

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VACAVILLE UNIFIED SCHOOL DISTRICT
and SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2016031019

DECISION

Student filed a request for due process hearing on March 17, 2016, naming Vacaville Unified School District and Sacramento City Unified School District. Student amended his complaint on August 11, 2016, and the matter was continued for good cause on September 26, 2016.

Administrative Law Judge Dena Coggins heard this matter in Vacaville, California, and Fairfield, California, on October 18, 19, 20, 25, and 26, November 8, 9, 10, 14, and 15, and December 6, 7, and 14, 2016.

Attorney Daniel Shaw represented Student at the hearing. Mother attended each day of hearing. Student was not present. An interpreter was provided for Mother on all hearing days.

Attorney Jan Tomsy represented Vacaville Unified School District at the hearing. Dr. Kerri Mills, Vacaville's Assistant Superintendent, attended each day of hearing.

Attorney Sarah Garcia represented Sacramento City Unified School District at the hearing. Becky Bryant, Sacramento's Director of Special Education and Special Education Local Plan Area, attended each day of hearing.

At the conclusion of the hearing, the matter was continued to January 17, 2017, to afford the parties an opportunity to submit written closing briefs. The record closed with the parties' timely submission of closing briefs and the matter was submitted for decision.

ISSUES¹

1. Did Vacaville deny Student a free appropriate public education from March 17, 2014, to the end of 2013-2014 school year, including the extended school year, by:
 - a. failing to provide measurable goals in all areas of need, including decoding and reading fluency;

¹The issues have been rephrased and reorganized for clarity. The issues have been renumbered from the prehearing conference order. 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.)

Issues 3(l) (failing to convene an annual IEP meeting) and 3(m)(failing to make a FAPE offer prior to the start of the school year), alleged in Student's first amended complaint, were withdrawn by Student on October 12, 2016.

Issue 5 (Respondents' failure to adequately respond to Student's complaint), alleged in Student's first amended complaint, was dismissed for lack of jurisdiction before the hearing commenced.

At hearing, Student's counsel withdrew the following issues alleged in the first amended complaint and October 11, 2016 Order Following Prehearing Conference: Issue 1(g) (failing to offer appropriate accommodations or modifications), Issue 2(f) (failing to offer appropriate accommodations or modifications), and Issue 3(f) (failing to offer appropriate accommodations or modifications).

- b. failing to offer or provide an appropriate placement;²
 - c. failing to offer appropriate mental health services;
 - d. failing to offer social work services;
 - e. failing to make a clear offer of FAPE;
 - f. failing to convene an individualized education program team meeting in response to Student missing numerous days of school; and
 - g. failing to implement Student's IEP?
2. Did Vacaville deny Student a FAPE during the 2014-2015 school year until May 2015, by:
- a. failing to provide measurable goals in all areas of need, including decoding and reading fluency;
 - b. failing to offer or provide an appropriate placement;
 - c. failing to offer appropriate mental health services;
 - d. failing to offer social work services;
 - e. failing to make a clear offer of FAPE;
 - f. failing to convene an IEP team meeting in response to Student missing numerous days of school; and
 - g. failing to implement Student's IEP?
3. Did Sacramento deny Student a FAPE from May 2015, through the 2015-2016 school year, including extended school years, by:

²This issue along with Issues 2(b) and 3(b) were reframed at Student's request at hearing. In the October 11, 2016 Order Following Prehearing Conference, the issue was framed as "failing to offer or provide an appropriate placement in a residential treatment center with a therapeutic focus on trauma recovery."

- a. failing to provide measurable goals in all areas of need, including decoding and reading fluency;³
- b. failing to offer or provide an appropriate placement;
- c. failing to offer appropriate mental health services;
- d. failing to offer social work services;
- e. failing to make a clear offer of FAPE;
- f. failing to convene a 30-day IEP team meeting;
- g. failing to provide copies of the IEPs in Spanish;
- h. failing to implement Student's IEP;
- i. denying meaningful parent participation developing an assessment plan; and
- j. denying meaningful parent participation in the IEP process?

4. Did both districts fail to assess Student in all areas of suspected disability by failing to conduct a functional behavior assessment and a mental health assessment?

SUMMARY OF DECISION

Student contends Vacaville and Sacramento denied him a FAPE, procedurally and substantively, at various times between March 17, 2014, and the 2016 extended school year. Both districts deny all allegations that they failed to offer or provide Student a FAPE during the period they were obligated to do so.

This Decision holds that Vacaville denied Student a FAPE by committing procedural violations that resulted in a loss of educational benefit and/or seriously infringed on Mother's opportunity to participate in the IEP formulation process. Those procedural violations include failing to provide measurable goals in all areas of need,

³ On the first day of hearing, this issue was clarified to add "including decoding and reading fluency."

failing to make a clear offer of FAPE, failing to convene an IEP team meeting in response to Student missing numerous days of school, and failing to assess Student in all areas of suspected disability by failing to conduct a mental health assessment. This Decision also finds Vacaville denied Student a FAPE by failing to offer or provide Student an appropriate placement and by failing to offer appropriate mental health services during the period at issue.

Student did not meet his burden of proving Vacaville denied him a FAPE by failing to offer social work services, failing to implement Student's IEPs, failing to convene an IEP team meeting (at a separate period than discussed in the preceding paragraph), and by failing to assess Student in all areas of suspected disability by failing to conduct a functional behavior assessment.

The Decision further holds that Sacramento denied Student a FAPE during the period relevant to Sacramento by committing procedural violations that resulted in a loss of educational benefit and/or seriously infringed on Mother's opportunity to participate in the IEP formulation process. Those procedural violations include failing to provide measurable goals in all areas of need, failing to make a clear offer of FAPE, failing to convene a 30-day IEP team meeting, failing to implement Student's IEP, and failing to assess Student in all areas of suspected disability by failing to conduct a functional behavior assessment and mental health assessment. This Decision also finds Sacramento denied Student a FAPE by failing to offer or provide Student an appropriate placement and failing to offer appropriate mental health services during the period relevant to Sacramento.

Student did not meet his burden of proving Sacramento denied him a FAPE by failing to offer social work services and failing to provide copies of the IEPs in Spanish.

Because Sacramento committed numerous procedural violations during the time period at issue, it is not necessary to determine the remaining issue of whether Sacramento denied meaningful parent participation in developing an assessment plan.

Consequently, this Decision awards Student equitable relief in the form of compensatory education to be funded by both districts as a result of denying Student a FAPE throughout the time period alleged. Additionally, both districts are ordered to provide training to their staff on special education laws relating to IEPs.

FACTUAL FINDINGS

JURISDICTION

1. Student is a 14-year-old boy who has been found eligible for special education and related services under the primary category of emotional disturbance and secondary category of speech and language impairment at all times relevant to the issues raised in his first amended complaint. Student has qualified for special education since 2007.

2. At the time of hearing, Student resided outside the boundaries of Sacramento and Vacaville. During various times during the relevant period, Student resided with his mother and siblings within the boundaries of Vacaville, with his maternal grandmother within the boundaries of Vacaville, and at a group home located within the boundaries of Sacramento. He has also been psychiatrically hospitalized at numerous times during the relevant period and resided at Edgewood Center for Children and Families, a residential treatment facility in San Francisco, for two to three weeks prior to residing within the boundaries of Sacramento in 2015.

STUDENT'S HISTORY OF BEHAVIORAL AND EMOTIONAL CHALLENGES

3. Student has a history of physical aggression at home and at school, which has been well-documented and will be discussed more fully below. Student has

presented with behavioral and emotional challenges since age four. Student's physical aggression outside of school has resulted in numerous psychiatric hospitalizations during the relevant period. None of Student's hospitalizations during the relevant period occurred because of Student's conduct at school.

4. During his childhood, beginning at six months of age, Student was exposed to domestic violence in the home. Student observed his father being physically abusive to his mother when Student was six months old. His parents were separated for approximately a year following the incident. When they reunited, it was calm in the home, although there were times when father was verbally abusive to mother and Student. Mother permanently separated from father when Student was five or six years old. At the time of separation, father threatened mother with physical violence, but he did not act on the threat. It is not clear from the evidence how often Student was exposed to domestic violence while he lived with his parents. Student has not had contact with his father since he was seven years old.

5. Student has been diagnosed with, or has been perceived as suffering from, language disorder, mood disorder, depression, bipolar disorder, post-traumatic stress disorder, intermittent explosive disorder, attention deficit hyperactivity disorder, and possible psychosis, by medical professionals and assessors.

2012 ASSESSMENTS

6. In April 2012, the Diagnostic Center of Northern California assessed Student and completed an assessment report to assist Student, Mother, and the rest of Student's IEP team in determining present and future goals. Student was referred to the Diagnostic Center by the IEP team. The most significant factor impacting Student's functioning in school was identified as emotional regulation. The assessment team opined that Student's history indicated he was suffering from post-traumatic stress disorder, which was based on Student's exposure to traumatic events when he

witnessed domestic violence in the home. However, no formal diagnosis of post-traumatic stress disorder was provided in the report. Post-traumatic stress disorder is a disorder that is diagnosed after a person has experienced a terrible, horrifying event and continues to have negative reactions to those events, often when there is no danger present.

7. In October 2012, Vacaville referred Student for a functional analysis assessment to aid in determining the function of Student's physical aggression exhibited in the school setting. At the time of the assessment, Student was attending Callison Elementary School in a special day classroom for students who benefit from frequent emotional regulation strategies throughout the day. The program was for students with social emotional challenges and behavior concerns that adversely impacted their ability to be in a general education setting.

8. A Vacaville behavior specialist assessed Student. The assessor was aware Student had been diagnosed with mood disorder, depression, bipolar disorder, intermittent explosive disorder, rule out ADHD,⁴ and possible psychosis. The assessor was aware Student had been exposed to domestic violence in the home. The assessor reviewed the Diagnostic Center's assessment report.

9. Student's target behavior of concern was physical aggression. At the time of assessment, Student's physical aggression was reported as occurring once per week for an average of 39 minutes per instance with serious intensity. Student had a history of being suspended due to his physically aggressive behavior.

10. The assessor hypothesized the function of Student's physically aggressive behavior was to obtain escape and outlined antecedents or triggers for Student's behavior. The assessor recommended a functionally equivalent alternative replacement

⁴ Rule out means that further evaluation is necessary in this area.

behavior for consideration in Student's behavior intervention plan. Specifically, he recommended that when Student is confronted with a task that he does not want to do, Student will tell staff that he does not want to complete that task, and will choose from a list of small possibilities of alternate tasks.

11. A comprehensive behavior intervention plan was developed in December 2012, following a reported incident of physical aggression at school by Student against peers and staff. The behavior intervention plan incorporated many portions of the functional analysis assessment. The hypothesized function of Student's behavior was determined to be escape from a non-preferred task or situation. Student was involved in several incidents of physical aggression toward staff and peers, as well as elopements, following the assessment.

FEBRUARY 8, 2013 AMENDED IEP AND OFFER OF PLACEMENT AT SIERRA SOLANO

12. On February 8, 2013, Vacaville convened an IEP team meeting to review Student's program and placement. Mother and an interpreter were present at the meeting, as Mother's primary language is Spanish. The assistant principal; the behavioral specialist that completed the functional analysis assessment; Tina Crivelli-Juarez, the Sierra School of Solano County Director; Karen Dace, Vacaville program specialist; the Special Education Local Plan Area assistant director; a school psychologist; a special education specialist; a representative from Children's Nurturing Project who offered Student counseling support; and a speech pathologist were also in attendance.

13. The IEP team believed Student's unique needs could not be met on a public school campus, even with the use of supplementary aids and supports. Student required a small, highly structured environment with more individualized specialized academic instruction with a small staff to student ratio and mental health services embedded throughout the school day to address Student's academic, social emotional, and school behavior issues.

14. Vacaville offered Student a placement at Sierra Solano, a nonpublic school that offered day rehabilitation services to its students, as opposed to day treatment services.⁵ Day rehabilitation at Sierra Solano provided students with mental health services embedded throughout the school day. The maximum number of students per class was 12. There were three adults in the classroom at all times, which included the teacher, teacher's aide, and mental health specialist. A mental health specialist was in the classroom throughout the day to provide support to all students. The mental health specialist ran group counseling and morning meetings. A mental health specialist at Sierra Solano was generally a non-certified therapist who had at least an associate's degree with six years of experience, a bachelor's degree with four years of experience, or master's degree with two years of experience. Generally, students met with a therapist for a minimum of 60 minutes per week of individual therapy sessions. All students received 40 minutes of group counseling daily. The amount of individual therapy and group counseling provided to students varied depending on what was offered in each student's IEP. Sierra Solano provided a curriculum consistent with state level standards. Typically, students placed at Sierra Solano by Vacaville had behavior concerns.

15. Vacaville offered Student specialized academic instruction for 360 minutes daily, and 300 minutes daily of day treatment services at a non-public school. Both components of Student's educational program, specialized academic instruction and day treatment services, were integrated and embedded throughout Student's day. However, the IEP did not describe what services Student would be receiving under the

⁵Although not entirely clear from the evidence, witnesses that testified at hearing generally understood the difference between day rehabilitation and day treatment to be related to billing and student/teacher ratios.

umbrella of “day treatment services.” For example, the IEP did not specify Student was to receive any individual therapy or group counseling. While all students received a certain amount of individual therapy and group counseling embedded in the day rehabilitation program at Sierra Solano, it was not clear from the IEP exactly what amount of individual therapy and group counseling Student needed to receive educational benefit, the actual amount Student was being offered or the number of minutes Sierra Solano was obligated to provide.

16. Jenelle Droke testified at hearing. She was the clinical director of day rehabilitation activities at Sierra Solano. She had been working at Sierra Solano since February 2008 and had a license in marriage and family therapy. She earned a master’s degree in marriage and family therapy and school counseling from California State University, Sacramento. She had a pupil personnel services credential. Prior to working at Sierra Solano, she worked at a different nonpublic school in Sacramento. At Sierra Solano, Ms. Droke was responsible for supervising mental health therapists and mental health specialists. She saw a small number of clients and drafted progress notes and developed IEP goals for students, among other duties.

17. Ms. Droke explained that mental health specialists run the components of the day rehabilitation program at Sierra Solano by conducting morning meetings, social skills training, group counseling meetings and observing students for trigger signs. Students were also provided individual counseling with a licensed therapist or Marriage and Family Therapy intern.⁶ The therapist or MFT intern filled in when mental health

⁶An MFT intern has a master’s degree in a relevant field, and is supervised by a licensed therapist. MFT interns must accrue 3,000 hours in a supervised internship to become a licensed MFT in California.

specialists were out of the classroom. As will be discussed more fully below, Vacaville's offer of placement at Sierra Solano was not appropriate.

18. The IEP team developed an IEP amendment memorializing the changes to Student's October 15, 2012 IEP, and Mother agreed to the contents of the IEP amendment on March 8, 2013. Student began attending Sierra Solano in February 2013.⁷ Student was in the fifth grade at the time.

JANUARY/FEBRUARY 2014 PSYCHO-EDUCATIONAL EVALUATION

19. Vacaville referred Student for a psycho-educational evaluation for his upcoming triennial review.⁸ Carolyn Parham, a Vacaville school psychologist, evaluated Student in January and February 2014. It is unclear when the assessment report was written following the assessments. Ms. Parham was aware of Student's numerous medical diagnoses and had reviewed the Diagnostic Center's assessment report. She

⁷Student previously attended Sierra Solano during the 2012 extended school year. It is not clear from the evidence if the date Mother signed the document was in error. However, no determination is made as to the issue of when Mother provided consent to the new placement and when Student began in that placement.

⁸There is some evidence that Student was not evaluated until January 2014 because Mother initially declined the three year reevaluation. No determination is made as to whether this evaluation, or the subsequent annual review, occurred in a timely manner.

was also aware of his exposure to domestic violence, and that he had been hospitalized for six days in March 2014⁹ for aggression towards a family member.

20. Ms. Parham used the Behavior Assessment System for Children, Second Edition, as part of her assessment process. The behavior assessment is a lengthy questionnaire designed to assess a student's current, social, behavioral, and emotional functioning. Ms. Parham provided the parent portion of the questionnaire to Mother and the teacher portion to Adrienne Solorio, who was Student's teacher at the time. Mother did not answer all of the questions, so the scale could not be scored as valid as to her responses. Ms. Solorio's responses indicated no clinically significant or at risk concerns and all areas measured in the normal or average range. However, on the content scales, Ms. Solorio's responses showed at risk concerns in the area of developmental social disorders based on her response that Student sometimes had a short attention span, had trouble communicating clearly, sometimes acted strangely, had trouble making friends, failed to encourage or compliment others, and was easily distracted. The behavior assessment also included a self-report survey, which Student completed. Student's responses indicated one clinically significant concern in the area of self-esteem. At risk concerns were in the areas of emotional symptoms and relationship with parents. Student completed the Behavior Assessment System for Children Self-Report survey. Student's responses indicated only one clinically significant concern in the area of self-esteem. At risks concerns were in the areas of emotional symptoms and relationship with parents.

⁹It is not clear from the evidence how Ms. Parham was aware of Student's hospitalization in March 2014 when Student was assessed in January and February 2014. Ms. Parham's report is not dated, however.

21. Ms. Parham also used the Hand Test, a diagnostic tool relating to human behavior and behavioral tendencies, and reviewed Ms. Solorio's and Mother's responses on the Behavior Rating Inventory of Executive Function, an assessment of executive function behaviors in school and at home. On the Hand Test, Student's profile was within the normal range as compared to his age group with the exception of a high number of exhibition responses. Student's exhibition responses indicated Student put significant energy attempting to gain the attention of others. Those responses may be positive or negative depending on the relative maturity and overall adjustment of the student. The results of the Behavior Rating Inventory Executive Function questionnaire showed Student to be in the normal range based on responses from Ms. Solorio. Mother's responses indicated Student had significant difficulty regulating his emotions at home, but he was able to effectively use his skills in the area of planning, organizing, problem solving, remembering, and evaluating.

22. Based on the assessment results, records review, and student and teacher interviews, Ms. Parham concluded Student qualified for special education under the category of emotional disturbance and recommended Student continue in his current placement at Sierra Solano.

23. Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational program: (A) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) inappropriate types of behavior or feelings under normal circumstances; (D) a general pervasive mood of unhappiness or depression; and/or (E) a tendency to develop physical symptoms or fears associated with personal or school problems. (34 C.F.R. § 300.8(c)(4)(i).)

MARCH 20, 2014 IEP (VACAVILLE)¹⁰

24. Between October 2013, and the March 2014 IEP team meeting, Student missed a total of eight days from school at Sierra Solano. Student was absent at least four of those missed school days because he was hospitalized for aggressive behavior occurring outside of school. Specifically, Student had a confrontation with his grandfather and tried to fight with his grandfather because of a dispute over cleaning Student's bedroom.

25. Also, Student was involved in two incidents of physical aggression at school in January and February 2014. In the first incident, Student was suspended for one day after causing, attempting to cause, or threatening to cause physical injury to another person and disrupting school activities or willfully defying school authority. In the second incident, Student pushed into school staff with aggression after failing to follow staff's instructions to return to a specific classroom.

26. Vacaville convened the first part of a two-part annual IEP team meeting on March 20, 2014. At the time of the meetings, Student was in the sixth grade. Parent; Ms. Dace; David Greer, Sierra Solano mental health therapist; Ms. Droke; an occupational therapist; Student's special education teacher; and Ms. Parham attended the meeting. Vacaville provided an interpreter for Mother at the meeting. The IEP team discussed Student's present levels of performance, the psycho educational evaluation results, Student's progress on goals, and some of the proposed IEP goals.

27. Mr. Greer, a mental health therapist at Sierra Solano, prepared a mental health report for the IEP team on March 18, 2014. Mr. Greer testified at hearing. He was an MFT intern at Sierra Solano during the 2013-2014 school year, and completed his MFT internship while there. He worked at Sierra Solano for approximately one year. Mr.

¹⁰No determination is made as to whether Student's annual review was timely.

Greer left Sierra Solano to work for Solano County as a therapist. At the time of the hearing, Mr. Greer had a master's degree in marriage and family therapy, and had obtained his MFT license. He received his master's degree from Alliant International University. He received his bachelor's degree in behavioral science from Utah Valley State College. As an MFT intern, Mr. Greer was supervised by a licensed therapist, who was responsible for overseeing his work. When Mr. Greer worked at Sierra Solano, he did not do formal mental health assessments.

28. Mr. Greer began working with Student as his individual therapist at Sierra Solano during the 2013-2014 school year. At hearing, Mr. Greer did not remember how often he was seeing Student, but the evidence established Student was receiving approximately 60 minutes per week of individual therapy.

29. Mr. Greer observed Student to present with positive mood and appropriate affect, positive interactions with staff, and good rapport with his classroom staff. Student did not communicate his needs very well. Student had great difficulty sharing information with those in a position to help him and a very low tolerance for emotional discomfort and was deficient in self-regulation. When Student got emotionally escalated, he had a difficult time coping and was deficient in self-regulation. Mr. Greer believed home dynamics seemed to negatively affect Student's functioning at school, which he noted in his report.

30. The IEP team did not have time to complete Student's annual review, so the team agreed to meet again. Vacaville convened the second part of the two-part annual IEP team meeting on March 31, 2014. Mother; an interpreter; Ms. Dace; a speech specialist; Ms. Solorio; and Ms. Droke attended the meeting.

31. Student's behavior, social emotional concerns, and deficits in speech and language impacted his ability to successfully access the general education curriculum.

Student continued to be eligible for special education under the primary category of emotional disturbance and secondary category of speech or language impairment.

32. The IEP team reviewed Student's goals contained in his October 15, 2012 IEP.¹¹ Student met his reading, written language math, intelligibility, vocabulary, and three behavior goals. Student did not meet any of his three emotional coping skills goals.

33. The IEP team developed eight new goals to address Student's identified areas of need in reading comprehension, writing, mathematics – number sense, behavior – coping strategies, social/emotional – emotional coping skills, speech intelligibility, expressive communication, and social pragmatics – communication.

¹¹Student asserts he was denied a FAPE because of several procedural violations occurring outside of the statute of limitations period — prior to March 17, 2014. The October 15, 2012 IEP was operative between March 17, 2014, and March 20, 2014, with the exception of the February 8, 2013 IEP amendment placing Student at Sierra Solano and offering Student related services.

Some of the alleged procedural violations in Issue 1 allege conduct occurring prior to March 17, 2014. At the October 15, 2012 IEP team meeting, Parent would have known or had reason to know of the facts underlying the basis for a request for due process hearing relating to Vacaville's alleged procedural violations alleged to have occurred at that meeting. There is no evidence to suggest Mother was not in attendance at the October 15, 2012 IEP team meeting or failed to participate in the development of the goals contained in the October 15, 2012 IEP. Therefore, alleged procedural violations occurring outside of the statute of limitations period will not be decided herein and all procedural allegations will be considered from March 20, 2014 forward. (See 20 U.S.C. § 1415(f)(3)(C); Ed. Code, § 56505, subd. (l).)

34. Student contended his behavior-coping strategies goal was not measurable. By March 2015, when faced with a stressful situation, Student was to react by choosing an appropriate method of response (i.e. removing himself from the situation, requesting help, switching to a different activity) 90 percent of the time, as observed and reported by classroom staff. Although it is a possibility that classroom staff may not have been able to determine each situation that Student deemed stressful, the classroom staff could use their professional judgment to determine when Student was faced with a stressful situation, such as a conflict with other peers, and determine whether Student was choosing an appropriate method of response to the stressful situation. Student's behavior-coping strategies goal was measurable.

35. Each goal written in Student's March 2014 provided an identified area of need, baseline, description of the goal, how the goal would be measured, and who would be working with Student and reporting on the goal. All of his academic goals were written to grade level standards. All of his goals were measurable, including his social emotional-emotional coping skills goal. Student's social emotional-emotional coping skills goal was, by March 2015, when feeling upset, angry or frustrated, and if unable to self-regulate, Student would seek a trusted adult for support (i.e. counselor, teacher, etc.) 85 percent of the time in three out of five situations as measured by staff observations, therapist observations, and self-report. The mental health staff was responsible for working with Student on this goal. Staff could use their professional judgment in determining when Student was feeling upset, angry or frustrated or unable to self-regulate for purposes of measuring Student's progress on this goal. Student did not establish that this goal or any other IEP goals contained in the March 2014 IEP were not measurable.

36. At the time of the IEP meeting, the IEP team was aware Student needed frequent support in the area of decoding, the process of translating a printed word into

a sound. Additionally, the IEP team knew Student's decoding skills affected his reading comprehension, an already identified area of need for Student. The IEP team should have determined that decoding was an area of need for Student and developed an IEP goal in the area of decoding. This was a procedural violation. This procedural violation resulted in a loss of educational benefit, as Student's need in the area of decoding affected his reading and reading comprehension abilities. Student should have had a goal in the area of decoding in order to make progress in the areas of reading and reading comprehension.

37. Karen Dace testified at hearing. Ms. Dace has been employed by Vacaville Unified School District since 2008. During the period relevant to Vacaville, Ms. Dace was a program specialist and associate technology specialist. She was employed as a program specialist and associate technology specialist from July 2012, through June 2015. In her position, Ms. Dace was the direct liaison and administrative designee for nonpublic school students with IEPs, provided support and guidance to staff teams, and facilitated and took notes at IEP team meetings. She received two masters' degrees in leadership studies and special education from Azusa Pacific University. She is currently working on a doctorate in special education with an anticipated graduation date of June 2018. She has a preliminary administrative services credential that authorizes her to supervise staff as a school administrator. She also has a Level II Education Specialist Instruction Credential that authorizes her to teach students with special needs, give assessments, and conduct IEP meetings. She completed a program to receive a Behavior Intervention Case Manager certification that authorizes her to prepare behavior intervention plans, and determine antecedents of behaviors and strategies to assist in changing target behaviors.

38. Tina Crivelli-Juarez testified at hearing. She was the site director at Sierra Solano from 2011, through the end of the 2015-2016 school year. She has a bachelor's

degree in early childhood psychology from St. Mary's College, and is currently working on a master's degree in special education at Touro University. She has a teaching credential through the California Department of Education. As a director at Sierra Solano, she was responsible for day-to-day operations, teacher support, behavioral support, intakes, and answering emails and phone calls from school districts and other providers.

39. Ms. Glasper testified at hearing. She had been a Sacramento program specialist for five years. Her responsibilities included facilitating IEP team meetings, reviewing IEP notes and goals, and case management duties for students at nonpublic schools. Prior to her employment as a program specialist, Ms. Glasper was a special education teacher for seven years. Ms. Glasper earned a master's degree in special education from California State University, Sacramento. She has two bachelor degrees in psychology and Spanish from California State University, Sonoma.

40. Ms. Dace, Ms. Crivelli-Juarez, and Ms. Glasper generally believed decoding was addressed as a component of reading comprehension and would be an area addressed in Student's reading comprehension goal. However, Student's reading comprehension goal did not specifically address Student's need for support in decoding. Student's comprehension goal measured how well Student understood what he read, not how well Student was actually able to read the words. Decoding was an area of need that was affecting Student's reading comprehension. The IEP team should have developed a separate decoding goal to address Student's frequent need for support in that area.

41. Vacaville offered Student special education and related services in the March 2014 IEP. Specifically, Student was offered 360 minutes daily of specialized academic instruction and 300 minutes daily of day treatment services. The specialized academic instruction and day treatment services were to be embedded throughout

Student's day and occurred at the same time for almost the entire school day. Student's placement was an integration of these two components. Vacaville failed to specify what related services would be included as day treatment services. Student was also offered speech and language and occupational therapy services. The IEP team offered Student 50, twenty-five minute sessions per year of speech and language services, totaling 1,250 minutes per year, and 25, 30-minute sessions per year of occupational therapy. Individual and group services were to be provided to Student for all of these services; however, Vacaville did not specify the number of minutes to be allotted in a group setting versus individual setting for any of the related services offered to Student. As discussed below in the legal conclusions section, these deficiencies made the offer unclear as written. All IEP services were to begin on March 20, 2014.

42. For the extended school year, Vacaville offered Student 240 minutes daily of specialized academic instruction and 240 minutes daily of day treatment services. As was the case in the school year offer, the program was an integrated program, wherein Student would receive both components at the same time, embedded in his school day. Again, Vacaville failed to specify what related services would be provided as day treatment services in the IEP. Vacaville also offered one, 50-minute session per week of speech and language services. All related services were to be provided in an individual and group setting. Again, Vacaville failed to specify the number of minutes to be allotted for services in the group versus individual setting. The offer for extended school year services was unclear, which resulted in Mother's inability to meaningfully participate in the IEP development process. The extended year services were to begin on June 16, 2014.

43. The IEP team developed a behavior intervention plan with the participation of Mother, Student's teacher, and Ms. Droke. The report was attached to Student's IEP. The behavior impeding Student's learning was aggression and task avoidance.

44. Student's placement offer continued to be Sierra Solano. At the time of the IEP team meeting, Student required specialized academic instruction in a small, highly structured environment with a strong behavioral component. Sierra Solano provided Student a low student to teacher classroom ratio with behavioral support and mental health services embedded throughout the school day. Student met all eight of his IEP goals in the areas of reading, written language, math, intelligibility, vocabulary, and behavior. During the first semester of the school year, Student was doing well academically. Student was receiving an A, three A-'s, and two B's in physical education, science, social skills, art, math, and English, respectively. The offer of specialized academic instruction at Sierra Solano was appropriate to address Student's academic needs.

45. However, Vacaville's offer of mental health services was not appropriate to address his social emotional needs that affected his school behavior and socialization. At the time the IEP was developed, Student had made minimal progress on his three emotional coping skills, he continued to be aggressive at school, as reported in behavior incident reports and teacher reports, and Mr. Greer expressed concern about his low tolerance for emotional discomfort and deficiency in self-regulation despite the fact Student participated in group and individual therapy at school. He was not meeting any of his goals developed to address his limited emotional coping skills. The evidence established Student should have been receiving individual therapy for three, one-hour sessions per week, which will be discussed more fully below. Student, however, was only given 60 minutes per week of individual therapy, which was the amount offered to all Sierra Solano students, unless a different number was specified on an IEP for a particular student. The offer of mental health services was not appropriate to address Student's unique needs. Therefore, as discussed below, because the mental health services were

an integrated and integral component of Student's placement at Sierra Solano, the placement offer was also not appropriate for Student.

46. Mother consented to the March 20, 2014 IEP on March 31, 2014.¹²

INCIDENTS OCCURRING AT SCHOOL AFTER STUDENT'S MARCH 2014 ANNUAL IEP TEAM MEETINGS

47. In order to encourage positive behavior from students, Sierra Solano employed a school-wide point system. Students earned points for following school directions and being on task. Students did not lose points for negative behaviors. The points were tallied on a point sheet each day. Based on the number of points a student had in a given day, the student was placed on a colored point level — the red level being the lowest point level. The highest level was gold. The levels below gold were blue, green, and yellow. Students had to apply to be on gold level after being on blue level for 45 days. Students had to maintain a certain number of points to maintain their level or to move up to a higher level. Students received level drops for behaviors such as leaving without permission, physical assault, and direct threats.

¹²The evidence provided at hearing did not show Mother consented to any other IEP during the period relevant to the issues alleged against Vacaville and Sacramento. An email correspondence between Student's counsel and Sacramento's counsel, dated August 3, 2016, was admitted into evidence at hearing. The email indicated Mother consented to the November 30, 2015 IEP developed by Sacramento. However, it is not clear from the document when Mother consented to the IEP and no witness testified about the document.

48. In April 2014, Student was dropped to red level after throwing a dirt clod at another student. Two days later, on April 16, 2014, Student was taken out of the classroom by his therapist after Student began to disrupt the class. Student spent the entire group therapy time with his therapist. Student attended all school days in the month of April.

49. In May 2014, Student left campus and was physically aggressive toward a peer and staff members. He missed 14 of the 21 school days in the month of May while being hospitalized at Rebekah's House for conduct occurring outside of school. Mother could not remember the reason Student was hospitalized at that time, and no evidence was provided regarding the location of Rebekah's House or what school district, if any, was responsible for providing Student a FAPE while he was hospitalized there.

50. Student missed every extended school year school day in July 2014 because he was hospitalized for conduct occurring outside of school. Student missed five out of the nine school days in August 2014 because he continued to be hospitalized. The evidence did not establish what conduct led to those hospitalizations or the location of those hospitalizations.

51. Student provided no evidence at hearing concerning the services he received or the lack of special education and related services provided to him during any of his hospitalizations. Also, Student did not provide evidence at hearing to establish Vacaville or Sacramento to be responsible for providing Student a FAPE during any of the hospitalizations or residential placements occurring during the relevant period.

SEPTEMBER 15, 2014 AMENDMENT IEP TEAM MEETING

52. On September 15, 2014, Vacaville convened an IEP team meeting at Mother's request. Mother; Grandmother; a family friend; and an interpreter attended the meeting. Ms. Dace; Ms. Solorio; a Solano County mental health therapist; Jeremiah

Watts, Sierra Solano Mental Health Specialist; a Sierra Solano speech specialist; and a Vacaville representative/administrative designee also attended the meeting.

53. At the meeting, Mother provided the IEP team with a letter from the Permanente Medical Group, Inc., Department of Psychiatry (associated with Kaiser Permanente). The letter from the Department of Psychiatry was written by Christopher Tennyson, MFT. In the letter, Mr. Tennyson noted Student had been psychiatrically hospitalized six times over the last few years and three times over the last year. Mr. Tennyson did not explain his understanding of what led to those hospitalizations. Mr. Tennyson opined Student needed an IEP residential treatment placement. He identified the primary treatment issue to be safety, as Student is bigger than Mother and Grandmother, and his siblings were at risk because Student could not self-regulate his anger.

54. Mr. Tennyson did not testify at hearing, and the basis of his opinion that Student needed an IEP residential treatment placement is entirely unclear. At the time he wrote the letter, Mr. Tennyson had only seen Student for two therapy sessions. The evidence did not establish Mr. Tennyson's overall knowledge of Student's behavior inside and outside of school. There is also no evidence of Mr. Tennyson's education and professional background and experience. Therefore, Mr. Tennyson's opinion is given little weight. However, the information contained in the letter provides insight into Vacaville's understanding of Student's mental health issues at the time of the IEP team meeting.

55. Mother also provided the IEP team with letters from MFT interns at JDT Consultants Therapeutic Behavioral Services, the provider who began providing Student and his family with in-home therapeutic behavioral services beginning in March 2014. The in-home behavior services were funded by Solano County Mental Health. Student had been receiving services from Solano County Mental Health since age six. He was

referred to Solano County Mental Health following a hospitalization at six years old. The behavior services provided to Student by JDT Consultants occurred weekly for six to eight hours per week.

56. The JDT Consultants letters noted the company stopped providing behavioral services to Student on August 20, 2014, because the company determined he was not benefiting from the services. Student began receiving in-home behavior services five days per week, two-hours per session, from Solano County Mental Health in August 2014. In one of the letters, the JDT Consultants' MFT intern expressed concerns that Student seemed to be preoccupied with death, had made suicidal comments, and commented he wanted to kill a teacher. The intern urged the reader to consider further medical evaluation to determine the origin of Student's impairments, including neurological testing, and treatment options in an effort to minimize any potential risk to Student or others. The letter did not document any concerning behaviors occurring in the school setting. There was no evidence of Student's preoccupation with death or suicidal ideation at school.

57. The authors of the JDT Consultants letters did not testify at hearing; therefore, it is unknown how familiar they were with Student, or their educational and professional backgrounds in making their opinions and recommendations. It is unknown whether they examined Student's conduct and mental health needs in relation to his educational needs and/or how, if at all, Student's behaviors were affecting his educational progress. Consequently, their opinions are given little weight. The information is, however, helpful in determining the information available to the IEP team at the time of the IEP meeting.

58. At the September 2014 meeting, Mother disclosed to the IEP team that Student had been hospitalized at different times between February 2014 and August 2014. The hospitalizations were the result of Student's conduct occurring outside of the

school setting, but resulted in Student missing numerous school days. Mother feared for her safety and the safety of others in the home because of Student's behaviors, and she believed Student needed to be placed in a residential facility. The IEP team was concerned that Mother had not expressed this level of concern in the past, to which she agreed. Despite Mother's concerns, the offer of FAPE remained unchanged, because the IEP team believed Student was receiving educational benefit in his program at Sierra Solano.

59. However, between the March 2014 and September 2014 IEP team meetings, Student was involved in aggression toward peers and school staff and disruptive behavior. He was absent from school almost the entire month of July 2014, and missed the entire 2014 extended school year because he was hospitalized. According to progress reports in June 2014, Sierra staff members working with Student on his reading comprehension, writing, and speech goals expressed concerns that his progress on those goals were impacted by his hospitalizations and resulting absences from school. The IEP team should have convened an IEP team meeting by May 2014, but, in no event, any later than the start of the 2014-2015 school year, in August 2014, to discuss the likelihood Student was not going to make progress in his educational program. The failure to do so was a procedural violation that denied Mother meaningful participation in the IEP development process.

OCTOBER 2, 2014 IEP TEAM AMENDMENT MEETING

60. Vacaville convened another IEP team meeting on October 2, 2014, to follow up on Mother's concerns expressed at the September 15, 2014 IEP team meeting. Mother; Grandmother; a family relative; and an interpreter attended the meeting. Ms. Dace; Ms. Droke; Ms. Solorio; Mr. Watts; a Vacaville representative/administrative designee; a Solano County mental health therapist; and a representative from Kaiser Permanente, also attended the meeting.

61. At the meeting, Mother requested Student be placed in a residential facility. The IEP team believed Student's unique needs were being met at Sierra Solano. The IEP team's FAPE offer remained unchanged.

62. Following the IEP team meeting, Kaiser Permanente contacted Child Protective Services regarding Mother's concerns. Child Protective Services investigated Mother's concerns, but a case was not opened because there was no allegation of Student being abused.

MARCH 19, 2015 IEP

63. On March 19, 2015, Vacaville convened the first of a two-part annual IEP team meeting. Student was in the seventh grade at the time of the meeting. Parent, Grandmother, and an interpreter attended the meeting. Additionally, Ms. Dace; Ms. Solorio; Ms. Droke; two mental health therapists, and a case manager from Kaiser Permanente attended the meeting.

64. From September 2014, through February 2015, Student missed only one day of school. By the time of the IEP team meeting, Student had been absent from school for four that month. Mother informed the IEP team that Student was currently hospitalized at St. Helena in Vallejo, California, on a psychiatric hold because the previous week he had become very violent, and hit and choked Mother and hit his sibling and an intervening neighbor. Mother, again, expressed concern for her safety and the safety of Student's sibling. As a result of the incident, Child Protective Services became involved, but Mother did not disclose their involvement to the IEP team at the meeting.

65. At the time of the meeting, Student was an active member of the school community and maintained a high behavioral level on the point system used by Sierra Solano. Student assisted staff with classroom projects, played on sports teams, and was invited to work school jobs in the school store and zoo. For the first semester at Sierra

Solano, Student received grades ranging from A to B+ in English, math, physical education, science, social skills, and social studies.

66. Despite doing well academically and behaviorally, Mr. Watts was concerned about Student's social emotional coping skills, which was noted in his report to the IEP team. Mr. Watts was employed as an MFT intern at Sierra Solano during the 2014-2015 school year. During the 2014-2015 school year, Student's therapist changed from Mr. Greer to Mr. Watts.

67. Mr. Watts observed Student continuing to struggle with his ability to manage his anger, often coping in unhealthy ways, like fighting with his sibling at home, leaving school without permission, and emotionally shutting down. Mr. Watts did not observe Student seeking support when upset and Student would not respond to staff when upset the majority of the time. Mr. Watts opined Student's inability to manage his frustration and anger, though improved, impeded his ability to reach his full potential at school and at home. Student did, however, become more comfortable in individual therapy sessions as the year progressed according to Mr. Watts. The information contained in Mr. Watts's report is helpful in understanding what the IEP team knew at the time of the IEP meeting.

68. Student met four of his eight IEP goals, in the areas of reading comprehension, writing, mathematics-number sense, and behavior-coping strategies. Student made progress on his speech intelligibility, social pragmatics – communication, and expressive communication goals. Student's progress reports for his expressive communication goal indicated that due to consistent absences, mastery of the goal benchmark had not been achieved by June 5, 2014. On the June 6, 2014 reading comprehension progress report, the reporter noted that Student's progress was impacted by hospitalization and resulting absence from school.

69. On his social emotional coping skills goal, Student made some progress but had regressed by the end of the reporting period. The goal stated that by March 2015, when upset, angry or frustrated, and if unable to self-regulate, Student would seek a trusted adult for support (i.e. counselor, teacher, etc.) 100percent of the time in three out of five situations as measured by staff observations, therapist observations, and self-report.

70. In order for Student to receive educational benefit, goals were written to address his identified needs in reading comprehension, writing, pre-algebra, behavior – prosocial interactions, social emotional – anger management, receptive language, vocal quality, and expressive language. Goals were drafted by the IEP team in all areas of identified need based on Student’s present levels of performance, past assessments, and progress on goals. All of the goals contained an identified area of need, Student’s baseline, a description of the goal, the person responsible for working with Student and reporting on the goal, and how the goal was to be measured. Each goal was measurable. For example, Student had an identified area of need in writing. Student’s baseline was an ability to insert quotes or ideas from other text in his own writing while avoiding plagiarism with 20 percent accuracy. By March 2016, Student was to be able to quote or paraphrase the data and conclusions of others while avoiding plagiarism and following a standard format for citation as measured by student work samples, on four of five trials with 80 percent accuracy. The person responsible for working with Student and reporting on the goal was a special education teacher. Student’s baseline showed a direct relationship to the goal set by the IEP team, and was measurable.

71. Student continued to have a need in the area of decoding. During the March 20, 2014 IEP team meeting, Ms. Solorio informed the IEP team Student needed frequent support with decoding, which affected his reading comprehension. By the March 2015 IEP meeting, Student still struggled to comprehend text he read. Student

was using tools, such as a dictionary, to help him decode. Student continued to have a need in the area of decoding and relied on tools to help him. Despite having this information, the IEP still did not develop a goal in the area of decoding for Student. The IEP team should have developed a goal in the area of decoding. This was a procedural violation. Student established that this procedural violation resulted in a loss of educational benefit.

72. The IEP team did not complete Student's IEP at the March 19, 2015 IEP team meeting. Vacaville reconvened the IEP team meeting on April 6, 2016. Mother; an interpreter; Grandmother; a clinical supervisor from Solano County Mental Health; Ms. Dace; a speech pathologist; and a Kaiser Permanente case manager attended the meeting. In addition, a representative from Child Protective Services; Solano County Mental Health representatives; Ms. Droke; Mr. Watts; and Kate Chilcote, a legal assistant from the office of Student's counsel were also present.

73. Vacaville offered Student specialized academic instruction for 360 minutes daily, and day treatment services for 300 minutes daily. These dual components continued to be integrated in his program, and were to be offered in an individual and group setting. The IEP team specified in the IEP notes that Student was receiving 20-minute morning and afternoon check-ins and check-outs, 40 minutes per day of group counseling and 60 minutes weekly of individual therapy, but did not specify this was considered the related services offered as day treatment services in his IEP. Vacaville did not specify the number of minutes Student was to receive in an individual versus group setting. The FAPE offer as written was unclear. Vacaville also offered Student individual speech and language services for 30 minutes per session for a total of 50 sessions (totaling 1,500 minutes per year). All services were to begin on March 19, 2015.

74. Vacaville offered Student specialized academic instruction and day treatment services during the extended school year, each for 240 minutes daily, to be

provided in an individual and group setting with no specification of how many minutes were to be provided in an individual versus a group setting. Likewise, Vacaville offered Student speech and language services during the extended school year for 50 minutes per week in an individual and group setting without specifying the number of minutes in each setting. Again, this offer was unclear for the same reasons discussed as to the FAPE offer for the school year. All services were to begin on June 15, 2015.

75. A behavior intervention plan was developed by Mother, Ms. Solorio, and Ms. Droke, and attached to Student's IEP. On the behavior intervention plan, the behavior impeding Student's learning continued to be task avoidance, but aggression was removed, and leaving class or other designated area without permission was added.

76. The IEP team discussed placing Student in a general education setting with specialized academic instruction and related services on a public middle school campus because the IEP team believed Student was progressing well at Sierra Solano, and might be able to transition to the public school setting. The IEP team also discussed a regionalized program on a public middle school campus, and a nonpublic school, but ultimately determined that a nonpublic school setting was the most appropriate placement for Student, due to his need for a small, highly structured environment with more individualized specialized academic instruction and mental health services embedded throughout his day.

77. Vacaville offered and provided Student placement at Sierra Solano. Student required specialized academic instruction in a small, highly structured environment with mental health services embedded in the program and a strong behavioral component to address his academic needs and social emotional needs that affected his academic progress, school behavior, and socialization. By the time the March 2015 IEP was developed, Student was an active member of the school community and maintained a high behavioral level. Student assisted staff with classroom projects,

played on sports teams, and was invited to work school jobs in the school store and zoo. Academically, Student was doing well.

78. Additionally, by the time the offer of placement was made in March 2015, Student had met four of his eight goals, in the areas of reading comprehension, writing, mathematics-number sense, and behavior-coping strategies. And Student made progress on two of his three speech goals. Student's progress on his academic, speech, and behavior goals showed he was making progress in identified areas of need. Additionally, there were no documented behavior incidents during the 2014-2015 school year leading up to the continued offer of placement at Sierra Solano. The offer of specialized academic instruction at Sierra Solano was appropriate to address Student's academic needs.

79. However, the offer of mental health services was not appropriate at this time. As was the case at his prior annual review, Student did not meet his social/emotional- emotional coping skills goal. Mr. Watts was concerned with Student's inability to manage his frustration and anger, which impeded his ability to reach his full potential at school. His participation in group therapy fluctuated and he continued to struggle with his ability to manage his anger often coping in unhealthy ways. Further, Student was not seeking support when upset and did not respond to staff when upset a majority of the time despite the fact that classroom staff reported he had met his behavior – coping strategies goal requiring him to react to stressful situations by choosing an appropriate method of response 90 percent of the time. It is concerning that he was not making progress in an area identified that was impeding his ability to access the general education curriculum and in light of his qualifying disability of emotional disturbance, especially when Student's social emotional needs were the driving force of placing him in the day rehabilitation program at Sierra Solano. The evidence established Student required three, one-hour sessions of individual therapy,

per week. Student was only receiving 60 minutes of individual therapy at the time the IEP was developed, in addition to group counseling and check-ins/check-outs. The offer of mental health services continued to be an integrated part of Student's placement at Sierra Solano. Since the offer of mental health services was not appropriate, as an integrated part of Student's program, the placement offer at Sierra Solano was also not appropriate.

80. Student remained hospitalized for a total of 15 days at St. Helena Hospital, in Vallejo, California. Student was released to Edgewood for two to three weeks. Child Protective Services was involved in Student's removal from the home, although the details of their involvement were not clear from the evidence.

81. Student was then placed by juvenile court order at Sacramento Children's Home in Sacramento, California, in May 2015. Student did not attend Sierra Solano during his hospitalization or while at Edgewood; however, no evidence of the special education or related services provided, or not provided, to Student during his hospitalization or time at Edgewood was provided. Accordingly, no determination relating to whether Student was provided a FAPE during his hospitalization and time at Edgewood is contained in this decision.

STUDENT'S TRANSITION TO SACRAMENTO

82. Student was transferred by juvenile court order to Sacramento Children's Home, a group home within the boundaries of Sacramento in May 2015.¹³ Sacramento

¹³ It is not clear why Student was before the juvenile court or the details of the court order. Student and Vacaville briefed the issue of whether Mother was required to produce the court order pursuant to a subpoena duces tecum issued by Vacaville after Student filed a motion to quash the subpoena duces tecum. An order granting Student's

placed Student at Sierra School at Eastern (Sierra Sacramento) nonpublic school located in Sacramento, California, in May 2015. Sierra Sacramento and Sierra Solano are owned by the same company.

83. Sierra Sacramento offered individualized instruction based on students' academic needs as well as mental health services and intensive behavioral support embedded throughout the school day. Sierra Sacramento provided individual therapy, group counseling, speech therapy, occupational therapy, physical therapy, and specialized academic instruction to students. Sierra Sacramento did not offer a day treatment program. There was a maximum of 12 students per class with a teacher, teaching assistant, and one other staff member in each class. Sierra Sacramento had one full time therapist and six MFT interns while Student was there. Each student participated in group counseling each week. Speech therapist and occupational therapists provided services on campus. All Sierra Sacramento staff members were trained to work with students with behavior challenges by participating in a nationwide training program. The staff also received routine training from licensed therapist, Stacie Martinez, regarding mental health issues. Many students placed in Sierra Sacramento by Sacramento had behavioral issues. The school-wide point system at Sierra Sacramento was similar to the point system implemented at Sierra Solano.

84. Becky Bryant testified at hearing. She waste Director of both the Special Education Department and the Special Education Local Plan Area for Sacramento. She had been the Director of Special Education since 2002, and the SELPA Director since 2010. She has a bachelor's degree in liberal studies from San Francisco State University and a master's degree in special education from the University of Oregon. Also, she has

motion to quash was issued prior to hearing. None of the parties provided the juvenile court order at hearing.

an administrative credential. Ms. Bryant was not aware of any nonpublic school programs offering day treatment services within Sacramento County.

85. Beginning in May 2015, Sacramento made efforts to implement Student's last agreed upon and implemented IEP. As mentioned above, Student's March 2014 IEP offered Student speech and language services in the amount of 50,25-minute sessions, for a total of 1,250 minutes per year. Student was also to receive 50 minutes of weekly speech and language services during the extended school year. The evidence provided by Student did not establish Sacramento failed to implement speech and language services pursuant to his March 2014 IEP from May 2015, through the 2015 extended school year.

86. Student provided evidence of the speech and language services provided by Sacramento from July 2015, through May 2016. During that time, Sacramento was to continue implementing Student's March 2014 IEP, as the evidence did not establish Mother consented to any subsequent IEP.¹⁴ For the 2015-2016 school year, beginning August 2015, until May 2016, Sacramento only provided Student 290 minutes of the

¹⁴In Student's closing brief, Student states his operative IEP when entering Sacramento was dated March 19, 2015. However, as discussed above, the evidence did not establish Parent consented to any IEP other than the March 2014 IEP during the relevant period. Even if Mother consented to the March 2015 IEP during the relevant period, the difference between the FAPE offers contained those two IEPs is so minimal that consent to the March 2015 IEP would not alter the remedies ordered in this Decision.

1,250 minutes of speech and language service minutes he was to be provided pursuant to his operative IEP.¹⁵ This was a material failure to implement Student's operative IEP.

87. Michelle Maduri had worked for Total Education Solutions as a speech pathologist since March 2015 and was contracted out to Sierra Sacramento for work. Total Education Solutions provided Student with speech and language services at Sierra Sacramento. She has a master's degree in speech. She received a California teaching credential waiver to practice as a speech specialist in March 2015. She received a temporary professional experience license in November 2015, and worked under the direct supervision of a speech therapist for eight hours per month. She provided Student speech and language services while Student was at Sierra Sacramento.

88. The speech logs prepared by Ms. Maduri indicated Student refused to attend four speech sessions from July 2015, through May 2016. Ms. Maduri testified Student refused to attend more sessions than she documented. Ms. Maduri's testimony relating to Student's refusal to attend speech sessions was not credible. She had a procedure for documenting students' refusals to attend speech sessions, and she followed that procedure for Student as to at least some of his refusals. The fact that Student allegedly had other refusals that were not documented per Ms. Maduri's general procedures and not discussed during IEP meetings or in her progress reports

¹⁵ The total number of speech and language service minutes Student received does not include the number of minutes Ms. Maduri billed for her participation in IEP team meetings.

In Student's closing brief, he asserts Student was to be provided with 1,500 minutes as provided in his March 2015 IEP. However, the evidence did not establish that the March 2015 IEP was the last implemented IEP.

supports the conclusion that Ms. Maduri's testimony regarding the undocumented refusals is less than credible.

89. Ms. Martinez was a school counselor at Sierra Sacramento, and had been in that position for three years. Her job responsibilities included running the counseling department, meeting with students with mandated therapy on their IEPs, putting together counseling groups, and supervising MFT interns. At the time of the hearing, she was responsible for providing individual therapy to 24 students on a weekly basis. Ms. Martinez received a bachelor's degree in psychology from California State University, Sacramento. She earned a master's degree in counseling psychology from National University. She has been a licensed marriage family therapist since 2009.

90. Student was receiving 60 minutes per week of individual therapy sessions while at Sierra Solano. Sacramento did not begin providing Student with individual therapy sessions until March 2016. From March 2016 to April 2016, Ms. Martinez provided Student with a total of 150 minutes of individual therapy.

91. Ms. Martinez testified on three hearing days. On the first day she testified, Ms. Martinez explained Sierra Sacramento students were provided with individual counseling if provided on the student's IEP. She was unclear if Student had received individual therapy from the time he began Sierra Sacramento to the November 30, 2015 IEP. On the second day she testified, Ms. Martinez disclosed that Student was actually receiving individual therapy from a trainee in her last year of a master's program from September 2015 through February 2016; however, Ms. Martinez's testimony regarding those individual therapy sessions was not persuasive or credible. There was no specific discussion of those individual sessions in her February 2016 therapy report and there was no discussion of those individual sessions at IEP meetings. Ms. Martinez was not even certain Student began therapy sessions with the trainee in September 2015 or the amount of therapy he was receiving from the trainee. Moreover, it is concerning that Ms.

Martinez never mentioned the trainee on the first day of testifying, but was adamant on the second day that the trainee she supervised provided Student with individual therapy sessions each week.

92. Moreover, Sacramento asked Mother to give permission for Sierra Sacramento to provide individual therapy services to Student, effective February 29, 2016. Ms. Martinez testified that this allowed her the ability to provide individual therapy to Student instead of an MFT intern or trainee. However, the permission slip signed by Mother mentioned nothing about who was going to provide Student individual therapy going forward. More likely than not, Sacramento provided a permission slip to Mother for individual therapy services because Student was not previously receiving individual therapy during the school year. However, this failure to provide Student any individual therapy services cannot be considered a failure to implement Student's IEP because, as discussed above, it was not clear from the March 2014 IEP that Student was offered any individual therapy services. However, the failure to offer individual therapy services supports the finding below that Sacramento did not offer or provide Student an appropriate placement.

NOVEMBER 30, 2015 INTERIM IEP TEAM MEETING

93. On November 9, 2015, Sacramento attempted to convene an interim IEP team meeting, but the meeting was cancelled when it was determined that an interpreter for Mother was needed at the meeting.¹⁶ On November 30, 2015, Sacramento convened an interim IEP team meeting for Student, even though, by that point, Student

¹⁶ Sacramento made some efforts to convene an IEP team meeting in September 2015; however, the circumstances surrounding those efforts were not clear.

had been attending the school since May 2015. At the time of the meeting, Student was in the eighth grade at Sierra Sacramento.

94. Mother, Grandmother, and an interpreter attended the meeting. Also, Jackie Glasper, Sacramento program specialist; Carlee Erickson, Sierra School Director; Lisa Allmon, Student's teacher at Sierra School; Ms. Martinez; Cyndi Tran, cottage facilitator at Sacramento Children's Home; Ms. Maduri; another speech therapist, and a Solano County social worker, attended the meeting.

95. The goals developed in the IEP were the same goals contained in Student's March 2015 IEP. Student's identified areas of need were the same as contained in the March 2015 IEP. Those goals were determined to be measurable above.

96. Ms. Allmon testified at hearing. She had been a teacher at Sierra Sacramento for over two years. Prior to her current position, Ms. Allmon was working as a one-to-one aide at Sierra Sacramento. She had a bachelor's degree in social work from Humboldt State University and a special education teaching credential (mild/moderate). At the time of the hearing, she was working on a master's degree in special education. At the meeting, Ms. Allmon discussed Student's present levels of performance and his transition to Sierra Sacramento.

97. Student's reading fluency was at the second grade level by the time of the IEP meeting based on Ms. Allmon's observations. She recognized that the biggest impact on Student's ability to read was Student's reading fluency. However, the IEP team did not develop a reading fluency goal for Student because members of the IEP team believed that the focus for fifth grade students should be on vocabulary development instead of fluency. Ms. Allmon acknowledged that Student made minimal progress in fluency during her time with him, even though Ms. Allmon worked with Student on fluency in the classroom through weekly peer competitions and individual reading sessions with Student. Student needed an IEP goal to address this area of need, but the

IEP team failed to develop a goal in reading fluency. This was a procedural violation. The evidence established this procedural violation resulted in a loss of educational benefit.

98. Student's transition to Sierra Sacramento was successful. Student was involved in sports and extracurricular activities at school, including writing and presenting a speech to be a representative for student government. Student became a member of student government, which required him to meet regularly with staff, plan events, and bring concerns from peers to student government meetings.

99. Student was present all school days during the first quarters of the school year. His grades during the first two quarters of the school year ranged from A's to a B+. Student was enrolled in English, math, physical education, science, and social science during the first quarter.

100. From the beginning of the school year to the IEP team meeting, Student spent a majority of his time on the higher behavioral point levels and received two awards for maintaining the blue level designation. However, despite maintaining high behavioral point levels, Student left campus on two occasions without permission in October 2015.

101. At the time of the meeting, Student's behavior, social emotional concerns, and deficits in speech and language impacted his ability to successfully access the general education curriculum. Student required specialized academic instruction in a small, highly structured environment with a strong behavioral component and appropriate mental health services.

102. Ms. Allmon discussed Student's incidents of leaving campus without permission on two occasions the previous month and his self-professed urge to run from campus. A behavior intervention plan was attached to the interim IEP. The behavior impeding learning was identified as task avoidance and leaving the classroom or other designated area without permission. These were the same behaviors identified in the

behavior intervention plan attached to Student's March 2015 IEP. In the behavior intervention plan attached to the November 2015 IEP, the team hypothesized the function of Student's behavior, which was the same as the behavior intervention plan attached to Student's March 2015 IEP, even though the targeted behavior was no longer aggression.

103. Sacramento's offer of FAPE made at the interim IEP meeting was 330 minutes daily of individual and group specialized academic instruction, but, again, did not specify the number of minutes to be provided in an individual versus group setting. Also, Sacramento offered Student 50, 30-minute sessions of individual speech and language services per year, and 120 minutes monthly of group counseling and guidance. All services were to begin on November 9, 2015.

104. Sacramento offered extended school year services to Student. Sacramento offered 240 minutes of individual and group specialized academic instruction and 30 minutes per week of individual and group speech and language services. Sacramento failed to specify the amount of minutes to be allotted in the group versus individual setting. Sacramento offered Student 120 minutes of group counseling and guidance. All extended school year services were to start on June 13, 2016, and end on July 15, 2016.

105. The IEP team discussed how well Student was doing at Sierra School and that it would be appropriate to begin discussing a transition back to a comprehensive campus, but Mother was concerned that previous discussions of transition caused Student anxiety. A slow transition was discussed by the team and the supports that could be provided in transitioning student to a comprehensive campus. Sacramento offered Student a placement at Sierra Sacramento.

106. Student was previously in a nonpublic school that offered specialized academic instruction in a setting with a low student to teacher ratio and intensive behavioral supports and mental health services embedded throughout the day. At the

time the November 2015 IEP was developed, Student was not being physically aggressive at school, he had become involved in social opportunities on campus, he was doing well academically, and he was present all days of the school year leading up to the meeting. The offer of specialized academic instruction was appropriate to address his academic needs.

107. However, Sacramento did not offer or provide Student with appropriate mental health services to meet his social emotional needs that affected his school behavior and socialization . From the time Student began at Sierra Sacramento, in May 2015, through the November 30, 2015 IEP team meeting, Student was not receiving individual therapy services, even though the evidence established he continued to need individual therapy to make progress on his social emotional goals and receive educational benefit. Student left campus without permission on two occasions in the prior month and he expressed to Ms. Allmon an urge to leave campus on some occasions. The progress report for his social emotional – anger management goal showed Student made limited progress on that goal and he needed prompting to discuss feelings of frustration. Vacaville was previously providing Student with individual therapy, although not specifically specified in his March 2014 IEP, but subsequently noted in his March 2015 IEP. Sacramento should have been aware Student required individual therapy services at that time to address his educationally related mental health needs. Yet, Sacramento did not offer or provide Student with individual therapy until March 2016.

108. Mother received a copy of the November 30, 2015 IEP in Spanish in the mail approximately a month after the meeting. The evidence did not establish Mother consented to the November 2015 IEP during the relevant period.

INCIDENTS OCCURRING AFTER NOVEMBER 2015 IEP TEAM MEETING

109. In December 2015, Student was involved in physical aggression towards a peer at school. After being involved in a verbal argument with another student throughout the day, Student put his arm around the other student's neck and began punching the student on his back despite staff's attempted interventions. In January 2016, Student was involved in serious property destruction at school. In that incident, Student left the school campus and headed to a nearby nature trail. Staff attempted to talk to Student but he refused to respond. Student subsequently returned to the campus parking lot and broke five school van windows with a stick. A staff member was able to redirect Student back to campus. Student was suspended from school for one day. Ms. Erickson called the police and Student was arrested. Student was returned to the group home. Upon his return, he assaulted another resident. He was placed on a psychiatric hold by the police. Student was hospitalized at Sierra Vista Hospital in Sacramento. The evidence did not establish who was responsible for providing Student with a FAPE during his hospitalization or what special education and/or related services he received during his hospitalization. Student returned to school 12 days later.

110. Ms. Erickson testified at hearing. She has a bachelor's degree in liberal studies and an educational specialist credential. At the time of hearing, she was working on a master's degree in special education. She had been the director of the kindergarten through eighth grade program at Sierra Sacramento for five years at the time of hearing. Her responsibilities included participating in IEPs, hosting school tours, speaking with parents about the program at Sierra Sacramento, training teachers, hiring staff, and ensuring staff were appropriately trained. She was in her current role when Student began attending Sierra Sacramento. She had worked at Sierra Sacramento for nine years. Ms. Erickson called the police to report the January 2016 incident because of Student's level of aggression and the resulting property damage.

MAY 9, 2016 IEP

111. Sacramento convened the first of a two-part annual IEP team meeting on February 29, 2016. Student was in the eighth grade. Mother, Grandmother and an interpreter attended the IEP team meeting. Ms. Glasper, Ms. Erickson, Ms. Allmon, Ms. Martinez, Ms. Tran, Ms. Maduri, and a Solano County social worker attended the meeting. A representative from Student's attorney's office and an occupational therapist also attended the meeting.

112. The IEP team discussed Student's present levels of functioning, and Student's current academic, behavioral, and social development. At the time of the meeting, Student participated in sports with his peers, helped in other classrooms, and played board games.

113. However, Student had a period of behavioral decline beginning about December 2016. Student had not participated in academics and was frequently out of the classroom and left campus on numerous occasions, although not all of these incidents had been documented in behavioral incident reports. Student had come to school on two occasions with a plan to elope from campus and he refused to turn in his cellular phone or go into the classroom.

114. Following the February 2016 IEP meeting, Sierra Sacramento staff documented incidents involving Student leaving campus without permission in March 2016 and shoving another student onto the ground the following month.

115. In May, prior to the next IEP meeting, Student refused to turn in his cell phone, pursuant to a school policy, because he was waiting for communication from Mother. Student paced around the parking lot for about an hour before he decided he wanted to complete work and returned to the therapy office, worked on his assignments then turned in his cell phone.

116. Ms. Tran testified at hearing. Ms. Tran was a cottage facilitator at Sacramento Children's Home, and had been in that position for 14 years. She acted as a case manager for children at the group home. Ms. Tran earned two masters' degrees in social counseling and family, marriage, and child counseling. At the time of hearing, she was an MFT intern.

117. Student's behavioral incidents had increased to approximately one time per month beginning in December 2015. There was some evidence Student's behavior may have been the result of discussions of transitioning from the group home back to his home, but no formal determination was made as to the cause of his escalating behaviors. No formal behavioral assessment was conducted to determine the function of Student's behavior in school.

118. The IEP team was aware Student had been in some physical altercations in the group home based on reports from Ms. Tran. The IEP team also discussed that Student had been hospitalized once in January 2016, for self-injurious behavior occurring at the group home.

119. Although Student participated in weekly group counseling to increase his self-awareness and communication of feelings, the IEP team believed Student would benefit from individual counseling at school in light of recent behavioral incidents, to which the family agreed. Mother signed a statement agreeing to individual therapy for Student at school in order for Student to begin receiving services prior to the completion of his annual IEP. The document giving Sierra Sacramento permission to provide individual therapy services to Student, effective February 29, 2016, was translated by the interpreter before Mother signed the permission slip on the same day. The IEP team agreed to table the IEP team meeting and reconvene the meeting at a later date.

120. On May 9, 2016, the annual IEP team meeting was reconvened by Sacramento. Mother; Student's Grandmother; an interpreter; and Kate Chilcote, a legal assistant from the law firm representing Student in this matter attended the IEP team meeting. Additionally, Ms. Glasper; Ms. Erickson; Ms. Allmon; Ms. Martinez; Ms. Tran; Ms. Maduri; a Sacramento special education supervisor; and Jennifer Baldassari, an attorney representing Sacramento attended the meeting.

121. During the second and third quarter of the 2015-2016 school year at Sierra Sacramento, Student's grades dropped to a range between B+ and D- in English, math, physical education, science, and social science. But by the end of the fourth quarter, Student improved his grades in all but one class. During the second quarter he attended all school days. During the third and fourth quarter, he missed a total of nine school days.

122. Ms. Allmon disclosed to the IEP team Student had recently exhibited more off-task behaviors, including doodling at his desk and occasionally sleeping. The off-task behavior occurred three to five times per week, for a few minutes to an hour. Nonetheless, the duration had decreased over the last month. Ms. Allmon observed Student to be back on task and working hard.

123. Student continued participating in sports with peers, playing an instrument, and teaching others how to play, participated in a cooking club at school, and continued as a member of student government during the school year.

124. The IEP team discussed Student's IEP goals. Student met his reading comprehension, writing, pre-algebra, and behavior goals. Student made progress on his receptive language goal.¹⁷ Although the May 9, 2016 IEP indicates Student met his expressive language goal, the evidence did not establish he actually met this goal,

¹⁷The progress Student made from his baseline is unclear since Student was redirected and given prompts in his progress reports. However, in connection with the

because the annual review report indicated that his accuracy was based on being given minimum-moderate verbal cues, but the goal did not allow for verbal cues.

125. Student did not make progress on his social emotional-anger management goal, which called for Student, when prompted, to discuss his feelings of frustration and anger with therapeutic staff in nine out of 10 situations to help manage his anger and help him work towards seeking support without staff prompting by May 2016. By February 2016, the date of his annual review, when prompted, Student was able to discuss his feelings of frustration and anger with therapeutic staff in six out of 10 situations. Student did not meet his vocal quality goal and it is unclear whether Student made progress on the goal.¹⁸

126. The IEP team determined Student had needs in the areas of reading, writing, behavior, social emotional, pragmatics, and receptive language. The IEP team proposed new goals in all of those areas. The evidence established all of Student's proposed goals, contained in his May 9, 2016 IEP were measurable and addressed Student's identified areas of need. Each goal contained a baseline, and none of those baselines was proven to be inaccurate. Each goal identified the person responsible for working with Student and reporting on the goal, and how the goal was to be measured. For example, Student's social emotional goal called for Student to be able to appropriately communicate his feelings of frustration, anger, or disappointment with staff and peers by increasing rapport, communication skills and use of coping strategies,

short-term objective and his progress reports between November 8, 2015, and his annual review on February 28, 2016, Student had made progress toward the goal.

¹⁸ It is unclear from the evidence whether Student made progress on his vocal quality goal. The summaries of progress do not measure Student's progress consistently; therefore, it is difficult to determine if he was making progress.

in nine out of 10 occasions as measured by staff observations, with staff prompting, by February 28, 2017. This goal was clear and measurable, as were the other goals proposed in Student's May 2016 IEP. Student's baseline was directly connected to the social emotional goal — Student was able to appropriately communicate his feels of frustration, anger, or disappointment with staff and peers in five out of 10 occasions, with staff prompting. The school therapist and/or staff were responsible for reporting and working on the goal.

127. However, Student continued to require a reading fluency goal, which was not provided in his May 2016 IEP. Ms. Allmon testified Student made minimal progress in fluency between the time she started working with him and when he left the school. This was a procedural violation. Student established that this procedural violation resulted in a loss of educational benefit.

128. Sacramento offered Student 330 minutes daily of group and individual specialized academic instruction with no specific allocation of minutes for group versus individual services. Sacramento offered 50, 30-minutes sessions of individual and group speech and language services, totaling 1,500 minutes per year without specifying how many minutes were to be allotted in an individual versus group setting. The offer was unclear because Sacramento did not delineate between the amount of services Student was to receive in an individual versus group setting. Sacramento also offered 120 minutes per month of group counseling and guidance and 120 minutes per month of individual counseling. All services were to begin on May 9, 2016.

129. Sacramento offered Student extended school year services, which included 240 minutes daily of individual and group specialized academic instruction and one, 30-minute session per week of individual and group speech and language services. Again, Sacramento did not specify how many of those minutes were to be provided in a group versus individual setting. Sacramento also offered 120 minutes per month of individual

counseling and 120 minutes per month of group counseling. All extended school year services were to be located at a nonpublic day school, beginning June 13, 2016, and ending July 15, 2016. The offer of extended year services was unclear for the same reasons as the offer for school year services.

130. A behavior intervention plan was attached to the May 9, 2016 IEP. Ms. Allmon, Ms. Erickson, and Ms. Martinez were listed as the participants in the development of the behavior intervention plan, even though Ms. Martinez testified she did not participate in the development of the behavior intervention plan, she was unsure of the triggers to Student's behavior, and she acknowledged Student was vague about the things that bothered him.

131. The behavior impeding learning was documented in the behavior intervention plan as task avoidance, leaving the classroom or designated area without permission, and property destruction. Physical aggression was not listed as behavior impeding learning. The team hypothesized that the function of the behavior was getting attention and avoiding non-preferred tasks, such as non-preferred class work and negative attention from peers.

132. Student's placement offer continued to be Sierra Sacramento. The offer of specialized academic instruction was appropriate to address his academic needs. Student continued to be present at school on most days in the months prior to the IEP team meetings. He missed a total of nine school days in the third and fourth quarter, but the evidence did not establish that the limited number of absences over the school year until the May 9, 2016 IEP meeting impacted his ability to access his education. By the time of the IEP team meeting, Student had met or made progress on a majority of his IEP goals and his grades were improving. He was involved in extracurricular activities.

133. However, the offer and provision of mental health services integrated and embedded in Student's educational program was not appropriate to address his social

emotional needs that affected his school behavior and socialization, and, accordingly, the offer of placement was also not appropriate. Student did not meet his social emotional – anger management goal. This should have been concerning to the IEP team given their awareness that Student’s social emotional concerns impacted his ability to successfully access the general education curriculum. Also, this should have been concerning in light of Student’s history of not meeting his social emotional goals and Student’s qualifying disability of emotional disturbance. The offer mental health services was not appropriate in light of his failure to meet his social emotional goal and escalating acts of physical aggression, property destruction, and leaving campus without permission.

134. Student established he needed three, one-hour sessions of individual therapy through the testimony of James Earhart, Ph.D. Dr. Earhart prepared a psychological report in August 2016, and testified as Student’s case-in-chief at hearing. Dr. Earhart’s report and testimony will be discussed more fully below.

135. At the end of the meeting, Ms. Glasper noted that with the previous IEP, she sent the document after it had been translated in Spanish. Ms. Glasper asked the family if they would like the English version of the IEP before it was translated. Mother stated that she would like the English copy first. The Spanish copy followed after the IEP team meeting.

136. Student attended the 2016 extended school year. Student earned an A- in Health, an A- in English, and an A in math. He was absent three of the 19 school days during the extended school year. Student was removed from Sacramento Children’s Home because of his behavior and safety concerns of others at the group home. Student was placed in a residential treatment facility outside of the boundaries of Sacramento in September 2016. Student was moved by social services into the residential placement for non-educational reasons.

EARHART PSYCHOLOGICAL REPORT

137. James Earhart, Ph.D., testified at hearing. Dr. Earhart is a licensed clinical psychologist in California. He earned a doctorate in clinical psychology and school psychology, and a master's degree in education, both from the University of California, Santa Barbara. He earned a bachelor's degree in psychology from University of California, Los Angeles. He has a clear pupil personnel services credential, which allows him to be a school psychologist in California. At the time of the hearing, he was employed as a clinical psychologist at the University of California, San Francisco, and Pediatric Psychology Services, and was a consultant at Sutcliffe Developmental and Behavioral Pediatrics. He had been employed in those positions since 2014. In those positions, he provided assessments and consultation as part of an interdisciplinary clinic serving primarily early childhood populations for underserved populations and provided short-term therapy as families got connected to more permanent support services. Also, he provided therapy to children for a range of mental health issues and provided diagnostic and psycho educational assessments to children. He was employed as a school psychologist during the 2013-2014 school year in Los Altos School District.

138. Dr. Earhart was retained by Student's counsel to conduct a psychological evaluation of Student. Dr. Earhart evaluated Student in July 2016, and completed a report in August 2016. Dr. Earhart observed Student during the extended school year at Sierra Sacramento for two hours, and spoke with Ms. Allmon briefly during the classroom observation. Dr. Earhart also interviewed Student and Mother during his evaluation to obtain Student's history, to understand what was happening at home, and to get information about the nature of Student's past traumatic events.

139. To evaluate Student's social-emotional and behavioral functioning, Mother completed the Conners-3 rating scale, which examines a range of areas of functioning

with a focus on attention, impulse control, and behavioral difficulties. Mother also completed the Achenbach Child Behavior Checklist to rate Student's behavior.

140. Dr. Earhart opined in his report that Student met the criteria for post-traumatic stress disorder, specific learning disorder with impairment in reading, and language disorder, finding that post-traumatic stress disorder appeared to be the primary cause of Student's extreme behaviors due to traumatic events occurring at an early age. He believed those traumatic events likely affected the way Student regulated himself and interpreted information. Dr. Earhart's diagnosis was based on Mother's reports that Student witnessed significant violence being directed towards her starting at an early age.

141. Mother testified at hearing of only one incident of physical violence between parents observed by Student when he was six months old. Mother did not have a specific recollection of the number of times Student observed physical altercations between parents. She also did not know the frequency Student witnessed or was subjected to verbal abuse in the home. Based on testimony at hearing, Dr. Earhart did not have a firm grasp of the frequency or duration of domestic violence observed by Student while Student's father was in the home when he opined Student suffered from post-traumatic stress disorder.

142. Generally in psychological reports, Dr. Earhart explains how a child meets the Diagnostic and Statistical Manual of Mental Disorders criteria for post-traumatic stress disorder if he is diagnosing a child with post-traumatic stress disorder. However, Dr. Earhart did not explain how Student met the criteria for post-traumatic stress disorder under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition in his report. Additionally, he did not explain how Student met the post-traumatic stress disorder criteria under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, during his testimony. Dr. Earhart reviewed the Diagnostic Center assessment

report and was not certain the report provided a formal diagnosis of post-traumatic stress disorder. His impression of the report was the assessment team recognized some post-traumatic stress disorder symptoms in Student, although he later admitted that the symptoms recognized in the report were not specific to post-traumatic stress disorder. The evidence did not establish Student suffered from post-traumatic stress disorder.

143. While the Diagnostic Center Assessment Report did not formally diagnose Student with post-traumatic stress disorder, the report clearly expressed a concern regarding Student's exposure to stressful or traumatic events. Neither district conducted a mental health assessment of Student at any time during the relevant period.

144. Student did establish he suffered from some form of trauma in connection with domestic violence in his home from the age of six months until his parents permanently separated when he was about five years old. In his interview with Dr. Earhart, Student discussed in detail what it was like when his father was aggressive towards his mother and watching his father hit his mother and scream at her. Student described to Dr. Earhart his feelings of wanting to kill his father when Student grabbed a knife in an attempt to protect his mother. These facts support the finding that Student suffered some form of trauma in connection with witnessing domestic violence in the home.

145. Dr. Earhart opined Student required the coordinated efforts of an interdisciplinary team and the involvement in specific trauma-focused therapy along with medication management. Student did not receive trauma-based therapy during the period relevant to Vacaville or Sacramento. Dr. Earhart opined Student required individual therapy two to three times per week for 45-minutes to one-hour per session. He further testified that Student required trauma-based therapy, but that trauma-based therapy is typically short term, about 12 to 16 sessions. He did not testify that Student required trauma-based therapy during all individual therapy sessions. Rather, he opined

that the determination of the number of sessions Student required should be made by a therapist with experience in the area of trauma. He recommended this level of therapy based on the severity of Student's behaviors and need to build rapport with the therapist. He opined that a residential setting appeared to be needed due to unpredictable and increasingly severe behaviors, and testified that he recommended trauma-focused therapy in a residential treatment placement because it would allow Student the ability to live away from home. Dr. Earhart indicated in his report that Student "will likely" require a comprehensive and integrated support program in a placement "such as a residential setting," not that he required residential placement to receive educational benefit.

146. Dr. Earhart's recommendation that Student required a placement at residential setting was unpersuasive. He did not indicate that trauma-based therapy was only available in a residential setting or that Student could not receive educational benefit absent placement in a residential treatment program. Dr. Earhart also did not persuasively explain the reason Student required a residential placement to receive a FAPE.

147. Dr. Earhart believed Sierra Sacramento was not addressing Student's learning needs or providing opportunities for social interactions, but this opinion was based primarily upon one observation of Student in the classroom during a non-typical school day. Dr. Earhart did not have an in-depth conversation with Ms. Allmon regarding Student nor did he have a discussion with any other Sierra Sacramento or Sierra Solano staff, Student's therapists, or any Kaiser Permanente or Solano County Mental Health staff members. He also did not appear aware of Student's involvement in extracurricular activities on campus or positive social interactions with his peers at school.

148. In addition to trauma-based therapy, Dr. Earhart recommended specialized instruction, group therapy, and ongoing speech therapy despite having no specific

training in speech pathology. He did not recommend the frequency and/or duration of those recommended services. Dr. Earhart opined that family therapy may be attempted at a later time after some of Student's more extreme behaviors are under control, but he did not opine that Student required family therapy as part of a program of educationally related mental health services.

149. Dr. Earhart testified the cost of Student's assessment was \$7,500, and that he was paid in full. Student did not provide an invoice detailing the breakdown of costs associated with the cost of assessment or whether the cost included fees associated with Dr. Earhart's preparation for and/or appearance at hearing to determine the reasonableness of that cost.

REQUESTED REMEDIES

150. In Student's closing brief, he requests Vacaville and/or Sacramento City jointly fund placement of Student at a residential treatment setting for a period of one year that provides trauma informed care. He further requests the placement be certified by the California Department of Education and be selected by Mother.

151. Student further requests Vacaville and/or Sacramento fund any and all transportation costs associated with this placement. Student requests transportation costs to include round-trip expenses of placement staff or other professionals (up to two individuals) to safely escort Student; as well as twice yearly round-trip travel for Student to visit home; and bi-monthly round trip travel for Mother to participate in family therapy and visitation, including per diem at the state rate and reasonable lodging for two nights each trip.

152. In addition, Student requests Vacaville and/or Sacramento City jointly fund the cost of Dr. Earhart's assessment in an amount not to exceed \$8,500 upon proof that said assessment has been paid. Student also requests payment be made to the law firm

representing Student for funding the assessment because Mother was not financially able to do so.

153. Student failed to establish he required a residential treatment placement at any time relevant to the issues alleged in this matter. Other than Dr. Earhart's testimony and report, which did not establish Student required a residential placement during the relevant period, no other witnesses testified Student required a residential placement to receive educational benefit. No evidence was provided as to where Student was requesting placement, the cost of residential placement, what services Student would receive in the proposed placement, and why he required those requested services in a residential placement. And while Student did establish he required individual therapy, including short-term trauma-based therapy, he did not establish he required individual therapy in a residential placement.

154. As to Student's request for reimbursement of the assessment fees associated with Dr. Earhart's assessment, Dr. Earhart testified that the cost associated with his assessment totaled \$7,500. It is unclear where Student arrives at his reimbursement request of \$8,500. Additionally, Student provided no evidence of the breakdown of costs associated with Dr. Earhart's assessment fee. Student did not provide the invoice or proof of payment relating to the assessment fee. It is not clear whether the cost for the assessment included the cost for Dr. Earhart to prepare for and testify at the hearing. Accordingly, it is impossible to determine if the cost for the assessment is reasonable.

155. Student attempts to guise the request for reimbursement of his attorney in preparation for trial, as an independent assessment to be used to assist in developing his educational program. However, the evidence did not establish that a mental health assessment was requested by Student at any time during the relevant period when the districts were developing his IEPs or that he attempted to use the results of the

assessment to inform the Sacramento IEP team in developing a subsequent IEP. Additionally, the first time Student made a claim that the districts failed to assess him in the area of mental health was in his first amended complaint, filed after Dr. Earhart already assessed Student. Student provided no legal authority permitting the reimbursement of a law firm for expert fees. Nor did Student provide any evidence to establish Parent has an obligation to reimburse Student's attorney for the costs associated with Dr. Earhart's assessment. All of these facts lead to the conclusion that Dr. Earhart's assessment report, and associated costs, were the result of Student's attorney's preparation for hearing, not to assist in developing his educational program. Accordingly, the cost for Dr. Earhart's assessment is not ordered to be reimbursable by either district.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*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 an Individuals with Disabilities Education Act administrative hearing decision is preponderance of the evidence].)

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA.¹⁹

2. 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. §

¹⁹ Unless otherwise indicated, the legal citations in this Introduction are incorporated by reference into the analysis of each issue decided below.

300.1(2006);²⁰Ed. 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (2) to ensure that the rights of children with disabilities and their parents are protected; and (3) to assist States, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities. (20 U.S.C. § 1400(d)(1)(A)-(C); 34 C.F.R. 300.1; Ed. Code, § 56000, subd. (a).)

3. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meets state educational standards, and conforms to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 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, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with

²⁰ All references to the Code of Federal Regulations are to the 2006 version.

disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

4. 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, 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.)

5. The United States Supreme Court highlighted the importance of the IDEA’s procedural requirements. (*Rowley*, at p. 200). Despite that importance, a procedural violation is not automatically considered a FAPE denial. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033 n.3; *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) Procedural inadequacies that result in a loss of

educational opportunity or seriously infringe on parents' opportunity to participate in the IEP formulation process clearly result in a denial of FAPE. (*Shapiro v. Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078; see also *Amanda J. v. Clark County School Dist.*, (9th Cir. 2001) 267 F.3d 877, 892.) "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994].)

6. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C); Ed. Code, § 56505, subd. (l).)

ISSUE 1(A): DID VACAVILLE DENY STUDENT A FAPE FROM MARCH 17, 2014, TO THE END OF 2013-2014 SCHOOL YEAR, INCLUDING THE EXTENDED SCHOOL YEAR, BY FAILING TO PROVIDE MEASURABLE GOALS IN ALL AREAS OF NEED, INCLUDING DECODING AND READING FLUENCY?²¹

7. Student alleges Vacaville failed to provide measurable goals in all areas of need, including decoding and reading fluency.²² Vacaville contends the district provided Student with measurable goals in all areas of need at all relevant times.

8. 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).)

9. The purpose of measurable goals and objectives is to allow 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).)

10. In the March 2014 IEP, Vacaville developed IEP goals for Student in the areas of reading comprehension, writing, mathematics – number sense, behavior –

²¹ This Decision analyzes alleged procedural violations first then alleged substantive violations.

²²As discussed above, the issue will not be analyzed as to Student's October 15, 2012 IEP, because the issue falls outside of the statute of limitations period.

coping strategies, social/emotional – emotional coping skills, speech intelligibility, expressive communication, and social pragmatics. Each goal contained an identified area of need, baseline, description of the goal, how the goal would be measured, and who would be working with Student and reporting on the goal. All of his academic goals were written to grade level standards. All of the goals contained in Student's March 2014 IEP were measurable.

11. However, Vacaville should have developed an IEP goal in the area of decoding. The IEP team was aware Student needed frequent support in the area of decoding, which affected his reading comprehension, an already identified area of need. The failure to do so was a procedural violation that resulted in a loss of educational benefit to Student. Student established he was denied a FAPE as to this issue.

12. Student also argues that he was denied a FAPE because Vacaville did not propose an IEP goal for Student in the area of reading fluency. The evidence did not establish that the information available to Vacaville during the relevant period showed Student required a fluency goal. Therefore, Student did not meet his burden of establishing a FAPE denial as to Vacaville's failure to develop a reading fluency goal.

ISSUE 1(E): DID VACAVILLE DENY STUDENT A FAPE FROM MARCH 17, 2014, TO THE END OF THE 2013-2014 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO MAKE A CLEAR OFFER OF FAPE?

13. A school district must present parents with a formal, specific, written offer of placement that allows them to make intelligent decisions for their child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*).) In *Union*, the Ninth Circuit held a school district is required by the IDEA to make a clear written IEP offer that parents can understand. (*Ibid.*) The Court emphasized the need for rigorous compliance with this requirement:

We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any.

(*Union, supra*, 15 F.3d at p. 1526; see also *J.W. v. Fresno Unified School Dist. supra*, 626 F.3d at pp. 459-461.) One district court explained *Union* requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108.)

14. The IDEA also requires that an IEP contain a projected date for the beginning of special education services and modifications, and “the anticipated frequency, location, and duration of those services and modifications.” (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) The purpose of the requirement is to require the school district to make clear its proposed commitment to particular aspects of a student’s special education and related services. As explained by the United States Department of Education:

What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various

services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.

(U.S. Dept. of Education, Off. of Special Education and Rehabilitation Services, Final Regs., Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, Analysis of Comments and Changes, com. to § 300.324(d), 71 Fed. Reg. 46540, 46667 (Aug. 14, 2006)(Comments to 2006 Regulations).)

15. Vacaville offered Student specialized academic instruction, day treatment services, and speech and language services in the March 2014 IEP. Those services were to begin on March 20, 2014. Student was offered the same services during the extended school from June 16, 2014, through July 18, 2014. For all these services, Vacaville offered the services in an individual and group setting, but failed to specify the number of minutes Student was to receive in each respective setting. The offer was unclear because Sacramento offered both individual and group services for all of the related services offered to Student without specifying the duration those services were to be delivered in a group versus individual setting. It was important for those providing services to Student to know exactly the amount of individual versus group services Student was to receive in order for Student to receive educational benefit, especially when his school therapist reported his concern about Student's progress in individual therapy sessions. Those providing services to Student had no way of determining whether they were providing the correct amount of individual and group services to Student as required by his IEP.

16. Vacaville also failed to define what services were being offered to Student as “day treatment services.” While witnesses testified as to their belief that day treatment services meant the therapeutic component of Student’s program, it is impossible to determine what specific services were being offered and the frequency and duration of those services within the four corners of the IEP. Ms. Droke testified regarding the types of services offered under the umbrella of day rehabilitation services at Sierra Solano; however, that information does not appear in Student’s IEP. Additional information was necessary to inform Mother or anyone else who was involved in the development or implementation of Student’s IEP of the specific services being offered to Student. The offer of day treatment services without further detail made the offer unclear. The failure to make a clear offer resulted in a procedural violation by Vacaville.

17. This procedural violation resulted in a denial of FAPE because the failure to provide a clear written offer of services seriously infringed on Mother’s opportunity to participate in the IEP formulation process because she did not have a clear understanding of what exactly was being offered by the IEP team and whether to agree, disagree, or seek relief through due process hearing. It was not clear what specifically Student was being offered in his IEP. Therefore, Student met his burden of proof of establishing a FAPE denial as to this issue.

ISSUE 1(F): DID VACAVILLE DENY STUDENT A FAPE FROM MARCH 17, 2014, TO THE END OF THE 2013-2014 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO CONVENE AN INDIVIDUALIZED IEP TEAM MEETING IN RESPONSE TO STUDENT MISSING NUMEROUS DAYS OF SCHOOL?

18. Student contends Vacaville denied him a FAPE by failing to convene an IEP team meeting in response to the numerous days of school he missed. Vacaville argues Vacaville and staff at Sierra Solano were not particularly concerned about his hospitalizations, his hospitalizations did not impact his progress at school, there was no

obligation for Vacaville to convene an IEP team meeting over the summer, and IEP meetings were convened the following school year.

19. The IEP team must meet whenever (a) a pupil has received an initial formal assessment, or the team may meet when student receives any subsequent formal assessment; (b) the student demonstrates a lack of anticipated progress; (c) the parent or teacher requests a meeting to develop, review, or revise the individualized education program; or (d) at least annually, to review the student's progress, the IEP, the appropriateness of placement, and to make any necessary revisions. (Ed. Code, § 56343, subds. (a)-(d); see also 34 C.F.R. § 300.324(b)(i)-(ii).) The IEP team must revise the IEP to address the items above, as well as any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters. (34 C.F.R. § 300.324(b)(i)-(ii).)

20. On March 20, 2014, Vacaville convened an IEP team meeting to review Student's progress, his current IEP, and the appropriateness of his placement. Prior to the IEP team meeting, Student was attending school regularly. However, following the March 2014 IEP meeting, Student was hospitalized and missed 14 days of school in May 2014. Sierra Solano was well aware that Student had missed a majority of school during that month. Vacaville should have convened an IEP meeting at that time out of a concern about Student's anticipated progress. By June 6, 2014, Student's progress reports on his reading comprehension and writing goals indicated his progress was impacted by hospitalization and resulting absence from school. This information was sufficient to put Vacaville on notice about the possibility that Student was demonstrating a lack of anticipated progress, even if he later progressed on those goals, since the decision not to convene an IEP team meeting is not reviewed in hindsight.

21. Further, even assuming the progress reports did not mean Student was demonstrating a lack of anticipated progress, Vacaville should have convened an IEP team meeting following the 2014 extended school year, because Student missed every single school day in July 2014. Since Student was offered extended school year services because of the possibility of regression during the summer break, the IEP team should have been concerned that Student's failure to attend any school day during the extended school year would likely result in lack of progress in his educational program. Failing to convene an IEP team meeting deprived Vacaville and Mother of an opportunity to evaluate and discuss the effect those absences had on Student's educational program or future offer of placement. This procedural violation impeded Mother's opportunity to participate in the decision making process in connection with the development of Student's IEP. Student met his burden of establishing a FAPE denial as to this issue.

22. Vacaville argues the District had no obligation to convene an IEP team meeting over the summer. The IEP team meeting should have been convened before the end of the school year. However, even if the IEP team did not have sufficient time to convene the IEP team meeting before the end of the school year, which was not shown to be the case, nearly an entire month went by in the new school year before an IEP team meeting was convened. Notably, that meeting was convened at Mother's request, not out of a concern by Vacaville about Student's significant absences from school the prior school year and extended school year.

ISSUE 1(G) AND 2(G): DID VACAVILLE DENY STUDENT A FAPE FROM MARCH 17, 2014, THROUGH MAY 2015, INCLUDING THE 2014 EXTENDED SCHOOL YEAR, BY FAILING TO IMPLEMENT STUDENT'S IEPs?

23. Student contends Vacaville denied him a FAPE by failing to implement his IEPs during his psychiatric hospitalizations. Vacaville asserts the District was not

responsible for Student's education when he was hospitalized during the relevant period.

24. A failure to implement an IEP may deny a child a FAPE and thereby give rise to a claim under the IDEA. (*Van Duyn v. Baker Sch. Dist.* (9th Cir. 2007) 502 F.3d 811, 821 (*Van Duyn*)). Minor implementation failures are not actionable given that special education and related services need only conform with the IEP. (*Ibid.*) A school district is not statutorily required to maintain perfect adherence to the IEP. (*Ibid.*) When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. (*Id.* at pp. 821-822.) A material failure occurs "when there is more than a minor discrepancy between the service a school provides to a disabled child and the services required by the child's IEP." (*Id.* at pp. 815, 821-822.)

25. California provides that individuals with exceptional needs who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes are the educational responsibility of the local education agency in which the hospital or facility is located. (Ed. Code, § 56167.)

26. Student provided evidence that he was psychiatrically hospitalized at various times during the relevant period, but did not provide evidence that Vacaville was responsible for Student's education during those hospitalizations or his subsequent placement at Edgewood. Student did not provide any further insight in his closing brief on this issue. Student did not meet his burden of proof on this issue.

ISSUES 1(B) AND 1(C): DID VACAVILLE DENY STUDENT A FAPE FROM MARCH 17, 2014, TO THE END OF THE 2013-2014 SCHOOL YEAR, INCLUDING THE EXTENDED SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE AN APPROPRIATE PLACEMENT AND FAILING TO OFFER APPROPRIATE MENTAL HEALTH SERVICES?

27. Student argued Vacaville failed to offer or provide him with an appropriate placement and failed to offer appropriate mental health services, which denied him a FAPE. Vacaville contends the district offered and provided Student with an appropriate placement and offered Student appropriate mental health services.

28. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to constitute a FAPE under the IDEA, the offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid*; see also *Capistrano Unified School Dist. v. Wartenberg* (9th Cir. 1995) 59 F.3d 884, 893 [citing *Rowley, supra*, 458 U.S. at 188-189].) In California, "specific educational placement" is defined as the "unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Gregory K. v. Longview School Dist., supra*, 811 F.2d at p. 1314.) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) 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.)

29. 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)[citing the district court, "Because [Student] required mental health counseling to accomplish her IEP goals, the Hearing Officer correctly measured the effectiveness of [the placement's] counseling in determining the appropriateness of the ... program as a whole."].)

30. Psychological services and counseling and guidance services, which Student has referred to as mental health services, are considered a related service. (20 U.S.C. § 1401(26); Ed. Code, § 56363.) An educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F.3d 1025, 1033.)

February 8, 2013 Amended IEP

31. Vacaville offered Student a placement at Sierra Solano in the February 2013 amended IEP. Student was offered daily specialized academic instruction and mental health services as an integrated program with both components embedded throughout Student's school day. At the time the offer was made, Student's unique needs could not be met on a public school campus because he required a small, highly structured environment with more individualized specialized academic instruction, a small staff to student ratio, and a mental health services component integrated into his educational program to address his unique social emotional and behavior needs. Student did not provide sufficient evidence to establish that the offer of specialized

academic instruction provided to Student throughout the school day was not appropriate between March 17, 2014, and March 19, 2014.

32. In Student's October 2012 IEP, the IEP team proposed goals in the area of behavior and social skills. The IEP team did not amend Student's goals in the February 2013 amended IEP. Yet, despite having behavioral and social skills goals, the IEP team did not specifically offer Student group counseling or individual therapy in the February 2013 amended IEP. Instead, the IEP offered "day treatment services," and failed to specify the type of services to be provided to Student. However, Student did not provide sufficient evidence as to why the specific mental health services he received over the three-day period from March 17, 2014, to March 19, 2014, was not appropriate to meet his educational needs. Therefore, Student did not meet his burden of proof as to this issue in connection with the March 17, 2014 through March 19, 2014 time period. Specifically, Student did not meet his burden of establishing that between March 17, 2014, and March 19, 2014, the offer or provision of placement at Sierra Solano was not an appropriate placement for Student or that Sierra Solano did not offer Student appropriate mental health services.

March 20, 2014 IEP

33. Student's placement offer continued to be Sierra Solano in his March 2014 IEP. Student continued to require specialized academic instruction in a small, highly structured environment with mental health services embedded throughout the day and a strong behavioral component. The placement offer with integrated specialized academic instruction and mental health services was offered to address Student's academic needs and social emotional needs that affected his academic progress, school behavior, and socialization. As discussed above, Sierra Solano provided Student a low student to teacher classroom ratio with mental health services and behavioral support embedded throughout Student's school day.

34. Student qualified for special education because he met the criteria for emotional disturbance and speech and language impairment. He also had needs in other academic areas. At the time of the IEP team meeting, Student met all goals in the area of speech and language, academics, and behavior. During the first semester of the school year, Student was receiving grades ranging from A's to B's in science, social studies, physical education, math, social skills, and English, respectively. The evidence did not establish Vacaville's offer of specialized academic instruction was not designed to meet Student's academic needs.

35. However, Student's educational program also consisted of embedded mental health services to address his social emotional needs that affected his academic progress, school behavior, and socialization. Student's social emotional and behavior concerns impacted his ability to successfully access the general education curriculum. Student had emotional outbursts that affected his education in class and he was not benefiting from a special day class. Student had been suspended from school because of his aggressive behavior in the past and his disruptive and aggressive behavior continued during the 2013-2014 school year.

36. At the time of his annual review on March 2014, Student had not met any of his three emotional coping skills goals. For example, by October 24, 2013, in the counseling setting, Student was to identify the strategies learned in counseling at the moment he started to feel overwhelmed or distressed in four out of five situations as measured by a counselor's observations and report. Five months after the goal was to be met, Student could only identify strategies learned in counseling at the moment he began to feel overwhelmed or distressed in a maximum of one out of five situations. His failure to meet any of his social emotional coping skills is concerning in light of his disability and documented social emotional and behavior challenges.

37. In Student's March 2014 IEP, Vacaville offered Student daily specialized academic instruction and day treatment services. Again, specialized academic instruction and mental health services were integrated and embedded throughout the school day. Student was receiving group counseling daily and was offered 60 minutes per week of individual therapy as part of the day rehabilitation program at Sierra Solano, as provided to all Sierra Solano students. The specific amount of individual therapy Student actually received could have fluctuated, and it is not clear he received exactly 60 minutes of individual therapy weekly. The IEP, itself, did not specify the amount of services Student was being offered at that time.

38. Despite receiving weekly individual therapy and daily group counseling, Student was physically aggressive and threatening to peers in the months leading up to the March 2014 IEP team meeting. Additionally, his therapist, Mr. Greer, reported Student had a very low tolerance for emotional discomfort, was quite deficient in self-regulation, and home dynamics seemed to negatively affect his functioning at school at the time of the March 2014 IEP team meeting despite the fact Student participated in group and individual therapy at school.

39. Dr. Earhart was persuasive in opining Student required individual therapy in an amount of two to three times per week of 45-minute to one-hour sessions. The mental health services offered were not appropriate to address Student's social emotional needs that affected his school behavior and socialization. Vacaville denied Student a FAPE by failing to provide appropriate mental health services to address his mental health needs and allow him to receive educational benefit, as educational benefit includes addressing his social and emotional needs that affected his social behavior and socialization. Student met his burden of proof of establishing a FAPE denial as to both issues.

ISSUE 1(D) AND 2(D): DID VACAVILLE DENY STUDENT A FAPE FROM MARCH 17, 2014, THROUGH MAY 2015, INCLUDING THE 2014 EXTENDED SCHOOL YEAR, BY FAILING TO OFFER SOCIAL WORK SERVICES?

40. Student asserts he was denied a FAPE because he required social work services in the form of coordination of services between school services and those being provided at home, and family counseling. Vacaville argues Student did not require social work services during the relevant period.

41. Related services include social work services in schools; preparing a social or developmental history on a child with a disability; group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affects the child's adjustment in school; mobilizing school and community resources to enable the child to learn as effectively as possible in his educational program; and assisting in developing positive behavioral intervention strategies. (34 C.F.R. § 300.34(a), (c)(14)(i)–(v); Ed. Code, § 56363, subds. (a), (b)(13).)

42. Vacaville conducted a functional analysis assessment of Student in October 2012. The assessment provided the IEP team with information relating to Student's social and developmental history. Vacaville administered a psycho educational evaluation in January and February 2014 that also provided information regarding Student's social and developmental history. Sierra Solano provided the IEP team with mental health reports from therapists working directly with Student to provide information relating to Student's mental health status, social interactions with staff and other students, as well as information regarding his participation in group and individual therapy. The evidence did not establish that a social or developmental history on Student was necessary during the period at issue.

43. Although Vacaville did not offer family counseling to Student, Student did not establish that family counseling was necessary to assist him in benefitting from

special education. Dr. Earhart opined that family therapy may be attempted at a later time after some of Student's more extreme behaviors are under control. He did not, however, conclude Student required family therapy to assist him in benefiting from special education. As Vacaville correctly states in its closing brief, the evidence did not establish Mother needed support in enabling her to access community resources, as her testimony at hearing showed she was well aware of community resources available to Student, and had used them in the past. The evidence did not establish Student needed social work services for any other purpose to benefit from special education during the period relevant to Vacaville. Student did not meet his burden of establishing a FAPE denial as to this issue.

ISSUES 2(A): DID VACAVILLE DENY STUDENT A FAPE DURING THE 2014-2015 SCHOOL YEAR UNTIL MAY 2015, BY FAILING TO PROVIDE MEASURABLE GOALS IN ALL AREAS OF NEED, INCLUDING DECODING AND READING FLUENCY?

44. At the time Student's March 19, 2015 IEP was developed, the IEP team determined that for Student to receive educational benefit, goals needed to be developed to address the following areas of need: reading comprehension, writing, pre-algebra, behavior – prosocial interactions, social emotional – anger management, receptive language, vocal quality and expressive language. Goals were drafted by the IEP team in all areas of identified need. All of the goals contained an identified area of need, Student's present level of performance, and a description of the goal. The goals explained the relationship to baseline in each area of need. The goals also specified how they were to be measured and who was responsible for working with Student on the goal. Each goal was measurable.

45. However, Student continued to have a need in the area of decoding. During the March 20, 2014 IEP team meeting, Ms. Solorio informed the IEP team Student needed frequent support with decoding, which affected his reading

comprehension. By the March 2015 IEP meeting, Student still struggled to comprehend text he read. Student was using tools, such as a dictionary, to help him decode. Student still had a need in the area of decoding and relied on tools to support himself. Despite having this information, the IEP still did not develop a goal in the area of decoding for Student. The IEP team should have developed a separate goal in the area of decoding for Student, the failure to do so, resulted in a procedural violation. This procedural violation resulted in a loss of educational benefit for Student. As a result, Student met his burden of establishing a FAPE denial as to Vacaville's failure to develop a decoding goal, but he did not meet his burden of establishing Student required a reading fluency goal during the period relevant to Vacaville.

ISSUE 2(E): DID VACAVILLE DENY STUDENT A FAPE DURING THE 2014-2015 SCHOOL YEAR UNTIL MAY 2015, BY FAILING TO MAKE A CLEAR OFFER OF FAPE?

46. Student's March 2015 IEP developed by the Vacaville IEP team offered Student daily specialized academic instruction and day treatment services, for 360 minutes and 300 minutes, respectively. Both services were offered in an individual and group setting without specifying the number of minutes to be allotted in each setting. Further, Vacaville did not specifically describe what services Student was being offered as day treatment services. The same deficiencies are found in Vacaville's offer of specialized academic instruction, day treatment services, and speech and language services for the extended school year. Accordingly, Vacaville did not make a clear offer of FAPE in the March 2015 IEP, which resulted in a procedural violation. This procedural violation resulted in a denial of FAPE because it seriously infringed on Mother's opportunity to participate in the IEP formulation process because she did not have a clear understanding of what exactly was being offered and whether to agree, disagree, or seek relief through due process hearing.

47. While it is true that Ms. Droke explained to the IEP team the number of minutes Student received in group counseling, individual therapy and morning and afternoon check-ins and check-outs, it was not clear from the IEP that those services were the services offered as day treatment services on the IEP service page. Thus, Ms. Droke's explanation was not sufficient to make the offer clear.

ISSUE 2(F): DID VACAVILLE DENY STUDENT A FAPE DURING THE 2014-2015 SCHOOL YEAR UNTIL MAY 2015, BY FAILING TO CONVENE AN IEP TEAM MEETING IN RESPONSE TO STUDENT MISSING NUMEROUS DAYS OF SCHOOL?

48. Student regularly attended school during the beginning of the 2014-2015 school year through February 2015. However, following the March 2015 IEP, Student only attended half of the school days in March and did not attend any school days in April or May 2015 due to psychiatric hospitalizations and his subsequent placement at Edgewood. Student did not return to Sierra Solano.

49. Vacaville convened a two-part annual IEP team meeting for Student in March 2015 and April 2015, and discussed at least one of Student's hospitalization at the April 2015 IEP team meeting. The evidence did not establish Vacaville needed to convene an additional IEP team meeting to discuss Student's absences from school during the relevant period. Student did not meet his burden of proof on this issue.

ISSUES 2(B) AND 2(C): DID VACAVILLE DENY STUDENT A FAPE DURING THE 2014-2015 SCHOOL YEAR UNTIL MAY 2015, BY FAILING TO OFFER OR PROVIDE AN APPROPRIATE PLACEMENT AND FAILING TO OFFER APPROPRIATE MENTAL HEALTH SERVICES?

50. Vacaville offered and provided Student placement at Sierra Solano during the relevant period. Student required specialized academic instruction in a small, highly structured environment with a strong behavioral component and mental health services embedded throughout the school day to address his academic needs and social

emotional needs that affected academic progress, school behavior, and socialization. By the time the March 2015 IEP was developed, Student was an active member of the school community and maintained a high behavioral level. Student assisted staff with classroom projects, played on sports teams, and was invited to work school jobs in the school store and zoo. Student's involvement in extracurricular activities provided Student the benefit of working on his behavior and social emotional coping skills. Academically, Student was doing well. For the first semester of the 2014-2015 school year, Student earned three A's, two A-'s, and a B+ in science, social studies, physical education, math, social skills, and English, respectively.

51. Additionally, by the time the offer of placement was made in March 2015, Student had met four of his eight goals, in the areas of reading comprehension, writing, mathematics-number sense, and behavior-coping strategies. And Student made progress on two of his three speech goals. Furthermore, there were no documented behavior incidents during the 2014-2015 school year leading up to the continued offer of placement at Sierra Solano, which was significant since Student's behavior was one area that impacted his ability to successfully access the general education curriculum. The offer of specialized academic instruction at Sierra Solano was appropriate. The offer of specialized academic instruction was designed to meet Student's academic needs.

52. However, Student's social emotional needs continued to affect his socialization at school. By the time Student's March 2015 IEP was developed, Student had not met his social/emotional goal, in which by March 2015, when feeling upset, angry or frustrated, and if unable to self-regulate, Student was to seek a trusted adult for support 100 percent of the time in three out of five situations as measured by staff observations, therapist observations, and self-report. This is especially concerning given Student's history of behavioral challenges stemming from anger and frustration, his

history of failing to meet his social emotional goals, and his qualification for special education under the primary category of emotional disturbance.

53. Although Student's behavior had improved from the time of the last IEP meeting in March 2014, to the time the March 2015 IEP was developed, Mr. Watts, Student's therapist, had concerns about Student's inability to manage his frustration and anger at the time of the March 2015 IEP meeting. More specifically, Mr. Watts opined Student's inability to manage his frustration and anger, though improved, impeded his ability to reach his full potential at school and at home. Student continued to struggle with his ability to manage his anger often coping in unhealthy ways, including leaving school without permission and shutting down emotionally. And while Vacaville had no obligation to ensure Student reached his full potential at school, it did have an obligation to offer appropriate mental health services to address Student's social emotional needs that affected his behavior and socialization.

54. Despite these concerns, Vacaville continued to offer Student the same mental health services in the form of 40 minutes daily of group counseling, 60 minutes weekly of individual therapy, and daily check-ins and check-outs as an integrated embedded component of Student's educational program. The mental health services component was not sufficient to meet his unique needs or assist him in making progress on his social emotional goals. The offer of mental health services was not appropriate at this time in light of Student's disability and his lack of social emotional progress at Sierra Solano. The evidence established Student required three, one-hour sessions of individual therapy, per week to meet his needs. Because Student's mental health services were integrated and embedded in his educational program at Sierra Solano, the failure to offer appropriate mental health services resulted in a placement that was not designed to meet Student's unique needs. Student met his burden of establishing

Vacaville did not offer or provide Student with an appropriate placement or offer Student appropriate mental health services. As a result, Vacaville denied Student a FAPE.

ISSUE 3(A): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY FAILING TO PROVIDE MEASURABLE GOALS IN ALL AREAS OF NEED, INCLUDING DECODING AND READING FLUENCY?

55. The Sacramento IEP team developed an interim IEP for Student at the November 30, 2015 IEP team meeting. The goals contained in the November 30, 2015 interim IEP, were the same goals contained in Student's March 19, 2015 IEP. As discussed above, those goals were measurable.

56. By the time of the November 30, 2015 interim IEP meeting, Student did not provide sufficient evidence that Student required a decoding goal. While reading comprehension continued to be a struggle for Student, Student did not provide sufficient evidence to show he continued to struggle in the area of decoding or needed a decoding goal at this time.

57. However, at the time of the November 30, 2015 IEP team meeting, Ms. Allmon observed Student to be performing at the second grade level in fluency. Ms. Allmon believed the biggest factor impacting Student's ability to read was reading fluency. No goal was developed in Student's November 2015 IEP in the area of fluency. Ms. Allmon testified that when a child is Student's age, the focus should be on vocabulary development instead of reading fluency. It is not clear what information Ms. Allmon relied upon in making that determination. While Ms. Allmon worked with all students in the area of fluency by having weekly competitions based on their independent fluency levels and providing classroom accommodations, reading fluency continued to be the biggest factor impacting Student's ability to read. The failure to provide Student with a fluency goal was a procedural violation resulting in a loss of

educational benefit. Accordingly, Student was denied a FAPE as the result of this procedural violation.

58. During the spring 2016 IEP team meetings, the IEP team determined Student had needs in the areas of reading, writing, behavior, social emotional, pragmatics, and receptive language. The IEP team developed new goals in all of those areas in order for Student to receive educational benefit. Each of Student's goals indicated the area of need that resulted from Student's disability to enable him to be involved and progress in the general curriculum. The goals were directly related to Student's baseline. The goals also specified how they were to be measured and who would be responsible for working with Student and reporting on the goal. The goals contained in Student's May 2016 IEP were measurable. As a result, Student met his burden of proof of establishing a FAPE denial as to this issue.

59. On the other hand, Student continued to require a fluency goal, which was not provided in his May 2016 IEP. Ms. Allmon testified Student made minimal progress in fluency between the time she started working with him and when he left the school. The failure to provide a measurable goal in the area of fluency was a procedural violation. Student established this procedural violation resulted in loss of educational benefit for Student.

ISSUE 3(E): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY FAILING TO MAKE A CLEAR OFFER OF FAPE?

60. Student asserts Sacramento failed to make a clear written offer of placement and services in Student's November 2015 IEP and May 2016 IEPs. Sacramento argues it made clear written offers of FAPE in both IEPs.

61. In the November 2015 IEP, Sacramento offered Student specialized academic instruction in an individual and group setting during the school year and

extended school year without specifying the number of minutes to be allotted in each setting. Sacramento also offered speech and language services during the extended school year in an individual and group setting without specifying the number of minutes to be allotted in each setting. Sacramento's failure to specify the number of minutes in each setting made the November 2015 IEP offer unclear.

62. This procedural violation seriously infringed on Mother's opportunity to participate in the IEP formulation process because she could not determine, from the four corners of the IEP, whether to agree or disagree with the offer. As a result, Sacramento's procedural violation resulted in a denial of FAPE to Student.

63. The same procedural violation and resulting denial of FAPE occurred in the May 2016 IEP as to the offer of specialized academic instruction and speech and language services during the school year and extended school year.

ISSUE 3(F): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY FAILING TO CONVENE A 30-DAY IEP TEAM MEETING?

64. Student contends Sacramento denied him a FAPE by failing to convene an IEP meeting within 30 days of the date Student entered the District. Sacramento asserts the delay in convening the IEP team meeting was at most a procedural error without substantive effect.

65. If a student has an IEP and transfers into a district from a district not operating programs under the same local plan in which he was last enrolled in a special education program within the same academic year, the local educational agency shall provide the student with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved

IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law. (Ed. Code, § 56043, subd. (m)(1); see also 34 C.F.R. § 300.323(e).)

66. Student was placed at a group home located within Sacramento in May 2015. Sacramento does not operate programs under the same local plan as Vacaville. Therefore, Sacramento was to provide Student with a FAPE, including services comparable to those described in the March 2014 IEP, in consultation with Mother, for a period not to exceed 30 days, by which time Sacramento was to adopt the March 2014 IEP or develop, adopt and implement a new IEP.

67. Sacramento attempted to convene an IEP meeting on November 9, 2015. Ultimately, the interim IEP team meeting did not occur until November 30, 2015, at which time Sacramento developed and implemented a new interim IEP. The November 30, 2015 interim IEP meeting was well outside of the 30-day timeline by which Sacramento was to adopt the March 2014 IEP or develop and implement a new IEP for Student.

68. Sacramento's failure to convene a 30-day interim IEP meeting was a procedural violation. By failing to convene the IEP meeting within 30 days, Sacramento significantly impeded Mother's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. Mother was unable to communicate to the IEP team Student's history of psychiatric hospitalizations, provide information regarding Student's previous placement at Edgewood and Sierra Solano, and any other placement or service concerns she had upon Student's transition to Sacramento. Sacramento committed a procedural violation that resulted in a denial of FAPE by failing to timely convene a 30-day IEP team meeting upon Student's enrollment in Sacramento.

ISSUE 3(G): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY FAILING TO PROVIDE COPIES OF THE IEPs IN SPANISH?

69. "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994].) Protection of parents' right to be involved in the development of their child's educational plan is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) Local educational agencies "shall take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians . . . whose native language is other than English." (Ed. Code, § 56341.5, subd. (i); see also 34 C.F.R. § 300.322(e).)

70. California has clarified that the obligation to ensure that a parent or guardian understands the proceedings extends to the IEP documents themselves, which must be provided to the parent in his or her primary language upon request. Section 3040, of title 5 of the California Code of Regulations, subdivision (a), states that "The LEA shall give the parent or guardian a copy of the IEP in his or her primary language at his or her request."

71. Student contends Sacramento failed to provide Parent a copy of Student's IEPs in Spanish, although he makes no mention of this issue in his closing brief. Sacramento asserts the District provided Mother with copies of all IEPs in Spanish.

72. The evidence established Mother received translated copies of the November 2015 and May 2016 IEP's provided in Spanish by Sacramento. Student did not meet his burden of proof on this issue.

ISSUE 3(H): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY FAILING TO IMPLEMENT STUDENT'S IEP?

73. Student contends Sacramento failed to implement his March 2014 IEP in connection with the speech and language and individual therapy services Sacramento provided between May 2015, through the 2015-2016 school year, including extended school year. Sacramento contends it implemented a comparable IEP program until convening a transition IEP meeting.

74. As discussed above, Sacramento was required to provide Student with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with parents, for a period not to exceed 30 days, by which time Sacramento was to adopt the previously approved IEP or develop, adopt, and implement a new IEP that was consistent with federal and state law. (Ed. Code, § 56043, subd. (m)(1); see also 34 C.F.R. § 300.323(e).) The Education Department declined to define "comparable services" in the 2006 Final Part B regulations. It explained that the department interprets "comparable" to have the plain meaning of the word, which is "similar" or "equivalent." (71 Fed. Reg. 46681 (2006).) Whether the services provided by the new local educational agency are comparable to those provided by the former district depends on the facts of the case.

75. Mother consented to the March 2014 IEP. The evidence did not establish she consented to any subsequent IEP offered by either Vacaville or Sacramento during the relevant period. As a result, Sacramento was to implement Student's March 2014 IEP during his time at Sierra Sacramento.

76. Student did not receive individual therapy services between May 2015 and February 2016. Ms. Martinez testified Student received individual therapy from September 2015 through February 2016 from an MFT intern, but Ms. Martinez's testimony was not credible on this point. Beginning March 2016, after receiving

permission from Mother, Sacramento provided Student with a total of 150 minutes of individual therapy.

77. However, the March 2014 IEP was not clear as to the amount of individual therapy services Student was to receive. Accordingly, Sacramento could not have failed to implement services that were not specifically offered in Student's operative IEP. However, as will be discussed more fully below, Sacramento failed to offer Student appropriate mental health services during the relevant period.

78. Sacramento was to provide Student with a yearly total of 1,250 minutes of speech and language services pursuant to Student's operative IEP, but only provided Student with 290 minutes of speech and language services during the 2015-2016 school year. The failure to provide a majority of Student's speech and language services during the 2015-2016 school year was a material failure to implement his March 2014 IEP, as Student received less than a quarter of the speech and language services his IEP mandated. Sacramento's material failure to implement Student's March 2014 IEP resulted in a denial of FAPE to Student.

79. Ms. Maduri's testimony regarding Student's refusal to attend speech was not credible for the reasons discussed above. Sacramento cites to Ms. Maduri's testimony regarding Student's refusal to participate in speech sessions and his unavailability due to absences from school to justify its failure to implement Student's IEP. However, Ms. Maduri was open to providing makeup sessions and Student's IEP provided a bank of speech and language minutes to be used during the school year. Sacramento could have provided make up speech and language services during weeks when Student was at school, but unreasonably chose not to do so.

80. There is also a reasonable argument that Sacramento materially failed to implement Student's IEP based upon Sacramento's failure to offer Student a program providing day treatment services pursuant to his operative IEP. However, it is not

necessary to analyze this additional basis, since Sacramento has already been determined to have materially failed to implement Student's IEP during the relevant period.

ISSUE 3(J): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY DENYING MEANINGFUL PARENT PARTICIPATION IN THE IEP PROCESS?

81. The issue of whether Sacramento denied Mother meaningful parent participation in the IEP process is an element that must be analyzed in determining whether Sacramento committed procedural violations that resulted in a denial of a FAPE to Student. This issue has been analyzed as part of Issues 3(a), 3(e), and 3(f).

ISSUES 3(B) AND 3(C): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY FAILING TO OFFER OR PROVIDE AN APPROPRIATE PLACEMENT AND FAILING TO OFFER APPROPRIATE MENTAL HEALTH SERVICES?

November 2015 IEP

82. The educational program offered by Sacramento to Student in his November 2015 and May 2016 IEPs contained two components, specialized academic instruction and mental health services, that were integrated and embedded in Student's school day to address his academic needs and social emotional needs that affected his academic progress, school behavior, and socialization. Sacramento offered to continue Student's placement at Sierra Sacramento in the November 2015 IEP.

83. At the time of the November 30, 2015 IEP team meeting, Student's grades ranged from A's to B+ during the first quarter of the school year. Behaviorally, the evidence did not establish he had any incidences of physical aggression by the time of the November 30, 2015 IEP meeting. He was present all school days during the first quarter. Academically, he was making progress on most of his IEP goals. Student was

involved in sports and extracurricular activities at school, including writing and presenting a speech to be a representative for student government. As a member of student government, he met regularly with staff, planned events, and brought concerns from peers to student government meetings. Student required specialized academic instruction in a small, highly structured environment, which was offered and provided by Sierra Sacramento. The IEP team perceived Student to be doing so well in his placement at Sierra, that they discussed transitioning Student back to a comprehensive campus. The evidence established the offer and provision of specialized academic instruction was appropriate to address Student's academic needs.

84. By the next annual review IEP team meetings in February and May 2016, Student continued to be present at school on most days. He missed a total of nine school days in the third and fourth quarter, but the evidence did not establish that the limited number of absences over the school year until the May 9, 2016 IEP meeting impacted his ability to access his education.

85. By the time of the February 29, 2016 IEP team meeting, Student had met or made progress on a majority of his IEP goals. During the last two quarters of the 2015-2016 school year, Student's grades initially dropped, but improved to a range from A+ to C-. The evidence established that Sacramento's offer of specialized academic instruction in Student's May 2016 IEP continued to be appropriate to address Student's academic needs.

86. However, Student's behavior and social emotional concerns continued to impact Student's ability to successfully access the general education curriculum at the time of the November 30, 2015 IEP team meeting. This was acknowledged by the IEP team in Student's November 2015 IEP. Student was involved in two behavioral incidents the prior month after leaving campus without permission on both occasions.

87. Student had not made any progress on his social emotional – anger management goal by the time of the November 30, 2015 meeting. That goal called for Student to discuss his feelings of frustration and anger with therapeutic staff in nine out of 10 situations to help manage his anger. This is concerning in light of Student's history of failing to meet his social emotional goals and his qualifying emotional disturbance disability. Additionally, Mother and Grandmother expressed concerns to the IEP team about Student's recent physically aggressive behavior at home and resulting hospitalization. In fact, Student was hospitalized at the time of the IEP team meeting.

88. Despite being aware of this information, Sacramento only offered Student 120 minutes per month of group counseling and guidance, and no individual therapy services in its November 2015 IEP offer. Sacramento began providing Student weekly 30-minute individual therapy sessions in March 2016, which was well below the 60-minutes per week previously provided by Vacaville. Sacramento finally offered Student individual therapy services in his May 2016 IEP in the amount of 120 minutes per month, in addition to 120 minutes of group counseling and guidance.

89. Sacramento's offer of mental health services in the November 2015 and May 2016 IEPs was not appropriate to address Student's social emotional needs that affected his school behavior and socialization. The evidence established Student required three, one-hour sessions of individual therapy, per week, throughout the period relevant to Sacramento. Sacramento's failure to offer appropriate mental health services as part of Student's placement at Sierra Solano resulted in a placement that was not appropriate for Student, as his mental health services embedded in Student's program were an integral component of Student's educational program. Student established he was denied a FAPE as to these two issues.

ISSUE 3(D): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEARS, BY FAILING TO OFFER SOCIAL WORK SERVICES?

90. Sacramento had access to Student's educational records and assessment reports. In each IEP developed by the Sacramento IEP team during the relevant period, there was a discussion by IEP team members regarding Student's social and mental health needs, skills, and concerns. Ms. Martinez provided the IEP team with a therapy report providing insight into Student's counseling services at Sierra Sacramento. She was also a member of all IEP team meetings convened by Sacramento during the relevant period. Student did not prove Sacramento needed to prepare an additional social or developmental history on Student to assist him in benefiting from special education.

91. Dr. Earhart did not opine that Student required family counseling to benefit from special education. Neither Dr. Earhart nor any other witness testified that Student required social work services during the relevant period to assist him in benefiting from special education. For all these reasons, the evidence did not establish he required social work services as a related service to assist him in benefitting from special education at any relevant time.

ISSUE 4: DID BOTH DISTRICTS FAIL TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY BY FAILING TO CONDUCT A FUNCTIONAL BEHAVIOR ASSESSMENT AND A MENTAL HEALTH ASSESSMENT?

92. Student contends Vacaville and Sacramento failed to assess him in all areas of suspected disability by failing to conduct a functional behavior assessment and a mental health assessment. Both districts argue they were not required to conduct a functional behavior assessment or mental health assessment during the relevant period.

93. A local educational agency must assess a special education student in all

areas of suspected disability, including if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).) A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The IEP team must consider the assessments in determining the child's educational program. (34 C.F.R. § 300.324(a)(1)(iii).)

94. A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119.) Such notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 1120 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].) A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Id.* at pp. 1124-1127.)

95. Regarding a child's behavior needs, the educational agency must follow the IDEA which provides that IEP teams must address behavior when it impedes a

student's or other students' access to education. (Ed. Code, § 56520.) In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider 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(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

Functional Behavior Assessment

96. A functional behavior assessment is an analytical process used to "identify the underlying reasons and environmental variables that contribute to problem behaviors," and relies on the premise that all behaviors serve a purpose. (*Cobb County School Dist. v. D.B.* (N.D.Ga. Sept. 28, 2015, No. 1:14-CV-02794-RWS) 2015 WL 5691136, at p. *1.) The functional behavior assessment assists an IEP team in designing a behavior intervention plan with strategies to reduce or eliminate conditions that encourage problem behaviors and encourage positive behaviors. (*Ibid.*)

97. The evidence did not establish Vacaville should have conducted a functional behavior assessment of Student at any time during the period relevant to Vacaville. Vacaville had already conducted a functional analysis assessment of Student in October 2012 that provided Vacaville with information concerning Student's relevant background information, target behavior, baseline data, frequency and intensity of the target behavior, antecedents, hypothesized function of the target behavior, and functionally equivalent alternative replacement behavior recommendations. Additionally, the Vacaville IEP team received mental health summary reports from Student's therapists, and incident and teacher reports regarding Student's behavior. Student did not establish that Vacaville failed to assess him in all areas of suspected disability by failing to conduct a functional behavior assessment.

98. On the other hand, Student did establish Sacramento failed to assess Student in all areas of suspected disability by failing to conduct a functional behavior

assessment when Student's involvement in property destruction and physical aggression began to escalate beginning in December 2015. Student's last behavior assessment was conducted by Vacaville in 2012. By the February 2016 IEP team meeting, IEP team members began noticing an increase in Student's behaviors. Student's escalating behaviors of property destruction and physical aggression were out of the ordinary for Student while at Sierra Sacramento. Student's escalating behaviors continued throughout the remainder of the school year.

99. Student's grades dropped during the second and third quarter,²³ and he had made no progress on his social/emotional – anger management goal between the November 30, 2015 and February 29, 2016 IEP team meetings. The behavior intervention plan attached to Student's November 2015 IEP only addressed Student's task avoidant and AWOL behavior, not property destruction or physical aggression. Therefore, Sacramento had not made a determination about the function of those behaviors or positive strategies to be employed if those problem behaviors occurred.

100. Ms. Martinez, Student's therapist, acknowledged she did not know the function of Student's destructive behavior. Student's behavior was impeding his learning because he was not accessing his education during the incidents or immediately following the incidents when he was not in class. It was important to know what worked and what did not work in remediating Student's behaviors. The purpose of a functional behavioral assessment was to identify the problem behaviors and antecedents to those behaviors, and to develop a support plan that would teach Student to substitute negative behaviors with positive behaviors. Sacramento needed to identify behaviors and antecedents to behaviors and behavioral data needed to be collected to develop a hypothesis as to why the behaviors occurred, so that individualized intervention strategies could be implemented.

²³His grades subsequently increased in the fourth quarter.

101. Although it is true the behavior intervention plan attached to Student's May 2016 IEP added property destruction as behavior impeding Student's learning and hypothesized the function of the behavior, no functional behavior assessment was performed to determine the hypothesized function of Student's behavior. In fact, Ms. Martinez was not even involved in the development of the behavior intervention plan despite her name appearing as one of the participants. If Ms. Martinez did not understand the function of Student's destructive behavior as his therapist, it is not clear how Student's teacher and the director of the school could determine the function of Student's behavior or how they were qualified to make such determination. Additionally, the May 2016 behavior intervention plan did not address Student's physical aggression exhibited prior to the May 2016 IEP team meeting.

102. Sacramento's failure to assess Student's behavior constitutes a procedural violation of the IDEA. The failure to assess Student impeded Student's right to a FAPE, because without the assessment, Sacramento could not be sure all of Student's special education and related service needs had been identified. Further, the failure to provide a functional behavior assessment constituted lost educational opportunity, because there was no clear determination of the functions of Student's behaviors that were impeding his learning. Accordingly, Student met his burden of establishing Sacramento denied Student a FAPE as to this issue.

Mental Health Assessment

103. The evidence at hearing did not show Student was fully assessed in the area of mental health during the relevant period despite numerous medical diagnoses indicating that Student suffered from mental health disorders that could be affecting his ability to access and benefit from his education. In Student's March 2014 and March 2015 IEPs, the Vacaville IEP team determined Student's behavior and social emotional concerns impacted his ability to successfully access the general education curriculum.

Student was involved in numerous acts of physical aggression and leaving school without permission after Vacaville offered Student a placement at Sierra Solano. Student never met his social/emotional goals during the relevant period.

104. Vacaville also received letters from Student's medical provider and the provider of in-home behavior services expressing concerns about Student being a danger to himself and others. Student was also absent from school for significant periods of time during the period relevant to Vacaville, often due to hospitalizations resulting from aggressive conduct towards family members. School staff expressed concern in Student's progress reports on his IEP goals in June 2014 that Student's absences from school were impacting his progress on his IEP goals. All of this information should have put Vacaville on notice that Student needed to be assessed in the area of mental health. Even if Student was already receiving mental health services through the program at Sierra Solano, Vacaville should have assessed Student to determine if additional or other related services were needed for Student to benefit from his education.

105. Vacaville's failure to assess Student in all areas of suspected disability by failing to conduct an assessment of Student's mental health during the period relevant to Vacaville was a procedural violation. The procedural violation seriously infringed on Mother's opportunity to participate in the IEP decision-making process. Therefore, Student met his burden of establishing Vacaville denied Student a FAPE by failing to conduct a mental health assessment during the relevant period.

106. Sacramento also did not assess Student in the area of mental health during the period relevant to Sacramento. At Student's interim IEP meeting in November, Student's teacher reported Student was leaving school without permission on multiple occasions. Student was involved in acts of physical aggression toward peers and significant property damage during the relevant period. Student's behaviors began

escalating in December 2015 and he failed to meet his social/emotional-anger management goal by the time of his annual IEP review meeting in 2016. Student's IEP team determined Student's behavior and social/emotional concerns impacted his ability to successfully access the general education curriculum in his November 2015 and May 2016 IEPs. Despite this information, Sacramento failed to assess Student to determine if he required additional or other related services relating to his mental health needs.

107. Sacramento's failure to assess Student in all areas of suspected disability by failing to conduct a mental health assessment during the period relevant to Sacramento resulted in a denial of FAPE to Student for the same reasons discussed as to Vacaville.

ISSUE 3(I): DID SACRAMENTO DENY STUDENT A FAPE FROM MAY 2015, THROUGH THE 2015-2016 SCHOOL YEARS, INCLUDING EXTENDED SCHOOL YEARS, BY DENYING MEANINGFUL PARENT PARTICIPATION DEVELOPING AN ASSESSMENT PLAN?

108. It is not necessary to decide this issue because this Decision finds Sacramento denied Student a FAPE throughout the relevant period for other reasons and awards Student an equitable remedy.

REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir.1994) 31 F.3d 1489, 1496 (*Puyallup*).) These are equitable remedies that courts may employ to craft "appropriate relief" to a party. (*Id.* at p. 1497.) An award of compensatory education need not provide a "day-for-day compensation." (*Ibid.*) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably

calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*) The court is given broad discretion in fashioning a remedy, as long as the relief is appropriate in light of the purpose of special education law. (*School Comm. Of Burlington, Mass. v. Department of Educ.*, (1985) 471 U.S. 359, 369.) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, [129 S.Ct. 2484, 2494, fn. 11, 174 L.Ed.2d 168].)

2. Student established Vacaville denied him a FAPE from March 20, 2014, to the end of the 2013-2014 school year, including the extended school year, by: failing to provide measurable goals in all areas of need; failing to offer or provide an appropriate placement; failing to offer appropriate mental health services; failing to make a clear offer of FAPE; and failing to convene an IEP team meeting in response to Student missing numerous days of school.

3. Student also established Vacaville denied him a FAPE during the 2014-2015 school year until May 2015, by: failing to provide measurable goals in all areas of need; failing to offer or provide an appropriate placement; failing to offer appropriate mental health services; and failing to make a clear offer of FAPE. Student also established that Vacaville failed to assess him in all areas of suspected disability by failing to conduct a mental health assessment.

4. As to Sacramento, Student established Sacramento denied him a FAPE from May 2015, through the 2016 extended school year by, failing to provide measurable goals in all areas of need; failing to offer or provide an appropriate placement; failing to offer appropriate mental health services; failing to make a clear offer of FAPE; failing to convene a 30-day IEP team meeting; and failing to implement Student’s IEP. Also, Student established Sacramento failed to assess him in all areas of

suspected disability by failing to conduct a functional behavior assessment and mental health assessment.

5. Student is entitled to compensatory education for Vacaville's denial of FAPE. Based on Vacaville's failure to offer Student appropriate mental health services between March 20, 2014, and May 2015, including the extended school year, the ALJ awards Student 80 hours of individual therapy services as compensatory education to be used within one calendar year, beginning on the day Vacaville contracts with a qualified mental health therapist selected by Student. Student demonstrated trauma-based therapy by a therapist experienced in working with a child with past trauma is an appropriate remedy, and to be included as part of the total award of individual therapy. Vacaville is not required to fund more than 16 hours (16, 60-minute sessions) of trauma-based therapy as part of this award, and is only required to fund 16 hours of trauma-based therapy if the therapist deems it appropriate. The therapist providing the trauma-based therapy must be certified to utilize trauma-based methods. All other individual therapy sessions can be provided by a licensed MFT. The therapist providing the trauma-based therapy can be the same therapist providing the individual therapy sessions, and shall be selected by Student. Student requests trauma-based therapy in a residential setting for lost educational opportunity. However, Student did not establish that he required individual therapy, including trauma-based therapy, in a residential treatment setting to receive educational benefit, so that request is denied.

6. Additionally, Student is entitled to an educationally related mental health assessment as compensatory education to be funded by Vacaville and Sacramento to assist future IEP teams in determining Student's need for mental health services to assist him in benefitting from his special education program and determining the appropriate level of care. The cost of the assessment will be split evenly between Vacaville and Sacramento. The cost of the mental health assessment shall not exceed \$6,000. Student

seeks reimbursement for the cost of Dr. Earhart's assessment paid for by his counsel. However, Dr. Earhart's assessment report was prepared in anticipation of litigation. Student provided no legal authority permitting the reimbursement of a law firm for expert fees. Nor did Student provide any evidence to establish Parent has an obligation to reimburse Student's attorney for the cost associated with Dr. Earhart's assessment of Student. Further, there is no evidence detailing the fees associated with Dr. Earhart's assessment cost. Therefore, the ALJ denies Student's request for reimbursement of Dr. Earhart's report as a request for reimbursement of expert fees.

7. Student established Sacramento denied Student a FAPE during the relevant period. Student is entitled to compensatory education for Sacramento's FAPE denial. The ALJ awards Student 108 hours of individual therapy services as compensatory education to be used within one calendar year, beginning on the day after Vacaville's obligation to fund those services ends, as described above. The therapist selected by Student must be a licensed MFT.

8. Mother may participate in the therapy sessions, if Mother's involvement is determined by the therapist to be necessary or beneficial to Student. However, neither district is responsible for any additional costs associated with Mother's participation in therapy sessions with Student.

9. Student established Sacramento failed to implement his IEP during the period relevant to Sacramento by only providing Student with 290 of the 1,250 minutes of speech and language services offered to Student in his March 2014 IEP. As compensatory education, the ALJ finds it reasonable to order Sacramento to fund the cost of speech and language services for Student for 1,250 minutes of services by a speech therapist certified by the State of California as a nonpublic agency and selected by Student to be used within one calendar year of Sacramento contracting with the speech and language therapist selected by Student.

10. Student demonstrated Sacramento failed to assess him in all areas of suspected disability by failing to conduct a functional behavior assessment. Therefore, considering the equities in this case, the ALJ orders Sacramento to provide Student with an independent functional behavior assessment, to be conducted by a doctorate level Board Certified Behavioral Analyst from an outside agency selected by Student. The assessment report must be completed and provided to Student within 180 calendar days from the date Sacramento contracts with the assessor. The cost of the functional behavior assessment shall not exceed \$6,000.

11. It is further determined that each district must provide a two-hour special education training to its special education administrators and program specialists by a third-party not employed by the districts on the laws relating to writing clear offers of FAPE and circumstances triggering an IEP team's duty to convene an IEP meeting. Sacramento's training must also include training on interim IEPs.

12. All other requests for relief are denied.

ORDER

1. No later than 30 calendar days from the date of this Decision, Student will provide Vacaville and Sacramento with the name of selected therapists to provide Student individual therapy and individual therapy utilizing trauma-based methods. The therapist(s) must be a licensed MFT to provide individual therapy to Student, and a licensed MFT and certified in utilizing trauma-based methods if providing Student with trauma-based therapy. No later than 30 business days from receipt of the names of those therapists from Student, Vacaville and Sacramento will agree upon one of the therapists and both districts will contract with the therapist to fund the individual therapy services awarded to Student.

2. Vacaville is required to fund 80 hours of individual therapy sessions for Student, which includes 16 hours (16, 60-minute sessions) of trauma-based therapy, if

determined to be appropriate by the therapist selected by Student, and 64 hours of individual therapy. Vacaville is only required to fund those sessions for one calendar year from the date Vacaville contracts with the therapist(s). Vacaville shall reimburse Student for travel costs incurred for one round trip from Student's residence to the therapist's office. Vacaville is not required to pay travel costs in excess of 40 miles round trip per session.

3. Sacramento is required to fund 108 hours of individual therapy sessions. Sacramento is required to fund those sessions for one calendar year beginning the day after Vacaville's duty to fund those sessions ends, as described in the preceding paragraph. Sacramento shall reimburse Student for travel costs incurred for one round trip from Student's residence to the therapist's office. Sacramento is not required to pay travel in excess of 40 miles round trip per session.

4. Going forward, if Student retains a new therapist, the new therapist must meet the qualifications discussed in paragraph one of the Order. The districts will have 30 days from the date the districts receiving the therapist's qualifications to contract with the new therapist. However, the time each district is required to fund those sessions does not change as a result of Student retaining a new therapist.

5. Within 30 days of the date of this Decision, Student will provide Sacramento with qualified assessors to conduct Student's mental health assessment. No later than 30 business days from receipt of the names, both districts will agree upon and contract with one of the providers to conduct a mental health assessment of Student. The districts will split the cost of assessment and travel costs incurred for one round trip from Student's residence to the provider's office for assessment. Reimbursement for Student's travel cost is limited to 40 miles round trip per trip to the provider's office for assessment. The cost of assessment shall not exceed \$6,000.

6. Within 30 days of the date of this Decision, Vacaville will conduct a two-hour special education training for all its special education administrators and program specialists on special education law. The subject matter of the training shall include a discussion of the laws relating to writing clear offers of FAPE and circumstances triggering an IEP team's duty to convene an IEP meeting. The training must be conducted by a person or persons with expertise in special education law who is not employed by Vacaville.

7. No later than 30 calendar days from the date of this Decision, Student will provide Sacramento with the name of a selected speech therapists, who are certified by the State of California as a nonpublic agency qualified to provide speech and language services. No later than 30 business days from receipt of the names, Sacramento will contract with one of the speech therapists to provide speech and language services to Student. Sacramento is required to pay travel costs from Student's residence to the therapist's office and from the therapist's office to Student's residence. Sacramento shall reimburse Student for travel costs incurred for one round trip from Student's residence to the speech therapist's office for speech services. Sacramento is not required to pay travel in excess of 40 miles round trip per session.

8. Sacramento is required to fund 1,250 minutes of speech and language services for Student. Student must use the 1,250 minutes of speech and language services within one calendar year from the date Sacramento contracts with the speech therapist. If Student retains a new qualified speech therapist during the period Sacramento is required to fund Student's speech and language services, Student must provide evidence of the new speech therapist qualifications to Sacramento. No later than 30 business days from receipt of the speech therapist's qualifications, Sacramento will contract with the speech therapist to provide speech and language services to Student. The time Sacramento is required to fund those sessions does not change as the

result of Student retaining a new therapist. Sacramento shall reimburse Student for travel costs incurred for one round trip from Student's residence to the speech therapist's office for speech services. Sacramento is not required to pay travel in excess of 40 miles round trip per session.

9. Since the therapy services and speech and language services are offered as compensatory education, they may not be considered as services provided pursuant to any subsequent IEP developed for Student by Sacramento, Vacaville, or any local education agency responsible for providing a FAPE to Student.

10. No later than 30 calendar days from the date of this Decision, Student will provide Sacramento with qualified assessors to conduct Student's functional behavior assessment. No later than 30 business days from the receipt of those names, Sacramento will contract with the assessor without requiring he/she release the report before being paid or imposing timelines for completion of the assessment. Sacramento will pay the assessor directly for his/her assessment. Sacramento shall reimburse Student for travel costs incurred for one round trip from Student's residence to the speech therapist's office for speech services. Sacramento is not required to pay travel in excess of 40 miles round trip per session. The cost of assessment shall not exceed \$6,000.

11. Within 30 days of the date of this Decision, Sacramento will conduct a two-hour special education training for all its special education administrators and program specialists. The subject matter of the training shall include a discussion of the laws relating to writing clear offers of FAPE, circumstances triggering an IEP team's duty to convene an IEP meeting, and interim IEPs. The training must be conducted by a person or persons with expertise in special education law who is not employed by Sacramento.

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. Student prevailed on Issues 1(a), 1(b), 1(c), 1(e), 1(f), 2(a), 2(b), 2(c), 2(e), 3(a), 3(b), 3(c), 3(e), 3(f), 3(h), and 4. Vacaville prevailed on Issues 1(d), 1(g), 2(d), 2(f), 2(g), and 4(in part). Sacramento prevailed on issues 3(d) and 3(g). Issue 3(i) was not decided and issue 3(j) was decided as part of other alleged issues, but not as a separate issue.

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: February 2, 2017

_____/s/_____
DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings