

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

WESTMINSTER SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2016020042

PARENTS ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH Case No. 2015110276

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on November 2, 2015. On January 27, 2016, District filed a due process hearing request, naming Student. On February 1, 2016, OAH consolidated both cases. OAH continued District's case based on showing of good cause, and ordered that the timeline for issuance of the decision in the consolidated cases be based on the filing date of District's case.

Administrative Law Judge Laurie Gorsline heard this matter in Huntington Beach, California on March 8, 9 and 10, and in Westminster, California on March 16, 17, 18 and 25, 2016.

Attorney Michelle Ortega represented Student and was assisted by Advocate Kenneth Perdomo. Mother and Mr. Perdomo attended all days of hearing. Father attended the hearing on March 16, 17, 18 and 25, 2016. Student did not attend the

hearing. Attorney Ernest Bell represented District. Reagan Lopez, District's Executive Director of Student Services attended all days of hearing. Nancy Finch-Heuerman, Director of the West Orange County Consortium for Special Education, attended the hearing on March 8, 9, 10, 16, 17 and 25, 2016, and part of the hearing on March 18, 2016. Linda Leech-Painter, Director of the West Orange County Consortium for Special Education attended part of the hearing on March 18, 2016.

At the close of hearing on March 25, 2016, the ALJ granted a continuance to April 14, 2016, for the parties to file written closing arguments. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES¹

STUDENT'S ISSUES:

1. Did District deny Student a free appropriate public education during the 2014-2015 school year, beginning on May 1, 2015, and the 2015-2016 school year up until the October 8, 2015 individualized education program by:
 - A) Failing to provide an appropriate multidisciplinary assessment, specifically mental health and functional behavior assessments;
 - B) Failing to offer eligibility under emotional disturbance;
 - C) Failing to offer an appropriate educational placement;
 - D) Failing to offer appropriate behavior intervention services, including collection

¹ The issues have been rephrased for clarity. 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.) In particular, for purposes of clarity, the October 8, 2015 individualized education program was analyzed as a separate issue in both Student's and District's cases.

of behavioral data;

- E) Failing to offer appropriate goals and objectives which addressed Student's areas of need, specifically: a) academic b) behavior and c) speech and language goals and objectives addressing behavior?

2. Did District deny Student a FAPE during the 2015-2016 school year in the October 8, 2015 IEP for the reasons in Issues 1B through 1E?

DISTRICT'S ISSUES:

1. Did District's offer of placement, program, and services contained in Student's May 12, 2015 IEP, as amended by the May 22, 2015 IEP, constitute a FAPE in the least restrictive environment?

2. Did District's offer of placement, program and services contained in Student's October 8, 2015 IEP deny Student a FAPE in the least restrictive environment?

3. Did District appropriately implement Student's May 12, 2015 IEP, as amended by the May 22, 2015 IEP?

SUMMARY OF DECISION

Student did not prove District denied Student a FAPE by failing to appropriately assess him in the area of mental health. The assessment was timely and Student presented no evidence the assessments were improperly administered. Student also failed to prove that he was entitled to a functional behavior assessment. District assessed Student in the area of behavior and Student failed to establish a functional behavior assessment was legally required.

As to the October 8, 2015 IEP, District denied Student a FAPE because District failed to give notice of or hold an IEP team meeting. However, Student failed to prove he was denied a FAPE prior to October 8, 2015. Student did not prove he was denied a FAPE by District's failure to offer eligibility for special education under the category of

emotional disturbance. The evidence established that the assessment results were consistent with eligibility under the category of autism. District was not required to place Student in a residential treatment center in order to provide a FAPE. The evidence established that the Pathways program offered by District was designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit in the least restrictive environment. Student failed to prove that District failed to offer him appropriate behavior intervention services. Student's behavioral needs were supported in the classroom and Student failed to establish that additional behavior intervention services were required at the time of Student's IEP's. Although Student established that District failed to offer Student an appropriate goal in the area of spelling, Student failed to prove that this procedural violation was material and constituted a denial of FAPE. District shall hold an IEP team meeting in order to propose changes to Student's IEP and provide training to its administrative and special education teaching staff on IEP meeting requirements, otherwise Student's requests for relief are denied.

District proved that the May 2015 IEP's offered Student a FAPE. District also proved that it appropriately implemented Student's May 2015 IEP's, and that its failure to implement the recording of data on Student's level points sheets for three of his annual goals was not material. However, as to the October 8, 2015 IEP, District denied Student a FAPE because District failed to give notice of or hold an IEP team meeting. District's requests for relief are partially granted.

FACTUAL FINDINGS

1. Student was an 11-year-old male at the time of the due process hearing. At all relevant times, Student was eligible for special education and related services, with primary eligibility as a child with autism and secondary eligibility as a child with specific learning disability. Student resided within District with Parents.

BACKGROUND

2. At age three, Student was removed from the custody of his biological parents due to neglect and drug abuse. Parents adopted Student when he was five years old.

3. In 2009, the California Department of Social Services referred Student to clinical psychologist Lee Madigan, Ph.D. for a psychological assessment. Mother reported Student was physically assaultive toward Mother and she believed Student had underlying attachment fears. Dr. Madigan prepared a report, which Mother later provided to District, in which she diagnosed Student with pervasive developmental disorder and reactive attachment disorder. She opined that Student's behaviors could be caused by either one of his diagnoses or both, and recommended Parents receive therapy with Student to help him control his aggressiveness and tantrums. Student began taking medication to control his aggression in 2010.

4. During the 2009-2010 school year, Student became eligible for special education as a student with a specific learning disability. Student attended public school until October 2010. Mother home schooled Student from October 2010 until February 2011. Parents moved into District in February 2011 and Student began attending District's Webber Elementary in March 2011. District assessed Student in June 2011. Student's eligibility for special education was changed to autistic-like behaviors. Beginning in October 2011, Student attended District's Eastwood Elementary for the second grade. He participated in general education with resource specialist program support, and received services in the areas of speech and language and occupational therapy until December 2011, when he was fully transitioned into a special day class for students with mild to moderate needs. In 2012, Regional Center of Orange County diagnosed student with autism spectrum disorder.

THE 2012-2013 SCHOOL YEAR

5. Student attended a special day class at District's Eastwood Elementary School during the 2012-2013 school year. He followed directions and got along with his peers.

6. Advancement of Behavioral & Educational Development and Intervention provided applied behavior analysis behavioral services to children through the Regional Center of Orange County. In November 2012, ABEDI conducted a functional behavior assessment funded through Regional Center to determine if Student qualified for in-home one-on-one behavior services. Student was referred for assessment due to tantrums, non-compliance, aggression and rigidity. Mother provided District with a copy of this assessment in November 2012. The assessment report stated that Mother reported Student behaved better at school than he did at home and that no severe behavior problems had occurred at school. The assessment also noted that reports from school staff as documented in Student's IEP's indicated that Student did not exhibit the same behavior concerns at school that he did at home, and was more compliant with teachers than with Parents. The behaviors took place primarily in the home, or in the car, and were triggered when Student was denied access to a preferred object; was trying to escape a non-preferred task; had not slept well; or, had not had a bowel movement for several days. The behaviors were least likely to occur when he was engaged in a preferred activity or when he was at school. ABEDI began providing in-home behavior services to Student in January 2013.

7. District conducted Student's triennial assessments and held an IEP team meeting in March 2013. Academically, Student was performing below grade level. Mother and teacher completed rating scales. Overall, Student's behaviors occurred primarily in the home setting. At school, he made friends easily and was as social as his grade level peers.

8. On September 4, 2013, Parents and District entered a written settlement agreement dated June 12, 2013, resolving disputes prior to that date regarding Student's IEP's. The parties agreed that Student would be considered a parentally placed private school student from September 4, 2013 through the end of the 2015 extended school year. Under the agreement, in exchange for reimbursing Parents for educational costs and services, Parents released District from all liability related to Student's education. Under the settlement agreement, District was required to complete a comprehensive triennial assessment of Student and to schedule Student's triennial IEP assessment prior to May 15, 2015, and the release excluded claims related to the appropriateness of these assessments and the resulting IEP. The parties agreed to waive the statutory requirement to complete the assessment and hold an IEP team meeting within 60 days of parental consent to the assessment plan.

THE PRIVATE PLACEMENT PERIOD DURING THE 2013-2014 AND 2014-2015 SCHOOL YEARS

9. Designs for Overcoming Obstacles and Realizing Success Educational Center, LLC provided academic remediation for children with disabilities. Claribel Camaya was the director of DOORS. Ms. Camaya conducted a records review and interviews with Mother and Student for purposes of recommending an academic program for Student. Ms. Camaya has a master's degree in special education and doctorate degree in educational leadership with emphasis in curriculum and instruction. After her informal intake assessment, she found that Student had impairments in academic skills in all academic areas. She recommended that Student begin an in-home academic program of no more than two-hour sessions, three times per week, focusing on decoding, spelling, and reading fluency. Ms. Camaya observed Student on several occasions. At hearing, she agreed that Student exhibited behaviors characteristic of autism and agreed that the learning environment could affect behavior.

10. Student began receiving private one-on-one tutoring services in the home from DOORS in September 2013, for five and one-half hours per week, in reading and spelling, which later increased to six hours per week in February 2014. Writing and math were added in May 2014. For the periods of time that services were provided, there was some variance in the schedule, and in the personnel delivering the services. The services were not delivered at the same time each of the three days they were provided and the schedule for delivery varied depending on the availability of providers.

11. Alana Wong was an academic consultant at DOORS. She provided some of the DOORS in-home tutoring services to Student, along with three other tutors. Ms. Wong has a bachelor's degree in psychology and social behavior, and master's degree in education. She holds a general education preliminary credential. She is not qualified to teach a special education class because she does not hold a special education credential. The other tutors who worked with Student did not hold teaching credentials. Ms. Wong is generally familiar with supporting learning of children with autism or maladaptive behaviors. The instruction in the home took place at the dining table. Student demonstrated avoidance behavior, elopement and violence toward his mother, by kicking, hitting and biting. Some days he was productive and other days he was not. He was resistant to new or challenging things and tasks. Student wanted to snack, his bedroom was a distraction to him, and half of the time he would elope to his bedroom. His behaviors interfered with his instruction the majority of the time, and he was not easily redirected. At hearing, Ms. Wong explained that some of the behaviors were elicited because of distractions in the home. She agreed that the learning environment could affect learning, and agreed that a routine and structured environment facilitated learning.

12. For a brief period of time in which DOORS provided services to Student, he received in-home behavior services from the Regional Center. ABEDI's services were

not provided on a consistent basis from the fall of 2013 to winter 2014 due to problems in staffing.

13. Dina Gordillo Feldman supervised the ABEDI one-on-one behavior interventionists and supervisors who provided services to Student and she visited Student's home. She is a board certified behavior analyst and holds a bachelor's degree in psychology and a master's degree in professional development. She worked with autistic students and students with other disabilities. She observed that Student was very rigid, that he did not like changes in his schedule, and that he had pragmatic language issues which were characteristic of autism. She explained that behavior can be changed through punishment or reinforcement. Punishment decreases behavior and reinforcement increases behavior, and a best practice of applied behavioral analysis is to use reinforcement, rather than punishment because punishment creates an emotional reaction in the recipient. She agreed that the environment can affect whether behavior services are successful. ABEDI staff could not determine the antecedents which were triggering Student's behavior, and with the exception of seeing his friends which they could not control, they could not identify reinforcers which motivated Student. The competing reinforcers in the home were more inviting to Student than what was provided by the behavior interventionist. At hearing, she explained the fundamentals of conducting a functional behavior assessment.

THE HOSPITALIZATIONS IN 2014

14. On February 26, 2014, Student was admitted to the UCLA Neuropsychiatric Hospital due to increasing aggression and impulsive behavior at home, and was discharged on March 26, 2014. Parent provided District the hospital discharge summary. During his stay, various medicines were trialed; he had intermittent tantrums, an occasional behavioral disturbance, but was redirectable and appeared to enjoy interaction with peers. Student denied he any issues with school or Parents, but that he

missed hanging out with some of the children from school. He denied suicidal ideations or homicidal ideations and denied depression. He was prescribed medication for severe agitation on an as-needed basis.

15. Student was readmitted to the hospital on March 28, 2014 due to aggression at home and discharged on May 5, 2014. A discharge summary was prepared, which Parent provided to District. Mother reported Student was hyperactive and had become physically violent with Father, and Mother did not believe she could care for him at home. Student had six other hospitalizations due to aggressive behaviors after his May 2014 discharge, between June 4, 2014 and November 3, 2014.²

16. Mother gave District a letter written by Dr. Jerrold Kartzinell, M.D., dated April 23, 2014. The letter stated that Student had a severe behavioral disturbance and was currently in the hospital at UCLA and that Student required long-term in-patient management.

17. Mother gave District a letter dated April 29, 2014 written by Michael Enenbach, M.D., Student's attending psychiatrist at UCLA. Dr. Enenbach reported that Student had required two inpatient admissions over the past two months for worsening agitated behaviors that escalated in the four-to-six months prior to his first psychiatric inpatient admission in February 2014. In Dr. Enenbach's opinion, Student's symptoms severely impaired his school, social and family functioning, and he was unable to sustain adaptive participation in a campus-based school program. He also reported that

² After the conclusion of testimony at hearing, Student requested the admission of Student's Exhibit 7b, consisting of a 21-page discharge summary from UCLA regarding Student's hospitalization during the period of time from September 29, 2014 through November 3, 2014. Student's request was taken under submission. Student's request to admit Exhibit 7b is granted.

Student participated in the unit behavioral and reinforcement program, where he could earn points for appropriate behavior and participation, which he could trade in for prizes. He was invested in this program and seemed eager to participate and did well. Student required and responded well to concise and neutral verbal redirection, consistency in responses from staff, routine in his daily schedule, preparation prior to transition, guidance with adaptive coping and social communication skills and was verbally redirectable. In Dr. Enenbach's opinion, Student met the diagnostic criteria for autism spectrum disorder, attention deficit hyperactivity disorder, intermittent explosive disorder, and a history of substance exposure in utero, and Lyme disease. He recommended a long-term resident treatment center as the least restrictive environment with a therapeutic component. He also recommended a specialized school program and counseling to help Student with coping skills and positive reinforcement of appropriate behaviors.

18. On October 3, 2014, Dr. Enenbach wrote another letter that Parents provided to District. In the letter, he detailed the dates of Student's hospitalizations, reported that all of the hospitalizations were precipitated by episodes of aggression, and made the same recommendations made in the letter of April 29, 2014. In this letter, he stated that Student met the diagnostic criteria for reactive attachment disorder, in addition to the other diagnosis he identified in his April 29, 2014 letter.

THE PRIVATE PLACEMENT SERVICES DURING AND AFTER THE 2014 HOSPITALIZATIONS

19. When Student entered the hospital in February 2014, ABEDI's one-to-one services were suspended and never resumed. On April 24, 2014, ABEDI wrote a letter that Parent gave to District. The letter summarized ABEDI's in-home services to date, reported that services had been disrupted due to Student's aggressive incidents with Parents, Student's hospitalizations, and an escalation in Student's behaviors. Student

had not responded to the services and ABEDI attributed the lack of success in part to the difficulties in finding motivating/reinforcing events or items, and the lack of consistency in the program. On September 24, 2014, ABEDI wrote a similar letter that Parent provided to District.

20. Student received intermittent tutoring services from DOORS between May 9, 2014 and May 10, 2015. On October 1, 2014, DOORS prepared an academic progress report that Mother provided to District. The letter summarized the in-home one-on-one services it had provided to Student since September 2013. It reported that services had been interrupted because of Student's hospitalizations and vacations, and for a period of time services were provided in its offices. Although Student participated in learning, he demonstrated avoidance behavior and aggressive behavior. When he was receiving behavior services during tutoring sessions he was more productive and able to sustain focus at the table, but when the behaviorists began phasing out of the tutoring sessions in November 2013, his behaviors increased. Student demonstrated that he had retained the information presented to him, but his educational success had been impacted considerably because of the health and behavior issues he faced.

21. On February 9, 2015, DOORS prepared an updated academic report that Mother provided to District. Student displayed avoidance behaviors, including leaving the work table to go to his room and play with his toys, lie down or listen to music. He became upset when he did not get his way, fixated on food reinforcers, and became frustrated when his expectations were not met. He also demonstrated fatigue, increased aggression and engaged in property destruction. DOORS concluded that Student's behavioral and health challenges were impeding his academic progress. At hearing, Ms. Wong opined that Student was capable of learning and that he made educational progress during the time that DOORS provided services to him.

THE ASSESSMENT PERIOD AND DISTRICT'S MULTI-DISCIPLINARY ASSESSMENTS

22. On February 24, 2015, District sent Parents an assessment plan for Student's triennial assessments, including assessments in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social/emotional, and sensory processing. Parent signed the assessment plan on February 27, 2015, consenting to all assessments.

23. Student was hospitalized for 26 days in 2015, including from sometime in early March 2015 through April 3, 2015. On April 3, 2015, Student moved to a group home where he remained until late May 2015.

24. On February 28, 2015 and March 16, 2015, Student's outpatient psychiatrist, Dr. Gayle Polsky, M.D., wrote letters recommending Student's placement in a residential treatment facility, which specialized in children who have a significant trauma history and difficulty with attachment. Parent provided both letters to District. Dr. Polsky opined that due to his oppositional behavior, Student had been unsuccessful with his tutoring and Student benefited from a structured setting.

25. On March 9, 2015, District sent Parents a second assessment plan offering additional assessments in the areas of adaptive/behavior and auditory processing. Parent signed the additional assessment plan on March 9, 2015, consenting to both proposed assessments.

26. In April 2015, Parents sought to rescind or void the June 12, 2013 settlement agreement. District and Parents agreed in writing to modify the settlement agreement, shortening the release period and advancing the end date of Parents' responsibility for Student's educational program to the sooner of May 15, 2015 or the date of Student's May 2015 IEP team meeting. Parents waived the statutory timeline for conducting the assessments and holding the triennial IEP team meeting.

27. Student's suspected areas of disability were other health impairment,

autism, emotional disturbance, specific learning disability and speech and language impairment. District assessed Student between March 12, 2015 and May 4, 2015, in all areas of suspected disability. Student was assessed in his home language of English. The testing and assessment materials used for the assessment were selected and administered so as not to be racially, culturally, or sexually discriminatory. The tests and assessment materials were validated for the specific purpose for which they were used and were administered in conformance with the instructions for the test or other assessment materials. They included those tests and assessment materials tailored to assess specific areas of educational need and no single procedure was used to determine Student's eligibility for special education and/or determine appropriate educational programming. With the exception of one measure completed by Father, which was deemed unreliable by the District psychologists who conducted the assessments, the assessment results were valid and reliable.

28. District reported the results of its triennial assessments in an 89-page assessment report dated May 8, 2015. Contained in the written report was a description of Student's background, including his family history, his educational history, the results of his March 2013 triennial assessment, a June 2011 assessment and a May 18, 2010 initial assessment. The report also contained information about Student's health and medical history, including his multiple diagnosis, multiple hospitalizations, medication regimen and allergies. The report also summarized the effects of any environmental, cultural or economic disadvantage Student may have experienced. It summarized that Student had been removed from his biological parents and he may have been possibly neglected or abused; that he had had varied educational experiences, including twice participating in an online charter school program and had been receiving one-to-one tutoring and home instruction rather than participating in a classroom setting, which may have limited his opportunities to further develop his social skills with peers and

behaviors expected in a grade level classroom.

29. Special education teacher Napoleon Dinh, and school psychologists Amanda Smith and Robin Moses were part of the assessment team. Each observed Student; were qualified to administer the testing they administered; obtained sufficient data in making their findings and recommendations; and consulted with and considered the testing of the other assessors and their recommendations. The assessments were administered while Student was in the hospital or living in the group home. The assessors had no opportunity to observe Student in a classroom setting. Student attended at least one tutoring session at DOORS during the time he was in the group home, but DOORS could only accommodate one observation in which District staff was available because of limited amount of time DOORS saw him. District's audiologist conducted the observation on May 4, 2015, in a clinic in a one-on-one setting. The audiologist gathered information as to how Student functioned in an educational setting, including task completion, compliance, interactions and communication. During the two-hour session, Student worked on a variety of skills, including sight words, spelling, decoding, writing, reading fluency and comprehension. He moved at a quick and steady pace, required significant prompting to stay on task, but typically complied with re-direction without complaint. Ms. Wong told the assessor that Student was currently working on skills mastered prior to his most recent hospitalization, and that she was seeing improvements in his ability to attend.

30. Mr. Dinh performed the academic assessment. Mr. Dinh holds a bachelor's degree and has a teaching credential in mild/moderate special education. He was an instructional aide in a mild/moderate special day class from 2004 to 2005. He worked in a special day class referred to as a Pathways classroom at District's Clegg Elementary from 2005, both as an instructional aide, and since 2007, as a special day class teacher. He had training to support students with maladaptive behaviors, including training in

positive behavioral interventions with the Orange County Department of Education and annual Pro-ACT training, which included aspects of applied behavior analysis. He had over 150 hours of behavioral training, including applied behavioral analysis techniques.

31. Mr. Dinh was qualified to assess Student in academics. As part of his assessment, he observed Student and conducted academic testing. On the Woodcock-Johnson IV Tests of Achievement, Student's overall performance was below average in broad reading, and far-below average in both written language and math.

32. Ms. Moses was director of mental health services for Huntington Beach Union High School District serving the five districts in the West Orange County Consortium for Special Education. She holds a master's degree in educational psychology and counseling, a pupil personnel services credential and an administrator credential. She is a licensed educational psychologist and a licensed professional clinical counselor. She was a preschool teacher, a school psychologist where she worked predominantly with children with autism, and program director for special education. As director of mental health, her duties included conducting evaluations, providing counseling services, investigating and making recommendations as to the appropriateness of residential placements. She was qualified to make diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, fourth and fifth editions.

33. Ms. Smith has been a District school psychologist since September 2012. She holds a master's degree educational psychology, a specialist degree and a pupil personnel services credential. Her duties included conducting assessments and she has training in behavior analysis and intervention.

34. Ms. Moses and Ms. Smith assessed Student in the area of cognition and social emotional functioning, including behavior and mental health. They used a variety of measures, including standardized measures, rating scales, interviews, observations, and checklists. Both were qualified to assess Student. Their testing was not affected by

whether Student had received appropriate instruction in reading. Ms. Moses selected measures, which required no reading whatsoever or were at a very low reading level. They reviewed Student's educational and medical records and had Mother, Student and his teachers at DOORS complete rating scales. They observed Student's test behavior and administered standardized tests.

35. Ms. Moses observed Student twice in the group home. Student had trouble attending, completed tasks with redirection and prompting and was compliant. Ms. Smith observed Student twice at UCLA, including in a social setting. Student was able to take turns, share and converse with similar aged peers. He engaged appropriately with peers and she saw no unhappiness or depression. During testing, he required redirection and prompting to complete the subtests.

36. Ms. Moses also interviewed Mother, Student and a service provider in the group home, and consulted with other members of the assessment team including the audiologist who observed Student at DOORS who provided the necessary information as to how Student performed in an educational setting. Mother reported concerns with Student's mental health, that Student needed placement in a residential treatment center, and he had a good relationship with both Parents. She reported that Student hated to have his schedule changed. He refused to do things he did not want to do, but did not engage in refusal when he attended Eastwood. Mother reported altercations with peers, but generally he had been provoked by the other peers, and the incidents she reported involving dangerous behaviors occurred outside of school. Mother reported that while Student was at UCLA, he took another child "under his wing" and was very sweet and nurturing toward this boy. The group home manager reported that Student did well with clear expectations, structure and consequences, was able to get along with others and spent time with one of the children in the group home. Student was generally compliant and well behaved and had only one behavioral episode in the

four weeks he had been in the group home. Once Student understood there were consequences for his actions, he modified his behavior and did not display any inappropriate behaviors. Student reported he missed his Parents and that he wished he went to school because he hated being alone and that he got along with staff in the group home.

37. Ms. Smith's testing included the Cognitive Assessment System, Test of Auditory Processing Skills, Berry Visual-Motor Integration, Test of Visual Perceptual Skills, and the rating scales included the Behavior Assessment System for Children-2 and the Vineland Adaptive Behavior Scales. Student's overall cognition was in the low average range and that he struggled with working memory, and had some weaknesses with auditory processing, visual processing and attention processing. He had difficulties in short term memory and had difficulties in sequencing. Student had a severe discrepancy between intellectual ability and academic achievement in the area of reading fluency, reading comprehension and math calculation and he demonstrated a processing deficit in auditory processing, visual processing and attention processing.

38. Ms. Moses' testing included the Achenbach System of Empirically Based Assessment, Kaufman Assessment Battery for Children, Children's Self Report and Projective Inventory, Revised Children's Manifest Anxiety Scale, Children's Problems Checklist, The Childhood Trust Events Survey, the Guess Why Game, Draw A Person Screening, Beck Youth Inventories, Parent Relationship Questionnaire, and the Parenting Stress Index. Student's overall cognitive level was in the low average range with some discriminate skills, some higher and some significantly lower.

39. On the Gilliam Autism Rating Scale, Student demonstrated some characteristics of autism, with Mother's responses indicating a Very Likely probability of autism and his teachers' responses indicating autism was Probable. On the adaptive behavior parent rating form, Student's composite score was in the moderately low

range, his maladaptive behavior was at a clinically significant level. On the Connors 3, Mother rated Student's behaviors as Very Elevated in all areas. Student's teachers rated his behaviors as being average in the area of defiance and aggression, high average in learning problems/executive functioning and elevated in inattention, hyperactivity/impulsivity and peer relations. On the Behavior Assessment System for Children, Student did not rate himself as having depression and none of his scores fell into the clinically significant range. His teachers rated Student at risk in some areas, and the only area that fell within the clinically significant range was for learning problems. His Mother rated him clinically significant in all areas except anxiety and somatizations, including hyperactivity, aggression, conduct problems, and depression. Mother saw Student's behavior as a greater concern than Student's teachers.

40. On the Scale for Assessing Emotional Disturbance, none of the teachers' scores fell into the clinically significant level. All of Mother's scores fell into the clinically significant level. On screening procedure for emotional disturbance, Student's performance was more reflective of a person with autism, rather than emotional disturbance. Other measures revealed that: Student tended to be concrete and focused on events rather than emotions, thoughts or feelings; his responses were consistent with a child with autism; he did not experience difficulties with depression, anxiety, anger, disruptive behaviors, or self-concept; and he did not believe he had difficulties with view of family, school or peers or general outlook. He had an average level of depressive thoughts and experiences in comparison with others in his age group, an average amount of anxiety and anger and perceived himself as happy.

41. Mother also completed the Achenbach System Child's Behavior Checklist. Mother reported that Student spent an average or higher amount of time engaged in sports; spent an average amount of time engaged in his favorite hobbies; an average amount of time doing his chores except tidying his room where he was below average;

had two or three close friends but was worse than average at getting along with other children. Mother saw no difficulties for Student in the area of somatic complaints or thought processes and the behaviors she reported which might be associated with anxiety, withdrawal or depression fell below a significant level. The behaviors Mother reported that fell into the clinically significant range were reflective of difficulties sometimes presented by children with autism such as communication and social interaction and unusual responses to sensory experiences. Mother also completed the Children's Problems Checklist, which supplemented the interview process. It is a screening instrument and is not standardized. Mother reported she saw Student as anxious or tense, and sad or depressed, but those reports were not consistent with the other data obtained on the standardized measures where the scores did not rise to a significant level. On the Parenting Stress Index, Parents experienced significant stress associated with parenting Student.

42. Ms. Moses and Ms. Smith concluded that Student met the edibility criteria for autism and that he did not meet the eligibility criteria for emotional disturbance. Student exhibited behaviors associated with autism that significantly affected his verbal and nonverbal communication and social interaction. Indications of reactive attachment disorder and intermittent explosive disorder were not evident. In Ms. Moses' opinion, the medical diagnosis of an attachment disorder was incorrect because a child cannot have such a diagnosis if the criteria for autism was met. Student did not exhibit depression or a general pervasive mood of unhappiness, and the behaviors reported by his Mother were not the result of emotional disturbance. In his present setting, social problems and attention problems were observed or reported, but no significant rule-breaking behavior or aggression occurred. Student's inability to learn was explained by intellectual, sensory or health factors, including poor attention and limited instructional experience. At hearing, Ms. Smith explained that Student's inability to learn was

explained by his learning disability.

43. The assessments did not reveal that Student had an inability to build or maintain satisfactory relationship with peers and teachers. Since he was homeschooled, Student did not have opportunities to build relationships with both peers and teachers; and acted appropriately in the group home with both peers and staff. While Student engaged in some inappropriate behaviors, such as repetitive behaviors and difficulty taking someone else's perspective, those behaviors were explained by his autism. Student did not have a tendency to develop physical symptoms or fears associated with personal or school problems.

44. Student also met the eligibility criteria for specific learning disability and other health impairment. Student presented unique needs in the area of receptive language, expressive language, semantics, and pragmatics, but he did not meet the eligibility criteria for speech and language impairment because his language deficits were secondary to autism.

45. At hearing, Ms. Moses explained the assessment findings. Her testimony was credible. She also found that Student had autism, which affected his learning, his communication, his social interactions, and his overall functioning. Student did not meet the eligibility criteria for emotional disturbance because his behaviors were better explained by his autism. Student did not demonstrate characteristics associated with emotional disturbance. He had features which are not indicative of emotional disturbance, such as his need to keep things the same, his poor perspective taking, and his language difficulties. He was happy, and in her opinion, his behaviors were driven by autism. According to Ms. Moses, autism is a cognitive difficulty in understanding the environment around you as compared to your own perceptions and expectations. Student was not driven by his emotions within himself, but from his struggles to work within the environment. He had the need for sameness and rituals and difficulty with

transitions. He did not like when objects were taken away from him because his expectation was to keep the object. In her opinion, Student would not have exhibited behaviors if the environment always met his expectations. Other than having a neglectful background, Student did not meet the criteria for an attachment disorder and any relationship difficulties he had were based on his autism. In Ms. Moses' opinion, the only possible indication of emotional disturbance was Mother's responses on the Behavior Assessment System for Children, but that scale measured behaviors, not emotions. Ms. Smith corroborated Ms. Moses' testimony.

46. Student was evaluated in the area of auditory processing by District's audiologist; in the area of speech and language by District's speech and language pathologist; and by the District's occupational therapist because of concerns with sensory processing and fine motor skills. The results of the auditory processing assessment found Student's auditory processing weaknesses were secondary to his higher order cognitive deficits, and that factors such as attention, motivation and auditory memory significantly affected his performance. Speech and language therapy which focused on receptive language and building linguistic skill was recommended. The results of speech and language assessment demonstrated Student had unique needs in the areas of pragmatics, semantics, receptive and expressive narrative language. The occupational therapy assessment found that Student presented with normal functioning in his underlying motor skills, that Student functioned more appropriately at school than at home, and displayed difficulty with in-seat behaviors.

THE IEP TEAM MEETING ON MAY 12, 2015 AND MAY 22, 2015 AMENDMENT

47. District convened an IEP team meeting on May 12, 2015, to discuss the results of the District's assessments. All required members of the IEP team were present. Student's advocate and a UCLA clinical social worker also participated by phone for a portion of the meeting. Parents were offered a copy of their procedural rights. The

meeting took place over the course of several hours and Parents participated. The IEP team reviewed the District's multi-disciplinary assessment report; both Parents participated in a discussion of the different categories of eligibility, determined Student's present levels of performance and unique needs, developed and revised goals, and discussed placement options, services and accommodations. The IEP team discussed Student's medical history and diagnosis. The social worker told the team that Student needed a structured setting and that he did well when he had consistency and redirection. She advised the team this was not possible in a home or normal school environment. She reported that Student was regulated in the group home where he had had only one behavior episode.

48. The IEP team identified areas of need in academics, behavior, and speech and language, and agreed that additional goals be added, including goals in the area of behavior. The IEP team developed 12 goals in the areas of pragmatics (compliance), receptive narrative and expressive narrative language, semantics (reading), mathematics, word identification (reading), spelling, following directions, starting on time, writing and reading fluency. The team agreed to add five additional goals in the areas of self-management (following directions and behavior), passage comprehension (reading), typing and math, which the IEP team agreed would be sent home to Parents for review, and agreed to by an amendment to the IEP. Three of the goals (following directions, starting on time and self-management) required Mr. Dinh to track behavioral data on the daily level point tracking sheets which were sent home to Mother.

49. The baselines for Student's goals came from the information obtained during the assessment and information from Parents. Ms. Wong credibly opined at hearing that the baselines for pragmatics (compliance), semantics, math, word identification were correct. However, by May 10, 2015, when she stopped working with Student, he had already met the spelling goal offered at the May 12, 2015 IEP team

meeting. Student was able to spell 40 words correctly at the second and third grade level on a more advanced sight list. She was credible because she appeared to have a good memory of Student's present levels of performance, and reviewed her notes before testifying. Ms. Feldman explained at hearing the manner in which she would have collected behavioral data to measure Student's progress on the five goals addressing behavior, including pragmatics, following directions, starting on time, and self-management. With the exception of the spelling goal, all of Student's unique needs, based on his present levels of performance at the time of the May 12, 2015 IEP meeting, were addressed by his goals and accommodations, including his social and behavioral needs. All of the goals were measureable and attainable within a year.

50. The IEP team discussed the continuum of placement options. The IEP team members agreed Student could not function in a general education setting. Student had been out of school for two years and was a fifth grader with low abilities. Home schooling had been inconsistent and had not enabled him to make educational progress. The IEP team agreed that Student required specialized academic instruction within a structured environment. He required a smaller structured environment with routine, visual supports, and a behavior component in order to learn. The District's IEP team members determined that the special day class at Clegg, referred to as the Pathways classroom, could meet Student's needs because it was a small class of no more than eight students with three instructional aides and one teacher. It was designed to environmentally limit the occurrence of behaviors through instructional methodologies, small class size, a low ratio of staff-to-students, visual supports and routines that were built into the program. The nature of the instruction permitted highly individualized attention as well as group learning. The classroom had positive behavior supports in place, and a classroom staff trained in positive behavior techniques. It was designed to support students who present with maladaptive behaviors that interfered

with their ability to learn and utilized strategies similar to the strategies that were used successfully during District's assessment process. Placement in the Pathways classroom at Clegg would permit Student to have consistency, acclimate to a classroom environment, give him more opportunities to socialize with peers at his maturity and academic levels, an opportunity to socialize with typical peers, and allow him to build confidence to succeed in an educational setting. All of Student's goals could be met within that special day class.

51. Residential placement was not appropriate. Ms. Moses opined that residential treatment centers predominantly provide therapy. Student had little, if any, ability to benefit from such therapy and lacked the language skills to benefit from those conversations, and that such a placement would be traumatic and isolating for him. In the group home, Student's behaviors were virtually eliminated. He had routine and structure in the group home, with no therapeutic intervention, and the positive impact that had on him made her believe that Student could be successful in the Pathways classroom. The one-to-one home instruction was an inappropriate educational setting for Student. Student did not have the consistent routine and structure during the period of private placement necessary to meet his needs, which contributed to the escalation of his behaviors and the need for hospitalizations. He had made progress in school prior to his home placement, and he presented with the similar skills to other students, in terms of cognitive abilities and language abilities, who had been successful in the Pathways classroom.

52. The IEP team determined counseling and guidance would enable Student to receive direct instruction to help him meet his goals. Those services included assisting Student in making better decisions during the day. Individual counseling would implement techniques designed for students with autism and group counseling enabled him to work on broader skills. Parent counseling, and psychological consultation

between the classroom teacher and the school psychologist would enable staff to work collaboratively with Parent. The speech and language pathologist recommended speech services to help Student meet his speech and language goals.

53. The IEP team offered placement in a special day class at Clegg, referred to as the Pathways classroom, for both the remainder of the 2014-2015 school year and the 2015-2016 school year. Based on all of the goals and areas of need identified during the IEP team meeting, including the five goals that would be added after the meeting, District also offered specialized academic instruction through the entirety of the day; speech and language services; counseling and guidance, individually and in group settings; parent counseling; and psychological services in the form of a consultation between classroom teacher and the school psychologist, which included observations. The services offered were appropriate to support progress on Student's goals. District also offered extended school year services including specialized academic instruction, parent counseling, and counseling and guidance in a group setting.

54. On May 22, 2015, District sent home a proposed amendment to the IEP including the five additional goals discussed and developed at the May 12, 2015 IEP team meeting. Mother consented to the amendment on June 11, 2015.

THE END OF THE 2014-2015 SCHOOL YEAR AND THE 2015-2016 SCHOOL YEAR

55. Student attended the Pathways classroom beginning on May 26, 2015, for the remainder of the fifth grade and during the 2015-2016 school year for sixth grade. Mr. Dinh was Student's teacher.

56. At hearing, Mr. Dinh opined that Student made academic progress and behavioral growth. He made progress on his goals and as curriculum challenges increased, he was able to adapt. He became more confident in his abilities, enjoyed learning, and was an engaged and active participant in classroom. He had friends and was well-liked. Student engaged in off task or other behaviors; however, his behavior

did not take significant time away from his learning or the learning of others, because he was easily redirected. Mr. Dinh successfully used applied behavioral methodologies and positive reinforcement behavioral techniques in the classroom.

57. Mr. Dinh kept behavior level system point sheet logs on Student between June 1, 2015 and June 11, 2015, and during the 2015-2016 school year. The level system was a positive reinforcement system which tracked points the Student earned each period throughout each school day. Students achieved certain levels, with platinum as the highest level, and accorded certain privileges based upon the points earned. Mr. Dinh was involved in tracking Student's behavior and in the collection of behavior data with the classroom aides throughout the day in order to track progress and incentivize Student to engage in appropriate behavior. Student was aware of the level system and it motivated his good behavior. Student was usually at the platinum level and he enjoyed earning points.

58. The point sheets reflected that Student engaged in a few instances of aggressive behavior, including physical altercations in which he did not earn points. At hearing, Mr. Dinh explained that none of these events were serious with the exception of one incident on November 2, 2015, where he was suspended. In that incident, Student got upset when he was not permitted to keep his Pokémon book, left the classroom and climbed a gated enclosure. Mr. Dinh explained that he expected some behaviors from Student because that was the reason he was in the Pathways classroom, and that Student was new to a classroom and was becoming accustomed to the program.

59. On October 2, 2015, Student's reading comprehension was tested and he scored at a 3.1 grade level. By January 27, 2016, he achieved a grade equivalency of 4.2. Student demonstrated significant difficulties in writing in May 2015, but by the beginning of the 2015-2016 school year, his writing skills had improved. His math skills

also increased. Student's sixth grade report card for the period from September 2, 2015 through November 20, 2015 reflected that he was following directions, completing classroom assignments, demonstrating organizational skills, behaving respectfully, and accepting responsibility for his behavior.

60. Mr. Dinh also kept his own journal where he tracked Student's progress on his annual goals. On at least 14 of his goals, Student was making progress toward meeting his goals. In his journal, Mr. Dinh documented the opportunities where he observed Student and recorded his responses. Mr. Dinh did not record that data on the level point sheets because there was not a good place on the daily point sheet for him to record the data.

61. After the May 2015 IEP, Ms. Smith worked with Student at least twice per week in both individual and group counseling, and visited Student's classroom on a daily basis. She observed that Student was mostly on task and compliant with redirection. Although Student moved around a lot, he was engaged with the lessons, listening and demonstrated comprehension through his responses. He was invested in the positive reinforcement and positive behavior management systems in place. His behaviors did not impact his learning or the learning of other students. He acted appropriately in group counseling. She opined that he could not benefit from psychotherapy; however, he could work well with rules and structure and concrete instructions. His redirection increased in the Pathways classroom because he understood the rules and was reinforced for following the rules. He required less redirection than he did in fall 2015.

62. At hearing, Mother claimed that sometime after May 2015, she received calls from school and that Student was having trouble with peers. However, other than one after school event in September 2015 and the November 2015 suspension, she provided no clear details. Student continued to exhibit aggressive behavior in the

mornings while preparing to go to school. Mother explained that she had to give Student medication to get him to school about 25 percent of the time between May 2015 and December 2015 which made Student sleepy at school, but she was not specific as to whether or how often this occurred prior to October 8, 2015. Student offered no evidence that Mother was routinely unable to get Student to school.

THE SEPTEMBER 23, 2015 IEP AMENDMENT

63. On September 23, 2015, District held another IEP team meeting. All required members of the IEP team were present. District offered Parents a copy of their procedural rights. The purpose of the meeting was to review Student's placement and discuss Parents' concerns related to Student's behavior. At the meeting, Parent shared that Student was hospitalized since September 17, 2015 and that Parents had received three calls due to Student's behavior. One incident was discussed. The incident occurred after school when something was taken away from Student and the school principal got involved. During school, Student exhibited no extreme behavior. Mr. Dinh reported that Student participated in class, wanted to feel like part of the class, and had friends on campus. He stated he had no concerns about aggression, and Student's placement was appropriate. Parent was concerned that Student's behaviors did not reflect a loss of points on his behavioral point sheets, and District staff explained how points were earned in the classroom. Parent reported that Student had engaged in violent behavior during a horse riding lesson outside of the school setting. Ms. Smith reviewed Student's group counseling services and described him as the "model student." Student enjoyed activities with his peers and his behavior was appropriate. The speech pathologist explained that although speech services had not yet begun for the school year because Student was in the hospital, based on his observation of Student in class, the services and goals continued to be appropriate. The IEP that resulted from this IEP team meeting was documented as an amendment to the May 12, 2015 IEP. No changes were made to

the May 12, 2015 IEP.

64. Because of Parents' concerns, at the IEP team meeting District offered to conduct a functional behavior assessment of Student and provided Parents with an assessment plan on September 23, 2015. District did not offer a functional behavior assessment prior to September 23, 2015 because Student was not in structured school setting prior to May 2015 which was necessary to assess his functioning in a school setting and determine how Student's behavioral needs would be met in the Pathways classroom. Predominantly, the purpose of looking at the function of a behavior requires examination of the environment in which the behavior occurs, and determining the antecedents and consequences of that behavior and manipulating that environment to motivate appropriate behavior. There was no relevant information District could obtain from such an assessment prior to the May 2015 IEP's because Student had not been in school, but had been in the hospital and in a group home.

65. Parent signed the assessment plan on December 11, 2015, consenting to the functional behavior assessment.

THE SPEECH AND LANGUAGE SERVICES

66. Ryan Kudo was District's speech pathologist. He has a master's degree in communication disorders, a rehabilitation services credential, and a speech and language and hearing license. He worked with preschool through middle school students, assessed in the area of speech and language, provided treatment and monitored progress. He provided weekly speech and language services to Student beginning in September 2015. He worked with Student in a small group setting twice per week on his goals for speech and language development. The goals were appropriate at the time of the May 12, 2015 IEP and Student was provided an appropriate level of service for him to make progress on his goals.

67. Student exhibited good behavior within the speech setting. Mr. Kudo

placed him in a helper role with another student; Student was patient, compliant, and actively engaged with the other student. Within a small group setting, Student's behavior was never a problem. He was easily redirected. By late September 2015, Student had already met one speech and language goal, and he made progress or nearly met his other speech and language goals.

THE OCTOBER 8, 2015 IEP AMENDMENT

68. District drafted an amendment to the May 12, 2015 IEP dated October 8, 2015. The purpose of the amendment was to reduce the total minutes of specialized academic instruction in Student's IEP and mainstream him for 120 minutes of visual and performing arts. There was no persuasive evidence that District gave Parents notice of this IEP. Parents did not consent to this amendment and did not waive notice of or the presence of all required IEP team members at an IEP team meeting.

THE EVENTS AFTER THE OCTOBER 8, 2015 IEP

69. On November 2, 2015, Mother took Student to UCLA hospital after the incident involving his Pokémon book. On November 9, 2015, Dr. Enenbach wrote another letter reiterating many of the same concerns and recommendations, detailed in his letter of October 3, 2014. His previous diagnosis of autism spectrum disorder was not included in this letter.

70. At hearing, Dr. Enenbach claimed that Student met some of the criteria for emotional disturbance under the Individuals with Disabilities Education Act, but he did not persuasively explain how Student met that criteria and, to the extent it was based upon his medical diagnosis, it was not unconvincing. Although his April 2014 and October 2014 letters stated that Student had met the diagnostic criteria for autism spectrum disorder, he could not persuasively explain at hearing why he had removed that diagnosis from his most recent letter. He admitted he did not know if he removed

that from his letter because of the concern that Student could not be residentially placed. Dr. Enenbach opined Student had reactive attachment disorder based upon the Diagnostic and Statistical Manual of Mental Disorders, fourth edition, but Dr. Enenbach agreed that autism had be “ruled out” for a diagnosis of reactive attachment disorder of the inhibited type and claimed he was uncertain if that same “rule out” requirement applied to a diagnosis of an attachment disorder of the disinhibited type. He also agreed that making a differential diagnosis of the potential for autism was important, because what might be interpreted as an attachment disorder could be autism; and that it was important to make the same kind of differential diagnosis with regard to a diagnosis of intermittent explosive disorder, because the explosive behaviors associated with that disorder could be attributable to rigidity as a result of autism. Yet, he claimed he never evaluated whether or not Student had autism, but agreed that Student had characteristics of autism, including: perseverative behaviors; rigidity; got upset when he did not get what he wanted; had limited insight; difficulty with perspective taking; social communication deficits; and expressive language deficits. Student also lacked eye contact, had trouble reading social cues and turn taking, misunderstood others’ statements, was concrete, and had difficulties with transitions.

71. Dr. Enenbach also claimed he had diagnosed Student with disinhibited social engagement disorder, but this diagnosis did not appear in any of his letters. He was unable to say how Student met the diagnosis of disinhibited social engagement disorder based upon conduct outside the hospital or otherwise persuasively explain how Student met the diagnostic criteria for disinhibited social engagement disorder within the hospital. He opined no evaluative tool existed for diagnosing attachment disorders other than assessment of patient’s history and interactions at home and in school. However, he admitted he was not successful in engaging Student in conversation and was unfamiliar with Student’s educational program. He did not know whether Student

had attended public school since September 2013 and was unacquainted with Student's home program. He was also unfamiliar with Student's educational environment prior to being homeschooled, was unaware of the school program offered by the District in May 2015, and had not visited a special day class since 2008. He agreed that an appropriate educational setting for Student required routine and structure and that a lack of routine and structure would lead to behavioral deterioration.

72. Dr. Enenbach's testimony was inconsistent and confusing in other ways, which significantly affected the weight given his testimony. He claimed Student's behaviors at home stemmed from his attachment issues, but an attachment disorder was not the primary cause. He also agreed Student had not exhibited a general pervasive mood of unhappiness or depression, but opined Student required residential treatment because of the trauma-focused therapy he was recommending. He also claimed he generated his April 2014 letter because Student had been hospitalized twice and Student's current school placement was not working. Later, he admitted he was unfamiliar with Student's educational placement and that he recommended residential placement based upon the recommendations made by the educational consultant and social worker on his team at UCLA, neither of whom testified at the hearing.

73. On November 10, 2015, District wrote a letter to Parent summarizing its efforts to provide counseling services to Parents pursuant to Student's May 12, 2015 IEP.

74. On November 13, 2015, Student's counsel advised District that Parents were not interested in parent counseling, that parent counseling was not a requirement for District to offer Student an appropriate FAPE, and requested that District cease contacting Parents about this therapy.

STUDENT'S EXPERT – CONNIE HORNYAK

75. Parents privately retained Connie Hornyak to assess Student between October 26, 2015 and December 10, 2015. They wanted to learn how to parent Student

more effectively, stop his violent behavior and heal from the constant chaos in their home. Ms. Hornyak holds a master's degree in clinical social work and a pupil personnel services credential. She is a licensed clinical social worker and a registered attachment therapist. She is qualified to provide psychotherapy services for children and adults in the state of California. Since opening her own practice in 2013, she has specialized in diagnosing and treating children with reactive attachment disorder. She has some experience working with children with autism, but she does not have an expertise in autism.

76. She met with Parent on October 26, 2015, and with Student in her office three times, November 19, December 1 and 10, 2015, and reviewed Student's medical and educational records. In her December 10, 2015 assessment report, Ms. Hornyak diagnosed Student with disinhibited social engagement disorder, disruptive mood dysregulation disorder, and attention deficit disorder. She concluded that Student was a danger to his family, his classmates and the community and that he was highly likely to develop an antisocial personality disorder and psychopathic personality style and will engage in persistent criminal behavior, and unable to parent his own children unless he received intensive residential treatment immediately. Ms. Hornyak recommended Student be placed in long-term residential treatment at either Villa Santa Maria in New Mexico or Change Academy Lake of the Ozarks in Missouri for 18 months to two years.

77. At hearing, Ms. Hornyak opined that Student did not have autism and that his category of eligibility for special education should have been emotional disturbance. According to Ms. Hornyak, disinhibited social engagement disorder falls under the category of emotional disturbance. She explained that what was previously referred to as reactive attachment disorder, is now divided into two categories, the first, reactive attachment disorder of the inhibited type for children under the age of five, and the second, disinhibited social engagement disorder, for children six through eighteen.

Although in her opinion observations are part of “best practices” doing assessments, she did not conduct observations of Student at school. She inconsistently claimed that she did not believe it was necessary to observe Student at school or talk to his teachers in order to conduct her assessment. She never observed Student outside of the clinical setting and admitted she was unaware as to whether Student was receiving academic benefit in his Pathways classroom. Ms. Hornyak relied on information she obtained during her interviews with Student to justify her diagnosis; however, the interviews were not recorded in her report. She unpersuasively claimed she was not legally allowed to summarize such conversations in her report due to the confidentiality of therapy sessions despite the fact she did not provide therapy to Student. She could not cite to any specific authority supporting her position.

78. Ms. Hornyak’s opinions were not credible, were inconsistent, and she was impeached numerous times during her testimony. For example, she explained that autism was a “rule out” for disinhibited social engagement disorder, but admitted that she did not assess Student for autism, and that she was not qualified to determine if Student had autism. She also testified that none of the behaviors on Student’s daily point sheets were characteristic of a child with autism, and then denied she made that statement, and some of the behaviors she admitted were characteristic of children with autism were the same behaviors listed on the daily point sheets. She inconsistently claimed Student had some characteristics of a child with autism, but also later claimed he did not have features of autism. She was evasive in her testimony as to whether children with autism have trouble with making transitions, which she eventually admitted was characteristic of a child with autism and was one of the behaviors listed on Student’s daily point sheets. Eleven of the twelve symptoms she used to support her diagnosis of disinhibited social engagement disorder were not part of the diagnostic criteria for this attachment disorder and Ms. Hornyak was inconsistent and evasive in her

testimony on this issue. She claimed that Student met the diagnostic criteria for disinhibited social engagement disorder because of certain characteristics he exhibited, including aggression and lack of empathy, but later conceded that such characteristics were not part of the diagnostic criteria. She also failed to demonstrate an adequate familiarity with the current programs offered at either of the residential treatment centers she had recommended. In completing her assessment, she claimed she spoke to Dr. Majors about Dr. Majors' observations at school, but Dr. Majors had not yet conducted her observations at the time of Ms. Hornyak's assessment.

DR. CHRISTINE MAJOR'S OBSERVATIONS

79. Parents retained Christine Majors, Psy.D, a licensed psychologist and neuropsychologist, to conduct observations and a record review to assist in determining an appropriate educational placement in relation to Student's academic, psychological and behavioral difficulties. She did not conduct any formal testing assessments of Student. Dr. Majors observed Student at school on January 19 and 20, 2016, for one and one-half hours each day, both in the classroom and on the playground. She interviewed Mother and Mr. Dinh, but she did not interview Student.

80. She prepared a written summary of her findings, concluding that Student met the eligibility criteria for special education as a student with an emotional disturbance and recommended placement in a residential treatment center with therapeutic treatment. Dr. Majors concluded that although Student's level system point sheets demonstrated that his behaviors were well-controlled, during her observations Student's behaviors occurred so frequently that they adversely affected his ability to engage in meaningful classroom work, and disturbed other students in the class. His frequent hospitalizations interfered with his ability to access his curriculum and his current placement was not capable of bringing about the behavioral change necessary for Student to access his education.

81. Dr. Major's testimony was not persuasive. She agreed that it was important to consider differential diagnosis when conducting special education assessments because the diagnosis derives treatment and it was necessary to consider all possible diagnosis for child. She did not conduct any tests to determine whether or not Student met the diagnostic criteria for autism or emotional disturbance, but agreed that testing should be done to determine if a student has autism. Dr. Majors knew Student had a prior diagnosis of autism. She claimed that she did not consider differential diagnosis of autism because she did not see autistic-like behaviors, but relied on UCLA's reports in making her findings. Dr. Majors also relied on Ms. Hornyak's report in making her findings and recommendations. She did not know if Student had communication deficits because she could not hear how he interacted with other students during her observations, but agreed that it was important to know if he demonstrated verbal communication deficits in determining if he was autistic. Although Dr. Majors claimed to have reviewed Student's records, she was not certain whether he demonstrated rigidity, did not know if he had social interaction deficits or engaged in repetitive behaviors, and could not recall whether he had difficulty with transitions. She also agreed that if the behaviors Student was exhibiting were more indicative of a particular special education eligibility category, that category should be offered.

82. Dr. Majors was unfamiliar with Student's private placement home program or whether he had opportunities to be socialized with peers during that time. She did not know if Student's home program was inappropriate, but agreed that maladaptive behaviors could escalate if a child were placed in an inappropriate educational environment. She had no familiarity with the residential placement she was recommending and claimed she had a limited understanding of what occurs in a residential treatment center.

83. Dr. Majors did not know if Student was making academic progress and she

never asked Mr. Dinh how Student was doing in the classroom. She also agreed that children with autism and children with emotional disturbance can benefit from a classroom which is designed to support students with maladaptive behaviors. When asked about whether Student's behaviors interfered with his learning, Dr. Majors' responses were equivocal. She also admitted that even when Student got out of his seat he appeared to be attending, and during her second observation, Student appeared to be completing his work. Dr. Majors' report did not reflect when Student's behaviors were disruptive to other Students and she admitted at hearing that she did not know if he disrupted other students. She did not quantify the intensity or duration of Student's behaviors she claimed to observe and did not know if Student was responsive to redirection. She also admitted that Student asked Mr. Dinh if Dr. Majors was in the classroom to observe Student, which could have affected his behavior. She did not know if Mr. Dinh or the instructional aides in the classroom were recording behavioral data during her observations.

DISTRICT'S EXPERT DR. MICHAEL HAAS AND THE FUNCTIONAL BEHAVIOR ASSESSMENT

84. In January and February 2016, District performed a functional behavior assessment of Student. Ms. Smith and Dr. Michael Haas, Ph.D. conducted the assessment. Dr. Haas was a school psychologist and professor of counseling and school psychology at Chapman University. He has a master's degree in psychology and social science and a doctorate degree in social science. He also holds credentials as a school psychologist and school counselor; licenses as a marriage and family therapist; educational psychologist; and professional clinical counselor. He was a school psychologist for 18 years, and since 2013 he has worked as an educational psychologist conducting evaluations. From 1988 to 1991, he was coordinator for a program for emotional disturbance and served as both its supervising administrator and school

psychologist.

85. Dr. Haas interviewed Student's teacher, observed him in the classroom and on the playground, interviewed Student twice, Ms. Smith and Mr. Dinh, and had Student fill out behavior rating scales. He sent Parents interview forms who declined to return them. He also reviewed Student's triennial assessment and IEP's, Dr. Majors' report, Ms. Hornyak's report, Dr. Polsky's letters, the letters from UCLA and Student's behavioral level system point sheets.

86. Dr. Haas summarized his findings in a written report dated February 23, 2016. He concluded that a behavior intervention plan was not necessary. The interventions and behavior strategies implemented in the classroom had a positive effect on Student's behavior. The behaviors explored included disruptive behavior and physical aggression. He also gave Mr. Dinh rating scales which dealt with different behaviors over a six-day period, including disruptiveness, cooperation and academic engagement. He determined that three of five instances of physical aggression involving Student were unprovoked altercations with a peer where Student did not purposefully put his hands on the peer. He also determined that Student engaged in disruptive behaviors one to four times per day, but that staff was able to redirect and prompt him back to task. The disruptive behavior occurred anywhere from five seconds to two minutes in length, but they typically lasted a few seconds and not more than one minute. The triggering events appeared to be primarily when there was a lack of attention or when something was taken away from him. Student was on task and engaged 86 percent of time. The other 14 percent of the time, he asked for help without raising his hand or similar conduct.

87. Student did not require an additional behavioral plan because his classroom already had a very structured behavior plan. The instructional day was routine and predictable. It was displayed on the board and in charts and students in the class

knew what they are supposed to do at any given moment of the day. The classroom had a low ratio of adults to students which gave Student frequent adult interaction, redirection and prompting. It had an incentive system in place to encourage positive behavior, and Student had access to a full-time psychologist on site. The level system in place communicated to students how they were performing behaviorally by the points they earned, and motivated them to engage in good behavior to earn points in order to assess incentives or privileges. Dr. Haas was familiar with level systems, and observed the level system being implemented correctly in the Pathways classroom. The behavioral point sheets were not designed or intended to record all of Student's behavior throughout the day. The focus of the program was on positive reinforcement and was superior to a program focusing on punishment. In Dr. Haas' opinion, the overwhelming amount of research indicated that punishing someone into good behavior was very difficult. He saw applied behavior methodologies being implemented in the classroom. He agreed that there were more behaviors listed in the point sheets than the five acts of aggression which were listed in his report, but there was no evidence that this affected his opinions. Student was on task the majority of the time and earning points. He opined that the Pathways classroom was the appropriate educational setting for Student.

88. Dr. Haas observed Student on the playground playing appropriately with five or six other boys. When interviewed, Student was mostly cooperative, and saw himself and his life as going well. When he talked about connections, he talked about his friends, parents and adults at school. Student had a limited capacity to talk about his own feelings and to be metacognitive. This is typical of a child with autism. Student presented to Dr. Haas in January and February 2016 in the same way he was described by District in the May 2015 triennial assessment.

89. Student presented more as a child with autism with attention deficit

disorder than a child with emotional disturbance. Although Dr. Haas was not tasked with determining eligibility, one instrument he utilized in assessing Student he used for determining emotional disturbance. Student scored within the average range on the anxiety rating scale and nothing Student said indicted that he had depression or anxiety or gave any indication he had an emotional disturbance. In order to make a determination of whether a child had an emotional disturbance, something quite apart from autism must be present. Autism by its nature makes attachment difficult. A medical diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, does not necessarily mean that the student is emotionally disturbed under the IDEA. The same ABA methodologies used for children with autism work for children with emotional disturbance in stabilizing behavior, but would not resolve their depression or anxiety or make them happier.

90. Dr. Haas criticized Dr. Majors' report because she did not conduct any testing and did not interview Student. He opined that she could not make a diagnosis of emotional disturbance without interviewing Student. An appropriate assessment of a student's social-emotional functioning for purposes of making determination of emotional disturbance required an interview of the child to understand their mental status. A comprehensive assessment includes record review, observations, interviews, and testing or rating scales. He also explained that there are dozens of types of psychotherapy. Some emphasize insight and focus on the past, and others focus on coping skills. Student did not present as a good candidate for the type of therapy to focus on his past and expect him to relate it to the present. He had a limited ability to probe his feelings which is characteristic of autism.

91. The parties stipulated that District appropriately implemented Student's May 2015 IEP as amended on May 22, 2015, except for the behavioral intervention level system which tracked points for appropriate behaviors.

LEGAL AUTHORITIES AND ANALYSIS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.⁴; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education 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, which meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "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 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

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

⁴ All references to the Code of Federal Regulations are to the 2006 version.

describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the

identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 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].) In Student's case, Student, as the complaining party, bears the burden of proof, and in District's case, District bears the burden of proof.

STUDENT'S ISSUE NO. 1A: FAILING TO PROVIDE AN APPROPRIATE MENTAL HEALTH AND A FUNCTIONAL BEHAVIOR ASSESSMENT

5. Student contends that District's mental health assessment was inappropriate because it failed to consider Student's clinical history and failed to include a developmental or educational history. Student argues that the Behavior Assessment System for Children-2 manual required District to conduct a "Structured Developmental History" which District failed to provide to Parents. Student claims District failed to comply with the instructions in the BASC-2 because Ms. Moses did not observe Student in an educational setting and failed to take the "momentary sampling" required by the instructions. Student further disagrees with the assessment's conclusions and claims that District should have interviewed Ms. Hornyak, UCLA or Dr. Polsky. Student claims District should have conducted a functional behavior assessment before September 23, 2015 and that the assessment was inappropriate.

6. District contends that its mental health assessment was appropriate and that it was not required to conduct a functional behavior assessment.

LEGAL AUTHORITY

7. Before any action is taken to place a student with exceptional needs in a program of special education, an assessment of the student's educational needs must be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) An assessment may be initiated by request of a parent, a State educational agency, other State agency, or local educational agency. (20 U.S.C. § 1414(a)(1)(B); Ed. Code, §§ 56302, 56029, subd. (a), 56506, subd. (b).)

8. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) The pupil must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the pupil has a disability or whether the pupil's educational program is appropriate. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code, § 56320, subds. (e) & (f).) The assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306.)

9. 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].)

10. A school district has 60 days from the date it receives the parent's written consent for assessment, excluding vacation and days when school is not in session, to complete the assessments and develop an initial IEP, unless the parent agrees in writing

to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a).)

11. Persons competent to perform the assessment, as determined by the local educational agency, shall conduct the assessment. (Ed. Code, § 56322.) Assessors must be knowledgeable about the student's suspected disability and must pay attention to the student's unique educational needs such as the need for specialized services, materials and equipment. (Ed. Code, § 56320, subd. (g).)

12. 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, supra*, 211 F.Supp.2d at p. 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

13. Assessment materials and procedures must be selected and administered so as not to be racially, culturally, or sexually discriminatory, and must be given in the student's native language or mode of communication unless it is not feasible to do so. (Ed. Code, § 56320, subd. (a).) Assessments must also meet the following requirements: 1) are provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not feasible; 2) are used for purposes for which the assessments or measures are valid and reliable; and 3) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments. (Ed. Code, § 56320, subd. (b).) Assessments must also be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors

the test purports to measure. (Ed. Code, § 56320, subd. (d).) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

14. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; (7) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (8) consistent with superintendent guidelines for low incidence disabilities, the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

15. A failure to properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190 at p. 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032). However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if 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); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2) & (j).)

16. If district, parent, and relevant members of the IEP team determine that a

student's conduct (that gave rise to a change in placement, i.e., a removal for more than 10 consecutive school days or a series of removals that constituted a pattern) was a manifestation of the student's disability, the IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan for the child. (20 U.S.C. § 1415(k)(1)(F); 34 CFR 300.530(f).) If a student with a disability who is removed from his current placement for more than 10 consecutive school days for behavior not determined to be a manifestation of his disability (or a student who is removed to an interim alternative educational setting for up to 45 school days for weapons, drugs, or serious bodily injury, irrespective of whether his behavior is a manifestation of his disability) must "[r]eceive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur." (20 U.S.C. § 1415(k)(1)(D); 34 CFR 300.530(d)(1)(ii).)

ANALYSIS

17. Student did not prove District failed to provide an appropriate mental health assessment or was required to offer a functional behavior assessment.

18. District's assessments were timely. On February 27, 2015 and March 9, 2015, Mother consented to the assessments offered by District. In the June 2013 settlement agreement, as amended in April 2015, Parents agreed to an extension of the statutory 60-day deadline. The settlement agreement required District to complete Student's comprehensive triennial assessment and to schedule Student's IEP team meeting following that assessment prior to May 15, 2015, waiving the statutory 60-day period. District completed the assessments and held the IEP team meeting by May 12, 2015.

19. Ms. Moses and Ms. Smith conducted the assessments in the areas of intellectual development and social/emotional functioning, including behavior and

mental health. The assessments they performed met all of the statutory requirements. Student's home language was English and he was assessed in English. The testing and assessment materials used for the assessment were selected and administered so as not to be racially, culturally, or sexually discriminatory. The tests and assessment materials were validated for the specific purpose for which they were used and were administered in conformance with the instructions for the test or other assessment materials. They included those tests and assessment materials tailored to assess specific areas of educational need and no single procedure was used to determine Student's eligibility for special education and/or determine appropriate educational programming. With the exception of one measure completed by Father deemed unreliable by Ms. Moses, the assessment results were valid and reliable.

20. Multiple different measures were selected and administered to ensure the results accurately reflected Student's social emotional functioning. Ms. Moses and Ms. Smith were qualified to administer the testing they administered, and knowledgeable of areas in which Student was tested. Their testing was not affected by whether Student had a temporary physical disability or social maladjustment or by environmental, cultural, or economic factors and was not affected by whether Student had received appropriate instruction in reading. As an extra precaution, Ms. Moses selected measures requiring Student to do no reading whatsoever or reading at a very low reading level. Both assessors obtained valid and reliable assessment data sufficient to make valid findings, including determining Student's unique needs and eligibility for special education.

21. District's written assessment report contained necessary information required by statute and was provided to Parents at the May 12, 2015 IEP team meeting. District's multi-disciplinary assessment report was in writing and included Ms. Moses and Ms. Smith's assessment results. The report stated that Student qualified for special

education under the eligibility categories of autism, specific learning disability and other health impairment, required a specialized program and supports, and that Student demonstrated a discrepancy between academic achievement and intellectual ability which adversely affected educational performance and required a specialized program and supports which could not be provided through adaption in general education. It also included the basis for making those determinations, including testing performed, the results of the testing, and the grounds for the findings.

22. The District's multi-disciplinary assessment report was 89 pages in length. It detailed the several different observations of Student which were conducted by District staff during the assessment. The report included the observation performed by Mr. Dinh, the observation conducted by the speech and language pathologist at UCLA as well as the observation conducted by the audiologist at DOORS. It also contained descriptions of the observations conducted by Ms. Moses in the group home, and the observations conducted by Ms. Smith in a social setting and during testing at UCLA.

23. The observations occurred in appropriate settings. The parties' settlement agreement required District to conduct its triennial assessments and schedule the IEP prior to May 15, 2015. Parents consented to the assessments on February 27, 2015 and March 9, 2015. By March 12, 2015, Student was in the hospital at UCLA and not released until April 3, 2015. Upon his discharge, he was placed in a group home where he remained until late May 2015. There was no opportunity for District to observe Student in a classroom setting. Student attended at least one tutoring session at DOORS during the time he was in the group home, but DOORS could only accommodate one observation in which District staff was available because of the limited amount of time DOORS saw him. Although Ms. Moses did not herself observe Student in an educational setting, District's audiologist conducted this observation and gathered information as to how Student functioned in an educational setting, including task completion,

compliance, interactions and communication. Ms. Moses reviewed the information gathered by the audiologist which provided Ms. Moses with the necessary information as to how Student performed in an educational setting and reliable assessment data sufficient to make her findings.

24. The report described the relationship of Student's behavior to Student's academic and social functioning. The educationally relevant health, developmental, and medical findings were summarized. Among other things, it contained a description of Student's background, including his family history, the results of his prior educational assessments, and information about his medical diagnosis and hospitalizations, medication regimen and allergies.

25. Student failed to establish that District did not conduct the assessments in accordance with any instructions provided by the producer of the assessments. Student presented no evidence at hearing as to the contents of the manual for the Behavior Assessment System for Children-2, or that Ms. Moses or Ms. Smith failed to follow the instructions for that assessment.

26. Student also failed to establish that District was required to personally interview Ms. Hornyak, Dr. Polsky, personnel at UCLA or the tutors at DOORS in order to conduct its assessments and make valid findings. There was no evidence that District knew of the existence of Ms. Hornyak prior to May 12, 2015. At the time of their assessment, District already had detailed information about Student from Dr. Polsky, UCLA, and DOORS, including Dr. Polsky's February 2015 and March 2015 letters, as well as Dr. Enenbach's April 2014 and October 2014 letters. As part of the assessment, District had input from DOORS in the form of teacher rating scales. In addition, District had DOORS' October 2014 and February 2015 reports which detailed Student's behaviors. The evidence established that Ms. Moses and Ms. Smith reviewed and considered all of this information in conducting their assessments and making their

findings. Student failed to establish what additional relevant information would have been revealed by speaking to DOORS or Dr. Polsky.

27. District was not required to offer a functional behavior assessment prior to September 23, 2015. First, Student failed to establish that District should have conducted a functional behavior assessment prior to September 23, 2015. Student did not claim and offered no evidence supporting a finding that District was required to do a functional behavior assessment under title 20 United States Code section 1415(k).

28. Next, District assessed Student in the area of behavior as part of the social-emotional assessment in May 2015. Student failed to establish that District was required to conduct a different kind of behavioral assessment than the one conducted. Prior to May 2015, Student was in the hospital and in a group home during the assessment period as opposed to a structured school setting. Placement in a structured school setting was necessary to conduct a functional behavior assessment in order to obtain relevant information as to Student's functioning in a structured school setting. The evidence established that prior to September 23, 2015, District reasonably concluded that Student's behavioral needs could be met in the Pathways classroom and that a functional behavior assessment was not necessary.

29. When Mother expressed concerns about Student's behavior in the classroom at the September 23, 2015 IEP, District offered to conduct a functional behavior assessment. Mother did not consent to the assessment until December 11, 2015, which delayed the District's ability to conduct the assessment. Because District did not conduct its functional behavior assessment until after Student filed his complaint, this decision does not address the appropriateness of District's functional behavior assessment.

30. Student failed to establish that Student was denied a FAPE during the 2014-2015 school year, beginning on May 1, 2015 and the 2015-2016 school year by

failing to provide an appropriate mental health assessment, or by failing to conduct a functional behavior assessment before December 2015 when Parent signed the assessment plan.

STUDENT'S ISSUE 1B: FAILING TO OFFER EMOTIONAL DISTURBANCE ELIGIBILITY

31. Student contends he should have been offered eligibility for special education as a child with emotional disturbance. Student contends that Student met the eligibility criteria for emotional disturbance and that the medical diagnosis, including the diagnosis of disinhibited social engagement disorder, qualified him for eligibility for special education as a child with emotional disturbance.

32. District contends it did not deny Student a FAPE. Student did not meet the eligibility criteria for emotional disturbance and that through the assessment process it was established that Student's behaviors were the result of his autism.

LEGAL AUTHORITY

33. Legal conclusions 19 and 20 are incorporated by reference.

34. A child shall qualify as an individual with exceptional needs if the results of the assessment demonstrate that the degree of the child's impairment requires special education. (Cal. Code Regs., tit. 5, § 3030 (b)(4) (2014).)

35. Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to 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 feeling under normal circumstances; (D) A general pervasive mood of unhappiness or depression; or (E) a tendency to develop physical symptoms or fears associated with personal or school problems. (Cal. Code Regs., tit. 5, § 3030 (b)(4))

(2014).) The term “emotional disturbance” does not apply to children who are socially maladjusted, unless it is determined they have an emotional disturbance as defined in subdivision (b)(4) of California Code of Regulations, title 5 section 3030. (Cal. Code Regs., tit. 5, § 3030 (b)(4)(F) (2014).) Inappropriate behavior under normal circumstances is behavior that is atypical for the student and for which no observable reasons exists. (*Letter to Anonymous*, 213 IDELR 247 (OSEP 1989).)

36. Autism means a development disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030 (b)(1)(2014).) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in subdivision (b)(4) of California Code of Regulations, title 5 section 3030. (Cal. Code Regs. tit 5, § 3030 (b)(1)(A)(2014).)

ANALYSIS

37. Student failed to establish by a preponderance of the evidence that he was denied a FAPE because District failed to offer eligibility for special education under the category of emotional disturbance.

38. The assessments did not demonstrate that Student had an emotional disturbance. District assessed Student in all areas of suspected disability, including emotional disturbance and autism. The assessments included an array of standardized tests, rating scales, observations and interviews, records review and consultation with the other assessors. Ms. Moses credibly explained that Student was not driven by his emotions within himself, but from his struggles to work within the environment because

of autism. On several measures, Student did not endorse any depression, anxiety, or anger. On the Scale for Assessing Emotional Disturbance, none of the teachers' scores fell into the clinically significant level. Student tended to be concrete and focused on events rather than emotions, thoughts or feelings. He did not believe he had difficulties with view of family, school or peers or general outlook. He had an average level of depressive thoughts and experiences in comparison with others in his age group, an average amount of anxiety and anger and perceived himself as happy. Mother saw no difficulties for Student in the area of somatic complaints or thought processes and the behaviors she reported which might be associated with anxiety, withdrawal or depression fell below a significant level. Although Mother reported she saw Student as anxious or tense, and sad or depressed, those reports were not consistent with the other data obtained on the standardized measures where the scores did not rise to a significant level.

39. Student did not meet the eligibility criteria for emotional disturbance. The weight of evidence established that Student's poor academic achievement was likely attributable to his learning disability, poor attention and limited instructional experiences. As such, Student did not have an inability to learn that could not be explained by intellectual, sensory or health factors.

40. The evidence did not establish that Student had an inability to build or maintain satisfactory interpersonal relationships with peers and teachers. Student did not participate in a school setting for two years and he had limited opportunities to build relationships with peers. During her observation of Student with peers at UCLA, Ms. Smith reported that Student played appropriately, was able to take turns, share and converse with similar aged peers. The group home manager reported that Student was able to get along with the other children, and spent time with one of them, and that he listened and respected authority figures. Mother also reported that while at UCLA,

Student had a nurturing relationship with another boy. At school, Student had made friends easily and was as social as his grade level peers. This evidence was corroborated by the testimony of Mr. Dinh, Ms. Smith, and Mr. Kudo regarding Student's behavior since Student began attending Mr. Dinh's class. Student had friends, was well-liked and enjoyed activities with his peers. Mr. Kudo placed Student in a helper role with another student and credibly testified that Student exhibited patience, compliance and acted appropriately. This evidence was also corroborated by the testimony of Dr. Haas. When asked about his connections, Student talked about his friends and the adults at school.

41. While the evidence established that Student exhibited inappropriate behaviors, the weight of evidence established that such behaviors were because of his autism and not an emotional disturbance. Further, the altercations with peers which Mother reported had generally been provoked by other peers, and the dangerous behaviors Mother reported occurred outside of school.

42. The weight of evidence established that Student did not have a general pervasive mood of unhappiness or depression. The assessments did not reveal that Student was depressed or unhappy. This was corroborated by other testimony. When asked whether Student met the eligibility criteria for emotional disturbance, Dr. Enenbach specifically declined to endorse that Student exhibited a general pervasive mood of unhappiness or depression. Furthermore, Mr. Dinh and Ms. Smith testified that Student presented as happy. Student also reported to Dr. Haas that he saw himself and his life as going well. The evidence did not establish that that Student had a tendency to develop physical symptoms or fears associated with personal or school problems.

43. Student met the eligibility criteria for autism. The weight of evidence established that Student exhibited behaviors associated with autism, which affected his learning, his communication, his social interactions, and his overall functioning.

44. Student's experts were not persuasive in establishing Student had an

emotional disturbance under the IDEA. Ms. Hornyak's testimony was not credible and was unpersuasive. Her sweeping predictions regarding Student years into the future were preposterous. Ms. Hornyak had only met Student three times and had only observed him in her office. She appeared confused and evasive at various points during her testimony. Her testimony was inconsistent and repeatedly impeached. For example, Ms. Hornyak diagnosed Student with disinhibited social engagement disorder and agreed autism was a "rule out" for disinhibited social engagement disorder, but admitted she did not assess Student for autism and that she was not qualified to determine if Student had autism. Many of the symptoms Ms. Hornyak used to support her diagnosis of disinhibited social engagement disorder were not in the diagnostic criteria for this disorder. She testified inconsistently on whether Student's behaviors were characteristic of autism. She also failed to persuasively explain how her diagnosis made Student eligible for special education under emotional disturbance. Ms. Hornyak claimed her report did not include her conversations with Student because her therapy sessions were confidential, but admitted she did not provide therapy to Student. She also claimed she relied on Dr. Majors' classroom observations in conducting her assessment; however, Ms. Hornyak had already concluded her assessment before Dr. Majors' performed her observations. All of these things affected Ms. Hornyak's overall credibility and her testimony was given very little weight.

45. Dr. Majors' testimony was also unpersuasive. Her assessment was incomplete. She primarily relied on observations and records review, conducted no testing and never interviewed Student. Dr. Haas credibility testified that a diagnosis of emotional disturbance could not be made without interviewing Student. Dr. Majors also relied on Ms. Hornyak's report in making her findings and recommendations and those findings and recommendations were not reliable. Dr. Majors agreed that it was important to consider a differential diagnosis when conducting special education

assessments, yet she did not conduct a differential diagnosis to determine if Student had autism even though she knew he had had a prior diagnosis of autism. She did not demonstrate familiarity with Student. She was not certain whether he demonstrated rigidity, did not know if he had social interaction deficits, engaged in repetitive behaviors, or had communication deficits, and could not recall whether he had difficulty with transitions. When asked whether Student's behaviors interfered with his learning, Dr. Majors was equivocal in her responses. She assumed that since Student was moving around so much, that he could not be learning, but admitted that even when he got out of his seat he appeared to be attending and that during Dr. Majors' second observation, he appeared to be completing his work. She also admitted she could not hear how Student interacted with other students during her observations. Student asked Mr. Dinh if Dr. Majors was there to observe him, which Dr. Majors admitted could affect his behavior. Dr. Majors did not know if Student was making academic progress and she never asked Mr. Dinh how Student was doing in the classroom. She was unfamiliar with Student's private placement home program or whether he had opportunities to be socialized with peers during that time. Dr. Majors admitted she had no familiarity with the placement she recommended and a limited understanding of what occurred in a residential treatment center. The fact that Dr. Majors made a recommendation for residential placement without familiarity with that placement greatly undermined the weight given to her testimony and the reliability of all of the findings made in her report.

46. Student failed to prove that Student's various medical diagnosis qualified Student for special education under the eligibility category of emotional disturbance. Dr. Madigan, Dr. Polsky and Dr. Kartzinel did not testify. Dr. Enenbach's testimony on this issue was unpersuasive. Although Dr. Enenbach claimed that Student met the first three criteria for emotional disturbance, he did not explain how Student met those criteria,

and to the extent it was based upon his medical diagnosis, it was unconvincing. Although he claimed Student had an attachment disorder, Dr. Enenbach agreed that autism had to be “ruled out” in order for a diagnosis of reactive attachment disorder of the inhibited type, did not know whether the same “rule out” applied to the disinhibited type, and admitted he did not know if Student had autism. He also agreed that making a differential diagnosis of the potential for autism was important because behaviors that are interpreted as symptomatic of an attachment disorder could actually be autism. Dr. Enenbach also agreed that it was important to make the same kind of differential diagnosis with regard to a diagnosis of intermittent explosive disorder, because the explosive behaviors associated with that disorder could actually be attributable to rigidity as a result of autism. In both his April 2014 and October 2014 letters, Dr. Enenbach stated that Student had autism spectrum disorder, but he claimed at hearing he did not know if Student had autism, but agreed Student had many of the characteristics of autism. His testimony was inconsistent and confusing when he claimed that Student’s behaviors at home stemmed his attachment issues, but that it was not primarily because of his attachment disorders that he was having behaviors.

47. Up until November 2015, UCLA’s letters had indicated that Student had a diagnosis of autism spectrum disorder. On November 9, 2015, Dr. Enenbach removed Student’s diagnosis of autism, but he could not persuasively explain at hearing why that diagnosis had been removed or deny that it had been removed because of the concern that Student could not be residentially placed. This fact, coupled with the fact that Dr. Enenbach admitted he knew that Student could not be residentially placed unless he had a diagnosis of emotional disturbance undermined the reliability of, and the weight given to, Dr. Enenbach’s testimony.

48. Although his letters of April 2014 and October 2014, state that Student was unable to sustain adaptive participation in a campus-based school program and

Student's symptoms severely impaired functioning at school, at hearing, Dr. Enenbach demonstrated no familiarity with Student's functioning at school. There was no evidence that Dr. Enenbach ever observed Student in a school setting and he demonstrated little familiarity with Student's educational history. Dr. Enenbach also admitted he was unfamiliar with Student's educational environment prior to being homeschooled, unaware that Student had not attended public school at all between September 2013 and May 2015, and was unfamiliar with Student's home program or the program offered by District in May 2015. While he asserted Student had disinhibited social engagement disorder, he was quick to point out that he was unable to say how Student met that diagnosis based upon conduct outside the hospital and otherwise failed to persuasively explain how Student met the diagnostic criteria for that disorder.

49. Even if Student qualified for special education under the eligibility category of emotional disturbance, Student failed to establish he was denied a FAPE by the District's failure to offer that designation, as discussed below.

50. Student failed to establish that Student was denied a FAPE during the 2014-2015 school year, beginning on May 1, 2015 and the 2015-2016 school year, through the October 7, 2015, by the failure to offer eligibility under emotional disturbance.

STUDENT'S ISSUE 1C: FAILING TO OFFER AN APPROPRIATE PLACEMENT

51. Student asserted that District denied him a FAPE by failing to provide him with an appropriate placement, specifically placement in a residential treatment center. District contends that its offer of placement in the Pathways classroom at Clegg provided Student a FAPE in the least restrictive environment.

LEGAL AUTHORITY

52. Legal conclusions 37 through 50 are incorporated by reference.

53. To determine whether a school district offered a student a FAPE the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

54. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is "a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p.1149.)

55. The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

56. A child's placement and related services are determined by his or her unique needs, not the eligibility category assigned to the child. (See, e.g., 20 U.S.C. §

1412(a)(3)(B) [Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability . . . is regarded as a child with a disability under this subchapter]; *Heather S. v. State of Wis.* (7th Cir. 1997) 125 F.3d 1045, 1055 ["The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education . . . tailored to the unique needs of that particular child."].)

57. A school district must deliver each child's FAPE in the least restrictive educational environment (LRE) appropriate to the needs of the child. (20 U.S.C. § 1412(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2).)

58. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the non-academic benefits of such placement"; 3) "the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Bd. of Educ.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's syndrome].) Whether education in the regular classroom, with supplemental aids and services, can be

achieved satisfactorily is an individualized, fact-specific inquiry. (*Daniel R.R., supra*, 874 F.2d at p. 1048.) If it is determined that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Id.* at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

59. Residential placement is, by its nature, considerably more restrictive than day school. (*See Kerkam by Kerkam v. Superintendent, D.C. Public Schools*. (D.C. Cir. 1991) 931 F.2d 84, 87; *G.D. v. Westmoreland School Dist.* (1st Cir.1991) 930 F.2d 942, 948; *Carlisle Area School v. Scott P. By and Through Bess P.* (3d Cir. 1995) 62 F.3d 520, 534, *amended* (Oct. 24, 1995).) The IDEA does not define a therapeutic placement; however, both day schools and residential facilities can qualify as therapeutic placements. By their very nature, therapeutic placements require a student's removal from the general education environment. As a result, a therapeutic placement is one of the most restrictive placements on the least restrictive environment continuum. (34 C.F.R. § 300.115.) Given their restrictive nature, removal of a student with disabilities to a residential setting complies with the least restrictive environment mandate in only extremely limited situations for students with severe disabilities who are unable to receive a FAPE in a less restrictive environment. (*Carlisle Area Sch. Dist. v. Scott P., supra*, 62 F.3d at p. 523.)

60. A district's responsibility under the IDEA is to remedy the learning-related

symptoms of a disability, not to treat other, non-learning related symptoms. (*Forest Grove School District v. T.A.* (9th Cir. 2011) 638 F.3d 1234, 1238-39 [no abuse of discretion in denying parent reimbursement where district court found parent sought residential placement for student's drug abuse and behavior problems.].) An analysis of whether a residential placement is required must focus on whether the placement was necessary to meet the child's educational needs. (*Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635, 643 (Clovis).) If "the placement is a response to medical, social, or emotional problems ... quite apart from the learning process," then it cannot be considered necessary under the IDEA. (*Ibid.*, accord *Ashland School Dist. v. Parents of Student R.J.* (9th Cir.2009) 588 F.3d 1004, 1009.)

ANALYSIS

61. Student did not meet his burden of proving that offers of placement in Student's May 2015 and September 2015 IEP's were inappropriate or denied him a FAPE.

62. Under *Rachel H.*, the analysis of whether an offer of placement is appropriate begins with evaluating whether or not a general education setting is appropriate for Student. Here, District and Parents agreed that Student could not be appropriately educated in the general education environment. The evidence established that placing Student in a full time general education setting was inappropriate because the educational benefits would have been very low due to Student's autistic-like and attention seeking behaviors, and the type of support and accommodations Student required in the classroom in order for Student to learn. Accordingly, a detailed analysis of each of the *Rachel H.* factors is not necessary to determine that full time general education was not an appropriate placement.

63. The evidence established that the IEP team properly concluded that the Pathways classroom, rather than a more restrictive residential treatment center, was

designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit in the least restrictive environment. District's witnesses credibly testified as to the reasons why District's Pathways classroom provided the type of structured classroom appropriate for Student in light of his unique needs. The information obtained during the assessment indicated that Student required a smaller structured environment with routine, visual supports, and a behavior component in order to learn. The Pathways classroom addressed Student's needs for predictability and smaller groups and provided him with both group and one-to-one instruction with its low student-to-teacher ratio. It had behavior management systems in place, including positive reinforcement methodologies, a classroom staff trained in positive behavior techniques and utilized strategies similar to the strategies that were used successfully during District's assessment process. It utilized visual supports, and provided opportunities for social interaction with the general education population. Because Student had been out of a structured classroom setting for two years, the Pathways classroom at Clegg gave him the chance to acclimate to a classroom environment, gave him more opportunities to socialize with peers at his maturity and academic levels, and allowed him to build confidence to succeed in an educational setting.

64. Other evidence corroborated that the Pathways classroom was an appropriate offer of placement. In the Pathways classroom, Student was making progress on most of his annual goals. He was on task most of the time and easily redirected. He enjoyed learning and was an active participant in the classroom. While Student engaged in off-task or other inappropriate behavior, the evidence established that he made behavioral progress. The incident involving Student's November 2, 2015 suspension from class occurred while Student was new to a classroom after being out of a structured school setting for two years, and still becoming accustomed to the expectations in the classroom. Student has also made academic progress. For example,

between October 2, 2015, and January 27, 2016, Student's reading comprehension went from a grade equivalency level 3.1 to 4.2. He also showed improvement in writing and math.

65. Student's lack of educational progress during the two-year period of private placement did not establish that Student required the more restrictive environment of a residential treatment center. He had made progress in school prior to his home placement in September 2013. The ABEDI functional behavior assessment stated that Mother reported that Student behaved better at school than at home and no severe behaviors had occurred at school. The report stated that the targeted behaviors were least likely to occur at school or when Student was engaged in a preferred activity. Student did not exhibit the same behavior concerns at school as he did at home. At school, he made friends easily and was as social as his grade level peers. During the assessment, Mother reported that Student did not engage in refusal when he attended Eastwood, that the incidents involving peer problems were generally provoked by the other peers and the incidents involving dangerous behaviors occurred outside of school. The evidence established that the one-to-one home instruction was an inappropriate educational setting for Student. Student did not have the consistent routine, structure and socialization with peers in an educational setting during the period of private placement necessary to meet his needs, which contributed to the escalation of his behaviors and the need for hospitalization.

66. *Kerkam by Kerkam, supra*, 931 F.2d 84 presents an appropriate analysis on facts similar to those presented here. Parents rejected a day-class placement offer for their cognitively impaired son and unilaterally placed him in a residential treatment center because having him live at home "had proved unworkable." (*Id.* at p. 87.) The court agreed that the parents' chosen residential placement was superior to the day class offered by the district. (*Ibid.*) Acknowledging the "understandable concern for [the

student's] best interests rather than on the appropriateness of the educational program proposed by the [district]," the court concluded that, because the evidence supported the conclusion that the District's day class placement would confer some educational benefit, the district's placement was an appropriate placement in the least restrictive environment and the district was not required to reimburse parents for the residential placement: "[N]o decision maker can casually deny a child and his overburdened parents resources they can so well use. . . . ; The command of Congress, however, is not difficult to discern. Congress has decided that every handicapped child should receive an appropriate education at public expense. The District of Columbia has met that standard. The Kerkams have laudably provided their child with a program intended to maximize his progress, but the Act does not require the District to reimburse them." (*Id.* at p. 88.)

67. While District's offer did not include a residential therapeutic milieu, and group therapy to address anxiety or depression, Student failed to establish by a preponderance of evidence that he required such services in order to receive a FAPE.

68. Student's experts were not persuasive. Ms. Hornyak was not a credible witness. Dr. Majors demonstrated no familiarity with residential treatment centers. She also admitted that she did not know if Student's home program was appropriate, but agreed that maladaptive behaviors could escalate if placed in an inappropriate educational environment. This was corroborated by Dr. Enenbach. He agreed that an educational setting which lacked routine and structure would lead to behavioral deterioration. Although Dr. Enenbach recommended residential placement, he had no familiarity with Student's educational placements and had no understanding of District's May 2015 offer of placement. He also admitted that his recommendations for residential placement was made based upon the recommendations made by an educational consultant and social worker. Neither of these people testified at hearing and as such,

the basis of their recommendations was not established.

69. The evidence presented in this matter demonstrated that Pathways classroom at Clegg offered Student a FAPE, and Student did not make the showing required to justify Student's placement, for educational purposes, in the substantially more restrictive environment of a residential treatment center.

70. Student failed to establish that Student was denied a FAPE during the 2014-2015 school year, beginning on May 1, 2015 and the 2015-2016 school year, through October 7, 2015, by the failure to offer an appropriate placement.

STUDENT'S ISSUE 1D: FAILING TO OFFER APPROPRIATE BEHAVIOR INTERVENTION SERVICES, INCLUDING COLLECTION OF BEHAVIORAL DATA

71. Student contends that District should have offered Student a functional behavior assessment at the May 2015 IEP. Student also contends that the functional behavior assessment was inappropriate, and that District failed to collect appropriate data in the classroom. District contends that Student's behavioral needs were appropriately supported by his IEP goals and placement in the Pathways classroom.

LEGAL AUTHORITY

72. Legal conclusions 16, 28 through 30, 63 and 64 are incorporated by reference.

73. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324; Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

74. The methodology used to implement an IEP is left to the school district's

discretion so long as it meets a child's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley, supra*, 458 U.S. at p. 208; *Adams v. State of Oregon, supra*, 195 F.3d 1141, 1149; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Comm.* (1st Cir. 2004) 361 F.3d 80, 84.) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. 176, 208.)

ANALYSIS

75. The weight of evidence established that Student's behavioral needs were appropriately supported in the Pathways classroom and that additional behavior intervention services were not required at the time of Student's IEP's. Student's classroom already had behavior supports in place designed to meet Student's unique needs and reasonably calculated to provide Student with some educational benefit. The instructional day was routine and predictable. The classroom used visual supports, and had a low ratio of adults to students which gave Student frequent adult interaction, redirection and prompting. It had an incentive system in place to encourage positive behavior, and Student had access to a full-time psychologist on site. The classroom used positive reinforcement systems, which both Dr. Haas and Ms. Feldman opined were conducive to motivating good behavior, and applied behavior methodologies were used in the classroom.

76. Student takes issue with the fact that the behavioral level points sheet did not reflect all of Student's behaviors throughout the day. However, Student did not present an expert to testify at the hearing and did not otherwise meet his burden of establishing that such data collection was required in order to provide Student a FAPE. While Ms. Feldman explained the fundamentals of conducting an appropriate functional behavior assessment, she did not opine on the necessity of taking daily behavioral data

in the classroom and was never asked to look at or opine on Student's behavioral point sheets.

77. As set forth above, regarding Student's Issue 1A, District was not required to conduct a functional behavior assessment, and since it did not conduct its functional behavior assessment until after Student filed his complaint, this decision does not address the appropriateness of District's functional behavior assessment. In any event, Student failed to demonstrate how the failure to provide him with a functional behavior assessment prior to September 23, 2015 denied him a FAPE.

78. In sum, Student failed to establish that Student was denied a FAPE during the 2014-2015 school year, beginning on May 1, 2015 and the 2015-2016 school year, through October 7, 2015, by failing to offer appropriate behavior intervention services, including the collection of behavioral data.

STUDENT'S ISSUE 1E: FAILING TO OFFER APPROPRIATE GOALS AND OBJECTIVES

79. Student contends District denied him a FAPE at the by failing to offer him appropriate goals in Student's areas of need, specifically academic, behavior and speech and language addressing behavior. District contends it appropriately identified Student's areas of need and wrote goals to address those needs.

LEGAL AUTHORITY

80. Legal Conclusions 37 through 50, 63 through 70, 75 and 76 are incorporated by reference.

81. No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) A student may derive educational benefit under Rowley if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative

of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School Dist.* (2nd Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist.*, No. 196 (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450; *Perusse v. Poway Unified School Dist.* (S.D. Calif. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759.)

82. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

83. The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler*, 213 IDELR 118 (OSERS 1998).) There is no requirement that an IEP include baselines for the goals, other than addressing a student's present level of performance. (*Student v. San Diego Unified School District* (2011) Cal.Offc.Admin.Hrngs Case No. 2011080459, at pp. 10-11.)

84. The IEP team need not draft IEP goals in a manner that the parents find

optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County Sch. Dist. Two*, 57 IDELR 128 (D.S.C. 2011) (the use of percentages tied to the completion of discrete tasks is an appropriate way to measure student progress).)

85. A failure to offer an appropriate goal is a procedural violation of the IDEA. However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if 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); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484, *superseded in part by statute on other grounds* ["...procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].) The hearing officer "shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program." (Ed. Code, § 56505, subd. (j).) While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.)

ANALYSIS

86. The IEP team developed 17 new goals at the May 2015 IEP's in the areas of academics, behavior, and speech and language. The spelling goal was inappropriate.

Sixteen of the 17 goals were appropriate. Those goals were based on Student's present levels of performance, which came from the information obtained during the assessment and the members of the IEP team. The goals were measurable and attainable within a year, and with the exception of the spelling goal, the goals addressed each area of unique need identified by the IEP team.

87. Student proved that District procedurally violated the IDEA by failing to draft an appropriate academic goal in the area of spelling. However, Student did not meet his burden of proof that District's failure to provide Student an appropriate spelling goal was a procedural violation that amounted to a denial of FAPE.

88. District's failure to provide an appropriate spelling goal did not significantly impede Parent's opportunity to participate in the decision making process. Parents meaningfully participated in the IEP process, had the opportunity to ask questions and provide input, and were accompanied by their educational advocate to the May 2015 and September 2015 IEP team meetings. Student did not prove that District's failure to offer an appropriate spelling goal resulted in a loss of educational opportunity or cause a deprivation of educational benefits. Student offered no evidence on this issue sufficient to meet his burden.

89. Student failed to establish that Student was denied a FAPE during the 2014-2015 school year, beginning on May 1, 2015 and the 2015-2016 school year, through October 7, 2015, by failing to offer appropriate goals and objectives.

DISTRICT'S ISSUE 1: DID DISTRICT'S OFFER OF PLACEMENT, PROGRAM, AND SERVICES IN THE MAY 12, 2015 IEP, AS AMENDED BY THE MAY 22, 2015 IEPs CONSTITUTE A FAPE

90. District contends that its offers made at the May 12, 2015, as amended by the May 22, 2015 addendum constituted a FAPE in the least restrictive environment.

91. Student contends he was denied a FAPE at the May 2015 IEP's for the

same reasons set forth in Student's case.

LEGAL AUTHORITY

92. Legal Conclusions 7 through 30, 34 through 50, 53 through 70, 73 through 78 and 81 through 89 are incorporated by reference.

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

94. The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Id.*) Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County School Dist., supra*, 267 F.3d at p. 882.)

95. 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(b) (2006); Ed. Code, § 56304; 56340-44.) 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., supra*, 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].)

96. The IEP team is required to include one or both of the student's parents or their representative, a regular education teacher if a student is, or may be, participating in the regular education environment, a special education teacher, a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) It is only necessary for a general education teacher who has instructed the child in the past or who may instruct the child in the future to be present at the IEP team meeting. (*R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 938-940.) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).)

97. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The

IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code § 56345, subd. (a)(7).) The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).)

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

99. In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 C.F.R. § 300.324(a)(4).)

ANALYSIS

100. District established that it complied with the procedural requirements of IDEA and California law. Parents were provided with notice and an opportunity to participate, and did participate in the May 2015 IEP's. Parents assisted with the development of Student's educational program and discussion of the continuum of placement options, related services and goals. The IEP team, comprised of the necessary participants, developed an IEP which comported with the procedural requirements of IDEA and California law including a statement of present levels of performance, goals, education program, and services.

101. The May 12, 2015 IEP and May 22, 2015 IEP amendment developed through the assessment and IEP development process were designed to meet the

Student's unique needs, and reasonably calculated to enable him to receive educational benefit. The May 2015 IEP's offered Student a FAPE.

102. Other than the issues set forth in Student's case, Student did not contest the validity of the assessments or District's May 12, 2015 and May 22, 2015 offers of FAPE. District conducted comprehensive triennial assessments of Student in all areas of suspected disability to identify Student's unique needs, and developed an IEP with goals agreed-upon by Parent, placement, services and accommodations, reasonably calculated to address Student's unique needs, to allow Student to progress on his goals and obtain an educational benefit. In developing the May 2015 IEP's, District considered the academic, developmental and functional needs of Student.

103. With the exception of the spelling goal which Student had already met at the time of the May 2015 IEP's, all of Student's unique needs were addressed by his IEP goals and accommodations, including his social and behavioral needs. The baselines on those goals were accurate and all of the goals were measureable and attainable within a year. The evidence established that District's failure to offer an appropriate spelling goal did not deny Student a FAPE.

104. The services offered by District were appropriate to support progress towards Student's goals. The counseling and guidance was appropriate because it allowed Student to receive direct instruction to meet his goals. The parent counseling and psychological consultation provided the support to enable school staff to work collaboratively with Parent. The speech and language services appropriately addressed Student's speech and language needs. As discussed above, the weight of evidence established that Student's behavioral needs were appropriately supported in the classroom and that additional behavior intervention services were not required at the time of Student's IEP's. Student's classroom already had behavior supports in place designed to meet Student's unique needs and was reasonably calculated to provide

Student with some educational benefit.

105. Finally, District proved that the Pathways classroom at Clegg was designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit in the least restrictive environment.

106. For these reasons, District's offer of placement, program, and services contained in Student's May 12, 2015 IEP, as amended by the May 22, 2015 IEP provided Student a FAPE.

STUDENT'S ISSUE 2: FAILURE TO OFFER FAPE AT THE OCTOBER 8, 2015 IEP

DISTRICT'S ISSUE 2: OFFER OF PLACEMENT, PROGRAM, AND SERVICES IN THE OCTOBER 8, 2015 IEP

107. Because the evidence and law relating to both Student's and District's issues are intertwined, the two issues are analyzed together.

108. Student contends he was denied a FAPE at the October 8, 2015 IEP for the same reasons set forth in Student's case. District contends that its offer made in the October 8, 2015 IEP amendment constituted a FAPE in the least restrictive environment and that it should be permitted to implement its October 8, 2015 IEP.

109. Legal Conclusions 92 through 99 are incorporated by reference.

110. The evidence established that District failed to comply with the procedural requirements of the IDEA and California law regarding the October 8, 2015 IEP. District did not provide proper notice to Parent of an IEP team meeting and did not hold an IEP team meeting to make the changes to Student's IEP proposed by the October 8, 2015 IEP amendment.

111. By the October 8, 2015 IEP, District sought to change Student's placement in a significant way. Specifically, the District sought to obtain Parents' consent to change Student's full-time placement in the Pathways classroom, so that Student would be mainstreamed in general education for a portion of his monthly school program.

Parents did not agree to waive an IEP team meeting for the purposes of making the changes proposed by the amendment. By not holding an IEP team meeting, District failed to obtain the required input and participation from Parents or the other members of the team, including both the special education and general education teachers. By October 8, 2015, Parents had already expressed concerns about Student's placement. The failure to hold an IEP team meeting with the required members of the IEP team denied Parent the opportunity to discuss the proposed IEP and prevented Parents from asking questions or otherwise participating in the development of an appropriate program for Student. The failure to give proper notice and hold an IEP team meeting with the required members of the IEP team significantly impeded Parents' opportunity to meaningfully participate in the decision making process and denied Student a FAPE.

112. For these reasons, District's offer of placement, program, and services contained in Student's October 8, 2015 IEP denied Student a FAPE.

DISTRICT'S ISSUE 3: DID DISTRICT IMPLEMENT STUDENT'S MAY 2015 IEP'S

113. The parties do not dispute that District implemented Student's May 2015 IEP's, except for the behavioral level point system which tracked points for appropriate behaviors.

114. District contends it appropriately implemented the behavioral level point system. District contends it collected extensive data on Student's behaviors in the Pathways classroom.

115. Student contends that District failed to properly implement behavioral level point system. Student argues that the behavior point sheets were not proper data tracking sheets.

LEGAL AUTHORITY

116. Legal Conclusions 75 and 76 are incorporated by reference.

117. There is no statutory requirement that a district must perfectly adhere to an IEP and, therefore, minor implementation failures will not be deemed a denial of FAPE. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 820-822.) Only a *material* failure to implement an IEP violates the IDEA. (*Id.* at p. 822.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Ibid.*) A brief gap in the delivery of services, for example, may not be a material failure. (*Sarah Z. v. Menlo Park City School Dist.* (N.D.Cal., May 30, 2007, No. C 06-4098 PJH) [2007 WL 1574569 at p. 7].) "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." (*Van Duyn, supra*, 502 F.3d at p. 822.)

ANALYSIS

118. District met its burden of proof in establishing that it appropriately implemented the behavioral level system. Mr. Dinh was involved in tracking Student's behavior and in the collection of behavior data on the point sheets with the classroom aides throughout the day in order to track progress and incentivize Student to engage in appropriate behavior. Student relied on Dr. Majors' testimony as evidence that Mr. Dinh was not recording data about Student's behaviors during her observations, but her testimony on this issue was not persuasive. Dr. Majors did not know whether Mr. Dinh or the instructional aides in the classroom recorded data. Dr. Haas, who was familiar with point level systems and reviewed the data sheets, credibly testified that the level system was implemented correctly in the Pathways classroom. He also credibly testified that the behavioral point sheets used in the level system were not designed or intended to record all of Student's behavior throughout the day.

119. Although Student's IEP required Mr. Dinh to record behavioral data on the

points sheets regarding the progress Student made on three of his goals, Mr. Dinh's failure to record this data on the point sheets was not a material failure to implement Student's IEP. First, Student's progress on these three goals was reported to Parents through periodic progress reports. On all three of these goals, Mr. Dinh reported Student's progress on June 9, 2015 and November 30, 2015. Thus, Parents had the information on Student's progress, which would have otherwise been included on the behavioral point sheets. Second, according to Mr. Dinh, he recorded that information in his journal, which he kept in his desk, which he claimed was part of Student's educational records. Mr. Dinh did not record the data on level point sheets because the sheets were not designed for this purpose.

120. In sum, District appropriately implemented Student's May 12, 2015 IEP, as amended by the May 22, 2015 IEP.

REMEDY

121. Student prevailed on Issue 2 in Student's case, and on Issue 2 in District's case, by establishing that District failed to properly notice and hold an IEP team meeting regarding the October 8, 2015 IEP, thereby significantly impeding Parents' opportunity to participate in the decision making process. As a remedy, Student requested residential treatment center placement, compensatory education in the form of funding of a residential placement, and reimbursement of private services, including traveling costs.

122. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230,

244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.)

123. Although District's failure to properly notice and hold an IEP team meeting to propose changes to Student's placement significantly impeded Parents' opportunity to participate in the decision making process, Student failed to establish that his proposed resolutions were an appropriate remedy for this violation. Student failed to establish that he was entitled to residential placement, that he lost educational benefits, or that he was entitled to reimbursement. In addition, no evidence was presented as to what educational loss Student suffered as a result of District's violation. Accordingly, Student is not entitled to an award of compensatory education.

124. However, the evidence established that District was required to hold an IEP team meeting to make the changes proposed by the October 8, 2015 IEP and that it failed to hold a meeting. Thus, as a remedy, District is ordered to give proper notice and convene an IEP team meeting to make the proposed changes to Student's IEP. In addition, although the evidence did not support an award of compensatory education to Student, it did support an order for special education training of District's administrative and special education teaching personnel on District's obligations regarding the noticing and holding IEP team meetings. Thus, as a remedy, District shall provide at least six hours of special education training from an independent institution not affiliated with District, specializing in special education training to school districts, to its entire administrative and special education teaching staff. The training shall include instruction on IEP meeting requirements and shall be completed by no later than March 1, 2017.

ORDER

1. On Student's case:
 - a. District shall give proper notice and convene an IEP team meeting with all required members of the IEP team to make the changes proposed by its October 8, 2015 IEP amendment.
 - b. District shall provide at least six hours of special education training from an independent institution not affiliated with District, specializing in special education training to school districts, to all of its administrative and special education teaching staff.
 - c. The special education training shall include instruction on the legal obligations of school districts in noticing and holding IEP team meetings.
 - d. The training shall be completed by no later than March 1, 2017.
 - e. All other relief sought by Student is denied.
2. On District's case:
 - a. District's May 12, 2015 and May 22, 2015 IEPs offered Student a FAPE.
 - b. District's October 8, 2015 IEP did not constitute a FAPE and District shall not implement the October 8, 2015 IEP in the absence of parental consent.
 - c. District appropriately implemented Student's May 12, 2015 IEP, as amended by the May 22, 2015 IEP.
 - d. District is not required to fund Student's placement at a residential treatment center.
 - e. All other relief sought by District is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard

and decided. Here, District was the prevailing party on Issues 1(A) through 1(E) in Student's case, and on Issues 1 and 3 in District's case. Student is the prevailing party on Issue 2 in Student's case and on Issue 2 in District's case.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: May 17, 2016

_____/s/_____
LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings