b)(ii), part of Issue 4(b)(iii), Issue 4(b)(iv), Issue 4(b)(viii), part of Issue 4(c), Issue 5(a), and Issue 6.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: July 8, 2013

_____/s/_____

ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings