

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017040667

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on April 12, 2017, naming Irvine Unified School District. On August 28, 2017, OAH granted Student's request to amend his complaint.¹ The matter was continued for good cause on October 20, 2017.

Administrative Law Judge Rommel Cruz heard this matter in Irvine, California, on November 14, 16, 20, 21, 28, 29, and December 1, 2017.

Tania Whiteleather, Attorney at Law, represented Student. Student's mother attended hearing on all days. Student did not attend hearing. Ms. Whiteleather's assistant, Debra Kamm, attended the hearing on November 16, 2017, and all days following.

Jennifer Fant, Attorney at Law, represented District. Jennifer O'Malley, Informal Dispute Resolution Director, attended the hearing on behalf of District on all days.

¹ District filed its response to Student's amended complaint on September 7, 2017, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

Melanie Hertig, Executive Director of Special Education, attended the hearing on behalf of District on three days. Erin Ferguson, Program Specialist, attended the hearing on behalf of District for part of the first day.

OAH granted a continuance at the parties' request for the parties to file written closing arguments. On January 4, 2018, upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.²

ISSUES³

1. Did District deny Student a free appropriate public education during the 2016-2017 school year, by failing to timely and appropriately assess Student in all areas of suspected disability?

2. Did District deny Student a FAPE, or deny Parent the ability to meaningfully participate in the development of Student's April 10, 2017 individualized education program, by:

² Parties were initially ordered to file written closing arguments no later than December 28, 2017. On December 27, 2017, the parties filed a joint request to extend the filing deadline for one week. OAH granted the request that same day and continued the matter for written closing arguments to be filed no later than 5:00 p.m. on January 4, 2018.

³ At the start of the hearing, Student withdrew Issues 2 and 3(a) as originally set forth in the Order Following Prehearing Conference dated November 6, 2017. The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.).

- a. Failing to obtain current information regarding Student's present levels of performance;
 - b. Failing to obtain information from Student's current behavior therapy and education providers before developing Student's IEP; and
 - c. Failing to obtain current information regarding Student's accommodations?
3. Did District deny Student a FAPE in his April 10, 2017 IEP by:
 - a. Failing to provide appropriate and measurable goals; and
 - b. Failing to offer Student placement and services in the least restrictive environment based upon Student's unique needs and present levels of performance?
4. Did District deny Student a FAPE by failing to provide Student extended school year services for summer 2017?

SUMMARY OF DECISION

This Decision holds that District denied Student a FAPE by significantly impeding Mother's ability to meaningfully participate in the development of Student's individualized education program. District failed to obtain current information as to Student's present levels of performance and accommodations in developing the April 2017 IEP. Additionally, District failed to gather and consider information from Student's current teacher and behavior therapist in the development of that IEP. This deprived Mother of valuable and relevant information for her consideration, denying her an opportunity to meaningfully participate in the IEP process. Therefore Student prevails on Issues 2(a), (b) and (c).

Furthermore, in failing to obtain information to accurately identify Student's present levels of performance and accommodations, the April 2017 IEP's annual goals and services were inadequately tailored to address Student's unique educational needs.

The goals, though measurable, were inappropriately based on unreliable present levels of performance. District's argument that it had sufficient educational information to develop and adopt the April 2017 IEP was unpersuasive. Therefore Student prevails on Issues 3(a) and (b).

This Decision further holds that District denied Student a FAPE by failing to provide Student extended school year services consistent with the last implemented IEP, which was agreed upon in 2015. For purposes of "stay put", District was required to provide extended school year services as consistently as possible with the 2015 IEP pending the resolution of this Due Process matter. District did not provide such services. That failure denied Student an educational benefit, in violation of the IDEA. Therefore Student prevails on Issue 4.

However, Student did not meet his burden in proving that District failed to timely and appropriately assess him during the 2016-2017 school year. District proposed, and Mother consented to, an assessment plan on April 26, 2017. District conducted their proposed assessments, as well as those requested by Mother, with the exception of the intelligence quotient test that District denied. Student failed to prove that District's use of alternative means of assessing Student's cognitive functioning instead of an IQ test denied Student an educational benefit or denied Mother an opportunity to meaningfully participate in the development of Student's IEP. District's assessments were timely and appropriate and did not result in a denial of FAPE to Student. Therefore District prevails on Issue 1.

FACTUAL FINDINGS

1. Student was a seven-year-old boy at the time of the hearing, who resided with Mother within the boundaries of District at all relevant times. Student was eligible for special education under the category of autism. At the time of hearing, Student was attending second grade at AmeriMont Academy, a private school in Anaheim, California.

2. Student received a diagnosis of autism in February 22, 2013, and received applied behavior analysis (ABA) therapeutic services, speech and language therapy, and occupational therapy from ACES.

PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT PRESCHOOL EDUCATIONAL ASSESSMENT

3. Student enrolled in Placentia-Yorba Linda Unified School District during the 2015-2016 school year. In March 2015, Placentia-Yorba Linda completed a preschool educational assessment of Student. He was four years old at the time.

4. The assessment considered Mother's concerns, in which she reported the following about Student: difficulty following directions; poor attention/reduced attention to task; auditory and visual processing; sequencing tasks; difficulty with transitions to non-preferred tasks; episodes of meltdowns/tantrums such as crying and falling on the floor; eloping; lack of stranger danger; communication development (functional communication, delayed echolalia, minimal spontaneous language); and sensory processing difficulties. Student did not know how to appropriately engage others to initiate contact, did not pick up on social cues, and had a high level of anxiety due to his difficulty communicating his wants and needs.

5. Mother reported that Student received 30 hours per week of individual ABA services from the Center for Autism and Related Disorders (CARD); consisting of 17.5 hours at school and 12.5 hours at home. Student also received speech and language therapy twice per week, occupational therapy once per week in a clinical setting and physical therapy once per week.

6. The assessment identified academics as one area of strength for Student. Student's overall academic skills were in the average range compared to same aged peers. In the area of fine motor and visual motor, Student's skills were found to be in the average range. This was not identified as an area of unique need.

7. The assessment identified Student's areas of weakness to include: social-emotional; vocational and behavioral, including disinhibition; adaptive deficits; deficits with free and cued recall of stories; spatial relations, locations, and details; and auditory memory. In the area of processing, the Student's performance was negatively impacted by his over-focus on preferred topics or reluctance to engage in non-preferred tasks. His social skills and pragmatics were atypical for a child of his age. Student was found to be impulsive, had difficulty completing assignments and following adult directions. The assessment opined that Student would be able to participate in the general education environment with supports and reinforcements.

8. In the area of adaptive behavior skills, Student did not demonstrate independence at home. He also had difficulties in attending and following adult directions, responding impulsively and completing work in comparison to peers his age.

9. In the area of social-emotional development, Student demonstrated functional social skills. However, his hyperactivity, impulsiveness, atypical behaviors, bullying and difficulty with adaptation could negatively impact his social interactions. The assessment recommended a functional behavior assessment be completed upon reenrollment at Placentia-Yorba Linda.

10. In the area of gross motor, Student's overall skills were in the average range. However, his object control skills and balance skills were in the very low range. It was recommended that adaptive physical education services be considered by the IEP team.

11. In the area of sensory processing skills, Student demonstrated sensory processing differences in the area of body awareness (proprioception), balance and motion (vestibular processing) and planning and ideas. The assessment opined that these sensory processing concerns would impact his ability to access and participate in

his educational setting. The assessment noted that Student required frequent movement breaks throughout the school day.

12. Student's communication skills were appropriate in formal testing settings but his use of language and communication in social contexts was a concern. The assessment opined that his lack of social competence may affect how teachers and peers interact with him in a classroom and on the playground.

MARCH 2015 IEP

13. Placentia-Yorba Linda convened an initial IEP team meeting on March 12, 2015, March 19, 2015, and April 16, 2015. Mother attended the meeting on all days. Mother was provided Placentia-Yorba Linda's preschool educational assessment prior to the initial IEP meeting. The IEP team noted concerns regarding poor attention, communication, and transition.

14. The IEP discussed Student's present levels of performance. In the area adaptive and daily living skills, Student was found to have extremely low conceptual skills relating to communication and self-direction in school; social and leisure skills; and practical community skills relating to home living, health and safety, self-care; and motor skills. Teacher rating indicated extremely low skills in the areas of health and safety, with borderline skills in the areas of self-direction; social and leisure; and motor skills. Student rated below average in the area of communication and self-care; and an average range of skills in the areas of functional pre-academics, social, and school living.

15. The March 2015 IEP noted that Student had a history of regression during breaks and offered extended school year services to consist of language speech services for one, 30 minute session per week in a group setting. Individual occupational therapy services were also offered for one, 30 minute session per week. Lastly, the IEP offered adaptive physical education for one, 30 minute session per week in a group setting. All three services would take place in a separate classroom.

16. The IEP noted the extended school year general education options available for Student were Linda Vista general education or Wagner general education preschool. The offer of extended school year services consisted of 30 minutes a week of language and speech services, occupational therapy services for 30 minutes per week, and 30 minutes per week of adapted physical education services. The IEP team agreed to reconvene again on May 5, 2015. Prior to the May 5, 2015 IEP team meeting, Mother toured the general education classrooms at Linda Vista Elementary and Wagner Elementary.

17. On May 4, 2015, Mother provided Placentia-Yorba Linda her written partial consent to the IEP. Mother consented to the extended school year offer for 2015 in a general education classroom at either Linda Vista Elementary or Wagner Elementary, to begin on June 22, 2015. Mother also consented to transportation to and from one of those schools during extended school year. Additionally Mother consented to an ABA aide assigned exclusively to Student throughout the entire school day during the extended school year. Finally, Mother consented to the following extended school year services: 30 minutes per week of language and speech, 30 minutes per week of adapted physical education, and 30 minutes per week of individual occupational therapy.

MARCH 2016 IEP

18. On March 8, 2016, the IEP team met for Student's annual IEP review. Among those in attendance were Mother, CARD Case Supervisor Nancy Nguyen, and Placentia-Yorba Linda's attorney Jennifer Fant. The IEP was developed and completed on that same date.

19. The IEP team reviewed Student's present levels of academic and functional performance. Academics were identified as an area of strength. Student's teacher reported that Student was exceeding benchmarks in the area of academics, but had

difficulty following whole group and small group choral directions which appeared to be a result of inattention and impulsivity. Student loved numbers, letters, spelling, and exceeded grade standards in academics. He was described as a sweet boy, who was empathetic to peers. Student was a fast learner and enjoyed learning. Student showed an increase in a desire for social interaction and improvements in throwing, catching, balance, beginning sounds, and whole body listening.

20. Mother reported concerns of Student's elopement during class time. Additionally, Mother wanted to see extended school year services for a classroom program to prevent behavioral regression.

21. Student's expressive and receptive language skills were in the average range based on previous testing; however his social use of language was atypical. Student engaged in a variety of play in the classroom and in recess. He interacted socially with peers by commenting on their play. When he was unsure of their names he would ask them appropriately. He sought out certain peers, and those peers engaged in reciprocal social interactions with him.

22. Student demonstrated inappropriate social interactions, such as grabbing without asking, that impacted his success during social interactions with peers when playing together. Student required consistent verbal modeling to use his words to comment, request, share, join play, and advocate for himself. Independently, he could only advocate for himself and wait for peers to respond in one out of five opportunities. With prompting, he could imitate verbal models and wait for peers to respond in four out of five opportunities.

23. Student did not consistently use language to respond to, or to initiate conversations with, peers and adults. He required prompting during unstructured social situations to use appropriate language with peers. Student did not maintain conversations with others and still struggled during structured and unstructured group

activities to respond to one question at a time with on-topic responses. He was 33 percent accurate when independently responding, and required two verbal prompts per opportunity for 100 percent accuracy.

24. Student had difficulty reading nonverbal social cues to determine his success during social situations. His inconsistency to engage in eye contact with peers and adults impacted his ability to read nonverbal cues. During social opportunities, Student demonstrated appropriate eye contact approximately two out of 10 opportunities, and the lack of eye contact occurred primarily because he was preoccupied or distracted by other stimuli in his immediate areas. He often followed his own plan despite what the group was doing, as he was impulsive and exhibited tunnel vision.

25. Student showed emerging knowledge of “expected” and “unexpected” behaviors of at least three social situations around school. He was able to identify expected and unexpected behaviors in three out of five trials over two consecutive sessions. His pragmatic language was consistent with his autism diagnosis. Student’s articulation, voice, and fluency were appropriate at that time; however, he spoke in an abnormally loud voice, regardless of the situation. He demonstrated difficulty regulating his vocal volume. During instruction and free choice activities, Student did not demonstrate adequate attention to therapist-directed instruction.

26. The IEP team noted Student improved that past year, with a focus on following directions, grasp, and bilateral coordination skills. He could maintain a functional grasp pattern to complete an age appropriate coloring or writing activity with three or fewer verbal, gestural, or physical prompts. Student was left handed and liked to use a five-finger grasp or an appropriate quadruped grasp. He was encouraged to use a dynamic quadruped or tripod grasp. He was prompted to align his letters and to apply pressure when necessary. Student could color, cut, and assemble a four step

project with five prompts or less while using a model. He improved his ability to cut on the line when cutting simple geometric shapes. Student received natural breaks throughout the school day.

27. Student could dribble the ball twice with control at belt height using one hand. He could independently hop on his right foot seven times forward and 10 times forward on his left foot. He had difficulty tossing to himself and grading the force needed to control the toss and catch successfully. Ninety percent of the time, Student tossed the bag one to two inches from his hands or followed a larger toss with his hands so that the object was never more than a few inches away from his palms. He was unable to catch the bean bag more than two inches above his palms. He tended to toss very low or very high. Student could catch a bean bag using his hand or hands and chest to trap the bag 80 percent of the time when gently tossed underhanded to him from 10 feet away.

28. In the area of adaptive and daily living skills, the IEP noted that Student went to the bathroom and ate snacks independently. He could care for his basic needs within the school setting at an age appropriate level.

29. The IEP team determined that Student's behavior impeded his learning and the learning of others. He was easily distracted by people or other activities. His attention varied throughout the day depending on the setting. He did better during structured lessons. He was less attentive when the structure was decreased or if there were multiple activities in the room. Student demonstrated whole body listening skills during whole class activities for up to 30 minutes. This was age appropriate.

30. Student would speak out of turn or comment without raising his hand. His comments were either on-topic or off-topic to the discussion. He would raise his hand and wait quietly without calling out in 75 percent of opportunities presented. There was some improvement; he raised his hand but did not wait to be called on.

31. Student was impulsive. He would leave his seat or walk away from the group to touch an item or engage in another activity within the classroom. The teacher and his one-to-one ABA aide reported that he typically moved towards an item or activity that the class would be discussing. He would then return to his seat with a verbal or gestural redirection. This did not occur daily, but would occur more frequently when there were very interesting or new items in the room.

32. Student was non-responsive at times. He perseverated on letters, numbers, spelling, and his peers. He would not follow whole group instruction. He accurately followed whole and small group choral directions 67 percent of the opportunities presented. His accuracy varied from 31 percent to 100 percent depending on the day and the activity. Student had more difficulties when unexpected events occurred such as new directions or something unusual happened or when he became distracted by his own interests. He would then ignore directions and go off on his own agenda. When he was distracted or a non-routine event occurred, he did not follow directions and required one or more verbal or gestural prompts.

33. Mother reported that Student could see and hear her, but she suspected he had auditory and visual processing disorders. The IEP team determined that goals would be created to address pragmatics, fine motor, classroom behaviors, visual motor, and gross motor.

34. The IEP's special factors reflected Student's difficulty with directions when they were only given verbally. This was due to his inattention. The IEP recommended visual supports for behavior expectations, a visual schedule for each activity, wikki stix to support coloring within the lines, and a visual model for multi-step tasks.

35. The IEP identified the following behavior interventions, strategies and supports: Individual Reinforcement system for general appropriate behavior including whole body listening, staying with the group, raising hand, transitioning with group; a

point system; a written schedule of his day; visuals reflecting expected school behaviors; a task breakdown system with a check mark system for activities; front loading or pre-teaching of behavioral expectations in different environments; movement prior to sitting instruction, fidgets; modeling of expected behavior; communication log for behaviors; an ABA trained support person for Student; and consultation with an autism specialist. Placentia-Yorba Linda did not believe a functional behavior assessment or behavior intervention plan was required as Student's behaviors could be appropriately addressed through goals, services, and positive behavior supports.

36. The IEP proposed goals in the areas of communication, visual motor, fine motor, gross motor, and behavior. The first goal in the area of pragmatics called for Student to identify expected or unexpected behaviors, and if a behavior was unexpected, he would explain what the appropriate behavior was. This would occur in a small group activity. Student would be given a social situation verbally or visually. He was expected to successfully meet this goal five out of five trials over three consecutive sessions as measured by therapist data and observations.

37. The second goal in the area of pragmatics asked Student to approach peers and use four or more word sentences to advocate for himself when wanting to interact or take turns with a shared item, in lieu of maladaptive behaviors during structured and unstructured activities. He was expected to achieve this in four out of five situations over three consecutive data days as measured by therapist data and observations.

38. The third goal in the area of communication focused on Student's ability to respond to greetings or questions. During structured and unstructured group settings, Student would be expected to respond to a greeting or question from peers or adults with an on-topic response while engaging in eye contact for approximately two

seconds in four out of five opportunities, independently, over three consecutive data days, as reported by speech and language therapist data and observations.

39. The fourth communication goal was in the area of pragmatics. The goal suggested that Student would respond to an indirect verbal prompt or visual cue by adjusting his volume to a conversational voice level in four out of five situations, over three trial days, as measured by speech language pathologist data and observations. This would occur in situations during small group instruction in which Student was speaking too loudly.

40. There were two suggested behavior goals. The first classroom behavior goal focused on Student's ability to follow instructions. Student was expected to follow choral directions 80 percent of the opportunities presented across three consecutive trial days. This would occur during small or large group instruction, engaged in non-preferred activities or when preferred distractions are within his vicinity.

41. The second classroom behavior goal addressed Student's ability to raise his hand and wait to be called on. Student was expected to successfully raise his hand and wait to be called on before speaking in 90 percent of the opportunities presented, across three consecutive trial days as measured by speech therapist observations and teacher records. This would occur during a classroom activity in which raising your hand was required.

42. In the area of visual motor, Student was asked to independently color, cut, and assemble a four step project while using a model. He was expected to accomplish this goal in three out of four opportunities over a three week period as measured by occupational therapist observations and work samples.

43. In the area of fine motor, Student was expected to independently maintain a functional grasp pattern to complete an age appropriate coloring or writing activity. He was expected to accomplish this goal in three out of four opportunities over a two

week period as measured by observations in the classroom and observations by the occupational therapist.

44. The IEP offered three gross motor goals. Student's first gross motor goal involved his ability to dribble. Student was asked to manipulate a ball by dribbling a playground ball five times with control, contacting the ball at belt height using one hand four out of five attempts over three consecutive adapted physical education sessions as observed and recorded by the adapted physical education specialist.

45. Student's second gross motor goal involved catching a ball or bean bag tossed to him. The goal called for Student to catch by trapping an underhand tossed beanbag or tennis ball using only his hands while standing 10 feet from the tosser. He would be expected to catch the item eight out of 10 attempts over three consecutive sessions as observed and recorded by the adapted physical education specialist.

46. Student's third gross motor goal involved catching a beanbag that he tossed to himself. As a goal, Student was expected to toss and catch a beanbag propelling it at least 12 inches above his hands with appropriate force and control to catch and maintain his body in a four-by-four zone, eight out of 10 attempts over three consecutive sessions as observed and recorded by the adapted physical education specialist.

47. Placentia-Yorba Linda's IEP team deemed Student could get his educational needs met in the general education setting with supplemental aides, services, and supports that included: sensory supports, opportunities for movement, visuals for comprehension, a reinforcement schedule, speech language pathologist consultation with an instructional aide, additional ABA trained adult support assigned to Student, a home to school communication log for behavior, team meetings every trimester, wikki stix for coloring tasks, an autism specialist to consult with the school team, preferred seating, prompts to use correct pressure when writing or coloring, a

written schedule with task breakdown, front loading and pre-teaching of behavioral expectations, small group setting during physical education activities, and reduced visual stimuli during gross motor instruction.

48. The IEP offered a general education classroom setting with weekly small group adaptive physical education services and individual occupational therapy services pushed into the classroom. The IEP also offered weekly language and speech services to occur outside of the classroom. An ABA trained aide would also be assigned to Student throughout the school day.

49. On June 9, 2016, the IEP team discussed extended school year. The IEP team meeting notes described a blended class that was to consist of typical and disabled children taught by both a general education teacher and special education teacher. The class was targeted to prevent regression. Mother sought an enrichment program instead and was concerned about the behaviors of other students in the blended class. Mother testified at hearing and opined that the blended class was more restrictive than a typical general education classroom.

50. Mother did not consent to the proposed March 2016 IEP. Student attended an enrichment program in the summer of 2016.

INSTRUCTION, ACCOMMODATIONS, AND SUPPORTS AT EASTSIDE CHRISTIAN ACADEMY

51. Mother enrolled Student in Eastside Christian Academy in August 2016 for his first grade year. Eastside Christian is a non-public school accredited by the Western Association of Schools and Colleges.

52. Alexis Buttrey was Student's first grade teacher at Eastside Christian for the 2016-2017 school year. At the time of hearing, Ms. Buttrey was teaching for Monrovia Unified School District. She taught at Eastside Christian for over two years, beginning in early 2014. She was a California CLEAR credentialed teacher. For the 2016-2017 school

year, her average class size was about 17 students, dropping to 15 near the end of the school year. Ms. Buttrey had no formal special education experience.

53. At hearing, Ms. Buttrey described Student as a very strong reader, writer, and speller. This was a source of enjoyment for him. She opined his reading level to be at third to fourth grade level, and reading comprehension at around second to third grade level. He was at grade level in math. Student was assisted by one-to-one ABA trained aides through CARD. One aide accompanied student throughout the school day and worked on goals developed by CARD. Ms. Buttrey opined CARD to be extremely professional, skilled and effective. She opined that Student would not have been successful at the beginning of the 2016-2017 school year without CARD's support. It would also have been difficult for everyone in the class. The CARD aide facilitated or assisted him in communicating with peers, such as initiating play. Either Ms. Buttrey or the aide would prompt Student, with the aide guiding Ms. Buttrey on how to respond. Ms. Buttrey found this to be very helpful. Ms. Buttrey shared that Student had grown a lot during the school year. She opined it would have been difficult for Student to achieve his academic, social and behavioral progress without the assistance of the aides.

54. In the April 2017 time frame, Ms. Buttrey shared that Student had difficulty inhibiting his movements in the classroom. Ms. Buttrey described Student as wanting to move a lot, and needing a lot of stimulation. When Student got excited, he needed help to remain focused. He had difficulty sitting by himself for more than one minute without disrupting himself or others. He tended to infringe on his peers' personal space and needed reminders to give the other students some space. Student would also make noises in class.

55. Student required help staying on task in the classroom. He required many prompts to redirect him, much more than any other student in the class. Sensory tools were utilized to help him remain on task. Student would also get fixated on an item or

idea, such as a preferred toy or a movie. As the school year went along, his perseveration diminished and was less noticeable at the end of the year.

56. At the beginning of the 2016-2017 school year, Student was allowed to take a break and go on a walk, with the expectation that when he returned he would complete the task. By April 2017, he still needed frequent movement breaks, but that strategy evolved. By the end of the school year, Student could look toward natural breaks in the classroom routine and no longer required going on walks.

57. Ms. Buttrey noticed that he was still reluctant to participate in less preferred tasks and needed support to engage in less preferred activities. However, this behavior as well looked different by the end of the school year. Student still had difficulty following adult direction, and though prompts helped, it was not always effective on the first attempt. Ms. Buttrey opined that his impulsive responses were still present but Student grew a lot in this area during the school year.

58. On or about April 2017, Ms. Buttrey still observed social delays that affected his communication with peers, but he had a lot of improvement in this area. He also improved in his use of language in social context. She opined he met a lot of objectives in this area and those objectives evolved as he progressed.

59. Ms. Buttrey opined that social language with peers still remained an area of need for Student. She didn't believe it was as much of a concern at Eastside Christian since he had grown to know his peers. Ms. Buttrey believed a change to a new school, with new peers would require more support for Student. His interactions with his peers improved, and by the end of the 2016-2017 school year, he did not need much help playing with others.

60. Ms. Buttrey observed changes to be difficult for Student. A couple of events in the school year were emotionally hard on him. One change was the family's relocation. The other was the departure of one of his CARD aides. During these changes,

Student cried more, was more frustrated, and avoided certain things. The new CARD aide and substitute teachers reported to Ms. Buttrey that Student was much more emotional and would often break down and not follow the aides' instructions when Ms. Buttrey was not present.

61. Ms. Buttrey prepared Student's January 2017 report card, consisting of two quarters of grades and comments. Student excelled in the classroom, with grades ranging from A- to A+. His citizenship grades were satisfactory or outstanding. His grade for use of self-control was satisfactory for both quarters. His grades for displaying obedience and showing respect to authority and other students improved from satisfactory to outstanding. Teacher comments showed growth. Quarter one comments described Student having made "amazing growth in one quarter ... his aides have really helped him work towards a new level of independence even in the last week." Quarter two comments described Student as continuing to grow and thrive socially, academically, and behaviorally. However, the report card did not provide specific information as to the accommodations that Student received at Eastside Christian or the strategies CARD utilized with him. Furthermore, the report card did not reflect to what degree Student's grades were impacted by the help of accommodations or his aides.

62. Ms. Buttrey shared that Mother was not in her classroom, and Mother spent her time volunteering in the school library and supervising on the playground. Parents did not participate in her classroom except when the classroom was having a party. Ms. Buttrey attended the monthly CARD meetings and shared Student's class performance and anything of note she observed.

63. Nancy Nguyen was a Case Supervisor with CARD. Ms. Nguyen possessed a bachelor's degree in psychology and a master's degree in psychology with a focus on ABA. She was a therapist with CARD from January 2012 to June 2014. Ms. Nguyen was a CARD case manager beginning in June 2014 until she assumed her position as a

supervisor in April 2015. She received her Board Certified Behavior Analyst certificate in February 2015. She testified that 100 percent of the students served by CARD are diagnosed with autism.

64. Ms. Nguyen was Student's CARD Case Supervisor since midyear 2015. As a CARD Case Supervisor, she supervised ABA trained aides who collected data and implemented behavior intervention plans. Ms. Nguyen analyzed data and developed strategies and goals for a behavior intervention plan.

65. Ms. Nguyen opined that behavior intervention plans needed to be consistently applied across all environments, including the educational setting. CARD's behavior intervention plans focused on both safety as well as behaviors that impacted a student's learning. Student's behavior intervention plan was consistently applied throughout the day. CARD provided Student with behavior support and one-to-one therapy at the school setting for 33 hours of services per week, and seven hours of services per week in the home.

66. Ms. Nguyen held monthly clinical team meetings that typically included herself, an assigned aide, the parent, and school staff when appropriate. The behavior intervention plan was reviewed and the strategies discussed. Ms. Nguyen found Mother to be knowledgeable about Student's needs and abilities, as well as the strategies CARD implemented with Student.

67. Ms. Nguyen authored a report entitled Anthem Initial Report (Anthem Report) dated January 3, 2017. The report was based on observations of Student's

behaviors in the home, clinic, and community settings; interviews with caregivers; a review of historical records; and treatment tracking data from Skills.⁴

68. The Anthem Report addressed Student's baseline levels and progress in a number of areas. The report discussed Student's behaviors as they presented in January 2016 through January 2017. One area covered was Student's level of noncompliance. The report defined noncompliance as episodes of protest such as whining or screaming and/or not complying with adult instruction within five seconds for the purpose of avoiding what is requested. The January 2016 baseline reflected Student was noncompliant about three times per hour. In June 30, 2016, during a one hour observation of Student, he was noncompliant four times. In July 2016, Student was averaging about zero to 4.2 episodes of noncompliance per hour. By January 2017, Student's noncompliance decreased to about zero to 1.5 times per hour.

69. The Anthem Report discussed two functions of Student's tantrums. One function was to access an item. This might involve verbal protest, kicking his feet, flopping or rolling on the floor, applying full body weight, aggression towards himself or others that lasted longer than 10 seconds. To gain an item, Student would tantrum about 1.65 times per hour in January 2016. During an observation of Student in June 30, 2016, he did not tantrum. Between July 2016 to January 2017, Student was averaging less than one tantrum per hour to get an item he wanted.

70. The other function of Student's tantrums was to escape a request, which involved the same behaviors as tantrums to obtain an item. These episodes of tantrums

⁴ Skills Assessment is based on developmental norms and identifies over 3,000 skills across every domain of child development, including language, social, play, adaptive, executive functions, cognition, motor and academic domains.

were occurring at 1.24 times per hour in January 2016. From July 2016 to January 2017, the tantrums occurred no more than 0.4 times per hour on average.

71. The Anthem Report also discussed Student's elopement. Elopement was defined as leaving, or attempting to leave, the designated work/play area without permission. Student eloped approximately 4.28 times per hour in January 2016. He was observed to elope once during the one hour observation in June 30, 2016. From October 2016, to January 2017, he averaged less than one elopement per hour.

72. The Anthem Report tracked Student's screaming. Screaming was identified as being at a low, medium, or high pitched volume within or outside of preferred play and/or activities. In January 2016, Student was screaming 2.3 times per hour. He did not scream during the one hour observation in June 2016. Between July 2016 and January 2017, Student screamed on average less than once per hour, with December's data showing an average of 0.5 screams per hour.

73. The Anthem Report also tracked Student's screaming for the purpose of obtaining an item as opposed to screaming for no particular purpose. In January 2016, Student was screaming for an item about 2.3 times per hour. By December 2016, Student had met his goal. At that point, for a period of one month, he averaged only 0.25 screams per hour.

74. Student's non-responses were also addressed in the Anthem Report. Non-response was defined as a failure to provide a response within five seconds to an adult or peer who was directing a comment or question to Student. In January 2016, Student was averaging 3.5 nonresponsive behaviors per hour. In a June 2016 hour long observation, Student displayed three nonresponsive behaviors. By January 2017, his rate of non-responsiveness decreased, with an average of less than one nonresponsive behavior per hour on most days.

75. Vocal stereotypy was defined in the Anthem Report as episodes of immediate or delayed echolalia, and/or making nonsensical sounds or jargon inappropriate for the given context that lasted for more than two seconds. In January 2016, vocal stereotypy was occurring 2.4 times per hour. During the June 2016 one-hour observation, Student had four episodes. By January 2017, the average frequency of vocal stereotypy was less than two times per hour.

76. Ms. Nguyen described Student's struggles. He had difficulty communicating why he was upset. Student started out with basic language skills and his communications lacked enough detail to get his message across. For example, he could state he was mad, but could not explain the reason for his anger. This frustrated him and led him to act out, such as screaming and tantrums. His behaviors had improved over time due to his improved use of language to express himself. At the time of hearing, Ms. Nguyen opined that Student could express himself in great detail. For example, rather than simply stating "I need help", he could now state, "I need help opening the door because my hands are full" or "Can you help me with my writing because my hands are tired?" Thus, he was less frustrated and his behaviors improved. This also allowed others to respond to him more appropriately, reducing miscommunication.

77. Ms. Nguyen recommended extended school years services to provide consistency and skill building to capitalize on skills Student had mastered. She opined that Student would likely regress without behavior intervention services during the summer.

78. Ms. Buttrey and Ms. Nguyen painted a more accurate and focused image of Student as of April 2017, compared to the dated and unfocused image from Placentia-Yorba Linda's IEPs and the January 2017 Eastside Christian report card. They established that Student made meaningful progress in many areas during 2016-2017 school year. His tantrums, elopement, screaming, vocal stereotypy, and noncompliant

behaviors diminished. His classroom behaviors improved and his relationships with his peers blossomed as his ability to express himself progressed. Their testimony also established that there was still work to be done in improving Student's communication and interactions with peers, his ability to focus on task, and his behaviors. Additionally, Student's need for consistency was significant and his struggles with changes impacted his learning considerably. Of the witnesses who testified at hearing, Ms. Buttrey and Ms. Nguyen were the individuals most familiar with Student, having worked with Student for the longest period of time. Their testimony was credible and persuasive.

RELOCATION TO DISTRICT

79. On March 1, 2017, Mother faxed a letter dated February 28, 2017, to Melanie Hertig, District's Executive Director of Special Education, requesting an IEP and informing District of her desire to transfer Student into District. The letter informed District that Student currently had an IEP with Placentia-Yorba Linda. Mother and Student relocated into District's boundaries on February 28, 2017, and the letter provided their new home address.

80. On March 1, 2017, Barbara Colbert, District's school psychologist at Portola Springs Elementary School, emailed Mother advising Mother to complete Student's online registration. Once completed, Mother was advised to contact Ms. Colbert's assistant, Chere Campbell to set up an appointment to finalize the registration. At that point, Mother was told District could then begin the IEP process.

81. On March 3, 2017, Mother emailed Ms. Colbert, advising Ms. Colbert of her request to meet with District's IEP team to discuss an offer of FAPE and placement before changing schools for Student. Mother explained that Student had great difficulty with change due to his autism. Mother attached a copy of Placentia-Yorba Linda's 2015 IEP to the email, which Mother identified as the last agreed upon IEP. She also attached her partial consent letters to that IEP.

82. On March 9, 2017, Mother completed registration forms at Portola Springs. The forms requested Mother to identify any “special services your child has received from their previous school” and to provide a current IEP or other documents for those services. Mother indicated Student received speech and language services, a one-to-one ABA aide, occupational therapy, physical therapy and adapted physical education. Near the bottom of the form, Mother noted Mable Paine as Student’s previous school where he received a special program. Mable Paine is a public school in Placentia-Yorba Linda. Mother signed the form on March 9, 2017. At hearing, Ms. Campbell testified that Mother did not inform her that Student was receiving services from CARD. District did not ask Mother who the providers were for the services indicated on the form.

83. On March 9, 2017, Mother also filled out District’s Health Condition Information form, where she listed Student’s medical conditions as autism and allergies. Mother also noted that Student required a one-to-one ABA aide to access the curriculum, as well as a sensory diet and accommodations in the classroom. District did not contact Mother and inquire if Student had a current one-to-one ABA aide at Eastside Christian or what, if any, sensory diet and accommodations he was provided at his private school.

84. On March 9, 2017, Mother signed a Request for Student Records for District to obtain Student’s records at Eastside Christian. The records to be requested were Student’s cumulative records, withdrawal grades, health record/immunizations, special education file/504 plan/individualized education plan, CELDT scores, and other test results. On March 13, 2017, District informed Mother that Student would be able to start at Portola Springs the following day, March 14, 2017.

85. On March 13, 2017, at 5:56 p.m., Mother emailed Ms. Campbell, and copied Student’s attorney and Ms. Colbert, reminding District that Mother wanted to

hold an IEP team meeting to discuss an offer of FAPE for Student and to agree on a placement before changing Student's school. The email reminded District that Student's "autism causes great difficulty with change."

86. On March 14, 2017, Ms. Colbert emailed Mother District's offer of interim special education services. The offer of interim special education services cited Education Code section 56325, indicating that at a 30-day IEP review, the previously approved IEP would either be adopted or a new IEP would be developed, adopted, and implemented. It was noted that the interim services would end on April 11, 2017. Ms. Colbert also invited Mother to meet with her at 8:00 a.m. on March 15, 2017 to discuss the interim offer. Additionally, Ms. Colbert attached a notice for an IEP team meeting for 11:00 a.m. on April 10, 2017. The notice indicated the meeting would end at 12:30 p.m. The notice had the box "Interim" checked. The "Annual" box was not checked.

87. The offer of interim services consisted of the following: group adaptive physical education services, 20 minutes twice a week; individual occupational therapy services 30 minutes twice a week; group language and speech services, 30 minutes once a week; individual language and speech services, 30 minutes once a week; individual physical therapy consultation services, 20 minutes six times per year; individual language and speech consultation services, 15 minutes per week; individual behavior intervention services consisting of 1,720 minutes a week of one-to-one support from a behavior tutor; and individual behavior intervention supervision services, 60 minutes twice a month.

88. Student did not accept District's offer of interim services. He remained in Eastside Christian and did not attend Portola Springs or any other District school during the 2016-2017 school year.

89. On March 15, 2017, Ms. Colbert emailed Mother a revised IEP team meeting notice. The notice scheduled the IEP team meeting to start at 11:00 a.m. and to

end at 1:00 p.m. on April 10, 2017. The notice checked "Other" and indicated "30 day review". The "Annual" and "Interim" boxes were not checked.

90. On March 16, 2017, Mother emailed Ms. Colbert indicating she did not believe two hours would be sufficient to complete an initial IEP. In her experience, an initial IEP usually took four to five hours to complete. On March 17, 2017, Ms. Colbert emailed Mother advising Mother that if the IEP team were unable to complete the IEP in the two hours as scheduled, a "Part II IEP" could be scheduled.

91. On March 20, 2017, Mother responded to Ms. Colbert and expressed her wish to hold a longer IEP team meeting on April 10, 2017, to avoid delaying the completion of the IEP until the end of May or June. Mother requested at least three hours for the IEP team meeting to minimize the number of days to review the IEP in the event the IEP team meeting needed to be continued. Mother also requested to change the time of the meeting as she was not available from 11:00 a.m. to 1:00 p.m. on April 10, 2017.

92. On March 21, 2017, Mother emailed Ms. Hertig and copied Ms. Colbert with the attached signed notice of meeting, indicating a request for a different time for the IEP team meeting. Mother also requested District contact Student's attorney to schedule the IEP team meeting. In response, Becca Lane, an administrative assistant with District, emailed Student's attorney that same day, with proposed dates and times for the IEP team meeting. The email noted the meeting was to conduct a "30 day IEP".

93. Mother and District agreed upon April 10, 2017, at 1:30 p.m. to 4:00 p.m. to hold the IEP team meeting. On March 24, 2017, Ms. Lane emailed Student's attorney a revised notice of meeting which indicated the purpose of the meeting was for a 30 day review, with a start and end time as agreed. Ms. Colbert emailed Mother the same notice of meeting that same day. On March 27, 2017, Mother signed and provided

District the notice of meeting, indicating she would be accompanied by her attorney and her intention to record the meeting.

APRIL 2017 IEP

94. An IEP team meeting was convened on April 10, 2017. Present were Mother and Student's attorney. Mother invited Student's attorney to assist her since she had not previously participated in a 30-day IEP review. In preparation for prior annual IEP reviews, Mother requested and reviewed draft IEPs and proposed goals ahead of time to help her formulate questions. This allowed her to meaningfully participate at the meeting. Mother's expectation going into the IEP team meeting was to review the interim placement offer.

95. District IEP team members in attendance were Informal Dispute Resolution Director Jennifer O'Malley, school principal Megan Bricker, speech-language pathologist Julie Jeffries, program specialist Aja McKee, school psychologist Barbara Colbert, behavior intervention specialist Richaun Hendricks, general education teacher Stephanie Brown, adaptive physical education specialist Danielle Gilley, physical therapist Teresa Stuart, occupational therapist Katy Schlossberg, and District's attorney, Ms. Fant. District provided an agenda to Mother and Student's attorney at the start of the meeting. To her surprise, the agenda informed Mother for the first time that the meeting would be a combined 30-day review and an annual IEP review. Mother waived the defect in notice to avoid delaying the development of the IEP. Mother was provided a copy of her procedural safeguards. She declined an explanation of her rights and safeguards.

96. Mother was provided a draft of the proposed IEP for the first time. District informed Mother that the information in the draft IEP was taken from the Placentia-Yorba Linda proposed 2016 IEP. District also considered the January 2017 report card from Eastside Christian. District expected that the draft IEP would be updated with Mother's input at the meeting. Mother and Student's attorney cautioned that it would

be difficult for her and Mother to review, formulate questions, and comment on the draft IEP while discussing it at the same time. They indicated they needed an opportunity to review the draft IEP before commenting on it. Nonetheless, the IEP team proceeded to develop the IEP.

97. Mother shared Student's strengths and concerns. Student was outgoing and friendly. He liked making friends, although he was socially awkward. He was academically gifted, knowing all the states in the United States and their capitols. He loved to be outside and spending time on an iPad device. Mother was concerned that Student's behavior impeded his learning. He had difficulty staying on task. He was easily distracted and Mother believed him to have sensory processing issues. Student needed to move around, was restless, and required the use of fidgets. He needed a choice to sit or stand at a desk. Mother could not recall more at that time. When asked about a hearing test that was conducted on February 4, 2015, Mother could not recall if Student passed the test.

98. Throughout the IEP team meeting, District attempted to elicit Mother's input, concerns, or suggestions as to Student's present levels of performance, baselines, goals, special factors, accommodations, and services for the school year and extended school year. Mother had limited comments and provided little input or guidance to the IEP team. She stated she did not have specific information in many of the areas and felt she did not have the knowledge and expertise to opine in those areas. However, she and Student's attorney did express concern about the lack of information as to Student's present levels of performance. Despite these shortcomings, the IEP team proceeded to develop the IEP.

Present Levels of Performance

99. The present levels of performance written in the draft IEP were taken directly from Placentia-Yorba Linda's proposed 2016 IEP. District acknowledged the data

from the proposed 2016 IEP was over a year old and the January 2017 report card provided limited information. District hoped Mother could provide some update on Student's progress. Mother and Student's attorney again expressed concern about the lack of current information regarding Student's present levels of performance.

100. District asked Mother if she had any input in the area of Student's present levels of academic performance. Mother was not comfortable commenting on how he was doing in school since she did not spend time in his classroom at Eastside Christian. District noted that Student progressed quite a bit in writing based on the Eastside Christian report card; however the report card was not specific. Mother stated that his teacher could better address his progress than she could.

101. As to Student's present levels of communication, Mother wanted to review the draft IEP and compare it with the proposed 2016 IEP before commenting. District asked Mother for her input and Mother identified this to be an area of concern. Mother did not wish to comment any further on whether the information in the proposed 2016 IEP reflected Student's present levels as of April 2017. Mother had nothing further to share at that time and could not recall if Student had recently received services in communication.

102. As to Student's present levels of performance in the areas of gross and motor development, District asked Mother about any information that she wished to share from a parent's perspective. Mother responded by informing District that the most recent occupational therapy assessment was conducted by Angie Winslow in 2016. Ms. Winslow participated in the March 2016 IEP team meeting and provided Placentia-Yorba Linda the occupational therapy assessment report. Mother shared that Student did not receive adapted physical education services but was unsure if he received occupational therapy and physical therapy during the 2016-2017 school year.

103. Mother had nothing to add and could not think of anything else to share off the top of her head regarding Student's present levels of social-emotional and behavioral performance. Mother did share that Student was assigned a one-to-one CARD aide to shadow him throughout the school day at Eastside Christian. CARD provided 40 to 41 hours a week of individual aide support and 17 hours a month of supervision by a board certified behavior analyst. This was the first time District's IEP team members learned of CARD's involvement during the 2016-2017 school year. District then proposed releases of information from CARD and Eastside Christian to speak to Ms. Buttrey and Ms. Nguyen. At the meeting, Mother verbally agreed.

104. District also asked Mother if she thought conducting a functional behavior assessment or developing a behavior intervention plan was something she would like to consider. Ms. Hendricks indicated that she could not recommend a functional behavior assessment at that time since she had not yet observed Student. The IEP team agreed that input from CARD as to Student's specific behaviors would be helpful in developing a functional behavior assessment.

105. At the meeting, District's attorney asked Mother if Student had any specific behavior concerns. Student's attorney indicated that Student had no maladaptive behaviors. Student's attorney stated that District had all the records, in which District's attorney responded that District didn't have records of what was "recent." Though District had the January 2017 Eastside Christian report card, Ms. O'Malley stated it didn't go into a lot of detail. Mother explained she did not spend time in the classroom at Eastside Christian and could not comment as to what took place in the classroom. She further shared that Student still eloped but stated that Ms. Nguyen could better speak to Student's behaviors at school.

Baselines and Goals

106. The April 2017 IEP baselines were the same baselines identified in the Placentia-Yorba Linda proposed 2016 IEP. All but one baseline noted "per 3/8/2016 IEP" in the April 2017 IEP baselines. The goals were identical to those of the proposed 2016 IEP, with the exception of the target dates, which were adjusted to April 9, 2018. As to each baseline and goal, District asked Mother if she had any input, questions, or comments. Overall, Mother had no input and opined that she lacked specific information and expertise to comment on the baselines and goals.

COMMUNICATION

107. The April 2017 IEP offered four goals in the area of communication, similar to the Placentia-Yorba Linda proposed 2016 IEP communication goals. The speech-language pathologist would be the responsible person in implementing these goals. District asked Mother if she had any input, comments or concerns on this subject, or whether she believed this was still an area of need. Parent did not believe she was qualified to comment on these areas and could not provide District more information.

108. District's speech-language pathologist Julie Jeffries had 23 years of experience as a speech-language pathologist. She was a speech-language pathologist with District from 2000 to 2003 and again from 2012 to the time of hearing. She possessed a bachelor's and master's degree in communicative disorders. As a speech-language pathologist for District, she evaluated and treated school-aged children with language disorders, phonological disorders, articulation disorders, fluency disorders, childhood apraxia of speech, pragmatic deficits, autism spectrum disorders and attention-deficit hyperactivity disorders. Additionally she provided clinical services, participated in and implemented IEPs.

109. Ms. Jeffries opined that present levels of performance were an important piece in developing an IEP. Present levels of performance provided a starting point, a

baseline, to develop appropriate, measurable goals that would dictate the accommodations and services that a student would receive in his or her IEP. In identifying a student's specific speech and language needs, Ms. Jeffries acknowledged that an assessor, not a parent, would be qualified to make that determination.

110. Ms. Jefferies explained that a transferring student's present levels of performance can be obtained either through a 30-day interim placement and/or through formal or informal assessments. A 30-day interim placement provided an opportunity for District to work with and evaluate a student. A student's baselines can then be determined through that process. Ms. Jeffries opined that interim services are provided until an existing IEP can be updated or a new annual IEP can be developed. Ms. Jefferies opined that information obtained from over a year ago could still be considered "present" if that was the information that was available at the time present levels were being determined.

111. Ms. Jeffries reviewed Placentia-Yorba Linda's 2015 IEP and proposed 2016 IEP, Placentia-Yorba Linda's preschool educational assessment, and the January 2017 report card from Eastside Christian in preparation for the IEP team meeting. She did not observe Student or conduct any assessments of Student prior to the IEP team meeting. Ms. Jeffries also explained that the Eastside Christian report card did not provide specific information as to what steps, if any, were taken to help Student with receptive and expressive language as of April 10, 2017. At the time of the April 10, 2017 IEP team meeting, Ms. Jefferies was also unaware of how Student was prompted when speaking with his peers or how many times he was prompted.

112. Ms. Jeffries opined that the report card did not raise any red flags as to Student's speech or language abilities and nothing she reviewed suggested that the proposed 2016 IEP baselines and goals would be inappropriate for the April 2017 IEP. She explained that the report card showed Student did well in reading comprehension

and vocabulary. She assumed the speech and language goals in the proposed 2016 IEP remained appropriate based on her understanding that Student did not receive speech and language services during 2016-2017 school year. For those reasons, Ms. Jefferies did not interview Ms. Buttrey prior to the IEP team meeting.

113. However, Ms. Jeffries opined that as a child develops, it was the hope that their skill levels would develop as well. She made no assumption that Student would not progress in the area of speech and language in the 13 months prior to the April 10, 2017 IEP team meeting. As a result, she opined that Student's pragmatic skill level in April 2017 may not be exactly the same as his pragmatic skill level in early to mid-2016.

114. District hoped to work with Student during the 30-day interim offer of services to become more familiar with Student and to obtain his present levels of performance. However, Ms. Jefferies acknowledged that Student did not need to be enrolled in a District school to be assessed. It was her understanding that District had to make an offer of FAPE on April 10, 2017, and if not, the interim services offered by District would have expired on April 11, 2017, leaving Student without a program.

115. Susan Hollar, a speech-language pathologist for 20 years, testified on behalf of Student. In her private practice, she evaluated and treated children with communication disorders associated with developmental delays, autism, and Down syndrome. She possessed a master's degree in communicative disorders and sciences. She was licensed in speech-language pathology by California and Kansas and earned a certificate of clinical competence through the American Speech-Language-Hearing Association. Ms. Hollar estimated having assessed an average of 20 to 25 students identified with autism each year for the past 15 years. She estimated creating goals and objectives for approximately 50 to 60 IEPs per year, with 25 to 30 of those cases involving students with autism. Each year, she conducted approximately 30 assessments

involving children with pragmatic language needs and was currently working with 30 children with pragmatic issues.

116. At hearing, Ms. Hollar reviewed the January 2017 report card. Though Ms. Buttrey noted that Student improved a lot in language arts when prompted to do his best, Ms. Hollar pointed out the report card did not grade his oral language abilities. Also, the report card did not distinguish how Student's grades accounted for his homework, test results or group work, which could explain how Student functioned in the classroom as opposed to his ability to respond to testing. Ms. Hollar also opined that the report card could not be relied upon to identify Student's pragmatic needs for the same reasons. Ms. Hollar opined the report card, along with data collected in early 2016, could not be relied upon to accurately identify Student's present levels of performance in speech and language as of April 2017. Similarly, the creation of IEP goals would require current levels of a student's abilities, and therefore, data collected from over a year prior could not be relied upon to generate appropriate goals.

117. Ms. Hollar opined that though the areas of deficits would not typically change for students with autism, expected changes in their skill levels through maturation and interventions would occur over time. To make her point, she compared District's August 28, 2017 multidisciplinary assessment and Placentia-Yorba Linda's 2015 preschool education assessment. She pointed out that Student's weakness in using grammatically past/present and future tense was identified in District's assessment but not in Placentia-Yorba Linda's assessment. She also noted the same regarding Student's use of vocabulary.

VISUAL MOTOR AND FINE MOTOR

118. The April 2017 IEP addressed one goal in the area of visual motor and another in the area of fine motor. District's occupational therapist would be the responsible person for these goals. District asked Mother if she had any input or

concerns in these areas. Mother expressed she had no expertise in these areas and therefore, could not provide District with any guidance.

119. Katy Schlossberg was an occupational therapist with District since August 2016. As an occupational therapist with District, she administered, scored, interpreted standardized testing, assessed for appropriate adapted equipment, and monitored therapy. She possessed an associate's degree in occupational therapy, a bachelor's degree in liberal studies, and master's degree in occupational therapy.

120. At the meeting, Ms. Schlossberg opined that since she had not met Student, it was appropriate to continue with the same level of occupational therapy services as provided by in the Placentia-Yorba Linda proposed 2016 IEP.

121. At hearing, Ms. Schlossberg opined that observing and working with a student is a preferred method of identifying the occupational therapy present levels of performance. In preparation for the April 10, 2017 IEP team meeting, she reviewed Placentia-Yorba Linda's 2015 IEP and proposed 2016 IEP, Ms. Winslow's 2016 occupational therapy assessment, and Student's January 2017 Eastside Christian report card. Ms. Schlossberg opined that these documents gave the IEP team a good idea how Student performed and provided a starting point. However, she did not observe Student prior to the IEP team meeting, nor did she speak with Ms. Buttrey. Though the information Mother offered at the start of the IEP team meeting was helpful, Ms. Schlossberg did not specify how it helped identify Student's present levels. Additionally, Ms. Schlossberg opined that the report card did not contain specific information related to Student's occupational therapy needs or accommodations.

122. Ms. Schlossberg explained that the present levels of performance reflected in the April 2017 IEP were directly taken from the proposed 2016 IEP. She shared that the IEP team expected to receive more information from Mother about Student's current progress. Ms. Schlossberg explained that District offered to conduct assessments after

the April 10, 2017 IEP team meeting because District did not obtain the information it was hoping to get from Mother.

123. As for goals, Ms. Schlossberg explained that the visual motor and fine motor goals were taken directly from the proposed 2016 IEP. Though she preferred to develop goals after working with a student, she opined that the April 2017 IEP goals were appropriate since there were no indications that Student met those goals. She explained that she recommended those goals in the abundance of caution; she thought it to be safer to offer him more goals and services at the time of the IEP team meeting, which could be revised by the IEP team in 30 days after District had an opportunity to work with Student. Ms. Schlossberg opined that the April 2017 IEP's present levels of performance, goals, special factors, accommodations, and services were appropriate to meet Student's educational needs. She opined that the IEP's offer of FAPE was a good place to start.

124. Dr. Suzanne Smith Roley conducted an independent occupational therapy assessment of Student on April 10, 2017, prior to the IEP team meeting later that day. Dr. Smith Roley testified at hearing on behalf of Student. Dr. Smith Roley had over 40 years of experience as an occupational therapist. She was certified by the National Board of Certification for Occupational Therapy in 1976 and received her California Board of Occupational Therapy license in 2000. She earned her Occupational Therapy Doctorate in 2012 and possessed a master's degree in Allied Health Sciences. Dr. Smith Roley conservatively estimated conducting between 400 and 500 independent educational evaluations for over 100 school districts in her career. She conducted an independent educational evaluation on behalf of District within the past six months of the hearing.

125. Dr. Smith Roley's assessment report was not completed until May 11, 2017, after the IEP team meeting. Among the records considered were the Anthem Report, District's proposed April 10, 2017 IEP, Student's Placentia-Yorba Linda 2015 and

proposed 2016 IEPs, Placentia-Yorba Linda's March 20, 2015 preschool assessment report, and Ms. Winslow's March 19, 2016 occupational therapy evaluation. In her opinion, the information from the 2015 and 2016 sources were outdated and could not be relied upon to identify Student's current skill levels as of April 10, 2017.

126. At hearing, Dr. Smith Roley was asked to review the January 2017 Eastside Christian report card. She opined that the report card lacked specific information to develop occupational therapy services. Though Student's grades were good, that was not enough to conclude that Student had no occupational therapy needs. She opined that children grow and change quickly, and in anticipation of those changes, assessments to gather current data were required. She further opined that the report card, taken together with the 2015 and 2016 documents she reviewed as part of her assessment, were not adequate to identify Student's present levels of performance in the area of occupational therapy as of April 10, 2017.

GROSS MOTOR

127. The April 2017 IEP included three goals in the area of gross motor. The baselines and goals reflected in the April 2017 IEP were identical with the baselines and goals in the proposed 2016 IEP. District offered Mother an opportunity to share her thoughts and concerns as to these areas. Mother did not have information to share as to Student's dribbling since had she had not asked him to dribble at home. She also could not comment as to Student's ability to catch and throw a bean bag or tennis ball.

128. Danielle Gilley, adapted physical education specialist, had been employed by District since 2013. As an adapted physical education specialist she created developmentally appropriate lessons with an emphasis on gross motor skills, social interaction, and behavior management for students with special needs. She also assessed students' motor skills and/or motor abilities and created annual goals and objectives. Prior to becoming an adapted physical education specialist, she taught both

adapted physical education and general physical education for over three years. She possessed a bachelor's degree in kinesiology and credentialed in both general physical education and adapted physical education.

129. Ms. Gilley reviewed Placentia-Yorba Linda's 2015 IEP and proposed 2016 IEP, March 2015 Placentia-Yorba Linda preschool educational assessment, and the January 2017 report card from Eastside Christian prior to the April 10, 2017 IEP team meeting. Those were the most recent sources of information she relied on regarding Student's adapted physical education goals, progress, and needs. The report card indicated a grade of A+ in physical education. In her opinion, this established that Student had no major concerns in the area of physical education. However, she did not speak to anyone at Eastside Christian to confirm her assumption. She was also not aware of whether or not Student's CARD aide was involved in his physical education.

130. Ms. Gilley explained that the baselines used in April 2017 IEP were taken from the proposed 2016 IEP and no additional information from the 2016-2107 school year was considered to identify Student's baselines as of April 10, 2017. During cross-examination, she was asked if the March 2016 IEP baselines reflected current levels for Student as of April 10, 2017. She responded it was possible.

131. Ms. Gilley did not observe Student prior to the IEP team meeting. She opined that there was a lot of information to work with and typically in a 30-day interim, it would have been appropriate to implement goals and services and make revisions to the IEP if necessary. She further hypothesized that since Student did not receive adapted physical education services during the 2016-2017 school year, that Student had not met his previous IEP goals in that area. Nevertheless, Ms. Gilley opined that District did not have enough information in the area of gross motor at the April 10, 2017 IEP team meeting. This necessitated assessing Student in various areas, to include an evaluation of Student's adapted physical education needs. Despite these deficiencies, Ms. Gilley

testified that she had sufficient information at the IEP team meeting to create the annual adaptive physical education goals and to recommend related services.

BEHAVIOR

132. The April 2017 IEP offered two goals in the area of behavior. The baselines and goals reflected in the April 2017 IEP were identical with the baselines and goals in the proposed 2016 IEP. One goal addressed Student's raising his hand before speaking out and the other addressed the volume of his voice during classroom. District asked Mother if she had any input or concerns in these areas. Mother had nothing to share because she did not observe Student in the private school classroom.

133. Kimberly Kapur, behavior intervention specialist, had been with District since August 2011. As a District behavior specialist, she supervised, evaluated, and coordinated the work of behavior tutors who provided one-on-one and group services to children with special needs. She also oversaw the behavior programming pursuant to an IEP. Ms. Kapur collected data and analyzed information to report on progress towards IEP goals and to provide recommendations for goals and objectives for an IEP. She also conducted functional behavior assessments and developed behavior intervention plans. Ms. Kapur possessed a bachelor's degree in music therapy and a master's degree in counseling with a focus on ABA. She received her Board Certified Behavior Analyst certification in 2010.

134. Ms. Kapur first learned of Student in March 2017 when she was informed that she was assigned to oversee the behavior component of his IEP. She did not attend the April 10, 2017 IEP team meeting. Prior to the meeting, she reviewed Placentia-Yorba Linda's proposed 2016 IEP.

135. At hearing, Ms. Kapur opined that the best practice in developing IEP goals was to observe a student in the environment in which they would receive the services

and to collect baseline data. She testified that baseline data needed to be collected before IEP goals can be created.

136. Ms. Kapur explained that District did not have the Anthem Report prior to the April 10, 2017 IEP meeting and therefore District did not consider it in developing the April 2017 IEP. She did review it prior to hearing and opined that the behaviors discussed in the Anthem Report were appropriately addressed by April 2017 IEP goals, accommodations, and services. She noted that the Anthem Report baselines were not specifically reflective of Student's behaviors in a school setting and that his behaviors identified in the report could manifest in other settings, not necessarily in the school setting. Ms. Kapur opined that a student's setting is important in analyzing their behavior because a student's behavior is impacted by a student's immediate environment. Different staff and peers may elicit different responses and behaviors, with different rates of occurrence.

137. Ms. Kapur opined that had Student attended a District school, the IEP team would have monitored his transition. If any concerns arose, the IEP team would have made adjustments to his program. It was her understanding that District was required to make an annual offer of FAPE at the conclusion of the April 10, 2017 IEP team meeting since the offer of interim services was expiring and the annual IEP was overdue.

138. Richaun Hendricks was a behavior intervention specialist for District. She attended the April 10, 2017 IEP team meeting in place of Ms. Kapur. Ms. Hendricks had been with District since the start of 2016, first as a Behavior Intervention Specialist Consultant, then as a Behavior Intervention Specialist. She possessed a bachelor's degree in psychology and a master's degree in clinical psychology, specializing in marital and family therapy. She received her Board Certified Behavior Analyst certification in November 2016.

139. Ms. Hendricks reviewed Placentia-Yorba Linda's proposed 2016 IEP, the January 2017 Eastside Christian report card, and District's offer of interim services. Ms. Hendricks gathered from the report card that Student was comfortable and growing, with no recent history of major tantrums at Eastside Christian. Based on the absence of any noted behavioral concerns in the report card, along with how well he was doing overall at Eastside Christian, she hypothesized that Student had no behavioral needs as of April 10, 2017. However, after learning at the IEP team meeting that Student was being served by CARD, Ms. Hendricks suggested that understanding the reinforcement schedule utilized for Student by CARD would allow for consistency if, and when, Student enrolled in the District.

140. At hearing, Ms. Hendricks described the IEP process in this case as a "little non-traditional," because District would typically work with a student during the interim placement leading up to a 30-day review. Ms. Hendricks shared that the April 2017 IEP baselines were transferred from the proposed 2016 IEP and no additional baseline information was presented at the IEP team meeting. Ms. Hendricks recalled that District did not request to gather data regarding Student's current levels before finalizing its annual offer of FAPE.

141. Ms. Hendricks opined the April 2017 IEP appropriately addressed Student's areas of need and that a behavior intervention plan was not needed for Student. Ms. Hendricks explained that a behavior intervention plan was typically used when there was a concern about Student's safety or the safety of others. In her opinion, that was not a concern for Student. However, Ms. Hendricks did not know the behavior intervention strategies that CARD used and the level of success of those strategies.

Special Factors and Accommodations

142. The IEP team reviewed special factors and proposed accommodations. Many of the accommodations offered in April 2017 IEP mirrored those of the proposed

2016 IEP, with a few changes. Among the changes was an offer for monthly meetings as opposed to meeting three times per year. Additionally, the April 2017 IEP changed the ABA trained aide support from an accommodation to a service. As the IEP team reviewed the list, Mother declined to provide any input. She expressed being uncomfortable opining on what should be added or removed as she lacked the training and knowledge to make such suggestions. She explained she did not observe Student in the classroom at Eastside Christian and did not know what accommodations he received at the school, or how successful any accommodations were. In the IEP team meeting, District cautioned Mother and Student's attorney that without any new information beyond what was contained in the Placentia-Yorba Linda proposed 2016 IEP and the January 2017 Eastside Christian report card, District would be very cautious of changing the previous IEP.

143. The IEP identified the following positive behavior intervention interventions, strategies, and supports: individual reinforcement system for general appropriate school behavior, written daily schedule, visuals of expected school behaviors, task breakdown system/check mark system for activities, front loading or pre-teaching of behavioral expectations in different environments, movement to sitting instruction, fidgets, modeling expected behavior, communication logs for behaviors, additional classroom ABA trained support for Student, consultation with an autism specialist, and sensory diet. The sensory diet included movement prior to sitting instruction, with five minutes of activity such as jumping on trampoline, bouncing on a therapy ball, running to a fence, hopping or hopscotch, hanging from bar every hour, and fidgets.

Placement, Special Education and Related Services

144. The IEP indicated that Student could have his educational needs met in the general education setting with designated instructional services for speech, occupational

therapy, and adaptive physical education. At the meeting, Mother shared that Student had a one-to-one ABA aide since the start of 2016-2017 school year to support him throughout the school day. Mother also shared that his general education classroom had about 17 students. Student's attorney shared that Student was successful in a small general education classroom setting with the support of the one-to-one aide.

145. Stephanie Brown was a general education teacher for District for the past three years. She taught first grade at Portola Springs. Prior to joining District, she was a teacher for six years at Westminster School District. Student would have joined her classroom had he attended Portola Springs during the 2016-2017 school year.

146. At the April 10, 2017 IEP team meeting, Ms. Brown shared that her classroom had about 25 students. She expressed confidence in her ability to meet Student's needs in her classroom. At hearing, she explained that as of the April 10, 2017 IEP team meeting, she had no current information as to Student's current skill levels in any area. Her only understanding as to the level of behavior support he received at Eastside Christian was a one-to-one aide for the entire school day. She was not aware of how many prompts he required throughout the school day, what accommodations were successful, and no knowledge as to any specific equipment used by Student in his Eastside Christian classroom. She testified that though her classroom at Portola Springs had many of the accommodations listed in the April 2017 IEP she was not certain if those accommodations were appropriate for Student as of April 10, 2017.

147. The April 2017 IEP offered special education and related services in the form of pull-out adapted physical education at 30 minutes a session for a total of 60 sessions, totaling 1,800 minutes yearly, to be evenly distributed throughout the year. As for language and speech services, Student was offered one 30-minute pull-out session in a group setting and 15 minutes of consultation each week. The IEP also offered the same duration and frequency of push-in language and speech services. Behavior

intervention services were offered at 1,720 minutes per week, to involve a behavior tutor assigned only to Student.

148. Occupational therapy services were offered at 30 minutes a session for a total of 60 sessions, totaling 1,800 minutes yearly. The intent was for the services to be distributed equally throughout the year. The IEP team meeting notes clarified the frequency as "2x 30 minutes weekly push in. Individual."

EXTENDED SCHOOL YEAR

149. The April 2017 IEP offered extended school year services. The extended school year was for four weeks, starting in June 2017. The IEP offered one pull-out 30-minute group session per week for language and speech services. Adapted physical education was offered consisting of one pull-out 30-minute group session, once per week.

150. The IEP team meeting ended at approximately 3:30 p.m. No request to continue the annual IEP review was made by District or Student to gather more information before finalizing the IEP.

151. After the meeting, District provided Mother with an 18-page draft of the April 2017 IEP and a separate three page document of the IEP team meeting notes. District provided Mother with two authorizations for release of information, one for Eastside Christian and another for CARD, to interview Ms. Nguyen and Ms. Buttrey. The proposed assessment plan was also given to Mother. The complete copy of the proposed IEP was not provided to the Mother that day.

The 30 Day IEP as an Annual Offer

152. Jennifer O'Malley was District's Director of Informal Dispute Resolution since 2015. As the Director of Informal Dispute Resolution, Ms. O'Malley handled all Due Process cases from initial negotiations to implementation of settlement agreements. She

had many of the same duties as Special Education Administrator for Compton Unified School District from 2010 to 2015. Ms. O'Malley was also a special education program specialist for four years and middle school teacher for three years with Compton. She taught a special day class for students diagnosed with emotional disturbance. She possessed a master's degree in pastoral studies, master's degree in special education, and an Educational Leadership Clear Credential.

153. At hearing, Ms. O'Malley testified that by April 10, 2017, Student's annual IEP review was just overdue. She opined that it made no difference whether or not the IEP team meeting was for a 30-day review or an annual review, explaining that both reviews are handled similarly where either the previously approved IEP would be adopted or a new IEP would be developed. She explained that District was required to make an offer of FAPE on April 10, 2017, regardless of whether or not the annual IEP review was continued. If District did not make an annual offer of FAPE that day, the interim services would have expired on April 11, 2017, and Student would have been left without a program. Ms. O'Malley acknowledged that the IEP team could have agreed to hold a second part to the annual IEP review, but she believed District had no choice but to make its annual offer of FAPE. However, when cross-examined, Ms. O'Malley acknowledged that District could have extended the interim offer of services until an annual IEP was completed.

154. Barbara Colbert was District's school psychologist for 13 years. Conducting assessments and developing offers of interim special education services were among some of her responsibilities. Prior to becoming a school psychologist, Ms. Colbert taught general education for 16 years. She possessed a bachelor's degree in liberal studies, a master's degree in educational psychology, and an Educational Specialist Degree.

155. Ms. Colbert explained that the interim placement offered to Student in March 2017 was comparable to the last agreed upon IEP. The interim offer was effective for 30 days. Ms. Colbert explained that a 30-day IEP team meeting is scheduled after a Student is enrolled because the interim placement offer was a temporary placement offer. She explained that ideally, a student would attend a District school and District would utilize the 30-day interim placement to evaluate a student to develop a more appropriate IEP offer.

156. Ms. Colbert opined that the development of an IEP for purposes of a 30-day review and an annual review were essentially the same. In both reviews, the IEP is developed in the same manner, with all parts of the IEP reviewed and developed. Ms. Colbert explained that though the IEP team meeting notices did not reflect that it was an "annual" review, she opined that the meeting was expected to be conducted as an annual review because the annual review was overdue. District understood the review would be treated as an annual review at some point in March 2017. She explained that if more time was needed to develop the IEP on April 10, 2017, the IEP team could have continued the meeting.

157. In preparation for the April 10, 2017 IEP team meeting, Ms. Colbert reviewed Placentia-Yorba Linda's 2015 IEP and proposed 2016 IEP, Mother's consent letters to the 2015 IEP, Placentia-Yorba Linda's 2015 preschool educational assessment, and the January 2017 report card from Eastside Christian. Ms. Colbert did not believe an assessment plan was needed prior to the meeting, opining that no additional information through assessments were needed and assessment results would not have been completed prior to the 30-day review on April 10, 2017. She, along with the rest of the District IEP team members were not aware prior the April 10, 2017 IEP team meeting that Student was receiving services from CARD during the 2016-2017 school year.

Registration documents and her communications with Mother did not identify CARD as a service provider for Student during that school year.

158. Ms. Colbert opined that the Placentia-Yorba Linda 2015 preschool educational assessment did not specifically provide Student's present levels as of April 10, 2017. She further acknowledged that it was District's responsibility to gather Student's present levels of performance for consideration at the April 10, 2017 IEP team meeting. Ms. Colbert opined that a parent must be involved in the creation of IEP goals and their input had great value in the development of an IEP. She opined that for a parent to give informed consent to an IEP, the parent must be informed of their child's skills and deficits. This information must be available to the parent for that parent to meaningfully participate in the development of their child's educational program. Ms. Colbert opined that a parent is entitled to have information on their child's present levels of performance and to have their child's IEP goals developed based on the present levels.

159. Ms. Colbert also opined that the April 2017 IEP goals were measurable and a general education setting was an appropriate placement. However, though the goals were measurable, she recognized that April 2017 IEP did not contain Student's present levels and baselines as of 2017. Ms. Colbert also acknowledged that Student did not have to enroll and attend District before District could obtain his present levels of performance.

160. Ms. Colbert did not know which accommodations were successfully implemented for Student during 2016-2017 school year. She assumed that since the accommodations outlined in the Placentia-Yorba Linda 2015 IEP were repeated again in the proposed 2016 IEP, that those accommodations had some success. Ms. Colbert noted that the report card provided no information as to specific accommodations at Eastside Christian

161. Ms. Colbert testified that District was cautious about making any changes to the proposed 2016 IEP. District wanted to keep everything in place as before since District had not had an opportunity to get to know Student. The April 2017 IEP offered to hold another IEP team meeting in 30 days from the time the IEP was implemented. The purpose of reviewing the IEP in 30 days was to make any changes to the IEP after District had a chance to work with Student. Since Mother did not provide the information District was hoping to receive, District proposed to reassess Student.

PROPOSED ASSESSMENT PLAN AND REQUESTS FOR RELEASE OF INFORMATION

162. On April 17, 2017, District mailed Mother a prior written notice as well as a complete copy of the proposed April 2017 IEP, parent procedural safeguards, a proposed assessment plan, and two authorizations for exchange of information and/or release of records for Eastside Christian and CARD. Mother signed the authorizations on April 24, 2017, and indicated an expiration date of August 1, 2017.

163. The proposed assessment plan sought to evaluate Student in the areas of academics, health, language/speech communication development, motor development, social/emotional, adaptive/behavior and to conduct both a functional behavior assessment and an assessment using alternative means to assess Student's IQ. Mother consented to the proposed assessment plan, adding a few requests. It was faxed to District on April 26, 2017. The signed assessment plan contained Mother's hand written notes, correcting the plan to reflect it was not a triennial assessment. Mother also disagreed with the assessment plan's proposal to use alternative means of assessing Student's IQ. Mother noted that she agreed with all the proposed assessments but requested Student's IQ be tested for a specific learning disability. She also requested auditory and visual processing assessments to be conducted.

164. In a prior written notice sent to Mother on May 8, 2017, District agreed to include auditory and visual processing assessments as part of the multidisciplinary

evaluation. The school psychologist would conduct the auditory and visual processing assessments. The prior written notice informed Mother that District would be conducting alternative means of assessing Student's cognitive abilities and no IQ test would be performed. District's last day of instruction for the 2016-2017 school year was June 9, 2017.

165. On July 26, 2017, at 6:46 p.m., Mother emailed Ms. Colbert and copied Ms. Hertig an attached letter serving as Mother's 10-day notice of her intention to place Student in second grade at AmeriMont Academy. The placement was based on Mother's position that District failed to make an offer of FAPE that was based on Student's present levels of performance and appropriate goals developed from current assessment of his unique needs.

166. On August 1, 2017, District emailed and mailed their response letter to Mother. District acknowledged receipt of Mother's 10-day notice and confirmed their position that the goals, accommodations and services offered in the April 10, 2017 IEP offered a free appropriate education. The same letter noted that District was still in the process of completing the agreed upon assessments and an IEP team meeting was scheduled to be held on August 28, 2017, to review those assessments and discuss any changes to the IEP that may be recommended by the IEP team as a result. Attached to the letter was District request for a release of information from AmeriMont. As of the time of hearing, no amendments to the April 2017 IEP had been made.

ASSESSMENTS FOLLOWING THE APRIL 10, 2017 IEP TEAM MEETING

Occupational Therapy Independent Educational Evaluation

167. Dr. Smith Roley's independent occupational therapy educational evaluation was conducted on April 10, 2017. Student was referred for the evaluation by Mother to assess his development and determine the need for occupational therapy

services. The results of the evaluation showed Student to have several areas of strength including visual perceptual skills, fundamental gross motor skills and imitation of postures. The results showed Student had poorly regulated behaviors and atypical sensory reactivity related to his ability to sit still, attend, and engage without inappropriate behavior. He also showed difficulty with body awareness, including tactile and proprioceptive perception and vestibular postural control, social skills, attention, and organizational skills. Dr. Smith Roley opined that these difficulties would affect Student's ability to access the curriculum and benefit from his education.

168. Dr. Korrie Sparks was an occupational therapist who began providing Student occupational therapy services in June 2017. Student received two hours of occupational therapy services per week, one hour provided by Dr. Sparks and the other hour provided by another occupational therapist. Dr. Sparks also conducted a school observation as part of Dr. Smith Roley's independent occupational therapy evaluation. That observation occurred on April 12, 2017.

169. Dr. Sparks possessed a bachelor's degree in psychological sciences, master's degree in occupational sciences and occupational therapy, and an occupational therapy doctorate. She operated her own practice since 2016. Since September 2015, she conducted school observations, consulted on reports, and attended IEP team meetings as a consultant for Dr. Smith Roley. She estimated having attended between 100 to 200 IEP team meetings.

170. Dr. Sparks testified as to Student's current occupational therapy needs.⁵ Dr. Spark's therapy goals were directed at Student's ability to process vestibular, proprioceptive, and tactile information more efficiently to allow him to be more

⁵ Dr. Spark's testimony regarding Student's occupational therapy needs was considered solely for the purpose of determining remedies.

organized and calm in his environment, his ability to complete multi-step tasks, and improve his graphomotor skills to write with better accuracy. Student had difficulty processing tactile sensations accurately. She opined that tactile processing was intricately linked to a person's ability to stay calm and regulated. For Student, tactile processing difficulties impacted him socially. He tended to inappropriately touch his peers, not give them enough personal space, or not notice when his peers are touching him, which had a negative impact on his social interactions.

171. Dr. Sparks shared examples of Student's inability to remain organized and calm. Student had difficulty maintaining an upright seated position without twirling and spinning; navigating the school environment without bumping into peers and objects; and standing in line without overreacting to being touched. She observed him disrupting class through the sounds he would make. Dr. Sparks opined Student's tendencies to make noises were directly linked to his sensory needs. He had difficulty processing auditory information and would seek out auditory information to stay calm and organized.

172. Dr. Sparks opined that Student could receive occupational therapy in a school setting if specialized equipment, space, and resources were available. Student had difficulty processing tactile information, and therefore needed intensive sensory integrative treatment in a clinic, providing multiple opportunities for sensory exploration and opportunities to change the environment and expose him to a variety of tactile media. In the school setting, tactile processing would involve such things as understanding where his peers were through the sense of touch. In her observation, Student was tapped on his back by a peer. Dr. Sparks explained that Student could have perceived that tap as threatening due to his difficulty processing and understanding where in his back he was tapped. Dr. Sparks also explained that tactile processing issues made it difficult to discriminate items when feeling for objects, such as searching for an

item in a backpack. It was also harder hold a pencil with a proper grasp if the placement of the pencil in the hand was difficult to sense.

173. Dr. Sparks explained that a sensory diet is a way to support a child in their environment with sensory rich opportunities to keep them calm and alert. She opined that Student struggled with processing vestibular information. Dr. Sparks defined vestibular as a person's sense of understanding movement in their body and orienting their body upright. As a result, a sensory diet for Student would include more opportunities for movement during the day to stay focused and alert. His sensory diet would also include opportunities to swing various times of the day before engaging in an activity that required a lot of focus. She explained that a sensory diet is unique to the child and is very dynamic. It involved consistent monitoring and adjustments. One strategy may work for one week and not the next. Dr. Sparks opined it be important to identify strategies that have been successful and to carry those over in developing a sensory diet.

174. Dr. Sparks opined that individuals working with Student should be trained in sensory processing because behavior is impacted by sensory processing. She provided an example that when Student hummed or called out in class, one could perceive that as being disobedient. However, someone trained in sensory processing would identify that behavior as a means for Student to seek out auditory information to help him understand where he was in his environment. This would allow Student to remain calm and organized.

175. Dr. Smith Roley and Dr. Sparks provided thoughtful and thorough responses during their examination. They credibly established that Student required occupational therapy service to access his education.

Independent Neuropsychological Evaluation

176. Dr. Mitchel Perlman testified at hearing on behalf of Student. He possessed a doctorate degree in clinical psychology and a postdoctoral master's degree in clinical psychopharmacology. He had been in private practice since 1984. One aspect of his private practice involved conducting comprehensive neuro-cognitive assessments of special needs children for special education purposes.

177. Since 1982, he has participated in approximately 23 to 30 IEP's per year. He has conducted on average 30 to 50 independent psychoeducational evaluations each year, with over half of his evaluations involving students diagnosed with autism. He attended numerous 30-day placement IEP team meetings. He understood those meetings to involve students transferring from one school district to another, where the incoming school district could adopt the last implemented IEP until a more enduring IEP can be developed.

178. Dr. Perlman conducted a neuropsychological assessment of Student. The assessment was conducted over three days on July 24, 25, and 31, 2017. Among the records considered by Dr. Perlman were District's proposed April 2017 IEP, the Placentia-Yorba Linda 2015 IEP and proposed 2016 IEP, the Placentia-Yorba Linda 2015 preschool educational evaluation report, and Ms. Winslow's March 19, 2016 occupational therapy evaluation in preparation for Student's assessment. The assessment report was completed in November 2017.

179. Dr. Perlman opined that identifying a student's present levels of performance is vital in the development of an annual IEP as they are intertwined in the identification of baseline levels, which reflect a student's abilities and educational needs. Present levels of performance can be obtained through parent feedback, observations, assessments, and data collection. Discipline logs and school nurse data are other sources of information. Teacher input through reports, report cards, and other forms of

communications such as emails were useful sources that can help identify present levels of performance. He opined that children aged four to seven possessed skills that vary greatly within that age group and he would expect that annual IEP goals to change from year to year.

180. Dr. Perlman opined that the present levels of performance in the April 2017 IEP were not new present levels and incomplete as originally written in 2016. They were very limited as far as addressing Student's educational needs. He explained that the Placentia-Yorba Linda 2015 preschool educational assessment clearly identified Student's social/emotional, vocational, and adaptive skills as his primary areas of need. To demonstrate the April 2017 IEP's insufficiency, Dr. Perlman pointed out that the present levels of performance as to adaptive daily skills in the proposed 2016 IEP made no mention of Student's difficulties reflected in the 2015 preschool educational assessment or the 2015 IEP. As a result, he opined that the present levels of performance as written in the April 2017 IEP were inadequate to create appropriate annual goals since they were taken directly from the proposed 2016 IEP that was insufficiently written. Furthermore, there was nothing to justify why the proposed 2016 IEP goals would be appropriate in 2017. He described the snapshot of Student in the proposed 2016 IEP as out of focus, in that the present levels were informative but incomplete, and by April 2017, the snapshot was old and less useful. As a consequence, the goals derived from those present levels would still be incomplete. Therefore, the educational placement based on those incomplete goals would be questionable as an annual IEP.

181. Dr. Perlman opined that as to the April 2017 IEP offer of accommodations, the absence of accurate present levels of performance identifying Student's needs and abilities called into question whether the accommodations could be delivered effectively. For example, Student presented with a high degree of anxiety, and though

the front-loading and visual aids would be helpful, it would have been more important for those delivering the accommodations to understand what was driving the need for those accommodations.

182. Dr. Perlman observed Student at AmeriMont on November 16, 2017.⁶ The observation lasted for approximately 90 minutes. He observed children in whole class and in small groups. There were 11 students in class that day, one student was absent. He observed Student working independently on a worksheet and on a computer. A one-to-one ABA trained aide from CARD shadowed Student. The teacher instructed the class to choose a classmate to partner with. Student did not listen to the teacher's direction. The aide prompted Student to ask his classmate. The aide helped foster positive relationships between Student and his classmates.

183. Dr. Perlman observed Student's headphones were not working as he individually worked on the computer. Dr. Perlman noted that Student began to break down, but did not have a full tantrum. With no headphones, he was permitted to use the computer's speakers and was asked to keep the volume to a minimum. He did not listen and turned up the volume. This required redirection by the aide and teacher. Throughout the observation, Student was redirected a number of times, especially during transitions. He was slow to initiate tasks, as he was careful and perfectionistic. With prompts, he completed his assignments. However, he completed the math assignment quickly with no redirection. Dr. Perlman opined that Student was accessing the curriculum.

184. Dr. Perlman observed two accommodations utilized at AmeriMont. One strategy was to allow Student to display some behaviors and to allow the behavior to

⁶ Dr. Perlman's testimony as to his observation of Student at AmeriMont was considered only for purposes of remedies.

play out as long it was not distracting others. This approach was balanced with immediate redirection. The most notable accommodation Dr. Perlman observed was making Student's environment smaller, with designated spaces in the room to sit and transition. He did better in the smaller physical environment. His playground area was also limited. He was restricted to very specific playground activities and equipment.

185. Dr. Perlman opined AmeriMont's small general education class size and the support of the CARD aide to be an appropriate placement for Student. Student was challenged academically and the smaller, more intimate group allowed for a more socially meaningful experience.

District's August 18, 2017 Functional Behavior Assessment

186. Ms. Kapur conducted a functional behavior assessment of Student in May 2017. She explained that a functional behavior assessment is an investigative tool to identify the function of behaviors and develop interventions to address the behaviors that are impeding a student's learning or that of others. Her assessment included interviews of Ms. Buttrey in May 2017 and of Ms. Nguyen at the end of June 2017 after extended school year had begun. She observed Student twice at Eastside Christian, the first on May 9, 2017 and the second on May 12, 2017. She observed Student to do quite well. He was happy, energetic, eager to participate, and responsive to the teacher. She did not observe any behavior that she felt raised any safety concerns.

187. At hearing, Ms. Kapur opined that changes to the April 2017 IEP were not needed based on the findings of her functional behavior assessment. She opined that extended school year behavior intervention services were not appropriate for Student. Based on the information provided by Ms. Buttrey and Ms. Nguyen, Ms. Kapur opined that the intensity and pervasiveness of Student's behaviors was not to the degree that required behavior intervention services. For the same reasons, she opined that no behavior intervention plan was warranted. Ms. Kapur observed and opined that the

CARD aide used simple interventions and those interventions were already reflected in the April 2017 IEP.

District's August 28, 2017 Multidisciplinary Assessment

188. Student was assessed over several days between May 22, 2017, and June 1, 2017. The purpose of the evaluation was to "establish eligibility for special education and related services, determine present levels of performance, monitor progress, and assess whether any modifications in the services are needed as mandated by state and federal regulations." The assessments were conducted by Ms. Colbert, Ms. Jeffries, Ms. Gilley, Ms. Schlossberg, education specialist Karra Ashton, physical therapist Teresa Stuart, and school nurse Amy Camp. The assessors took into consideration background information provided by Mother, Student's recent grade history from all four quarters of the 2016-2017 school year at Eastside Christian, Dr. Smith Roley's April 10, 2017 occupational therapy assessment, Placentia-Yorba Linda's April 15, 2013 Initial Assessment, and Placentia-Yorba Linda's Triennial IEP review of March 6, 2015.

189. Student was assessed in all the areas proposed in the assessment plan, including assessments in audio and visual processing and cognitive functioning. The assessments also looked into whether Student had a specific learning disability. At hearing, Ms. Gilley, Ms. Jeffries, Ms. Kapur, and Ms. Colbert all opined that their assessment findings did not warrant modification to any of the recommended accommodations or services offered in the April 2017 IEP.

190. District's multidisciplinary assessment report was presented to Mother at an IEP team meeting on August 28, 2017.

PARENT'S EXPENDITURES

191. Student presented invoices paid for occupational therapy services. Mother spent \$2,610 for occupation therapy services from Centerpointe for Children, for 18

sessions, from a period of May 9, 2017, to September 26, 2017. In August and September 2017, Mother paid Sparks Occupational Therapy, Inc. for nine therapeutic occupational therapy activities and one school based consultation at a rate of \$145 per session. She paid \$140 for one professional consultation. Her total payment to Sparks Occupational Therapy was \$1,590.

192. Mother transported Student to and from both occupational therapy locations. Travel to Centerpointe from Student's home totaled 11 miles one way and travel to Sparks Occupational Therapy from the home totaled 16.6 miles one way.

193. Student presented tuition invoices indicating payments and a zero balance from AmeriMont and Eastside Christian. Mother paid the full year of tuition for AmeriMont on August 1, 2017, to take advantage of a five percent tuition discount if paid in full. In addition, she paid an annual materials fee. The tuition and fee paid, less the discount, totaled \$11,458 for the full school year.

194. AmeriMont school uniforms consisting of polo shirts, bottoms, a vest, and a hooded nylon jacket costing a total of \$212.84 were purchased by Mother on October 13, 2017. Student presented purchase orders to support those expenditures. Travel from Student's home to AmeriMont totaled 16.1 miles each way. Mother transported Student to and from AmeriMont. Mother also paid a summer program registration fee of \$40, two full day adventure camps totaling \$570, and field trip chaperone ticket and fees totaling \$74.50, however Student provided no explanation of these events and failed prove they were necessary educational expenses.

195. Mother's tuition payment plan for the 2016-2017 school year at Eastside Christian consisted of 10 payments of \$466.50 per payment. Tuition payment from April 13, 2017 to the end of the school year in May 2017 totaled approximately \$746.40. Travel from Student's home to Eastside Christian totaled 19.8 miles each way. Mother transported Student to and from Eastside Christian.

196. Student provided invoices and online payment receipts of supplies and materials purchased by Mother. On May 30, 2017, Mother purchased a "Fat Brain Toys Squigz Deluxe Set" for \$44.95. From June 21, 2017, to June 26, 2107, Mother purchased nine books involving social stories that totaled \$88.93. In August and September 2017, Mother purchased additional books of social stories totaling \$48.45. Two books purchased that same period that were aimed to assist school staff totaled \$24.47. In October 2017, Mother purchased additional social story books, fidgets, a seat cushion, chair bands, a seat rocker, and pencil top erasers geared for children with autism and attention deficit hyperactivity disorders totaling \$224.97. However, Student failed to establish whether the items purchased were required educational materials and items, rather than merely suggested by Student's teachers or service providers.

197. On November 7, 2017, Dr. Perlman provided Mother with an invoice for his neuropsychological assessment totaling \$6,212.50. As of the time of hearing, the invoice had not yet been paid by Mother. Student presented an email printout of a hotel reservation confirmation in San Diego, California. The hotel confirmation indicated that Mother paid \$304.58 for a hotel in San Diego, California for two adults and two children from July 23, 2017, to July 25, 2017 to allow Dr. Perlman to evaluate Student. Additionally, Mother paid Dr. Smith Roley \$1,500 for the occupational therapy independent educational evaluation. Dr. Smith Roley's invoice did not indicate it was paid.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁷

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁸ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an individualized education program is a written statement for each child with a disability that is

⁷ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

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

developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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

4. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these

phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

5. In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*), the Supreme Court held that a child's "educational program must be appropriately ambitious in light of his circumstance." "[E]very child should have a chance to meet challenging objectives." (*Ibid.*) *Endrew F.* explained that "[t]his standard is markedly more demanding than the 'merely more than de minimis' test [¶] The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.*, as the Court was "[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case." (*Id.* at p. 1001.)

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, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Student requested the hearing in this matter, and therefore Student has the burden of proof related to the issues for hearing.

ISSUE 1: DID DISTRICT FAIL TO TIMELY AND APPROPRIATELY ASSESS STUDENT DURING THE 2016-2017 SCHOOL YEAR?

7. Student contends that District failed to timely assess, and that the assessments it conducted were inappropriate because they did not fully assess Student in all areas of suspected disability. Student argues that District's failure to timely assess Student, or to fully assess all areas of suspected disability, denied Student a FAPE by failing to identify his unique educational needs.⁹

8. District contends that an assessment of Student was not required prior to the April 10, 2017 IEP team meeting and the assessment plan proposed on that date, and modified to include Mother's request for auditory processing and visual processing assessments was timely. District further contends that its assessments fully and appropriately assessed Student in all areas of suspected disability.

9. A failure to properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.*, 158 F.Supp. 2d 1190, 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and District agree otherwise, but at least once every three years unless the parent and District agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted if the local educational agency "determines that the educational or related services needs, including improved academic achievement and functional

⁹ Student did not challenge whether District's August 28, 2017 multidisciplinary assessment was conducted in accordance with federal and state law. Rather, Student argues that District failed to fully assess Student in all areas of suspected disabilities during the 2016-2017 school year.

performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment." (20 U.S.C. §1414(a)(2)(A); 34 C.F.R. § 300.303(a); Ed. Code, § 56381, subd. (a)(1).)

10. A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

11. The school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral, not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral. (Ed. Code, § 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, § 56321, subd. (c)(4).) A school district is required to complete an assessment or reassessment and hold an IEP team meeting to review the results within 60 days of receiving written parental consent to assess, exclusive of school vacations in excess of five schooldays and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

Analysis

12. District's assessments were timely. Student's triennial assessment was not due until March 2018. Mother did not request to reassess Student and Student failed to prove that District was legally required to reassess Student prior to April 10, 2017. At the April 10, 2017 IEP team meeting, District proposed to reassess Student and Mother voiced her agreement. The written proposed assessment plan was provided to Mother on April 10, 2017. Mother signed the assessment plan on April 24, 2017, and provided the consented assessment plan to District on April 26, 2017.

13. District's last day of instruction for the 2016-2017 school year was June 9, 2017. The 2017-2018 school year began on August 24, 2017. An IEP team meeting was held on August 28, 2017, to review the results of the District's assessments. Forty-four days elapsed from the date District received Mother's consent to the date District began summer break. The assessment was reviewed four days after District began the 2017-2018 school year. Therefore, District completed the assessments and held an IEP team meeting to review the results of the assessments within 60 days of Mother's consent. Accordingly, Student failed to prove that District's reassessment of Student was untimely.

14. Student did not establish that District failed to fully assess Student in all areas of suspected disabilities during the 2016-2017 school year. District's proposed assessment plan sought to evaluate Student in the areas of academics, health, language/speech communication development, motor development, social/emotional, adaptive/behavior. The proposed assessment plan called for a functional behavior assessment and a cognitive skills assessment through alternative means of assessing Student's IQ. Mother consented to those assessments, with the exception of using alternative means to assess Student's IQ. Mother requested an IQ test to assess Student for a specific learning disability; however, Student did not establish that a typical IQ test was necessary to assess Student for a specific learning disability. Furthermore, District timely denied Mother's request by providing Mother with a prior written notice informing her of District's intention to utilize alternative testing methods to assess Student's cognitive skills. Mother also requested, and District agreed to conduct, audio and visual processing assessments. Both these assessments, as well as a cognitive skills assessment were conducted as part of District's August 28, 2017 multidisciplinary assessment.

15. District conducted all the assessments proposed in the assessment plan, the audio and visual processing assessments requested by Mother, and an assessment of Student's cognitive abilities and examined whether Student had a specific learning disability. The weight of the evidence established that Student was appropriately assessed in all areas of suspected disabilities. Therefore, Student failed to meet his burden in proving District's assessments were untimely or inappropriate.

ISSUES 2(A), (B), AND (C): DID DISTRICT SIGNIFICANTLY IMPEDE PARENT'S ABILITY TO MEANINGFULLY PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING STUDENT'S IEP?

16. Student argues that District failed to obtain the necessary information to identify Student's present levels of performance and accommodations, and to consider input from Student's Eastside Christian teacher and CARD in the development of the April 2017 IEP. Student contends that these failures significantly impeded Mother's ability to meaningfully participate in the IEP process.

17. District contends that it had sufficient educational information in its possession to develop and adopt the April 2017 IEP. Furthermore, District claims it was legally required to make an offer of FAPE on April 10, 2017, pursuant to Education Code section 56325. District also argues that Mother was a welcomed participant at the IEP team meeting and despite District's efforts to elicit information from Mother about Student's present levels of academic and functional performance and accommodations at his private school, Mother held back what she knew and provided little assistance in the development of the IEP. Accordingly, District argues that Student should not be able to claim that Mother was denied an opportunity to meaningfully participate in the IEP process when she herself was uncooperative in the development of the IEP.

18. An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional

performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

19. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (458 U.S. at pp 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

20. Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044 (*Doug C.*).) The parents of a child with a disability must be afforded an opportunity to participate in

meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a free appropriate public education to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).)

21. A school district is required to conduct, not just an IEP team meeting, but also a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d 1479, 1485; *Fuhrmann v. East Hanover Board of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

22. When a student with an IEP transfers into a district from a district not operating programs under the same local plan in which the student was last enrolled in special education program within the same academic year, the school district shall provide the pupil with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parents, for a period not to exceed 30 days. (Ed. Code, § 56325, subd. (a)(1).) At the expiration of 30 days, the school district shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law. (*Id.*) When parents and a school district disagree on the appropriate placement for a transferring student, providing services in accordance with the student's previously implemented IEP pending further assessments

effectuates the statute's purpose of minimizing disruption to the student while the parents and the receiving school district resolve disagreements about proper placement. (*A.M. ex rel. Marshall v. Monrovia Unified School Dist.* (9th Cir. 2010) 627 F.3d 773, 778-779.)

23. When a school district is faced with a situation of complying with one procedural requirement of the IDEA or another, the school district must make a reasonable determination of which course of action promotes the purpose of the IDEA and is least likely to result in a denial of a FAPE. (*Doug C., supra*, 720 F.3d at p. 1046.)

Analysis

ISSUE 2 (A), PRESENT LEVELS OF PERFORMANCE

24. District failed to obtain current information to identify Student's present levels of performance in developing the April 2017 IEP. District took Placentia-Yorba Linda's proposed 2016 IEP present levels of performance and transferred it the April 2017 IEP. At the April 10, 2017 IEP team meeting, District IEP team members acknowledged that the information from the proposed 2016 IEP was not current and the January 2017 Eastside Christian report card provided limited information. The April 10, 2017 IEP team meeting notes supported this conclusion, as District was cautious to change anything from the proposed 2016 IEP due to the lack of current information.

25. Ms. Buttrey and Ms. Nguyen's testimony clearly established that Student had grown and progressed in many ways during the 2016-2017 school year. Student's tantrums, elopement, screaming, vocal stereotypy, and noncompliant behaviors diminished. His classroom behaviors improved and his relationships with his peers blossomed as his ability to express himself strengthened. Their testimony also established that there was still work to be done to improve Student's communication and interactions with peers, his ability to focus on task, and his behaviors. Additionally, Student's need for consistency was crucial and his struggles with changes had a deep

impact on his learning. This information was crucial in developing an IEP that was tailored to Student's unique needs.

26. District's IEP team members testified that the information they relied on at the time of the IEP team meeting only provided a good starting point, but more information needed to be gathered. Furthermore, Dr. Perlman, Dr. Smith Roley, and Ms. Holler credibly established that the information the IEP team relied on at the meeting was insufficient to identify Student's present levels of performance as of April 10, 2017. Dr. Perlman persuasively established that the present levels of performance in the April 2017 IEP were inadequate as they were wholly based on the proposed 2016 IEP's incomplete present levels. District's IEP team members were essentially of the same opinion that they could not accurately identify Student's present levels of performance with the information that they had at the IEP team meeting. District needed to reassess Student and to interview Student's Eastside Christian teacher and his behavior services providers from CARD. At the IEP team meeting, District recommended reviewing the IEP in 30 days and anticipated the need to update its present levels and goals.

27. District knew the information it had on April 10, 2017, was inadequate to identify Student's present levels of performance. District also knew there was current information to be gained through assessments and teacher and behavior therapist interviews, which Mother was in agreement with at the IEP team meeting. However, rather than continuing the annual IEP review to collect up-to-date information on Student's present levels, District simply adopted the present levels of performance from the proposed 2016 IEP to develop its offer of FAPE.

28. District was aware in early March 2017 that it would not have an opportunity to work directly with Student through a 30-day interim placement. Rather than taking steps to get to know Student prior to the IEP team meeting, District simply waited for the IEP team meeting in the hopes that Mother would fill in the blanks.

District's IEP team members could have interviewed Student's Eastside Christian teacher or requested specific information from Mother about services Student was receiving during the 2016-2017 school year. Neither of those steps was taken.

29. District argues that Mother was less than forthcoming about her knowledge of Student's present levels, accommodations and services and therefore, did not act in good faith in developing the IEP. District expected Mother to be engaged and informative at the meeting, just as she had been in IEP team meetings with Placentia-Yorba Linda. Even if Mother had more to share but chose not to, District brought nothing to the table at the IEP team meeting to either confirm or call into question what Mother could have shared regarding present levels and accommodations. Furthermore, at the IEP team meeting, Mother verbally agreed with reassessing Student and allowing District to request information from Eastside Christian and CARD. Therefore, Mother's lack of input in the IEP team meeting did not preclude District from obtaining the information Mother failed to provide, whether or not Mother intentionally withheld information. A "Part II IEP" team meeting could have been scheduled to consider any new information District acquired.

30. Though Mother was a welcome participant in the April 10, 2017 IEP team meeting, her participation was limited by the lack of information identifying Student's present levels of performance. District's failure to obtain Student's present levels denied Mother of valuable and relevant information for her consideration. This procedural failure significantly impeded Mother's ability to meaningfully participate and make informed decisions in the development of Student's IEP.

31. Therefore, Student met his burden of proving, by a preponderance of the evidence, that District denied Student a FAPE by failing to obtain current information to accurately identify Student's present levels of performance in the April 2017 IEP.

32. Student met his burden in proving District denied Student a FAPE by failing to obtain information from Student's Eastside Christian teacher and CARD for consideration in the development of the April 2017 IEP. District did not contact Ms. Buttrey prior to the April 10, 2017 IEP team meeting. Her direct input was not considered. Despite acknowledging Ms. Buttrey had valuable current information about Student's skills and deficits, District went forward and developed the IEP and made its annual offer of FAPE on April 10, 2017.

33. Similarly, District did not obtain information from CARD prior to making its annual offer of FAPE. At the IEP team meeting, District was informed by Mother that Student had a one-to-one ABA trained aide from CARD, who shadowed him throughout the school day during the 2016-2017 school year. District acknowledged at the meeting that obtaining information from CARD would be helpful. Ms. Hendricks at the meeting stated that information as to what reinforcement system was successfully being implemented at Eastside Christian would have been important to help maintain consistency when Student transferred into a District school. District also sought a release of information from CARD at the meeting. However, rather than continuing the annual IEP review to obtain information from CARD, District chose to complete the IEP and made its annual offer of FAPE at the conclusion of the meeting.

34. By failing to obtain current information from Ms. Buttrey and CARD, District denied Mother critical information for her consideration. For example, one baseline and goal in the April 2017 IEP addressed Student's social interactions. The baseline was inaccurate, as Ms. Buttrey and Ms. Nguyen credibly established that Student's ability to express himself had improved substantially. Information such as this should have been obtained and considered in identifying Student's present levels of performance and to develop appropriate measurable goals.

35. District did not seek to continue the IEP review to get Ms. Buttrey and Ms. Nguyen's input before finalizing its offer. Ms. Buttrey and Ms. Nguyen were Student's most recent providers and had the greatest understanding of Student's current academic, social and emotional needs as of April 10, 2017. District committed a procedural violation by failing to obtain and present for Mother's consideration, Ms. Buttrey's and Ms. Nguyen's contribution regarding Student's academic, developmental, and functional needs. The procedural failure significantly impeded Mother's opportunity to meaningfully participate in the IEP process. Therefore, Student proved by a preponderance of the evidence that District denied Student a FAPE by failing to obtain and consider information from Student's teacher and behavior therapist in the development of the April 2017 IEP.

ISSUE 2(C), ACCOMMODATIONS

36. The April 2017 IEP offered a number of accommodations, many of which were identical to those listed in the proposed 2016 IEP. Mother did not observe Student in the classroom at Eastside Christian, and therefore did not know what accommodations were being used, how they were being used, or how successful the accommodations were. District's IEP team members had nothing more to rely on beyond the January 2017 report card, Ms. Winslow's 2016 occupational therapy assessment, Placentia-Yorba Linda's 2015 preschool educational assessment, Placentia-Yorba Linda's 2015 IEP and proposed 2016 IEP, and Mother's input as to Student's strengths and concerns. None of those sources described with any specificity as to what accommodations Student was receiving at Eastside Christian, how those accommodations were being implemented, or how successful the accommodations were.

37. The failure to obtain information as to the accommodations Student received during the 2016-2017 school year, that enabled Student to succeed, was a

procedural violation of the IDEA as District had ample time to speak with Ms. Buttrey before the IEP team meeting. That procedural failure significantly impeded Mother's ability to meaningfully participate in the development of Student's IEP by denying her valuable and pertinent information for her consideration. Therefore, Student met his burden in proving by a preponderance of the evidence that District denied him a FAPE by failing to obtain information regarding Student's 2016-2017 school year accommodations.

Compliance with Procedural Timelines

38. The April 10, 2017 IEP team meeting was convened to hold both an annual IEP review and a 30-day IEP review pursuant to Education Code section 56325. District feared that had no offer of FAPE been made on April 10, 2017, the interim services would have expired, leaving Student without a program. However, in developing a new annual IEP, District could not simply adopt the previously approved IEP and carry it over for the next year. Though adopting the previous IEP was permissible for the purpose of a 30-day review under Education Code section 56325, adopting the previous IEP in creating a new annual IEP was not. As discussed above, District needed current information of Student's present levels of performance to properly develop annual goals and identify appropriate accommodations and services for the next year. Hence, the annual IEP review should have been continued to gather more current information as to Student's present levels of performance, accommodations and to acquire information from Ms. Buttrey and CARD.

39. District was confronted with either complying with Education Code section 56325's procedural deadline to offer of FAPE within 30 days of the offer of interim services or miss the deadline, and continue the annual IEP review to gather more current information as to Student's present levels of performance, accommodations and to acquire information from Ms. Buttrey and CARD. When confronted with either

complying with one procedural requirement or another, District had to make a reasonable determination of which course of action promoted the purposes of the IDEA and was least likely to result in the denial of FAPE. Delays in meeting IEP deadlines alone do not result in a denial of FAPE where they do not deprive a student of any educational benefit. (*Doug C., supra*, 720 F.3d at p. 1046.) However, failing to obtain valuable and relevant information for a parent to consider does result in a denial of FAPE, as it impedes that parent's ability to meaningfully participate in the development of their child's IEP. (*Target Range, supra*, 960 F.2d at p. 1484.)

40. District's argument that Student would have been denied an educational program had an offer of FAPE not been made on April 10, 2017, is inconsistent with the IDEA's intent to minimize disruption to a student while the parents and the receiving school district resolve disagreements about proper placement. That argument is premised on the erroneous assumption that District was authorized or even required to cease providing services to Student if his annual IEP review was overdue. (*Doug C., supra*, 720 F.3d at p. 1046.) Thus, District's argument must be rejected as District could have continued to provide the stay put educational program until it obtained the needed information.

41. Ms. Colbert acknowledged that a "Part II IEP" team meeting could have been held to complete the IEP review. Mother also came into the IEP team meeting understanding that the meeting could take multiple days. Therefore, District was not prohibited from seeking a continuance of the annual IEP review to further develop the IEP by gathering more current information as to Student's present levels of performance, accommodations and to acquire information from Ms. Buttrey and CARD. District chose not to.

ISSUE 3(A): DID THE APRIL 2017 IEP FAIL TO PROVIDE APPROPRIATE AND MEASURABLE GOALS?

42. Student contends that the April 2017 IEP offer of FAPE was not based on Student's present levels of performance and not created to address Student's current unique educational and related needs. Student argues that the April 2017 IEP specifically failed to address Student's behaviors and anxiety that impeded his education.

43. District contends the April 2017 IEP's goals were both measurable and appropriate. District asserts that any areas of concern that were not specifically addressed in a dedicated goal were accounted for indirectly through other goals.

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

45. Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. §1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

46. 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.) An IEP is evaluated in light

of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Analysis

47. As of April 10, 2017, the relevant information that was in existence that was considered, or could have been considered by the IEP team prior to making an annual offer of FAPE, was the Placentia-Yorba Linda preschool educational assessment, the Placentia-Yorba Linda 2015 IEP and proposed 2016 IEP, the January 2017 Eastside Christian Report Card, and information that was available through Ms. Buttrey and Ms. Nguyen, including the Anthem Report.

48. The April 2017 IEP goals were not based on Student's present levels of performance as of April 10, 2017. The IEP team did not have sufficient information on April 10, 2017 to determine Student's present levels of performance. The present levels of performance in the April 2017 IEP were inadequate, as they were wholly based on the proposed 2016 IEP's incomplete present levels. Therefore, as Dr. Perlman credibly established, the present levels of performance as written in the April 2017 IEP were inadequate to create appropriate annual goals.

49. The absence of accurate and meaningful present levels made the writing of measurable annual goals impossible. Without identifying Student's current level of functioning, a starting point for annual IEP goals could not be established. Without an accurate starting point, or baseline, the IEP team could not confidently develop annual goals that were sufficiently ambitious and obtainable.

50. District committed a procedural violation by failing to include in the April 2017 IEP, annual goals that were based on Student's present levels of performance and reasonably calculated to address Student's unique challenges. The failure to offer appropriate annual goals made the IEP unworkable, impeding Student's right to a FAPE.

Therefore, Student proved by preponderance of the evidence that District denied Student a FAPE by failing to include appropriate annual goals in the April 2017 IEP.

ISSUE 3(B): DID THE APRIL 2017 IEP FAIL TO OFFER STUDENT PLACEMENT AND SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT BASED UPON STUDENT'S UNIQUE NEEDS AND PRESENT LEVELS OF PERFORMANCE?

51. Student contends that the April 2017 IEP's offer of services and placement were not tailored to address Student's unique needs. Student argues that the IEP failed to address Student's behaviors and anxiety which impeded his education. District contends that the April 2017 IEP offered an appropriate placement for Student in a general education classroom with the support of a full time behavior intervention shadow aide. Additionally, District argues the services and supports were appropriate and the IEP identified and addressed Student's long-standing needs.

52. Both federal and state law requires a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a); Ed. Code, § 56040.1.) "Least restrictive environment" reflects the preference by Congress that an educational agency educates a child with a disability in a regular classroom with their typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (Rachel H.)) A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).)

Analysis

53. In reviewing the appropriateness of the April 2017 IEP offer of placement in the least restrictive environment, the analysis is limited to what information was available at the time. Student was thriving at Eastside Christian, with grades ranging

from A- to A+. He made wonderful strides socially and behaviorally during the 2016-2017 school year. Ms. Buttrey and Ms. Nguyen noted the decreasing trends in his impeding behaviors and an upward trend in his social and language skills.

54. However, District was not aware of this information as District did not take steps to investigate Student's behavioral needs before making an annual offer of FAPE. Input from Ms. Buttrey and CARD was available to be gathered and would have informed the IEP team of Student's behavioral needs and CARD's strategies and accommodations, which included the use of a behavior intervention plan, that were implemented during the 2016-2017 school year.

55. Having found the April 2017 IEP's present levels of performance and annual goals to be inadequate and the accommodations based on sources from a year prior, the resulting annual services and educational placement were therefore questionable at the time the IEP was developed. The specific educational services offered in the April 2017 IEP, including services to address Student's behavioral needs, could not have been directly related to Student's unique educational needs since the IEP team could not identify Student's present levels of performance at the April 10, 2017 IEP team meeting.

56. The April 2017 IEP's failure to offer special education services and placement that were directly related to Student's present levels of performance was a procedural violation. The violation impeded Student's right to a FAPE. Hence, by a preponderance of the evidence, Student proved that District denied him a FAPE by failing to offer special education services and placement based on his unique needs and present levels of performance.

ISSUE 4: WAS STUDENT ENTITLED TO EXTENDED SCHOOL YEAR SERVICES FOR SUMMER 2017?

57. Student contends that District failed to provide extended school year services in 2017 consistent with the last agreed upon extended school year placement pursuant to the IDEA's "stay put" provision. District contends that the April 2017 IEP's offer of extended school year services was appropriate. However, District did not raise a defense against the alleged failure to provide Student extended school year services in 2017 pursuant to stay put.

58. Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of this "stay put" provision is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Analysis

59. The 2015 IEP was the most recent implemented IEP prior to the filing of Student's Request for Due Process in April 2017. Student's extended school year services, as implemented pursuant to that IEP, included enrollment in a public general educational classroom with a one-to-one ABA trained aide to support Student throughout the school day. The 2015 IEP extended school year services also included

language and speech services, occupational therapy services, and adaptive physical education services.

60. Here, District failed to provide Student with extended school year services in the summer of 2017 consistent with the 2015 IEP extended school year offer pursuant to stay put. The failure to provide Student with extended school year services consistent with the most recent implemented IEP pending the resolution of the due process proceedings denied Student an educational benefit. Student met his burden in proving, by a preponderance of the evidence, that District denied him a FAPE by failing to offer him extended school year services in 2017.

REMEDIES

1. Student did not prevail on Issue 1. Student failed to prove by a preponderance of the evidence that District failed to timely and appropriately assess Student during the 2016-2017 school year. Therefore, Student's request for independent educational evaluations is denied.¹⁰

2. Student prevailed on Issues 2(a), 2(b), 2(c), 3(a), 3(b) and 4. District significantly impeded Mother's ability to meaningfully participate in the development of Student's April 2017 IEP by failing to consider current information related to Student's present levels of performance and accommodations and failing to include input from Student's Eastside Christian teacher and CARD. Additionally, the April 2017 IEP denied

¹⁰ Student also seeks reimbursement of independent educational evaluations that Mother scheduled or obtained prior to the April 10, 2017 IEP team meeting. Clearly, these were not for purposes of responding to District's offer of FAPE on April 10, 2017. Therefore, it would be inequitable to require District to pay for an evaluation that was initiated for reasons unrelated to any failures on the part of District. For this reason, Student's request for reimbursement is denied.

Student a FAPE by failing to offer appropriate goals, services, and placement that were based on Student's unique needs and present levels of performance. Furthermore, District failed to offer Student extended school year services in 2017 pursuant to the IDEA's "stay put" provisions.

3. Student requests compensatory education in the form of one-to-one ABA services and occupational therapy services, and reimbursement for tuition and related expenses associated with Student's attendance at Eastside Christian and AmeriMont. Student also seeks reimbursement for occupational therapy services. Additionally, Student seeks reimbursement for materials and supplies, as well as transportation to and from school and services.

4. District contends that Student's reimbursement for private school tuition and related costs should be denied due to Mother's failure to provide District timely notice of her intent to place Student in a private school. District also argues any award for reimbursement or compensatory education should be denied in full, or in part, due Mother's refusal to cooperate in the development of the IEP. District contends that Mother withheld valuable and relevant information from the IEP team. Finally, District challenges the competency of Student's supporting documents for the reimbursements he seeks, claiming Student failed to prove that the expenses sought for reimbursement were actually paid or incurred by Mother.

Applicable Law

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

243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

6. Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Id.*; *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F. 3d 1489, 1496.) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district’s proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement found to be reimbursable where it had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student had made substantial progress].)

7. The IDEA does not require that a private school placement provide all services that a disabled student needs as a condition to full reimbursement. To qualify for reimbursement under the IDEA, parents need not show that a private placement

furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159 (*Garden Grove*); see also, *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048.)

8. An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) The award must be fact-specific and 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." (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case "generalized awards" are not appropriate. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.) "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Ibid.*)

Analysis

PRIVATE SCHOOL TUITION AND RELATED COSTS

9. Mother informed District as early as March 3, 2017, that Student would not be attending a District school and would remain in Eastside Christian until an IEP team

meeting was held to discuss an offer of FAPE. On April 12, 2017, just two days after the IEP team meeting, Student filed a Request for Due Process Hearing challenging the appropriateness of the offer and the manner in which the April 2017 IEP was developed. In response, Student remained in Eastside Christian after the IEP team meeting and the annual offer of FAPE was presented.

10. As concluded above in the analysis of Issue 2, District denied Student a FAPE when it denied Mother an opportunity to meaningfully participate in the development of Student's IEP. Therefore, it was reasonable for Mother to leave Student at Eastside Christian.

11. The evidence was clear that Student thrived at Eastside Christian; academically, socially, and behaviorally. Accordingly, Mother is entitled to reimbursement for tuition at Eastside Christian in the amount of \$774.39. Reimbursement for round trip transportation from Student's home to Eastside Christian is also appropriate to be calculated as follows: one round trip daily between Student's home and Eastside Christian, consisting of 39.6 miles, at the 2017 Internal Revenue Service standard rate of \$.535 per mile. Student did not provide evidence of actually trips that Mother provided Student transportation to and from Eastside Christian. Therefore, Student will need to submit proof of attendance, for Mother to receive transportation reimbursement for each day of Student's attendance.

12. Mother enrolled Student at AmeriMont on August 1, 2017, for the same reasons. On July 26, 2017, Mother provided District a written 10-day notice of her intention to place Student at AmeriMont. Student was not being removed from District as Student had been dis-enrolled from District prior to April 10, 2017. Additionally, Student's due process hearing request and complaint gave District ample notice of Mother's rejection of the proposed placement and her concerns related to the IEP. Furthermore, Mother prepaid the tuition on August 1, 2017, to take advantage of a

tuition discount if early and full payment was made. Therefore, Mother's written 10-day notice to place Student in AmeriMont was timely and proper.

13. District attempted to address Mother's concerns by conducting a multidisciplinary assessment and interviewing Ms. Buttrey and Ms. Nguyen. However, no amendments to the April 2017 IEP had been made by the time of hearing. Therefore, Mother's election to enroll Student at AmeriMont was appropriate.

14. Dr. Perlman observed and opined that AmeriMont's small general education class size, with the support of a CARD aide to be an appropriate placement for Student. Student was challenged academically and the smaller, more intimate group allowed for a more socially meaningful experience. Accordingly, Mother is entitled to reimbursement for tuition and uniforms related to Student's attendance at AmeriMont from August 2017 to the date of this Decision. That amount is \$5,941.84.

15. Reimbursement for round trip transportation between Student's home to AmeriMont is also appropriate, calculated as follows: one round trip, consisting of 39.6 miles, at the 2017 Internal Revenue Service standard rate of \$.535 per mile for trips occurring prior to January 1, 2018. For trips occurring on and after January 2, 2018, the 2018 Internal Revenue Service standard rate of \$.545 per mile will be applied. Student did not provide evidence of actual trips that Mother provided transportation to and from AmeriMont. Therefore, Student will need to submit proof of attendance for Mother to receive transportation reimbursement for each day of Student's attendance. Additionally, Mother is entitled to transportation reimbursement for one roundtrip to and from AmeriMont for the remainder of the 2017-2018 school year, or until District holds an IEP team meeting to develop a new IEP and makes an offer of FAPE to Student, whichever occurs first.

16. Student failed to prove the full day adventure camp and field trip chaperone ticket and fees were necessary educational expenses. Therefore, reimbursement for those expenditures is denied.

OCCUPATIONAL THERAPY SERVICES

17. Mother spent \$2,610 for occupational therapy services from Centerpointe for Children, from May 9, 2017 to September 26, 2017. She also paid \$1,590 for Sparks Occupational Therapy, Inc., to provide nine sessions of therapeutic occupational therapy activities, one school based consultation, and one professional consultation in August and September 2017.

18. The weight of the evidence established that occupational therapy services were necessary for Student to access his education. Occupational therapy services were offered in both the 2015 IEP and the proposed 2016 IEP. It was also offered by District in the April 2017 IEP. Additionally, Student was entitled to occupational therapy services during extended school year services pursuant to "stay put." Accordingly, Mother is entitled to reimbursement for occupational therapy services paid for in May 2017 through September 2017 in the amount of \$4,200. Additionally, Mother is entitled to reimbursement for subsequent occupational therapy services paid for by Mother to the date of this Decision, to be calculated as follows: two hours per week, at a rate not to exceed \$145 per hour. Mother is also entitled to reimbursement for occupational therapy services of one hour per week, not to exceed \$145 per week, from the date following this Decision to the remainder of the 2017-2018 school year, or until District holds an IEP team meeting to develop a new IEP and makes an offer of FAPE to Student, whichever occurs first.

19. Reimbursement for transportation for occupational therapy services is appropriate. Mother transported Student on 18 occasions to and from Centerpointe. Roundtrip travel to Centerpointe from the home was 22 miles. Mother also transported

Student on nine occasions to Sparks Occupational Therapy. Roundtrip travel to Sparks Occupational Therapy from the home was 32.2 miles. Therefore, Mother is entitled mileage reimbursement at a rate of \$.535 per mile, for a total of \$366.90, for transportation from May 2017 through September 2017.

20. Mother is also entitled to reimbursement for transportation for occupational therapy services from October 2017 to the date of this Decision, which shall be calculated as follows: one round trip, consisting of 22 miles and 32.2 miles, to Centerpointe and Sparks Occupational Therapy respectively, at the 2017 Internal Revenue Service standard rate of \$.535 per mile for trips occurring prior to January 1, 2018. For trips occurring on and after January 2, 2018, the 2018 Internal Revenue Service standard rate of \$.545 per mile will be applied. Student will need to submit proof of attendance to receive transportation reimbursement for each day of Student's attendance. Additionally, Mother is entitled to transportation reimbursement for one weekly round trip to and from occupational therapy services, from the date following this Decision through the remainder of the 2017-2018 school year, or until District holds an IEP team meeting to develop a new IEP and makes an offer of FAPE to Student, whichever occurs first.

MATERIALS AND EQUIPMENT

21. Student failed to prove Mother's purchase of a "Fat Brain Toys Squigz Deluxe Set", books involving social stories, books purchased for school staff, fidgets, pencil top erasers geared for children with autism and attention deficit hyperactivity disorders, a seat cushion, chair bands, and a seat rocker were necessary educational expenses. Though they may have been suggested or recommended, Student failed to establish that any of the items were required in his educational setting. Therefore, Student's request for reimbursement for materials and equipment is denied.

COMPENSATORY EDUCATION

22. Student seeks compensatory education for the one-to-one ABA services that Mother obtained for Student. Student's CARD services were fully funded by insurance. Student presented no evidence establishing that Mother paid any out-of-pocket costs for CARD services. Student failed to prove that he was denied one-to-one ABA services during the relevant time period that would warrant compensatory education. Therefore, compensatory education for one-to-one ABA services is denied.

23. Similarly, Student's request of compensatory education for occupational therapy is denied. Reimbursement of payments for past and future occupational therapy services is found to be appropriate. That award equitably addresses District's failure to offer occupational therapy services, and an additional award of compensatory occupational therapy services would be excessive. Student's request for compensatory occupational therapy services is therefore denied.

24. District failed to offer Student extended school year services in 2017 pursuant to stay put. Those services would have consisted of 30 minutes per week of language and speech services and 30 minutes per week of adapted physical education services. District's 2017 extended school year calendar was four weeks long. Accordingly, Student is entitled to compensatory language and speech services totaling two hours and compensatory adaptive special education services totaling two hours, to be provided by a nonpublic agency of Mother's choosing, at a rate not to exceed \$150 per hour.

SERVICES PENDING DISTRICT IEP OFFER

25. Despite completing its assessments and obtaining needed educationally related information from Eastside Christian and CARD, District failed to convene an IEP team meeting to amend its April 2017 annual IEP offer. As that IEP does not provide Student with a FAPE and District had not made another IEP offer at the time of the

hearing, Student will be entitled to reimbursement for AmeriMont tuition, occupational therapy services, and transportation, until such a time that District holds an IEP team meeting and makes an IEP offer.

ORDER

1. Within 45 days of this Decision, District shall reimburse Parent for tuition, fees and uniforms at Eastside Christian and AmeriMont from April 13, 2017, through the date of this Decision, in the amount of \$6,716.23. Parent shall provide District proof of payment in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement.

2. District shall reimburse Parent for tuition and mandatory fees at AmeriMont and mileage for one round trip daily between Student's home and AmeriMont at a rate of \$.545 per mile from the date immediately after this Decision through the remainder of 2017-2018 school year, or until District holds an IEP team meeting to develop a new IEP and makes an offer of FAPE to Student, whichever occurs first.

3. Within 45 days upon receipt of proof of the number of days Student actually attended Eastside Christian from April 13, 2017, to the end of the 2016-2017 school year, District shall reimburse Parent for one round trip daily between Student's home and Eastside Christian, consisting of 39.6 miles, at the 2017 Internal Revenue Service standard rate of \$.535 per mile.

4. Within 45 days upon receipt of proof of the number of days Student actually attended AmeriMont from the start of the 2017-2018 school year through the date of this Decision, District shall reimburse Parent for one round trip daily between Student's home and AmeriMont, consisting of 32.2 miles, at the 2017 Internal Revenue Service standard rate of \$.535 per mile, for trips occurring before January 1, 2018. For

trips occurring on and after January 2, 2018, the 2018 Internal Revenue Service standard rate of \$.545 will be applied.

5. Within 45 days of this Decision, District shall reimburse Parent for the cost for occupational therapy services provided by CenterPoint and Sparks Occupational Therapy from May 9, 2017, to September 30, 2017, in the amount of \$4,200. For services provided and paid for by Parent from October 1, 2017, to the date of this Decision, District shall reimburse Parent for the cost of two hours a week of occupational therapy services, at a rate not to exceed \$145 per hour. Parent shall provide District with proof of payment in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement for services. District shall reimburse Parent for the cost of transporting Student to and from occupational therapy services from May 9, 2017, to September 30, 2017, in the amount of \$366.90.

6. District shall reimburse Parent for one hour per week of occupational therapy services, at a rate not to exceed \$145 per hour, that are provided and paid for by Parent from the date following this Decision to the end of the 2017-2018 school year, or until District holds an IEP team meeting to develop a new IEP and makes an offer of FAPE to Student, whichever occurs first. Parent shall provide District proof of payment in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement.

7. District shall reimburse Parent for one round trip travel between Student's home and CenterPoint for each day of service, consisting of 22 miles, at the 2017 Internal Revenue Service standard rate of \$.535 per mile, for trips occurring between October 1, 2017, and December 31, 2017. Starting January 1, 2018, the 2018 Internal Revenue Service standard rate of \$.545 will be applied for trips occurring through the 2017-2018 school year. District shall reimburse Parent through the 2017-2018 school

year, or until District holds an IEP team meeting to develop a new IEP and makes an offer of FAPE to Student, whichever occurs first.

8. District shall reimburse Parent for one round trip travel between Student's home and Sparks Occupational Therapy for each day of service, consisting of 33.2 miles, at the 2017 Internal Revenue Service standard rate of \$.535 per mile for trips occurring between October 1, 2017, and December 31, 2017. Starting January 1, 2018, the 2018 Internal Revenue Service standard rate of \$.545 will be applied for trips occurring through the 2017-2018 school year. District shall reimburse Parent through the 2017-2018 school year, or until District holds an IEP team meeting to develop a new IEP and makes an offer of FAPE to Student, whichever occurs first.

9. District shall provide Student with compensatory language and speech services in the amount of two hours and compensatory adaptive physical education services in the amount of two hours, to be used by the end of the 2017-2018 extended school year, or the services will be deemed forfeited. Both services will be provided by nonpublic agencies of Parent's choice. Within 30 days of Parent providing District with the name and contact information of a certified nonpublic agency, District shall contract with the identified provider, at a rate not to exceed \$150 per hour. The timing and delivery of the services shall be coordinated between Parent and the provider. District shall reimburse Parent at the rate of \$.545 per mile for one round trip per session.

10. Until such time as District makes a subsequent IEP offer, Parent shall be entitled to reimbursement for AmeriMont tuition, occupational therapy services, and transportation, within 45 days of Parent providing District proof of payment in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement.

11. All other claims for relief by Student are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on Issue 1 and Student prevailed on Issues 2(a), 2(b), 2(c), 3(a), 3(b), and 4.

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: January 22, 2018

/s/

ROMMEL P. CRUZ

Administrative Law Judge

Office of Administrative Hearings