

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015070748

DECISION

Student, by and through his Parents, filed a Due Process Hearing Request on July 2, 2015, with the Office of Administrative Hearings, State of California, naming Pasadena Unified School District. Student amended his complaint on September 18, 2015.

Administrative Law Judge Clifford H. Woosley heard this matter in Altadena, California, on November 12, 13, 16, 17, 18, 19 and 20, 2015.

Attorneys Alexis Casillas and Sophia Bliziotis appeared on behalf of Student. Mother and Father attended the entire hearing. Attorney Meredith B. Reynolds represented District. Jerell B. Hill, Assistant Superintendent, Special Education, attended on behalf of District, except for two days when program coordinators Carol Higa and Carlos Garcia Lara attended on his behalf.

On the last day of hearing, a continuance was granted for the parties to file written closing arguments and the record remained open until December 14, 2015. Upon timely receipt of written closing arguments, the record was closed and the matter submitted for decision on December 14, 2015.

ISSUES¹

1. Did District deny Student a free appropriate public education during the 2013-2014 and 2014-2015 school years, and through September 18, 2015, by failing to find Student eligible for special education under the categories of:
 - (a) Other health impairment at the (i) May 20, 2014, IEP, (ii) March 23, 2015, IEP, and (iii) September 11, 2015, IEP;
 - (b) Emotional disturbance at the (i) May 20, 2014, IEP, (ii) March 23, 2015, IEP, and (iii) September 11, 2015, IEP; or
 - (c) Specific learning disability at the (i) May 20, 2014, IEP, (ii) March 23, 2015, IEP, and (iii) September 11, 2015, IEP?
2. Was District's May 20, 2014 psychoeducational assessment appropriate?
3. Was District's March 23, 2015 psychoeducational assessment appropriate?
4. Did District commit other procedural violations, which denied Student a free appropriate public education during the 2013–2014 and 2014–2015 school years, and through September 18, 2015, by:
 - (a) Failing to perform its child find duty to assess Student for eligibility for special education services;
 - (b) Failing to provide an assessment plan or prior written notice in response to Parents' request for assessment in September 2013;
 - (c) Failing to consider parental concerns in the areas of (i) academics, (ii) socialization, (iii) emotional development, and (iv) behavior at the IEP team meetings, thereby denying meaningful participation;

¹ The issues have been reorganized for purposes of analysis. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

- (d) Predetermining eligibility at the IEP team meetings of (i) May 20, 2014, (ii) March 23, 2015, and (iii) September 11, 2015; and
- (e) Failing to consider the recommendations of outside professionals on the issue of eligibility at the IEP team meetings of (i) May 20, 2014, (ii) March 23, 2015 and (iii) September 11, 2015?

SUMMARY OF DECISION

Student convincingly demonstrated that Student was eligible for special education at the March 23, 2015 IEP as a child with other health impairment and emotional disturbance. At the time of the IEP, Student had limited strength, vitality or alertness, due to his chronic Attention Deficit Hyperactivity Disorder and accompanying anxiety. Student also had an intense, internalized anxiety regarding school attendance, which caused Student to be extremely school resistant and, when at school, needed safe places and people when he became anxious. Those conditions affected his educational performance, requiring special education to access his school program. Student also met his burden that Student should have been declared similarly eligible at the September 2015 IEP because the District had the same information available as the March 2015 IEP, had not done any additional assessments, and were considering an independent educational evaluation that recommended Student be found eligible under other health impairment and emotional disturbance. Student did not meet his burden of proof that Student should have been found eligible because of a specific learning disability.

Student proved that District failed to meet its child find obligation, which was triggered in November 2014, upon Student's return from his six-week partial hospitalization at the UCLA ABC program. Parents gave District the UCLA ABC's summary letter report, which provided District with specific knowledge and reason to suspect Student might have a disability requiring special education services. Student

also demonstrated that the District's March 2015 psychoeducational assessment was not legally appropriate and that District failed to properly consider the views of outside professionals at the March 2015 IEP. Student did not meet his burden as to Issues 1(a)(i), 1(b)(i), 1(c), 2, 4(b), 4(c), 4(d), 5(e)(1), and 5(e)(iii)

FACTUAL FINDINGS

1. Student was a nine-year-old fourth grader, who at the time of the hearing, attended Frostig School, a private non-public school. Student resided with Parents within District boundaries. At the time of hearing, Student was not eligible for special education services.

EDUCATIONAL BACKGROUND

Kindergarten and First Grade

2. Student attended District's Longfellow Elementary School for kindergarten, first grade, and second grade. On January 17, 2012, District convened a Student Success Team meeting. The Student Success Team addressed Student's difficulties with focusing and attention and developing social skills with peers. The Student Success Team informed Parents that Student had sensory needs that could affect his ability to attend to task. Student participated in weekly occupational therapy and regular sports activities. His teacher used preferential seating, along with verbal and physical cues, to help Student focus in class. Student's first grade teacher told Parents that Student needed improvement in self-control and interacting with others. She turned Student's desk so it faced the wall, with the intent of minimizing distractions. Student interpreted her actions as punishment and began thinking of himself as "stupid" or that he was always in trouble.

3. District held Student's second Student Success Team meeting on October 25, 2012. The team agreed that Student needed to identify word families and increase

his fluency rate. Student's first grade teacher, Carol Parker, rated Student at the end of the school year slightly less than satisfactory for behavior and study skills. Student needed improvement in self-control but was outstanding in timely completing and returning homework. Student received a grade of low proficient in reading. Student had mastered concepts and phonemic awareness and was progressing in decoding and word recognition, vocabulary and word recognition, reading comprehension, and literary response and analysis. Student received a low proficient grade in writing and was progressing in all writing standards, except for sentence structure, for which he received a mastery rating. Student was proficient in mathematics and progressing in all math standards. Student was absent nine days in first grade, and was late to school four times.

4. Ms. Parker told Parents that Student was not going to "cut it," because he was distracted, would not pay attention, and unable to focus. Student could not work in a normal classroom setting, without some intervention to help him focus. Ms. Parker's statement, along with Parents' own increasing concerns regarding Student's distractibility and behavior, caused Parents to have Student privately assessed at the recommendation of Student's therapist. District did not offer to assess Student by the end of first grade.

2012 Neuropsychological Assessment – Dr. Maher

5. Chrystal C. Maher, Psy.D., BCBA-D² of Greenhouse Therapy Center privately conducted a neuropsychological assessment of Student from April through July 2013. Dr. Maher administered a battery of standardized tests.

6. Parents reported Student was irritable, had poor impulse control, and had difficulty taking directions. He was hyperactive and could not regulate his emotions, easily becoming upset, angry, and sometimes aggressive. Student's private therapist Dr.

² A doctoral designation for Board Certified Behavior Analyst.

Crawford believed Student had difficulty processing information and making decisions

7. Ms. Parker completed the Conners teaching form, which demonstrated her elevated concern for Student's hyperactivity, impulsivity, and peer relationships. The Conners Attention Deficit Hyperactivity Disorder index indicated Student had an 87 percent probability of Attention Deficit Hyperactivity Disorder, predominantly Hyperactive-Impulsive Type. Ms. Parker also completed the BASC teacher form and rated Student as having clinically significant difficulty with hyperactivity and at risk difficulties with attention problems and social skills. She rated Student at risk for bullying, emotional self-control, executive functioning, and resiliency. Ms. Parker's ratings verified that Student was easily distracted, restless, fidgety, or impulsive and that he may have trouble finishing tasks and may distract others.

8. Dr. Maher diagnosed Student with Attention-Deficit/Hyperactivity Disorder, combined. She concluded Student had difficulty in social, occupational, or school functioning. She listed 15 specific recommendations of positive behavioral strategies and environmental modifications, to help Student academically. Dr. Maher recommended that Parents contact Student's school to initiate a 504 Plan or Individualized Education Program to address his behavioral and learning needs.

Second Grade – 2013-2014 School Year

9. Student attended teacher Lena Farra's second grade class. Ms. Farra testified at the hearing. She taught second grade at Longfellow for 12 years. She had a bachelor's degree in music, a state multiple subject teaching credential, and a cross-cultural, language, and academic development certificate. Parents gave Dr. Maher's report to Ms. Farra. Ms. Farra set up her class into cooperative groups of four to six pupils, grouping them according to their abilities and performance. She gave direct instruction, modelled instruction depending on the subject, and provided the groups with guided and independent practice. She introduced music into her class as a means

of gaining attention and assisting in memorizing and recall.

10. At Parents' request, District held Student's third Student Success Team meeting on September 17, 2013. Mother, Ms. Farra, Longfellow principal Erica Ingber, and resource teacher Debra Lucas attended. District was aware of Student's Attention Deficit Hyperactivity Disorder diagnosis. Student was seeing a private therapist weekly. Mother prepared a list of suggestions to address Student's learning style, primarily based upon Dr. Maher's neuropsychological report, including having an aide in the classroom. District team members told Mother they could not provide an aide. The team agreed that Student's fluency needed to increase 43 to 53 words per minute. The team agreed to various supports and accommodations.

Student's Second Grade Conduct and Performance

11. Student told Parents that he was not smart, was stupid, and not doing well in school. Student became increasingly resistant to homework, lashing out at Mother, sometimes raging. He got frustrated and would often shut down. In class, however, Student participated in activities and discussion. At the beginning of the school year, Student's standard rating was basic for math, reading, and writing; he was proficient in speaking and listening. By the second trimester, he was basic in reading and writing and was proficient in math, speaking, and listening.

12. Mother and Ms. Farra communicated regularly. Mother explained the difficulties in getting Student to do homework, and sought assistance from the school. District provided as an accommodation that Student did not have to do all his homework. Ms. Farra also implemented other strategies to address Student's inattention, such as preferred seating and redirection, which were keeping Student focused and on task. Student was completing and returning assignments. Parents also had increasing trouble in getting Student ready for school and Student showed greater anxiety regarding his peanut allergy. However, Student's school attendance was not a

significant issue and, when visiting the health office because of his peanut allergy, Student was calm and typically returned to class after a few minutes.

13. District held Student's fourth Student Success Team meeting on March 10, 2014. Mother, Father, Ms. Farra, school nurse Ms. Kohl, and Ms. Lucas attended. Ms. Farra reported that Student's fluency had increased to 77 words per minute. When Parents told the team that they drafted a letter to Dr. Michael Jason, District's executive director of special education, requesting assessment of Student, the meeting stopped. District received Parent's assessment request on March 11, 2014.

District's May 20, 2014 Initial Psychoeducational Assessment Report

14. On March 27, 2014, District school psychologist Zena Begin provided Parents with an assessment plan and health form. District received the signed assessment plan on April 8, 2014.

15. Ms. Kohl completed a health assessment report dated May 15, 2014. Ms. Kohl testified at the hearing. She was in her fourth year as a school nurse with District. Her testimony was knowledgeable and demonstrated a professional and caring concern for Student. Student had Attention Deficit Hyperactivity Disorder, allergies and skin problems. Mother reported behavior patterns of: distractibility, impulsivity, hyperactivity, sensitivity to criticism, frustration, a tendency to become angry, temper tantrums, acting out, verbal threats, lying and crying. Student had at least three explosive episodes per day, but Mother reported that these were down to one episode a day since Student started taking Strattera, which was prescribed to address Attention Deficit Hyperactivity Disorder symptoms, and which Student took morning and evening. Mother described Student as persistent, smart, athletic, social, empathetic, friendly, and affectionate.

16. Student passed the vision and hearing screenings. His gross and fine motor skills were developmentally normal, and his neurological screening was within normal limits. Student visited the health office frequently. On several occasions, he

expressed to Ms. Kohl his fear that he was having an allergic reaction to peanuts. On those visits, Ms. Kohl assessed and reassured Student; when he felt better, he returned to class. Student also often went to the health office after lunch for various reasons such as his arm hurting because he hit it on a desk, leg hurting, wrist hurting, burning underneath his eyes, and other reasons. He had been in the health office four times during the first two weeks of May 2014.

17. Ms. Begin assessed Student and prepared an Initial Psychoeducational Report dated May 20, 2014. Student's behaviors at home had improved; he was able to actively participate in his homework and family activities where, before, it was a battle. He was still having a difficult time maintaining in class. Student benefitted from preferred seating to help with his attention and verbal prompts to complete his work. Student's inattention could impact his class work completion; he needed Ms. Farra's verbal prompts. Student was reading one point less than the second grade benchmark at 77 words per minute.

18. Ms. Begin reviewed Student's school records and Dr. Maher's report. Ms. Begin observed Student in the Longfellow science room, in class, and on the playground. Student was not unusually distracted, other than when he "zoned out;" Student would return to his work on his own. Student actively engaged in a game of kicking a ball, appearing happy playing with his peers. Student demonstrated athletic skill.

19. Ms. Begin assessed Student over three different days, at different times of the day. The tests and other evaluation materials used by Ms. Begin in assessing Student were selected and administered so as not to be racially or culturally biased, and given for the specific purpose for which the standardized tests were validated. Student transitioned from and to the assessment room without hesitation. Student fidgeted in his chair as the assessments proceeded, but he did not appear to be distracted.

20. Ms. Begin administered the Differential Ability Scales, Second Edition, a cognitive assessment. Student's general conceptual ability was above average, in the 84th percentile, although he had a discrepancy between his verbal and nonverbal abilities. Ms. Begin compared his scores with those from the Wechsler Intelligence Scale, which Dr. Maher administered in 2013. There, Student had a full-scale IQ score of 100, which was average. Ms. Begin suggested that Student's higher cognitive score on the Differential Ability Scales was due to his Attention Deficit Hyperactivity Disorder medication, which Student was not taking when Dr. Maher assessed him.

21. Ms. Begin used the Developmental Test of Visual Motor Integration – Sixth Edition for visual processing. Student's performance was within the average range. He did not present with a visual motor deficit. On the Motor Free Visual Perception Test, Third Edition, Student scored in the above average range which was consistent with his performance on the NEPSY Visual Spatial Processing subtests given by Dr. Maher. Student did not have a visual perceptual processing deficit.

22. Ms. Begin administered the Comprehensive Test of Phonological Processing – Second Edition. Student scored in the average range on the phonological awareness, the phonological memory, and the rapid naming composites; he scored in the average range on every subtest. Although Student required verbal prompts to stay on task, Student did not have an auditory processing deficit.

23. Special education teacher Robin Artin administered the Kaufman Test of Educational Achievement - Second Edition. She testified at the hearing. She had a current special education teaching credential, mild to moderate, and possessed a cross-cultural, language, and academic development certificate. She was a teacher in the resource specialist program for the 19 years of her employment with District. She did about 20 Kaufman tests a year. Based upon her training, experience, and education, Ms. Artin was qualified to administer, score, report, and interpret the results of the Kaufman.

24. Student's composite scores in Math, Written Language, Oral Language, Sound-symbol, Decoding, Oral Fluency, and Comprehensive Achievement all fell within the average range. His Reading composite score, as well as his letter and word recognition subtest, were above average. His oral expression subtest was below average and Ms. Artin observed that Student had some difficulty when trying to understand the verbal prompts with the visual cues. He did not seem to have similar difficulty relative to the Math subtest. Ms. Artin concluded that Student was not presenting any academic deficits.

25. Mother and Ms. Farra completed the Behavior Assessment Scale questionnaires. Mother reported at-risk and clinically significant range behavior in all areas, except for Withdrawal, Leadership, and Functional Communication, which fell in the normal range. Scores in the "at-risk" range may identify a significant problem that may not be severe enough to require formal treatment, whereas "clinically significant" scores suggested a high level of maladjustment. Ms. Farra scored Student in the normal range for all behaviors, except one at-risk score for Somatization. Somatization is the generation of physical symptoms, with no discernable organic cause, as a result of a psychiatric condition such as anxiety. Ms. Begin referred to somatization as an avoidance behavior. Ms. Begin inaccurately stated in her multidisciplinary report that Ms. Farra's Behavior Assessment Scale scores were the same as Student's first grade teacher Ms. Parker. However, Ms. Farra and Ms. Begin did not observe the behaviors Ms. Parker reported in first grade. The assessment properly determined that the significant behaviors Mother observed in the home setting were not being seen at school. Ms. Begin concluded that Student's behavior was not impacting his school performance.

26. On the Conners Rating Scales, Mother reported clinically significant range behavior in all areas while Ms. Farra reported average range behavior with no reported concerns. Ms. Begin said Student was currently taking the Attention Deficit Hyperactivity

Disorder medication Strattera, which might have accounted for his average behaviors in school. On the Adaptive Behavior Assessment forms, Mother reported below average skills overall; Ms. Farra's scores were in the average range for skills. Ms. Farra rated Student below average in his General Ability composite and Practical skills, and extremely low range in community use skills. Generally, though, the general education accommodations were addressing Student's Attention Deficit Hyperactivity Disorder.

27. Ms. Begin found that Student's cognitive ability was not significantly discrepant from his academic achievement. Also, the assessments could not confirm a processing disorder. Student therefore did not qualify for specific learning disability eligibility. As to other health impairments eligibility, Ms. Begin concluded that Student's Attention Deficit Hyperactivity Disorder was not adversely impacting his academic performance and, therefore, did not meet other health impairment eligibility standards for special education. Ms. Begin properly concluded that Student was successfully accessing the general education curriculum without the need for specialized academic instruction.

May 20, 2014 Initial IEP

28. On May 20, 2014, District timely convened an initial IEP team meeting. Parents, Ms. Kohl, Ms. Ingber, Ms. Begin, Ms. Artin, and Ms. Farra attended. District provided Parents with copies of the District reports for the first time at the IEP meeting. Ms. Kohl presented her health report.

29. Ms. Begin presented her psychoeducational report, describing Student as cooperative, attentive, and interested in doing his best work. Parents talked about Student's combative attitude toward homework and how frustration affected his homework record. Ms. Farra explained how she modified Student's homework. The team reviewed Student's behavior and Conners scales and District members concluded that Student's behavior and Attention Deficit Hyperactivity Disorder diagnosis were not

impacting his academic performance. The IEP team concluded Student did not qualify for special education services. Parents consented.

30. Ms. Farra reported at the end of the school year that Student was proficient in reading, math, speaking, and listening, while basic in writing. Student was satisfactory in all areas of study skills, except he needed improvement in timely completing and returning his work and in using his time appropriately. For the year, Student was absent 21 days and tardy two days.

THIRD GRADE – 2014-2015 SCHOOL YEAR AT LONGFELLOW

31. Student attended Tyra Brooks' third grade class for the 2014-2015 school year. Ms. Brooks testified at the hearing. She taught third grade at Longfellow since 2006 and at District's Linda Vista Elementary School from 2004 to 2006. She had a bachelor of arts in elementary education and a masters of arts in education; a current multiple subject teaching credential; a reading instruction competence assessment certificate; and a cross-cultural, language, and academic development certificate. Ms. Brooks regularly participated in continuing teacher education and professional development, taking at least 14 trainings or seminars in the previous two years.

32. On August 11, 2014, Ms. Brooks provided Parents with a handout that listed the rules and expectations of class. She attached a contract for the parents to sign, acknowledging that they read the rules and discussed them with their child. Each week, Ms. Brooks issued a "Homework Connection" sheet, which outlined what was being taught that week in class. On the reverse side, students were expected to write their daily homework assignment for language arts and mathematics, with a place for parents to daily sign when their child completed the homework. Ms. Brooks gave homework every day which was due the next morning, with few exceptions. Mother met with Ms. Brooks and gave her a two-page information sheet regarding Student's Attention Deficit Hyperactivity Disorder and executive functioning deficits.

33. Ms. Brooks expected her students to “bench” themselves instead of taking recess when they failed to put homework on the table at the beginning of class. Student would bench himself though Mother knew he had the homework. On one occasion, Student could not find his progress report; he concluded he did not have it and told Ms. Brooks. She looked in his backpack and found the signed progress report. Ms. Brooks took Student outside, said he had lied, and that he was never to lie to her again. These incidents added to Student’s belief that he could not do his work; others thought he was a failure; he was “stupid;” and was therefore regularly punished.

UCLA’s ABC Partial Hospitalization Child Program

34. In the first few weeks of the school year, Student became increasingly resistant to doing his homework and going to school. He was obsessed with his peanut allergy, not wanting to go near people. Student would demand Benadryl, thinking he had been exposed to peanuts. If he did not receive the Benadryl, he would scream and tantrum. In the first two weeks of September 2014, Student had two serious episodes, when he raged and threatened to kill himself.

35. Student’s pediatrician, who had been monitoring Student’s behaviors along with Student’s therapist, directed Mother to enroll Student in the ABC (Achievement, Behavior, Cognition) Partial Hospitalization Child Program at the Resnick Neuropsychiatric Hospital at University of California, Los Angeles. UCLA social worker, Wendy Robinson-Miller, testified at the hearing and explained the program. ABC was a short-term integrated day treatment program for young children, six to 12 years of age, who have been diagnosed with, or may have, developmental disabilities and behavior disorders. The partial hospitalization was between four to eight weeks, depending on a child’s individualized program. In addition to the therapeutic treatment of the child, the UCLA program developed educational, behavioral, and social intervention plans for the child. The last week of the program consisted of a controlled transition of the child back

to an appropriate educational placement with services.

36. Ms. Robinson-Miller was Student's supervising clinical social worker. She saw Student daily, about 20 hours per week. She was his group therapist, worked with the family regarding Student's needs and behaviors, and assisted with outside program resources. When admitted, Student had been suffering from several months of heightened anxiety, irrational fear of peanuts, frequent school refusal, and suicidal ideation. He was 10 to 15 minutes late to the program each day during the first week. As he got used to the program, he was not resistant and was comfortably participating.

37. Student was in small, supervised, therapeutic group activities and, as he progressed through his routines, had on-going contact with various treatment staff who directed his appropriate participation. Student was also in an individualized positive behavioral support plan to address target behaviors, which included daily and weekly awards. The program team developed goals and strategies to achieve the goals. The program had less than 10 students, six to 10 year of age. Three times a week, for six weeks, Student had individual therapy, cognitive behavior therapy, social skills group, and group therapy. Daily, he had group recreational and occupational therapy. Three times a week, Student had mindfulness skill group therapy, which assisted Student in being aware of his environment at the "present moment," thereby helping manage his emotions. Student had art therapy twice a week.

38. Each day, the Carlson school from Los Angeles Unified School District would hold two 45-minute educational blocks in a classroom, but with individual attention to each child's need. Ms. Robinson-Miller noted that Student was easily distracted, often off task, in and out of his chair, frequently interrupted, and struggled with multi-stepped tasks. Ms. Robinson-Miller did not know whether the study packets Ms. Brooks provided for Student were used in the Carlson classes.

39. The UCLA staff administered diagnostic assessments, including the

Children's Yale-Brown Obsessive Compulsive Scale for Obsessive Compulsive Disorder, Vineland Adaptive Behavior Scales, and elements of the Anxiety Disorders interview Schedule for children. Student was diagnosed with obsessive-compulsive disorder, separation anxiety disorder, and general anxiety disorder. UCLA staff noted that Student's anxiety was an internalizing disorder and, therefore, his distress would not be apparent to adults and teachers, but would still be adversely and seriously affecting Student's academic and social functioning. His anxiety symptoms impaired his academic performance. Neither Ms. Robinson-Miller nor UCLA staff believed Student's anxieties were caused by Parents.

40. Student successfully learned coping skills and strategies that addressed his obsession and reactivity regarding his peanut allergy. However, his diagnosed disorders continued to cause Student to be rigid and difficult in transitions, with a tendency to misperceive social cues. For example, he might inaccurately believe that peers were intending to cause him harm or that adults were displeased with him. UCLA recommended social skills training to better prepare Student as he progressed through elementary school, to better understand and tolerate the subtleties in social interactions.

41. UCLA staff noticed Student had some difficulty in his motor planning, motor skills, and writing abilities; they recommended occupational therapy services. UCLA staff also observed that Student had problems with oral expression, consistent with the District's psychoeducational assessment; they recommended a comprehensive speech and language assessment.

42. Student left the UCLA ABC program on October 30, 2014 based on financial concerns; he was officially discharged on November 3, 2014. Ms. Robinson-Miller was responsible for the discharge planning. Because Student left the program one week early, she did not have the full opportunity to assist transitioning Student back to Longfellow. She talked to Ms. Brooks, but was unable to build a transition plan. She was

certain that Student required supports and services as he returned to a less restrictive environment and was surprised that Student did not have an IEP.

43. UCLA ABC program staff authored a letter report to be given to Student's school, which detailed his program, diagnoses, and expected symptoms, including a series of recommendations for the educational environment. The UCLA ABC staff said that Student continued to struggle with marked sensitivities about doing poorly in school and, therefore, adults working with Student should be informed about appropriate expectations, with effective and respectful communication about Student's school work. The goal was to minimize Student's experiences of being scrutinized, judged, or penalized due to his illnesses. The report emphasized that Student should be evaluated for an IEP at the soonest possible time "to maximize a smooth return to school and maintenance of adaptive educational functioning following his discharge." The report indicated that Student's psychiatric illnesses would continue to adversely affect his educational functioning under normal circumstances, requiring continued monitoring to determine the necessity of educationally related mental health services. Since Student's anxiety was severe and pervasive, UCLA concluded that Student would benefit from consistent and comprehensive supports. The UCLA ABC team believed that Student's school avoidance was a consequence of his anxieties.

Student's Return to Third Grade at Longfellow

44. Before Student returned to Ms. Brooks' third grade class, Parents requested a meeting with Ms. Brooks and Ms. Ingber, to whom Parents gave copies of the UCLA ABC letter report. Ms. Ingber reviewed UCLA's recommendations. Ms. Ingber worked for District since 1996, always at Longfellow. She had been principal since August 2007. From 2004 to 2007, she was a language development resource teacher and literacy coach; from 2002 to 2003, she taught fourth grade; and from 1998 to 2002, she taught first grade. She possessed: multiple subject credential; administrative services

credential; AB 466 certification; GATE certification, cross-cultural, language, and academic development certificate; and Crisis Prevention Institute certification.

45. To address UCLA's recommendations, Ms. Ingber arranged for Student to have regularly scheduled contact with resource teacher Dawn El-Rashid, community assistant Connie De La Torre, and herself. District permitted Student to go to the resource room with Ms. El-Rashid or the health office as a safe place during anxiety attacks. Ms. Ingber believed that Ms. Brooks was providing instructional support in her class and time with the teacher, which was consistent with UCLA's recommendations. Although Ms. Ingber offered a social skills class from Hathaway-Sycamores Child and Family Services at the school campus, the class was not offered. Ms. Ingber arranged for a behavior assistant to carefully monitor Student during unstructured time, such as recess. Ms. Ingber also expected that Ms. Brooks would work with Student, as well as the resource teacher Ms. El-Rashid, to accommodate Student's need for make-up work for time missed from school. Ms. Ingber responded to UCLA's recommendation for extra time by explaining that Ms. Brooks gave extra time to any pupil who needs it; therefore, Student did not need a special accommodation.

46. Ms. Ingber felt that Longfellow teachers and classes were positive and that no adjustment for Student was necessary to address UCLA's recommendations concerning Student's OCD and anxiety, his sensitivities, and shame.

47. Because District had disenrolled Student when he started the UCLA ABC program, District required Mother to reenroll Student upon his return. When Parents asked for an immediate assessment and IEP meeting upon Student's return, Ms. Ingber declined, explaining that Student was actually a new student and therefore was not entitled to an immediate assessment. Ms. Ingber also said she did not offer an assessment and IEP meeting because Student had just been assessed less than a year before and was not eligible.

48. When District failed to offer an assessment plan, Parents privately provided the services recommended by the UCLA ABC program team, including a speech assessment and services, behavioral support, and social skills training. Parents retained speech pathologist Dr. Alicia Elliott to assess Student and, with her associate pathologist Ms. Sambrano, to provide speech and language therapy. Elliott Institute's services to the end of the 2014-2015 school year, totaled \$3,158.

49. Mother sent a December 3, 2014 email to Ms. Ingber saying that Student was afraid of Ms. Brooks and inquired about changing teachers. Student's therapist also suggested a change of teacher to address Student's refusal to go to school, which was consistent with UCLA's concern that Student's educational placement significantly affected his anxiety disorder. Ms. Ingber responded by saying "I don't think changing the teacher will change anything with [Student]. It's just another excuse for him to use."

50. On December 10, 2014, Mother emailed Ms. Ingber that Student had locked himself in his room and was hysterically crying; if Mother went near him, he would strike her. Mother asked what Ms. Ingber recommended. Ms. Ingber responded, "Call the police." Student's therapist, when told of the principal's suggestion, responded that having the police take Student to school would be very damaging to Student.

51. Student missed many school days and was regularly tardy. As an accommodation, Ms. Ingber agreed that Student could have a later start time, around 9:00 a.m., without being marked as tardy. Thereafter, when Student came to school late, he stopped and checked in at Longfellow's front office and received a tardy slip. He would give the slip to Ms. Brooks, who would make note of the time; she would weekly inform the front office of when Student got to class. He occasionally stopped by offices of other staff during his transition to class, which Ms. Artin believed District allowed giving him "an extra boost" before going to Ms. Brooks' class. Student's attendance record listed every one of his tardy appearances despite District's accommodations. Ms.

Ingber acknowledged that if Student had an IEP, and a late start was a special education accommodation, his records would not have included tardiness. In Ms. Ingber's opinion, District accommodated Student by not reporting Parents and Student to the District's School Attendance Review Board.

52. Ms. Ingber spoke proudly of her Longfellow teachers, regularly complementing their teaching styles and competence. She exhibited personal confidence in her ability to evaluate her staff and students, which occasionally sounded as if her opinions and insight were more credible and persuasive than those of other professionals and Parents. Mother regularly emailed Ms. Ingber and Ms. Brooks, sometimes daily. Although typically professional and supportive in her correspondence, as the year moved forward and the frequency of the emails increased, Ms. Ingber's responses sometimes read as insincere and dismissive.

53. Ms. Brooks' progress report comments were stark and frank. Mother reviewed Ms. Brooks' progress reports with Student at the end of each week. While recognizing when Student did well, she also pointed out when Student was not paying attention, not properly participating, or only sometimes engaging in groups or class. The reports caused Student to feel that he was regularly judged, doing poorly in school, unable to perform, and could not meet Ms. Brooks' expectations.

District's March 16, 2015 Psychoeducational Assessment Report

54. On December 4, 2014, Parents wrote District special education coordinator Ms. Higa, revoking their consent to the May 2014 IEP and requesting assessments and an IEP to address Student's Attention Deficit Hyperactivity Disorder, severe anxiety, school phobia, and emotional disturbance. Parents personally delivered the letter, which District received the same date. Ms. Higa responded on December 15, 2014, and included an assessment plan for a reevaluation of Student, consisting of a psychoeducational assessment, speech and language assessment by a pathologist, and

an educationally related mental health assessment. District received the signed assessment plan on January 5, 2015. Later, Parents agreed to include a District occupational therapy assessment.

55. School nurse Ms. Kohl completed a health assessment report dated March 23, 2015. She reviewed Student's UCLA ABC hospitalization and diagnoses of OCD and general anxiety disorder. Student was taking Zoloft, twice daily, for anxiety, but nothing for Attention Deficit Hyperactivity Disorder. From November 2014 to March 2015, Student had been in the health office eight times. The health office was a designated safe place for Student if he was experiencing anxiety at school. While there, Student would talk in a calm manner, engage with other students, and eventually return to class.

56. District school psychologist Jessica Ghermezi prepared a Psychoeducational Assessment Report dated March 15, 2015. She reviewed Student's prior District assessment, Dr. Maher's assessment, the UCLA ABC exit summary, private assessments, and his educational file. She interviewed Mother. Student was impulsive, hyperactive, distractible, sensitive to criticism, quick to anger, easily frustrated, would tantrum, and fought excessively with other children. He cursed, would not listen, and was very oppositional.

57. She summarized an Educational Therapy Treatment Plan Report from the Elliot Institute, prepared by certified speech-language pathologists Alicia Elliot, a doctor of education, and Caroline Sambrano. They designed a speech-language treatment plan to address Student's receptive and expressive processing deficits, with academically related deficits, which had been identified in a November 2014 assessment. They found that Student's language skills ran from the significantly low to slightly above average range with errors primarily in grammar and vocabulary above age five and significantly in formulation of sentences in oral and written tasks. Elliot Institute cautioned that Student's scatter of abilities was misleading as he would be quite good at some tasks

and yet struggle with the basic underpinning of these tasks.

58. Ms. Ghermezi observed Student during three sessions of testing. He was friendly, easily built rapport, engaged in conversations, and willingly went to the testing room. He did not require frequent breaks, any adaptations, or modifications. She conducted two 20-minute school observations, finding that Student presented with respectful classroom behavior, although he occasionally appeared to lose focus and attention.

59. Ms. Ghermezi administered the Kaufman Assessment Battery for Children – Second Edition. Student’s overall score was as good or better than 58 percent of his same-aged peers.

60. Ms. Ghermezi administered the Test of Auditory Processing Skills – Third Edition, which measured Student’s ability to absorb and understand auditory information. Student scored in the average range in all four auditory memory index subtests. The auditory cohesion subtests measured Student’s higher-order linguistic processing; Student performed in the average range. Student took the Test of Visual Perceptual Skill, Third Edition; Student scored in the average range. District occupational therapist administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition, which assessed the extent to which Student could integrate his visual and motor abilities. Student’s visual-integration and visual perceptual and motor coordination skills were in the average range.

61. Ms. Ghermezi found that Student functioned in the average range of cognitive ability for his age. He demonstrated strength in his ability to manipulate information in short-term memory, phonological processing skills, and higher order linguistic functioning. He had a relative weakness in visual sequential memory, but his performance was still in the average range. Based on informal observation and interviews, she also concluded that Student’s gross motor skills were appropriate for his

age. She found that Student had the cognitive ability and psychological processing skills to access his general education curriculum.

62. Ms. Artin administered the Kaufman Test of Educational Achievement, Second Edition. Student scored in the average range on all academic areas, except for associational fluency, which was above average. Student's February 2015 and May 2014 scores on the Kaufman achievement test were also average to above-average in every subtest.

63. Olga Sosa-Estrella conducted the social-emotional assessment for educationally related mental health services. Ms. Sosa-Estrella had a bachelor of arts in psychology and Spanish and a masters of arts in educational psychology. She had been a licensed educational psychologist since 2010, with pupil personnel services credential for school psychology. In May 2011, she received a behavior intervention case manager certification. Ms. Sosa-Estrella was a clinical school psychologist with District from August 2013 through June 2015, and a bilingual school psychologist with Huntington Beach City School District from September 2009 to August 2013. She worked for Monrovia Unified School District since June 2015.

64. Ms. Sosa-Estrella read Ms. Ghermezi's review of documents and report. She reviewed the District's May 2014 assessment and Dr. Maher's neuropsychological report. She did not recall reviewing the UCLA ABC summary and therefore was unaware of the hospital's many recommendations. She was unaware of Student's suicidal ideations. She was unaware of, and did not read, Student's five prior Student Study Team reports. She observed Student in class, using the Scales for Assessing Emotional Disturbance – 2. She found Student to have appropriate behaviors and class engagement, to be generally focused, and completing tasks in the allotted time.

65. Ms. Brooks and Mother completed the Behavior Assessment Scale forms. Mother's responses were to be viewed with caution, though not invalid, pursuant to the

test protocols. Mother rated Student to have clinically significant behaviors in all areas, except an at-risk rating for anxiety and an average rating for withdrawal, leadership, and functional communication. Ms. Brooks rated Student to be at-risk for anxiety, somatization, and attention problems.

66. On the Conners Rating Scales – Third Edition, Mother rated Student clinically significant in five evaluated areas. Ms. Brooks rated Student at-risk regarding peer relations and clinically significant for inattention and for learning problems involving executive functioning. Ms. Brooks testified that her scale responses were dependable indicators of her evaluation of Student’s behaviors.

67. Ms. Sosa-Estrella administered self-rating scales and interviewed Student. On the Beck Youth Inventories, Second Edition, Student rated himself average for the anxiety, anger, depression, disruptive behavior, and self-concept inventories. However, on the self-rating form of the Children’s Depression Inventory, Student evaluated his abilities and school performance negatively and may have been experiencing impaired capacity to enjoy school and other activities, with ratings in the very elevated range for functional problems.

68. Student’s self rating on the Revised Children’s Manifest Anxiety Scale -- 2 fell within the not significant range. However, Ms. Sosa-Estrella cautioned that Student was taking psychotropic medication to help with his anxiety symptoms. She noted concern because of Student’s following responses on his questionnaire: “Others seem to do things easier than I can; I get nervous when things do not go the right way for me; I feel bad if people laugh at me; I am afraid to give a talk to my class; I worry about what other people think about me; My feelings get hurt easily; I am tired a lot; I worry about what is going to happen; It is hard for me to keep my mind on my school work; It is hard for me to sleep at night and sometimes get sleepy during the day.”

69. Student completed a series of 35 sentences, referred to as the Guess Why

Game. The assessor read Student a statement and then asked "Why?" About 20 of Student's responses demonstrated negative perceptions of school, his school performance, and his grades. The responses reflected an attitude that he was always getting into trouble and not doing the right thing. Ms. Sosa-Estrella did not use any additional standardized instruments focusing on Student's functional and adaptive skills, such as the Adaptive Behavior Assessment System, Second Edition, which was used to evaluate learning difficulties, Attention Deficit Hyperactivity Disorder, or other impairments related to motor, speech and language, hearing, and neuropsychological disorders. She believed she had enough information to evaluate Student.

70. Ms. Sosa-Estrella did not address the UCLA ABC summary report in her social emotional assessment because she did not read it. Ms. Sosa-Estrella concluded that Student's self-reports indicated that he had feelings of ineffectiveness and that his academic work was too hard. He demonstrated a reoccurring perception that he was going to get into trouble for getting bad grades or a bad report. He felt that school was hard, reiterating feelings of ineffectiveness on the sentence completion portion of the assessment. Ms. Sosa-Estrella testified that if Student would have been found eligible for special education, she still would not have recommended mental health services, though Student's social emotional functioning was at-risk within the school setting.

71. Ms. Sosa-Estrella met with Ms. Ingber and discussed the accommodations Ms. Ingber had provided regarding Student's attendance. They also discussed Student's school refusal. Ms. Sosa-Estrella previously had students with school phobia. These students had difficulty functioning in school, with symptoms during the day. Student did not act consistent with this pattern; Student was adequately present and involved during school. However, Ms. Sosa-Estrella acknowledged that Student might have internalized his anxiety or fears, which could cause him to seek a safety zone, such as the health office or RSP classroom.

72. Ms. Ghermezi included Ms. Sosa-Estrella's written social-emotional report as part of the final District psychoeducational report. However, Ms. Ghermezi added a sentence to Ms. Sosa-Estrella's conclusions, stating that Student missed a great deal of school days that school year and the impact of lost instructional time could have resulted in Student falling behind not due to social emotional needs but as a natural consequence of not being in school. Ms. Sosa-Estrella testified that Ms. Ghermezi did not discuss the caveat sentence with her. She did not authorize the addition and did not agree with Ms. Ghermezi's statement. The unilateral change was unprofessional.

73. Ms. Ghermezi discussed three possible special education eligibilities for Student. Student was average cognitively and average in his academic achievement. Student did not display a severe discrepancy between ability and achievement and did not meet the criteria for specific learning disability. Ms. Ghermezi then discussed other health impairment eligibility. Although Student had Attention Deficit Hyperactivity Disorder, she concluded that they did not appear to be adversely impacting his academic performance and did not meet the eligibility criteria for other health impairment. Ms. Ghermezi spoke of Student's academic performance, even though she had quoted the Educational Code that listed "educational performance" the controlling standard.

74. Ms. Ghermezi discussed emotional disturbance eligibility, which required that a pupil exhibit one or more of five characteristics that existed over a long period of time, to a marked degree, which adversely affected educational performance. She found that Student had two of the characteristics. Student had a general pervasive mood of unhappiness or depression, as confirmed by Mother and Ms. Brooks, as well as Student's rating of being highly ineffective. Student also had a tendency to develop physical symptoms or fears, because of his prior peanut allergy phobia, causing elevated anxiety regarding others who had contact with peanuts and, consequently, would not show up

at school. This statement was inaccurate; Student's peanut phobia had been under control since the UCLA ABC program.

75. In determining that Student was not entitled to emotional disturbance eligibility, Ms. Ghermezi concluded that Student had missed a great deal of school days and the lost instructional time impacted Student, causing him to fall behind, which was not due to Student's social emotional needs, but was a natural consequence of not being in school. Ms. Ghermezi and Ms. Sosa-Estrella did not address the UCLA ABC program's specific findings that Student had internalized anxiety that caused him to be school resistant; therefore, Student's social emotional needs caused Student's loss of instructional time. District's assessment supports this finding. The District's psychoeducational assessment was not legally appropriate.

District's March 10, 2015 Speech and Language Evaluation Report

76. Language, speech and hearing specialist, Samantha Behboudikha, conducted a speech and language evaluation of Student, producing a March 19, 2015 written report. She noted that Student took Zoloft for anxiety, but was no longer taking medication for his Attention Deficit Hyperactivity Disorder. In November 2015, Student had a comprehensive evaluation for speech therapy, which indicated a receptive/expressive language delay. She did not review the evaluation or speak to Student's speech therapy providers. He was currently receiving speech and language therapy from Elliot Institute since January 2015, and had received individual therapy, skills group and educational therapy. Student's primary problem was opposition to homework, school refusal, and high levels of frustration.

77. Ms. Behboudikha administered the Goldman-Fristoe Test of Articulation – 2 to assess Student's ability to articulate consonant sounds. His scores were in the average range. Articulation and phonology were not a concern. Informal assessments of Student's vocal quality, pitch, and resonance were appropriate, as was his fluency.

78. She administered the Peabody Picture Vocabulary Test – IV, the Expressive Vocabulary Test – 2, and the Test for Language Development Primary – Fourth Edition. Ms. Behboudikha concluded Student possessed high average/average receptive/expressive language and articulation skill. She found Student did not meet eligibility standard for speech and language impairment. She opined at hearing that even if Student was otherwise eligible, she would not have recommended services. She did not observe Student with other children or interacting with anyone other than herself. When testifying, Ms. Behboudikha acknowledged that she did not specifically test for social pragmatics.

79. The District’s speech and language assessment was not legally appropriate because it did not consider the Student’s November 2014 assessment, did not address the nature of Student’s speech and language ongoing therapy, and failed to test for social pragmatics, which had been designated as an area of concern.

March 23, 2015 Initial IEP

80. On March 23, 2015, District convened an initial IEP team meeting. Parents and all required District staff attended. District distributed copies of its reports. Ms. Kohl presented her health report. Ms. Choi presented her occupational therapist report, which found that Student had no fine or gross motor needs affecting participation in school learning activities. She also reported that Student was able to manage his sensory experiences at school without difficulty. Ms. Behoudikha presented her speech and language evaluation report. Ms. Brooks commented that Student had some difficulty organizing his thoughts when asked a question; he lacked assurance in responding. However, Ms. Brooks said Student had made progress in class participation.

81. Ms. Ghermezi, Ms. Sosa-Estrella, and Ms. Artin presented the psychoeducational assessment report. The District members of the team agreed with the report determination that Student was not eligible for special education. Parents

disagreed. The Parents said Student had a school phobia and worried he might fail in his learning. Parents were providing Student with intensive intervention services. The IEP team did not discuss the cause of Student's absences and tardy attendance, other than setting up a daily check-in to encourage Student to come to school. Further, the IEP team did not discuss the UCLA ABC diagnoses of Student's internalizing general anxiety disorder and obsessive-compulsive disorder.

82. The Parents took the District reports home to read. They did not sign the IEP in agreement. By letter dated March 26, 2016, Parents formally informed Ms. Higa of their disagreement with District's assessments and requested District to fund an independent education evaluation by neuropsychologist Dr. Oren Boxer; District eventually agreed to fund Dr. Boxer's evaluation. Because District failed to provide any behavioral services, Parents retained behaviorist Chloe Willis after the March 2015 IEP, who billed Parents \$600.

Student's Completion of Third Grade at Longfellow

83. Ms. Brooks provided Student with multiple accommodations for the remainder of the school year: preferential seating; peer tutoring; one-on-one tutoring with Ms. Brooks to catch up on missed concepts; modified homework; opportunity to complete homework in class; checking to assure Student understood direction; positive behavior expectation and work ethic strategies; illustration of spelling to help Student process information.

84. Ms. Brooks believed that Student's absences affected his ability to learn concepts and put him behind in his studies. Student's frequent tardiness, when Ms. Ingber allowed Student to have a start time of up to 9:00 a.m., caused Student to miss crucial morning teaching, such as: review of rules and work expectations for the day; homework check and review; morning review packet; teaching about the state of the week; spelling pre-test; and the first session of language arts. On Friday mornings, Ms.

Brooks gave her language art and spelling tests. Ms. Brooks considered homework necessary to practice and learn concepts; since Student was having difficulty doing his homework, he was missing a vital learning opportunity.

85. On the spring 2015 California Assessment of Student Performance and Progress assessments, Student failed to meet the achievement standard in English language arts and literacy, scoring in the lowest quadrant, needing substantial improvement in knowledge and skill for success in future coursework. In mathematics, Student also scored in the lowest quadrant, well below standard. On District's May 28, 2015 academic progress assessment report, Student was far below basic in math and below basic in English language arts. He was below standard in reading fluency.

86. In his final grade report, Student was basic in his reading progress, below the standard in five reading evaluative categories, and moving toward the standard in the remaining six. Student's progress in writing was basic, needing improvement in his effort, below standard in three writing categories, and moving toward the standard in the remaining five. Student's progress in math was below basic, needing effort improvement, below standard in seven math categories, progressing toward standard in six, and meeting one standard, clearly communicating mathematical thinking. He was below basic in social studies progress and basic in science progress.

87. Ms. Brooks acknowledged that educational performance included more than academics. She taught her third graders "school skills," which were foundations to later success. These included: keeping track of assignments; managing time for completion of class, homework, and long-term assignments; organizing school materials; completion and return of homework; preparing for and attending school; and going to class on time.

88. On June 2, 2015, licensed psychologist, Dr. Bodil Sivertsen, went to Parents' home to observe Student's school refusal. She observed that Student refused to

leave the house for school, curling up on the floor and then his bed. Eventually, Student came out and gradually talked with Dr. Sivertsen and Mother.

89. Dr. Sivertsen testified at the hearing. She has undergraduate and doctorate degrees in psychology. She has had a private practice providing home educational consultation to parents of autistic children, Rett's Syndrome, Asperger Syndrome, school and academic phobias, and individual therapeutic work since 1993. She has delivered numerous presentations, including those regarding phobias and anxiety disorders. She was qualified to evaluate Student.

90. Dr. Sivertsen reviewed Student's schoolwork and weekly progress reports. She concluded that Student was frequently subject to "negative feedback" on his work. Student expressed a strong dislike for his teacher. Dr. Sivertsen determined that Student had problems with classroom instruction because he had difficulty with the school material and the classroom staff's teaching style; thus, he resisted going to his class. If he was going to school to be tested or on a field trip, he willingly attended. Dr. Sivertsen's credible professional opinion was that Student had developed a phobia for the current classroom situation, caused by a high level of anxiety. His strong resistance behaviors were Student's attempt to be "heard" by the adults in his life.

91. For the remainder of the year while enrolled at Longfellow, Student was absent 31 days and tardy 20 times. The last day of school for Longfellow students was June 4, 2015.

PARENTS' UNILATERAL PLACEMENT OF STUDENT AT FROSTIG CENTER FOR FOURTH GRADE

92. As Student's third grade came to a close, Parents began looking for an alternative school because District had failed to provide an IEP or a 504 Plan while Student's behaviors and educational performance became worse. Parents visited Frostig and decided that its program was well-suited for Student. Frostig accepted Student for a

private placement on May 27, 2015.

93. The tuition for a private placement was substantially more than a public placement by a school district. Frostig could not meet its financial needs if there were too many public placements. If Student's private placement was changed to a public placement, Frostig could not guarantee that Student could continue at Frostig. The total cost of Student's private placement program at Frostig is \$35,580. Parents have paid \$11,674, leaving an unpaid balance of \$23,906.

94. Father informed Mr. Hill in a letter dated August 10, 2015, that Parents were placing Student in Frostig for the 2015-2016 school year and extended school year, intending to seek tuition reimbursement from District. Parents would also seek reimbursement for costs associated with mental health supports and services through Frostig, and educational therapy.

95. Ms. Knight was the Frostig IEP administrator, attending all IEP's for the school's students. She was also involved in the admission process, noting that District had a number of Students publicly placed at Frostig. Frostig held private IEP's for students without public school IEP's. These private IEP's were structured like any other IEP, identifying the child's needs, documenting present levels of performance, setting goals and objectives, and related services and supports. Frostig held a private IEP for Student, assuring that all teachers and staff were aware of Student's needs and supports.

96. Student's class had 11 students with two adults. Student did not miss a day of school at Frostig. Ms. Knight and Mother believed Student's good attendance meant that he felt safe and was learning. Student's fear of peanuts was not an issue. He had a social skills class, which was improving his interaction with peers by increased understanding of social language and pragmatics. Student responded well to consistent and regular, positive feedback, with redirection when necessary. Frostig used strategic methods of encouraging Student to assess his feelings in a safe and supportive

environment. Student was also making academic progress, as reflected in his progress reports. Student benefitted academically, socially, emotionally, and behaviorally at Frostig.

DR. BOXER'S INDEPENDENT EDUCATIONAL EVALUATION

97. Dr. Boxer conducted an independent educational evaluation of Student over summer 2015, issuing a written report dated August 17, 2015. Dr. Boxer testified at the hearing. He had a bachelor's degree in psychology, a master's degree in psychology, with a neuroscience emphasis, and a doctorate in clinical psychology. He had been in private practice as a licensed clinical neuropsychologist since 2011, working with educators and professionals. He had previously been an independent evaluator for a number of school districts and had participated in approximately three District IEP's. Dr. Boxer was a postdoctoral scholar in the pediatric neuropsychology tract at UCLA Neuropsychiatric institute, where he also served his doctoral internship and externship between 2007 and 2009. He administered pediatric neuropsychological assessments for children with Autism, Attention Deficit Hyperactivity Disorder, and learning disorders.

98. Before doing Student's assessment, from the beginning of 2015 Dr. Boxer had been providing social skills training to Student as well as serving as a paid consultant for Parents, recommending service providers for Student. Dr. Boxer's invoice was \$1800. Mother testified \$900 was for social skills training, while the balance was for consultation services including reviewing documents, referrals to service providers, therapists, and treatment centers.

99. This prior professional paid relationship with Parents and Student rendered his report less than independent. Dr. Boxer reviewed Student's private assessments from UCLA, the Elliott Institute, and Dr. Maher. He failed to review or summarize District's prior two psychoeducational assessments. Dr. Boxer did not analyze how his findings fell within the legal special education eligibility criteria. Dr. Boxer

provided additional insight into Student's functioning from a neuropsychological viewpoint.

100. During his testimony, he was familiar with and discussed the legal criteria for three eligibilities – other health impairment, emotional disturbance, and specific learning disability. He diagnosed Student with Attention Deficit Hyperactivity Disorder, combined presentation, and Generalized Anxiety Disorder. He concluded that Student's type of Attention Deficit Hyperactivity Disorder negatively affected his working memory, executive functioning, and his general ability to learn. He talked to Ms. Brooks, who reiterated her various concerns for Student, which confirmed many of Dr. Boxer's observations. He concluded that Student's Attention Deficit Hyperactivity Disorder adversely affected his education and thus met the legal requirement of other health impairment eligibility. Dr. Boxer stated that his testing confirmed Dr. Maher's finding that Student had impaired functioning and a processing disorder.

101. Dr. Boxer challenged the District's statement that Student's Attention Deficit Hyperactivity Disorder did not impact his educational performance and therefore was not eligible under other health impairment. He stated that the District ignored Student's obvious struggle with functional skills, such as completion and return of homework, keeping track of school papers and reports, and timely and consistently attending class. These inadequacies were a consequence of Student's Attention Deficit Hyperactivity Disorder and associated anxiety, which affected his basic functional skill.

102. Dr. Boxer opined that Ms. Begin should have found Student eligible under specific learning disability. Ms. Begin used Dr. Maher's previous year's cognitive test, which found student to have an average full scale intelligence quotient, for purposes of determining that there was not a one and a half deviation discrepancy from Student's achievement score. If she had used her own cognitive test, she would have found the significant discrepancy, between Student capability and achievement, necessary for

eligibility. Dr. Boxer believed that the IEP team should have found Student eligible under specific learning disability at the May 2014 IEP. However, based upon his own cognitive and achievement testing of Student, Dr. Boxer determined that Student did not demonstrate a pattern associated with a specific learning disorder.

SEPTEMBER 11, 2015 IEP

103. Student's IEP team reviewed Dr. Boxer's evaluation at a September 11, 2015 IEP meeting. Parents, their attorney, Dr. Boxer, Hathaway Sycamore representative Randy Mendoza, all required District staff, District school psychologist Paul Hunter, and District's attorney attended. The District members of the IEP team found that Student was not eligible under emotional disturbance, specific learning disability, or other health impairment criteria.

104. District hired Mr. Hunter shortly before the IEP; he testified at the hearing. He reviewed the assessments and IEP's before the meeting and observed Student at Frostig. He disagreed with Dr. Boxer's analysis of Student's anxiety. Mr. Hunter did not believe that Student had school phobia, because he did not demonstrate behaviors in class showing his dislike or fear of school. Mr. Hunter agreed that education performance included tests, assignments, homework, and getting to school. Although quite confident on direct examination, Mr. Hunter was very tentative when asked challenging questions. His testimony was generally unpersuasive.

STUDENT'S EXPERT, DEBORAH M. NEAL, ED.D.

105. Dr. Deborah M. Neal testified as a special education expert on behalf of Student. Dr. Neal obtained a bachelor of arts in psychology from Hampton and a master's degree in education from the University of Southern California. She possessed a life standard teaching credential for early childhood, a pupil personnel services credential in school psychology, and a professional administrative services credential.

She has been an educational consultant since 2013. Previously, she worked for the Los Angeles Unified School District as a Specialist in the Due Process Department, Division of Special education, from 2004 to 2012 and as a school psychologist from 1994 to 2003. She had extensive experience in psychoeducational assessment, special education eligibility, related services, and placement.

106. Dr. Neal reviewed all of Student's private and District assessments, the IEP documents, and Student's five SST's. She was critical of the lack of follow-up and controls in Student's Student Study Team reports, finding that District did not properly schedule subsequent meetings to evaluate the interventions' effectiveness. Although she believed that Student should have qualified at all three of the IEP's for special education under emotional disturbance and specific learning disability, Dr. Neal was most adamant and persuasive that Student was eligible as a child with other health impairment. Referring to the May 2014 IEP, Dr. Neal noted the District was aware of Student's Attention Deficit Hyperactivity Disorder diagnoses, regular attention issues, tendency to be distracted, and concentration difficulties. Ms. Farra indicated that Student had difficulty completing work in class. The IEP inaccurately stated that the first grade teacher's scale scores were primarily normal. However, in the second grade, Student was taking Strattera medication, which Ms. Begin believed diminished Student's attention issues at school. Dr. Neal did not specifically disagree with the assessment's finding that Student's behaviors were not significant in the school setting and that the general education accommodations were addressing Student's Attention Deficit Hyperactivity Disorder symptoms.

107. Dr. Neal opined that District inappropriately delayed the March 23, 2015 IEP. District should have immediately commenced assessment of Student when he exited the UCLA program because its summary report provided new and vital information regarding Student's diagnoses and needs. Dr. Neal believed that District

diminished Student's struggles. Her review of District's own testing demonstrated Student's deep fears and anxiety regarding school.

DISTRICT'S EXPERT, JACK H. SCHNEL, ED.D.

108. Dr. Jack H. Schnel testified as a special education expert on behalf of District. Dr. Schnel had a bachelor of science in technical arts and education, a master's degree in educational and counseling psychology from the University of Southern California, followed by his doctorate in education from the University of San Francisco. He has held administrative, community college counseling, teaching, pupil personnel services, and school psychology and counseling credentials; he has not kept all the credentials current. He had been an educational consultant since 1994, an individual and family counselor since 1976, an adjunct faculty member at California State University, Dominguez Hills, from 2000 to 2006, a school psychologist at Palos Verdes Peninsula Unified School District from 1972 to 2006, and an educational psychologist for the Regional Development Center in Alhambra from 1972 to 1975.

109. Dr. Schnel never assessed Student or spoke to his teachers, but he reviewed the private and District assessments and IEP's. He did not know about or review Student's SST's. He expressed agreement with all three IEP teams' determinations that Student was not eligible for special education. Dr. Schnel was generally and strongly confident in school staff to make accurate observations and evaluations, and opined that private assessments were less valuable in properly evaluating a student.

110. Dr. Schnel opined that Student's Attention Deficit Hyperactivity Disorder was not affecting Student's performance in the classroom. Teachers were the best and most reliable source of information about a pupil's performance and behavior. Student's teachers did not see Attention Deficit Hyperactivity Disorder affecting Student's academic performance, which Dr. Schnel believed were confirmed by the scales. However, when referred to Ms. Brooks' scale responses for the Connors and behavior

assessment, he acknowledged that the teacher had seen at risk and clinically significant behaviors consistent with Attention Deficit Hyperactivity Disorder affecting Student in the classroom.

111. Dr. Schnel concluded Student did not have a school phobia. In his experience, such children's fear or dislike of school was seen at school, in the classroom. Student was always respectful and pleasant in class and did not manifest any behaviors reflecting deep dislike or fear of school. Therefore, even if high levels of anxiety caused Student's absences, no one observed the anxiety in classroom. The emotional disturbance criteria were not seen across settings. Dr. Schnel acknowledged that Student's anxiety may have been internalized.

112. Dr. Schnel opined that Student's academic performance was affected by his numerous absences and loss of educational opportunity, not an educational disability. He believed that the general education accommodations were sufficient to assist Student in his academic performance. Dr. Schnel acknowledged that educational performance was more than academics. He agreed that the acquisition and development of school skills was vital in early elementary grades.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁴ et seq.; Ed. Code, § 56000 et seq.; Cal.

³ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁴ All subsequent references to the Code of Federal Regulations are to the 2006

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v.*

version.

Rowley (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. A district’s determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district is not held to a standard based on “hindsight.” (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501,

56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student carries the burden of persuasion.

ISSUE 1: ELIGIBILITY

6. Student contends that District denied him a FAPE by failing to find him eligible for special education as a child with other health impairment, emotional disturbance, or specific learning disability. Student generally contends that District's assessments and IEP meetings ignored or minimized Student's Attention Deficit Hyperactivity Disorder, general anxiety disorder, executive functioning deficits, and processing disorder. Student's attendance and educational performance steadily suffered as District failed to properly consider private assessments and Parents' input. District asserts that it had twice comprehensively evaluated Student for special education, utilizing numerous assessments and observations by qualified assessors, and both assessments properly found Student not eligible.

7. For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment

adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

8. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessment materials must be used for purposes for which they are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii)); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).)

9. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3).) Persons knowledgeable of the student's disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

Issue 1(A). Other Health Impairment

10. A student is eligible for special education and related services in the category of other health impairment if he is a pupil with limited strength, vitality or alertness, due to chronic or acute health problems which adversely affect his educational performance. ((Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).⁵)⁶ Attention Deficit

⁵ The California legislature amended section 3030, effective July 1, 2014, changing the subsections' numbering. Subdivision (b)(9) was formerly subdivision (f). However, the

Hyperactivity Disorder may be a qualifying health condition for other health impairment eligibility, but all the requirements of the definition above still must be met. (Ed. Code, § 56339, subds. (a), (b).) As previously stated, eligibility criteria also require a student to be unable to access the school program without the instruction or placement that is provided by a FAPE. (Ed. Code § 56026, subds. (a), (b).)

Issue 1(A)(i). Other Health Impairment Analysis of May 20, 2014 IEP

11. Student failed to meet his burden of proof that the May 2014 IEP team should have found him eligible under the category of other health impairment. Although Student had a diagnosis of Attention Deficit Hyperactivity Disorder, the mere evidence that a student suffers from a particular diagnosis does not mean he meets the criteria for special education under the IDEA or California law. Student did not establish that he had impaired vitality, strength or alertness at school, due to his Attention Deficit Hyperactivity Disorder or other diagnoses that adversely affected his educational performance. Ms. Farra utilized interventions and strategies to address Student's inattention and distractibility, which generally kept Student focused and on track. Student was completing and returning his assignments despite reports from Parents that he struggled at home. Mother reported that home behaviors had greatly improved because Student was on Attention Deficit Hyperactivity Disorder medication.

12. The behavior and Conners rating scales from Student's second grade teacher indicated that Student's behaviors generally fell into the average range, except for somatization, for which Ms. Farra felt Student was at risk. The Kaufman achievement

substance of the regulation was unchanged.

⁶ The regulation lists various other health impairments that are not relevant to this decision.

assessment showed that Student was performing academically, which was also reflected in his second grade trimester report cards.

13. Student's Attention Deficit Hyperactivity Disorder was not substantively affecting Student's educational performance. The evidence indicated that Student did not need specialized academic instruction in order to access his school program; he was doing well with general education strategies by Ms. Farra. Accordingly, the May 2014 IEP team was correct when it found Student was not eligible for special education under the eligibility category of other health impairment.

Issue 1(A)(ii). other health impairment Analysis of March 23, 2015 IEP

14. Student has met his burden of proof that the March 2015 IEP team should have found Student eligible under the category of other health impairment and therefore denied him a FAPE.

15. At the time of the IEP, Student had limited strength, vitality or alertness, due to his chronic Attention Deficit Hyperactivity Disorder and accompanying anxiety that affected his educational performance, requiring special education to access his school program. Student spent six weeks in partial hospitalization program at UCLA Resnick Neuropsychiatric Hospital after the May 2014 IEP meeting; he fell significantly behind grade standards in most academic domains; was below basic on both the District and state progress assessments; and was chronically absent and tardy. The March 2015 IEP team had all of this information available to it.

16. In her behavior and Conner scales, Ms. Brooks scored Student at-risk for peer relations and clinically significant for inattention and learning problems involving executive functioning. Student's Attention Deficit Hyperactivity Disorder caused Student to feel inadequate, unable to achieve, "stupid," and always in trouble. Although District attempted to address some of the inattention through Student Study Teams and accommodations, those attempts and other general education efforts were inadequate.

Dr. Neal credibly opined that general education interventions, modifications, and accommodations are a first step. Ms. Ingber agreed the next step would be special education. Here, Student's chronic Attention Deficit Hyperactivity Disorder and accompanying anxiety materially affected his educational performance. The evidence established that Student could not access his school program without special education placement and instruction.

17. District believed its general education program and teachers could meet Student's needs, contrary to the insight of private professionals. For example, UCLA's partial hospitalization program is a national model, including its careful and considered transitional plan when a child returns to school. UCLA emphasized that Student's psychiatric illnesses continued to adversely affect his educational functioning under normal circumstances, requiring continued monitoring to determine the necessity of educationally related mental health services, which was why it strongly urged an immediate IEP. If Student had an IEP, his accommodations would have been for the purpose of accomplishing stated goals, after consideration of Student's levels of performance. The IEP team would have established measures to gauge success, with clear delineation of responsible personnel. District dismissed these recommendations and incorrectly determined instead that Student was not eligible for special education.

18. District asserts that Student's poor grades and low scores on District and State assessments were the natural consequence of Student's lost educational time because of his many absences and tardy attendance, not because of a disability. The District's March 2015 psychoeducational report considered Student's absences to be the primary reason for Student's increasingly poor academic performance; this theme was restated at the March 2015 IEP meeting, as well as by District witnesses at the hearing.

19. However, District's assertions were not persuasive. The accommodations were without context or accountability. Ms. Brooks listed the many accommodations she

provided Student in her class, yet she never testified how she knew they were successful or when they should be altered. Though the District provided “safe place” breaks to Student, there was no one responsible for monitoring the strategy’s success or adapting the support to meet Student’s changing needs. No one evaluated if the late starts increased the likelihood of Student coming to school or determined when to implement an appropriate transition plan toward earlier starts. The accommodations merely exacerbated Student’s struggles.

20. Notably, the District’s March 2015 psychoeducational assessment was not legally appropriate. The assessment failed to specifically address the UCLA ABC’s findings and recommendations. Though Student spent six weeks of partial hospitalization at a psychiatric hospital, none of the assessors contacted Student’s UCLA doctors, therapists, or providers. Inexplicably, when evaluating Student for educationally related mental health services, the assessor did not contact Student’s current therapist, who had weekly sessions with Student.

21. Student met his burden of proving that he was eligible for special education as a child with other health impairment as of the March 2015 IEP meeting.

Issue 1(A)(iii). Other Health Impairment Analysis of September 2015 IEP

22. The purpose of the September 2015 IEP was to review Dr. Boxer’s independent educational evaluation, which recommended that Student be found eligible for special education under other health impairment. However, as discussed above, Student should have been found eligible under other health impairment at the March 2015 IEP meeting. At the September 2015 meeting, the IEP team did not consider any report or assessment other than Dr. Boxer’s findings and recommendations. Therefore, Student should have been found eligible at the September 2015 IEP, because the information available to the team was the same as – and even more persuasive than – the March 2015 IEP.

23. In summary, Student met his burden of proving that District failed to find Student eligible for special education as other health impaired at the March 2015 and September 2015 IEP's. Student's remedy is discussed below.

Issue 1(B). Emotional Disturbance

24. A child with emotional disturbance exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (a) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (c) inappropriate types of behavior or feelings under normal circumstances; (d) a general pervasive mood of unhappiness or depression; and (e) a tendency to develop physical symptoms or fears associated with personal or school problems. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(4).⁷)

Issue 1(B)(i). Emotional Disturbance Analysis of May 20, 2014 IEP

25. Student failed to prove by a preponderance of the evidence that the May 2014 IEP team should have found him eligible as a child with an emotional disturbance. The May 2014 psychoeducational assessment did not discuss or analyze whether Student was eligible as a child with an emotional disturbance. However, the assessment results did not reveal social-emotional issues in the school setting. Dr. Neal opined that Student could have been found eligible under emotional disturbance. However, Student failed to provide the May 2014 IEP team any evidence that the team should have considered to determine whether he was eligible as emotionally disturbed. Student may

⁷ The California legislature amended section 3030, effective July 1, 2014, changing the subsections' numbering. Subdivision (b)(4) was formerly subdivision (i). However, the substance of the regulation was unchanged.

have been defiant and oppositional at home, but Ms. Farra and the assessors affirmed that at school, Student was pleasant and engaging.

26. Emotional disturbance requires that Student exhibit one or more of the five listed characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance. First, Student was struggling with some of his class work and homework, but this was due to his inattention and off-track behaviors caused by his Attention Deficit Hyperactivity Disorder, which is a health factor, and makes this characteristic inapplicable. Second, while Student may have had trouble reading social cues, Ms. Farra and staff all indicated that Student was a sweet and engaging boy, who loved playing with his friends. Student did not exhibit symptoms of troubled interpersonal relationships. Third, Student did not have inappropriate types of behavior or feelings under normal circumstances, although he did struggle with his Attention Deficit Hyperactivity Disorder. The evidence did not support a finding that his feelings or behaviors were inappropriate. Student's diagnosis of Attention Deficit Hyperactivity Disorder resulted in expected inattentiveness and off-task behaviors, which are not contemplated by this characteristic. Fourth, Student did not exhibit a general mood of unhappiness or depression in the school setting. He struggled at home with homework, but at school he exhibited a pleasant demeanor. Fifth, Student started to become increasingly concerned about his peanut allergy and feared coming into contact with people who had come into contact with peanuts. Ms. Farra scored Student at risk for somatization on the behavioral scale. However, the fear had not become obsessive, at least in the school setting. His visits to the health office about his peanut allergy were markedly calm, as confirmed by Ms. Kohl.

27. To the extent that some of Student's behaviors might exhibit any of the five characteristics, the evidence did not support a finding that the behaviors occurred over a long period of time and to a marked degree that adversely affected Student's

educational performance. Accordingly, Student failed to prove by a preponderance of the evidence that he should have been found eligible as a child with an emotional disturbance at the March 2014 IEP.

Issue 1(B)(ii). Emotional Disturbance Analysis of March 23, 2015 IEP

28. Student has met his burden of proof that the March 2015 IEP team should have found Student eligible for special education as a child with emotional disturbance. The evidence demonstrated that Student had an intense, internalized anxiety regarding school attendance and Ms. Brooks' class, which caused Student to be extremely school resistant and, when at school, to need safe places and people when he became anxious. This anxiety was exacerbated by Student's continued feelings of failure and punishment in the school setting.

29. District inexplicably contended that Student did not exhibit any of the five characteristics over a long period of time and to a marked degree that adversely affected Student's educational performance. Ms. Ghermezi, for example, claimed his absences were caused by his peanut allergy phobia, not his fears and unhappiness. Accordingly, she reasoned, emotional disturbance did not apply. However, District's contention in this regard is not supported by evidence. Ms. Kohl noted that Student often went to the health office because of some perceived injury or malady, other than peanut allergy concerns. This is consistent with Ms. Brooks' report of Student's somatization. After Student's return from the UCLA ABC program, there was no evidence that Student's school resistance was the result of fears associated with his peanut allergy.

30. Ms. Ghermezi acknowledged that Student exhibited two of the characteristics. Ms. Brooks, Mother, and his self-rating of ineffectiveness indicated that Student had a pervasive mood of unhappiness. The evidence unambiguously established that Student suffered from anxiety, which he typically internalized when at

school. Longfellow acknowledged this by setting up safe zones and designated adults where Student could go, at anytime when Student became anxious at school.

Additionally, when Student came to school late, he was allowed to go to a safe zone, like he did with Ms. Artin, before entering his class. Student exhibited these characteristics throughout the school year, to a marked degree, as evidenced by Student's attendance and tardy record.

31. Ms. Brooks, Mr. Hunter, and Dr. Schnel all acknowledged that educational performance was more than academic performance and included school skills. These skills, especially in the early elementary years, include: managing time for completion of class and long-term assignments; organizing school materials; completion and return of homework; preparing for and attending school; going to class on time. Student exhibited characteristics that adversely affected Student's education performance because they prevented him from learning and practicing school skills.

32. Dr. Schnel, Ms. Sosa-Estrella, and Mr. Hunter asserted that if Student feared or hated school, he would have exhibited the fear or dislike while at school. Student did not display such conduct. However, UCLA Resnick Neuropsychiatric Hospital diagnosed Student with a general anxiety disorder and, further, said that Student would internalize his anxieties so that they were not apparent to adults. District offered no evidence or convincing argument that UCLA's observation was wrong. Dr. Schnel acknowledged that a pupil might internalize anxiety, although he had never observed it. Student's responses in the sentence completion test given by Ms. Sosa-Estrella demonstrated Student's fears and anxiety about not doing well and being punished; Dr. Neal noted this was consistent with Student's internalized anxiety. Also, District's psychoeducational assessment did not properly address the UCLA determinations and recommendations and did not contact Student's treating therapist. The evidence convincingly established that Student's school refusal was related to his anxiety, which

affected Student's educational performance because he would often not come to school or arrive late.

33. Student has demonstrated by a preponderance of the evidence that Student should have been deemed eligible for special education at the March 2015 IEP as a child with an emotional disturbance.

Issue 1(B)(iii). Emotional Disturbance Analysis of September 11, 2015 IEP

34. The purpose of the September 2015 IEP was to review Dr. Boxer's independent educational evaluation, which recommended that Student be found eligible for special education as a child with an emotional disturbance. As discussed above, Student should have been found eligible under emotional disturbance eligibility at the March 2015 IEP meeting. At the September 2015 meeting, the IEP team did not consider any report or assessment other than Dr. Boxer's findings and recommendations. Therefore, Student should have been found eligible as a child with an emotional disturbance at the September 2015 IEP, because the information available to the team was the same as – and even more persuasive than – the March 2015 IEP.

35. In summary, Student met his burden of proving that District failed to find Student eligible for special education as a child with an emotional disturbance at the March 2015 and September 2015 IEP's. Student's remedy is discussed below.

Issue 1(c). Specific Learning Disability

36. Eligibility under the category of SLD means first that a pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C.

§1401(30); Ed. Code, § 56337, subd. (a).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B).⁸

37. The criteria uses the standardized achievement tests to measure the pupil's levels of academic competence and require finding a severe discrepancy of at least 1.5 standard deviations between the cognitive ability of the pupil and his or her academic achievement. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) (1).) In the absence of a severe discrepancy on standardized assessments, an IEP team may nevertheless find such a discrepancy if it is documented. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) (3) SLD does not include learning problems that are primarily the result of visual, hearing or motor disabilities; intellectual disability; emotional disturbance; or of environmental, cultural, or economic disadvantage. (Ed. Code, § 56337, subd. (a).) As previously stated, eligibility criteria also require a student to be unable to access the curriculum without specialized academic instruction. ((Ed. Code § 56026, subds. (a), (b).)

Issue 1(c)(i). Analysis for the May 20, 2014 IEP

38. District's May 2014 assessment showed Student's cognitive functioning was in the above average range while his academic achievement was generally in the average range. Ms. Begin stated that Student did not have a significant discrepancy between his cognitive ability and his academic achievement. Student contends that District improperly used the private cognitive test performed by Dr. Maher, which found average cognition, for purposes of determining whether there was a severe discrepancy.

⁸ The California legislature amended section 3030, effective July 1, 2014, changing the subsections' numbering. Subdivision (b)(10) was formerly subdivision (j). However, the substance of the regulation was unchanged.

If District's Differential Ability Scales score of above average were used, Student asserts that the discrepancy would have exceeded one and a half deviations, which would be a severe discrepancy.

39. However, the May 2014 assessment did not find a processing disorder. Although reference was made to an auditory disorder, Student did not present convincing evidence demonstrating that the District's assessment of Student's processing was inappropriate. Therefore, because the discrepancy was not the result of processing disorder, Student did not qualify for specific learning disability. Student failed to meet his burden of proof.

Issue 1(c)(ii). Analysis for the March 23, 2015 IEP

40. The March 2015 psychoeducational assessment determined that Student functioned in the average range cognitively. His educational achievement scores were in the average range on all academic areas. Student showed no severe discrepancy and, consequently, the IEP team correctly found that Student did not have a specific learning disability. Additionally, based upon Student's performance on the psychological processing standardized instruments, Student's evidence that Student may have had a psychological processing disorder was not convincing. Student failed to meet his burden of proof.

Issue 1(c)(iii). Analysis for September 11, 2015 IEP

41. Based upon his own cognitive and achievement testing of Student, Dr. Boxer stated in his report that Student did not demonstrate a pattern associated with a specific learning disorder. Therefore, Student did not meet his burden of establishing that District should have found him eligible for special education because of a specific learning disability.

42. In summary, Student has failed to meet his burden of proving that District

failed to find Student qualified for special education as a child with a specific learning disability.

ISSUES 2 AND 3: APPROPRIATENESS OF DISTRICT PSYCHOEDUCATIONAL ASSESSMENTS

43. Student contends that District's May 2014 and March 2015 psychoeducational assessments were not legally appropriate. District contends that qualified personnel conducted assessments in all areas of Student's suspected disability and are therefore appropriate. Student failed to meet his burden as to Issue 2 and the May 2014 assessment. Student did prove, by a preponderance of the evidence, that District's March 2015 assessment was not appropriate, thus prevailing on Issue 3.

44. For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

45. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessment materials must

be used for purposes for which they are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii)); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).)

46. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3).) Persons knowledgeable of the student's disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

47. A school district's failure to conduct appropriate assessment or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) A procedural violation results in liability for denial of a FAPE only 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; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*.)

Issue 2: Analysis for May 2014 Psychoeducational Assessment

48. As discussed above, the May 2014 IEP team properly found that Student was not eligible for special education. District assessed in all areas of suspected disability. The standardized instruments were administered by trained and competent personnel, in accordance with the protocols. Though Ms. Begin inaccurately referred to the Student's first grade behavior scales as average, Ms. Farra's behavior and Conners scales scored Student's second grade behavior in the average range, except for somatization. Student's visits to the health office had been uneventful, with Student typically returning to class within a few minutes. Symptoms associated with Student's Attention Deficit Hyperactivity Disorder were not substantively impacting Student's

behaviors or performance at school; the general education accommodations and Student's Strattera medication had been effective. Student did not demonstrate, by the preponderance of the evidence that the May 2014 psychoeducational assessment was not appropriate.

Issue 3: Analysis for March 2015 Psychoeducational Assessment

49. Student has met his burden of proof in establishing that the District's March 2015 psychoeducational assessment was not appropriate, as found in the Factual Findings above. Ms. Sosa-Estrella conducted the social emotional functioning portion of the assessment for purposes of determining if Student would qualify for educationally related mental health services. However, though aware of Student's six weeks of partial hospitalization at a psychiatric hospital, she did not personally review UCLA ABC's report or attempt to contact Student's UCLA doctors, therapists, or service providers. She did not discuss UCLA's psychiatric diagnoses, their expressed concerns about how his internalized anxiety would affect his school resistance, and recommendations to assure that Student's educational environment were properly monitored and evaluated to meet Student's unique psychological profile. Further, Ms. Sosa-Estrella was aware that Student was undergoing weekly therapy but did not attempt to discuss Student's emotional functioning with Student's therapist. A social emotional assessment must consider all available information. Fundamentally, that would include reviewing reports regarding recent psychiatric hospitalizations and discussing Student's mental health with his mental health providers, especially the one professional who was currently delivering therapeutic services. Ms. Sosa-Estrella's social emotional functioning assessment was not sufficiently comprehensive to identify Student's educationally related mental health needs.

50. Ms. Ghermezi was the school psychologist responsible for the assessment report and the analysis associated with the various eligibilities. In doing so, she

misstated facts upon which she based her analysis. Though Student was scoring in the average range on much of the standardized achievement test, she did not properly review and report Student's poor grades and performance on District and State standard tests. She also stated that the measure was Student's academic performance, even though the regulations refer to a pupil's educational performance. Most significantly, Ms. Ghermezi viewed Student's absences as the cause for lost educational opportunity, which resulted in poor academic performance. Therefore, she inexplicably concluded that Student's poor performance was not due to any social emotional needs. She also unprofessionally inserted this view in Ms. Sosa-Estrella's summary, modifying Ms. Sosa-Estrella's conclusions, without proper consultation. Ms. Ghermezi did not consider or analyze that Student's absences and tardy attendance was the consequence of his internalized anxiety disorder. As Dr. Neal correctly noted, District's own assessment demonstrated that Student was beset with deep anxieties regarding his school performance and being judged inadequate, creating school resistance. As a result, District's March 2015 psychoeducational assessment was not sufficiently comprehensive to identify all of the Student's needs for special education and related services and was therefore not legally appropriate.

ISSUES 4: OTHER PROCEDURAL VIOLATIONS

51. Student alleges various procedural violations that denied Student a FAPE, including: violating its child find obligations; not responding to Parents' request for an assessment in 2013; failing to consider parental concerns; predetermining its non-eligibility findings; and failing to consider the opinions of Parents' consultants and experts.

Issue 4 (a): Child Find

52. Student contends District should have known that Student was a child who

might be eligible for special education during the 2013-2014 and 2014-2015 school years and it failed to initiate the assessment process for eligibility.

53. A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (*Department of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

54. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that District knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education*. (3rd Cir. 1993) 993 F.2d 1031, 1041.) Violations of child find are procedural violations of the IDEA and the Education Code. (*Cari Rae S., supra*, 158 F.Supp. 2d 1190 at p.1196.)

55. As discussed above, District properly found that Student was not eligible for special education at his May 2014 IEP. No evidence supported a finding that any change of circumstances would have put District on notice that it should assess Student during the few remaining school days after the May 2014 IEP. District's child find obligation was not triggered after the May 20, 2014 IEP through the end of the 2013-2014 school year.

56. From August 18, 2014, until Student was admitted to the UCLA ABC partial hospitalization on September 19, 2014, Student was absent from school six times and tardy three times. Mother met during that time with Ms. Brooks and Ms. Ingber and discussed various supports and accommodations for Student. Student became

increasingly difficult at home, resisted going to school and obsessed on his peanut phobia. Student went to the health office a few times during this period for his peanut allergy; Ms. Kohl occasionally gave him Benadryl with Mother's permission; Ms. Kohl would often just talk to him and he would return to class after a few minutes. At school, he was a pleasant boy. Ms. Brooks was surprised to learn Student was admitted to the UCLA program. Student did not present convincing evidence that, during this time, District had knowledge of, or reason to suspect, a disability, or reason to suspect that special education services may be needed to address a disability. From the school's perspective, Student was presenting very similar to second grade.

57. However, after Student exited the UCLA program, and before his November 17, 2014 return to Longfellow, Parents met with Ms. Ingber and Ms. Brooks. Parents gave Ms. Ingber the UCLA summary, which recommended an immediate IEP. Parents asked for an assessment but Ms. Ingber declined, saying that Student was a new student, having reenrolled, and as a new student, he was not entitled to an immediate assessment and IEP.

58. Student's new pupil status and the date of the last IEP and related assessments did not relieve District of its obligation to assess Student for eligibility. Ms. Ingber was aware of a substantial change of circumstance in Student's profile, which included diagnosis of a general anxiety disorder. Student was hospitalized with suicidal ideations. He was found by the UCLA ABC program to be in need of managed supports in the classroom. The UCLA ABC summary/report provided specific knowledge to Ms. Ingber and Ms. Brooks and gave District reason to suspect Student might have a disability that made him eligible for special education services. The UCLA summary/report triggered District's child find obligation to assess Student.

59. Therefore, Student has met his burden of proof of establishing that District's child find obligation was triggered from and after November 2014, obligating

District to offer an assessment upon Student's return to school. (*Cari Rae S., supra*, 158 F.Supp. 2d 1190 at p.1196.) District should have prepared an assessment plan for the Parents to sign and offered it to them in a timely manner, which it did not do. Student's remedies are discussed below.

Issue 4 (b): Not Responding to September 2013 Request for Assessment

60. Student alleges that Parents requested District to assess Student in September 2013 and that District did not respond. A request for an initial evaluation to determine whether a student is a child with a disability in need of special education and services can be made by either the parent or a public agency. (34 C.F.R. § 300.301(b).) Student did not, however, present convincing or persuasive evidence that District received such a request. Student failed to meet his burden of proof on this issue.

Issue 4 (c): Failing to Consider Parental Concerns

61. Student contends that District failed to consider parental concerns at his May 20, 2014, March 23, 2015, and September 11, 2015, IEP meetings.

62. Procedurally, the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

63. Student has not provided convincing evidence that District failed to

consider parental concerns in the areas of academics, socialization, emotional development, and behavior at the IEP team meetings, thereby denying Parents meaningful participation. Failing to consider Parents' concerns differs from not agreeing with Parents. Student did not prove, by a preponderance of the evidence, that Parents were denied an opportunity to discuss their concerns. The evidence does not indicate that Parents were denied the opportunity to discuss the District's assessment or ask questions at the May 2014 IEP. At the March 2015 IEP meeting, Parents asked questions regarding the District assessments. District assessors explained the basis for their recommendations. As Dr. Boxer and Mr. Hunter noted in their testimony, the September 2015 IEP meeting included vigorous discussion about the report and findings. District did not often agree with Parents and their representatives at the IEP team meetings. However, District's disagreement with Parents did not deny Parents an opportunity to ask questions or state their opinions, which is all the law requires. The evidence does not support a finding that District denied Parents meaningful participation at the IEP's.

Issue 4 (d): Predetermining eligibility at the IEP meetings

64. Student contends that District predetermined eligibility at the IEP team meetings of March 23, 2015, and September 11, 2015.

65. To establish predetermination, Parents need not prove that every element of an IEP was decided in advance. Predetermination of all or a significant portion of an IEP is a procedural violation. (*R.L. v. Miami-Dade County Sch. Bd.*, *supra*, 757 F.3d at p.1188 [predetermination of "material aspects" of IEP denied FAPE]. A district's IEP team members may consider placement options or have opinions about placement before an IEP team meeting. (*Nack v. Orange City Sch. Dist.* (6th Cir. 2006) 454 F.3d 604, 610-611.) They need not arrive with blank minds, merely open minds. (*Doyle v. Arlington Sch. Bd.* (E.D. Va.1992) 806 F.Supp. 1253, 1262.) But they may not arrive with closed minds.

66. Student has not demonstrated evidence of predetermination. The IEP

notes from the March 2015 indicated a vigorous exchange between team members. Parents asked questions and participated in discussions. None of the attendees who testified at the hearing met with other team members before the IEP about the outcome. No evidence established that District personnel met to predetermine Student's eligibility for the March 2015 IEP meeting.

67. The September 2015 IEP was very animated. Mr. Hunter testified that he and Dr. Boxer, with some other IEP team members, had vigorous conversations regarding Dr. Boxer's findings. Both Dr. Boxer and Mr. Hunter said that the IEP was lively. Although the Parents and District did not agree on the outcome, nothing indicated that District had predetermined the outcome or District staff was unwilling to hear Dr. Boxer and the Parents. Student did not present persuasive evidence of predetermination at either IEP team meeting.

Issue 4 (E): Failing to Consider Outside Professionals at the IEP meetings

68. Student asserts that the District failed to consider the recommendations of outside professionals at the IEP team meetings of May 2014 and March 2015. A school district is required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).) This includes consideration of private assessments which address a child's possible disability.

69. District considered Dr. Maher's July 2013 diagnosis of Student's Attention Deficit Hyperactivity Disorder in the May 2014 assessment, which was discussed at the May 2014 IEP team meeting. Therefore, Student did not meet his burden of proof on Issue 4(e)(i).

70. However, as to Issue 4(e)(ii), Student met his burden of proof and demonstrated that the District failed to consider or discuss the UCLA ABC's

summary/report. As analyzed above, District's May 2015 psychoeducational assessment was not legally appropriate primarily because the assessors did not consider and address UCLA ABC's November 2014 report of Student's partial hospitalization, the diagnosis of generalized anxiety disorder, the concerns for Student's sense of inadequacy and failure in the educational setting, and the recommendations regarding Student's educational environment.

71. As to Issue 4(e)(iii), Student did not meet its burden. Mr. Hunter and Dr. Boxer had a vigorous discussion at the September 2015 IEP regarding Dr. Boxer's evaluation and recommendations. Though District disagreed, the evidence establishes that Dr. Boxer's report was considered.

72. In summary, Student has prevailed on Issue 4(e)(ii), but has not met his burden as to Issues 4(e)(i) and 4(e)(iii).

REMEDIES

1. Student asserts he was entitled to a unilateral private placement after District failed to offer a FAPE at the March 2015 IEP. As a remedy, Student requests reimbursement or payment of all costs related to the Frostig placement for the 2015-2016 school year in the amount of \$35,580, which is the total cost of Student's private placement program at Frostig. Parents have paid \$11,674, leaving an unpaid balance of \$23,906.

2. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district did not make a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L.Ed. 2d 385] (reimbursement for unilateral placement may be awarded under the

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

3. Here, Student met his burden of proof on Issues 1(a)(ii) and 1(b)(ii) that District should have found him eligible and offered a FAPE at the March 2015 IEP. Parents also timely notified District of their intention to privately place Student at Frostig and seek reimbursement from District. (20 U.S.C. § 1412(a)(10)(C)(iii)(I); 34 C.F.R. § 300.148(d)(1).) The private placement at Frostig was appropriate. Student received educational benefit from the Frostig program and supporting services, as documented in Student's private IEP, in Frostig progress reports, and by Ms. Knight. Parents were thus permitted to unilaterally place Student and are further entitled to recover the cost of placement from District.

4. District asserts that Parents are permitted to reimbursement only and, therefore, District's obligation is limited to what Parents have paid. District's assertion is not persuasive. Parents have only paid a portion of tuition because they do not have the financial resources to totally fund Frostig's annual cost. If District's assertion applied universally to unilateral placements, only families with the resources to pay the annual cost for private placement would be fully reimbursed. Families with limited resources would not be made financially whole. District has not cited persuasive legal authority that supports a finding that a family's entitlement to a unilateral placement is

constricted by their own limited financial resources. Therefore, District must finance Student's Frostig program for the entire 2015-2016 school year. District shall reimburse Parents \$11,674, or what they have paid Frostig to date. District shall pay Frostig the balance of the annual cost for Student's program and services at Frostig, up to the total sum of \$35,580.

5. District may, at its option, arrange for a public placement of Student at Frostig for the remainder of 2015-2016 school year. This may reduce Frostig's tuition, as explained by Ms. Knight. However, any such public placement shall not reduce or alter Student's current program at Frostig. Student shall receive the same program and services as if he remained in a private placement for the 2015-2016 school year. Further, if District cannot arrange for a public placement or other negotiated tuition reduction with Frostig, District shall pay the private placement cost for Student's program and services.

6. Student seeks reimbursement for other costs Parents claim they incurred as a result of District failure to offer a FAPE. Student prevailed on Issue 4(a) by demonstrating a failure to perform its child find duty to assess Student for eligibility for special education services in the 2014-15 school year, as of November 13, 2014. When District failed to offer an assessment plan, Parents privately provided the services recommended by the UCLA ABC program team, including a speech assessment and services, behavioral support, and social skills training.

7. Parents retained speech pathologist Dr. Alicia Elliott to assess Student and, with her associate pathologist Ms. Sambrano, to provide speech and language therapy. Parents reasonably sought assessment and services after District failed to offer to assess and offer Student a FAPE. District claims that its March 2015 speech and language assessment found that Student did not require speech services. However, as discussed in the Findings of Fact, Ms. Behboudikha did not review or address Dr. Elliot's November

2014 assessment of Student in her report, making no effort to distinguish her findings as more reliable, and was therefore not appropriate. District is equitably obligated to pay for the services Parents obtained because of District's failure to fulfill its obligations to assess and offer a FAPE. Parents submitted billings related to Elliott Institute's services to the end of the 2014-2015 school year, totaling \$3,158. District shall reimburse Parents what they have paid Dr. Elliott and shall pay the balance directly to Dr. Elliott, up to the total sum of \$3,158.

8. Student seeks reimbursement for Dr. Boxer's invoice of \$1,800. Mother testified \$900 was for social skills training, while the balance was for consultation services including reviewing documents, referrals to service providers, therapists, and treatment centers. Parents are only entitled to reimbursement and/or direct payment of \$900 for the social skills class.

9. Parents retained behaviorist Chloe Willis after the March 2015 IEP, who billed Parent \$600, which District shall also pay by way of reimbursement and/or direct payment.

10. Student requests reimbursement of \$480.40, which Parents paid as the balance for the UCLA ABC program not paid by health insurance. District's child find duty was not triggered until after completion of the UCLA ABC program. Therefore, District is not obligated to reimburse.

11. Student seeks reimbursement for services provided by Leonard R. Baker, M.D., from the Descanso Medical Center for Development and Learning. Student submitted a billing with charges beginning in November 2013 and ending on November 18, 2015. All but one entry precedes District's triggered child find obligation. Student has failed to meet his burden of proof regarding Dr. Baker's services; the billing and testimony do not adequately explain what services were provided, who actually provided the services, and the purpose of the services. The request is denied.

12. Student seeks compensatory services for District's failure to timely assess and provide a FAPE. Student asks for educational therapy to remediate his math, reading, and writing deficits in the amount of 120 hours, asserting that he missed 24 weeks of special education services; Student proposes one hour a day as reasonable compensatory educational therapy. As discussed above, District's child find duty was triggered as of November 13, 2014, which was also the date Parents would reasonably have been expected to return the signed assessment, thus commencing the 60-day time period within which District would assess and hold an IEP. The 60 days are calendar days but do not include days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days. (Ed. Code, § 56344(a).) District's closure for Thanksgiving break did not exceed five days and, therefore, are included. District was closed 10 consecutive school days for winter vacation; these 10 days are not included. 60 calendar days from November 13, 2014 is January 16, 2015; 10 days are added for winter break, which means the 60th day by which District was obligated to hold the IEP would have been January 26, 2015. Pursuant to the District's 2014-2015 school calendar, 18 school weeks remained. Therefore, using Student's parameter of one hour per day, Student is seeking 90 hours of educational therapy. As the UCLA ABC summary emphasized, Student required supports and services each school day; having received none, an hour a day of educational therapy is a reasonable request. Therefore, District shall fund 90 hours of education therapy to be provided Student by Frostig.

13. Student requests compensatory speech and language therapy to address pragmatic language issues. However, District is reimbursing Parents for the privately obtained speech and language services, as well as the social skills training. Student has therefore already received services for which District has paid. The request is denied.

ORDER

1. Student is eligible for special education placement and services, under the

eligibility categories of other health impairment and emotional disturbance.

2. District shall pay for Student's Frostig program for the 2015-2016 school year, not to exceed the sum of \$35,580.

3. District shall pay for Dr. Elliott's and Ms. Sambrano's speech and language assessment and services, not to exceed \$3,158.

4. District shall pay for Dr. Boxer's social skills services in the sum of \$900 and Ms. Willis' behaviorist services in the sum of \$600.

5. District shall make reimbursements to Parents and payment to service providers, in the manner previously discussed, within 60 calendar days of the date this Decision is issued. However, District's payments to Frostig may be made pursuant to an agreement between District and Frostig, providing that Student's program and services shall not be diminished or compromised.

6. District shall fund 90 hours of education therapy for Student through Frostig.

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 prevailed on Issues 1(a)(ii), 1(a)(iii), 1(b)(ii), 1(b)(iii), 3, and 4(a), and 4(e)(ii). District prevailed on Issues 1(a)(i), 1(b)(i), 1(c), 2, 4(b), 4(c), 4(d), 5(e)(1), and 4(e)(iii).

RIGHT TO APPEAL THIS DECISION

This was 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: December 28, 2015.

/s/

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearing