

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT
v.
AVESON GLOBAL LEADERSHIP ACADEMY.
OAH CASE NUMBER 2018110119
AND
AVESON GLOBAL LEADERSHIP ACADEMY
v.
PARENT ON BEHALF OF STUDENT.
OAH CASE NUMBER 2019010133

DECISION

Student filed a due process hearing complaint with the Office of Administrative Hearings on November 2, 2018, naming Aveson Global Leadership Academy. The Office of Administrative Hearings is commonly referred to as OAH. On December 7, 2018, OAH granted the parties' joint request for a hearing continuance. Aveson filed a complaint against Student on January 4, 2019. On January 11, 2019, OAH consolidated Student's case with Aveson's case. On April 12, 2019, OAH granted the parties' joint request for a hearing continuance in the consolidated case. The filing date of Student's complaint controlled the decision due date.

Administrative Law Judge Sabrina Kong heard this matter in Altadena, California on May 14, 15, 16, 21, and 22, 2019. Aveson filed its response to Student's complaint on November 13, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

Attorneys Mark Woodsmall, Nelson Chu, and Maxwell Goldman represented Student. Mother attended the hearing on all days. Attorney Vivian Billups represented Aveson. Aveson's administrator Kate Bean attended the hearing on Aveson's behalf on

all days. Aveson's program manager and Desert Mountain Special Education Local Plan Area, commonly referred to as the Desert Mountain SELPA, director Kathleen Peters attended the hearing on May 14, 2019. Aveson's and Desert Mountain SELPA's program specialist Sheila Parisian attended the hearing on May 15, 16, 21, and 22, 2019.

ALJ Kong granted a continuance for the parties to file written closing arguments on June 19, 2018 and June 28, 2019, and the record remained open until June 28, 2019. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

The issues set forth below have been clarified consistent with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443. No substantive changes have been made. On May 13, 2019, Student withdrew the following issues in the March 29, 2019 Order Following Prehearing Conference: 1 E; 1 F; 3 A through E; 4 A through C; 5 D; 5 E; 7 B and 7 C. At hearing, the parties confirmed the issues set forth below as the remaining issues for hearing. Free appropriate public education is commonly referred to as FAPE. Individualized education program is commonly referred to as IEP.

STUDENT'S ISSUES:

1. Did Aveson deny Student a FAPE, within the statutory period, by failing to appropriately assess Student in all areas of suspected disabilities, specifically:
 - A. occupational therapy;
 - B. speech and language;
 - C. psycho-education;
 - D. functional behavior; and
 - E. social skills?

2. Did Aveson deny Student a FAPE by failing to assess Student in violation of its child find obligations?

3. Did Aveson deny Student a FAPE for the 2017-2018 and 2018-2019 school years as a result of the following procedural violations:

- A. failure to timely provide Parents with an assessment plan;
- B. failure to provide Parents with appropriate prior written notice regarding:
 - I. Parents' request for an educational program specializing in twice exceptional children and additional counseling pursuant to the August 29, 2018 letter; and
 - II. changing Student's placement at the June 15, 2018 IEP team meeting?

4. Did Aveson deny Student a FAPE by failing to offer Student the following at the April 19, 2018 and the June 19, 2018 IEP team meetings:

- A. an appropriate placement, specifically, a nonpublic school;
- B. appropriate counseling;
- C. appropriate one-to-one aide support;
- D. an appropriate behavior intervention plan; and
- E. appropriate social skills support?

5. Did Aveson deny Student a FAPE in the 2017-2018, and 2018-2019 school years by failing to offer Student a program based on peer reviewed research intervention?

AVESON'S ISSUE:

6. Did the IEP dated November 5, 2018, offer Student a FAPE in the least restrictive environment, such that Aveson may implement it over Parent's objection if Parent wishes Student to receive special education services from Aveson?

SUMMARY OF DECISION

Student did not prove that Aveson improperly conducted its occupational

therapy, speech and language, psycho-educational, functional behavior, or social skills assessments. Student did not prove that Aveson failed to give Student appropriate prior written notice. Student also did not prove that Aveson denied Student a FAPE by not offering her a peer reviewed, research based intervention program.

Student proved that Aveson denied her a FAPE by not timely meeting its child find obligations by November 1, 2017. Student also proved that Aveson denied her a FAPE by not timely providing her with an assessment plan by November 16, 2017, fifteen days after Mother's request for assessment. Student also proved that Aveson denied her a FAPE by not timely convening and completing her initial IEP team meeting approximately two months afterwards, excluding non-school days in excess of five days, by February 3, 2018. Aveson's untimeliness impeded Student's right to a FAPE and caused her a deprivation of educational benefits. Aveson's delay prevented Student from receiving an offer for special education placement and services until April 19, 2018, approximately two months later than February 3, 2018. Student also proved that Aveson denied Student a FAPE at the April 19, 2018 and June 19, 2018 IEP team meetings by not offering services from a board certified behavior analyst. Aveson continued to deny Student a FAPE as of November 2019. As a remedy, Aveson shall reimburse Parents for eight months of Student's tuition at, and mileage from transporting Student to and from, the non-public school known as Stem 3, and payments to Dr. Hasse for eight therapy sessions and an IEP attendance.

Aveson did not prove that its November 5, 2018 offer was a FAPE because it did not have input and updated information from Student's teachers at Stem 3 for the 2018-2019 school year. Therefore, Aveson is not entitled to implement the November 5, 2018 IEP without parental consent.

FACTUAL FINDINGS

Student was fourteen years old at the time of the hearing and resided within

Altadena Unified School District's boundaries with Parents at all relevant periods.

Mother home schooled Student, with brief and unsuccessful enrollments in both public and private schools, for approximately six years before she enrolled at, Aveson, a charter school located in Altadena and part of the Desert Mountain SELPA. Student enrolled at Aveson for the seventh grade in the 2017-2018 school year. Through exercising its child find obligations, Aveson found Student eligible for special education under the category of autism and emotional disturbance.

Student had anxiety and emotional issues and had worked with her therapist Dr. Joanna Hasse since she was seven years old. Around March 2017, Parents retained Dr. Lisa Hancock to start a neuropsychological assessment of Student. They wanted to obtain a comprehensive profile of Student in preparation for school in the 2017-2018 school year. Because of Student's verbal and physical aggression towards Dr. Hancock, she could not complete the neuropsychological assessment. Dr. Hasse recommended that Dr. Hancock postpone the neuropsychological assessment several months until Student improved her behavior regulation. In the meantime, Student worked on behavior regulation with the help of Dr. Hasse and psychiatrist Dr. Linslee Egan. In the summer of 2017, Dr. Egan prescribed Prozac for Student's anxiety and depression. This was the first time Student had been prescribed medication to help with her emotional challenges.

On August 22, 2017, in preparation for Student's school enrollment, Mother met with English teacher Elena Marquez at Aveson. Mother informed Ms. Marquez that Student's prior elementary in-school placements were unsuccessful because of Student's classroom anxieties. Mother did not inform Ms. Marquez that Student had an IEP years ago, or that Student had any behavioral or issues other than anxiety. Mother shared with Ms. Marquez that she wanted Student to interact more effectively with others. Mother did not request a special education assessment from Aveson at this meeting.

On August 28, 2017, Dr. Hancock resumed her neuropsychological assessment of Student. Dr. Hancock invited Mother to sit across the room, with her back towards Student and Dr. Hancock, during assessment. Student's desire to please Mother and behave appropriately when Mother was present allowed Dr. Hancock to obtain assessment results reflective of Student's abilities without interference from her anxieties and maladaptive behaviors. Dr. Hancock had no opinion on whether the improvement in behaviors resulted from working with Dr. Hasse and Dr. Egan, and or from having Mother in the room during testing.

2017-2018 SCHOOL YEAR

Aveson had two general education programs. One program was the five-days, full-time, site based program. The five-days program required students to attend class all five days. The other program was the three-days flexible program that required three days of mandatory classroom attendance, with two days of independent study which could be in school or at home, at the student's election. Mother liked the two general education programs at Aveson because of the small class sizes. Aveson placed Student in the general education environment, in its three-days program, known as the Flex program. The Flex program required Student to attend school at Aveson on Mondays, Tuesdays, and Thursdays. Student had the flexibility to either work from home or attend Aveson on Wednesdays and Fridays.

During the first semester, Student had two creative writing elective classes on Mondays; and English, math and science projects, and physical education on Tuesdays and Thursdays. Student attended Aveson on September 5, 2017, the first day its 2017-2018 school year. Student did well in the first week of school, but had begun exhibiting outbursts and maladaptive behaviors by late September 2018.

On September 21, 2017, Student yelled at Ms. Marquez multiple times to check her work. Student was upset that Ms. Marquez had not given the immediate feedback

she wanted. She refused to go to a breakout room, a small room located within the classroom, to deescalate and loudly exclaimed "f--k this" in the classroom. Student calmed down after Ms. Marquez checked her work. Ten minutes later, Student apologized and hugged everyone in class. That same day, she ran away from Ms. Marquez in the courtyard, outside her classroom, to join her friends and the math teacher, Mackenzie Brownsmith, who were leaving on a field trip. Ms. Marquez was unaware that Student was scheduled on the field trip, so asked Student to stay. Before Ms. Marquez had an opportunity to determine if Student was actually scheduled on the field trip, Student ran to join the field trip group, refusing to stay with Ms. Marquez as instructed.

On September 26, 2017, Student became upset when her computer did not load or start. Student informed Ms. Brownsmith she wished to help around the classroom. In response to Student's request to help, Ms. Brownsmith asked Student to organize a bookshelf, and water the classroom plants. When Student completed those tasks, Ms. Marquez asked Student to restart her computer, which again did not start. Ms. Brownsmith then told Student to work on something else, and that it was o.k. Student loudly responded, "It's not f--king o.k.!" Ms. Marquez redirected Student to take a break in the breakout room. While in the breakout room, Student yelled at another student who was also there. Student then laid on the ground sobbing that she could not help anyone. When Ms. Marquez entered the breakout room, Student held onto, then tightened and gripped Ms. Marquez's arm for ten minutes. She stated that she did not want Ms. Marquez to leave and screamed that she wanted to help. This incident interrupted the entire class's ability to learn. As a result of Student's September 26, 2017 outbursts and maladaptive behaviors, Ms. Marquez asked to meet with Mother after school to discuss strategies to support Student.

Mother met with Ms. Marquez, Ms. Brownsmith, and Student's projects teacher, Rebecca Duran-Perez. Mother shared that anxiety prevented Student from doing well in school, and that Student was taking twenty milligrams of Prozac for anxiety. Mother shared that she would check with Dr. Egan to see if Student's medication needed adjustment. Student had been working with an educational therapist, a psychologist, and a psychiatrist. Mother told the teachers that she would share Student's classroom progress and setbacks with those professionals to see if they had any suggestions to support Student in the classroom.

Mother informed the teachers that Student was being tested by a neuropsychologist, and would likely be diagnosed with Asperger's syndrome. Mother shared that being ignored by teachers was one of Student's big anxiety triggers. For example, Student's maladaptive behaviors were triggered by not being called on when Student raised her hand. Student had anxieties about doing well, letting people down, and wanting to help people. The teachers responded that they could have Student help others in the community. Mother did not request a functional behavior assessment at this meeting, but as part of the strategy discussion she suggested that it could help with Student's maladaptive behaviors. Ms. Marquez was unfamiliar with the process for a functional behavior assessment, and informed Mother she would check with the school's special education team.

After the September 26, 2017 meeting with Mother, Aveson started tier one of the peer reviewed and research based response to intervention services for Student. The interventions included prompting, redirecting, checking, and providing constant feedback to Student. Ms. Marquez spoke with the school's special education team, Executive Director, Shauna Staffer, Board Certified Behavior Analyst Robyn Gloyd, and Director of Special Education Kelly Jung, to learn what a functional behavior assessment involved. Someone from the special education team told Ms. Marquez that a functional

behavior assessment was an intensive process which typically started after the teaching team gathered lots of data to determine which strategies were effective, or ineffective, when working with a student. The special education team decided that Student's teachers should collect data while implementing the strategies discussed at the September 26, 2017 meeting before deciding if she needed a functional behavior assessment.

On or around September 28, 2017, Student had an outburst which resulted in a classroom meltdown. On September 28, 2017, after speaking with Student, Mother informed Ms. Marquez and Ms. Brownsmith by email that the meltdown resulted from Student's frustration and embarrassment that she could not answer a math question during a test. Mother also informed the teachers that math had been an anxiety trigger for Student, and if Student's classroom maladaptive behaviors were mostly triggered by math, then Mother did not believe that Student needed a functional behavior assessment. Ms. Marquez, Ms. Brownsmith, and Mother discussed the functional behavior assessment as a possible strategy. Mother did not specifically request a functional behavior assessment during the late September 2017 discussions.

On October 3, 2017, when Student asked Ms. Duran-Perez for feedback on whether an assignment Student had been working on was right or wrong, Ms. Duran-Perez suggested that Student could improve the assignment by providing more specificity. Student became upset and said that she just needed to be told whether her work was right or wrong, and not how to improve the assignment. When Ms. Duran-Perez explained that this was part of the learning process, Student told her to stop talking as she did not want to hear the teacher's voice. Ms. Duran-Perez asked if Student needed a break. Student responded that she wanted to throw the teacher across the room. Ms. Duran-Perez redirected Student to the assignment and explained that throwing her across the room was not an option. Student stated that she wanted to

draw, did not need Ms. Duran-Perez's help, and asked her to leave. At some point Student went into the breakout room and later apologized.

In a second incident on October 3, 2017, Student became upset when her peers did not share her opinion that humans were useless during a discussion about the usefulness of animals and humans. Ms. Marquez redirected the conversation to the classroom and stated that humans, like the students in her class, were useful. Student yelled that humans should be extinct so animals could thrive, followed by a statement that the Tasmanian wolves were extinct, and started crying. Ms. Marquez asked Student if she needed a break. At hearing neither party provided any information on Student's response.

On October 31, 2017, Student asked Ms. Marquez for feedback regarding a short stories assignment. When a peer began her presentation on a project, Student closed her computer and informed Ms. Marquez that they should review the short stories later. Ms. Marquez then left the classroom. When Ms. Marquez returned shortly, Student informed Ms. Marquez she was "f--king rude" for walking away while reviewing Student's short stories. Ms. Marquez apologized and explained that it was a miscommunication because she would not intentionally hurt Student. Ms. Marquez also explained that she did not hear Student asking her to resume reviewing the short stories after the two of them stopped reviewing them the first time. Student reiterated that Ms. Marquez was "f--king rude". When Ms. Marquez explained that cursing was disrespectful and asked Student to stop, Student became angry. Student eventually took a break.

In a second incident on October 31, 2017, Student used inappropriate language, yelled profanities at teachers and peers during a hike when the group left without her. Student became upset when she could not catch up with the group. While attempting to catch up, Student muddied her pants, so she pulled them off and continued hiking. When a teacher instructed her to stop using profanities and to put her pants back on,

Student refused. She pushed a teacher and then fell face down. Student then clawed at the dirt, cried, and stated that she was a horrible person and refused to move. When Student was unable to calm and follow instructions, Aveson's staff called Mother. When Mother arrived at the site, Mother eventually persuaded Student to get up and walk back to school. Mother took Student home. Aveson suspended Student one day on November 1, 2017 for inappropriate language and behaviors. Aveson could not identify Student's motivation for this incident.

Because of Student's maladaptive behaviors, Ms. Marquez, Ms. Brownsmith, and Mr. Simmons consulted with Ms. Jung, in October 2017. They asked Ms. Jung to provide additional response to intervention supports to address Student's maladaptive behaviors. Ms. Jung recommended prompting Student during transitions, and frontloading the daily schedule to prepare Student for transitions.

Aveson's response to intervention services included three tiers of interventions. Tier one included providing small group instruction to students within the general education classroom. Tier two included increased frequency, duration, and intensity of supports. Tier three included increasing the level of supports and services from tier two. Ms. Jung opined that tier three could either be followed by special education assessment, or included in the offer of special education services. Student received tier two response to intervention services sometime in the fall of 2017 until Parents consented to an IEP for Student, at which point Student moved into tier three. Ms. Jung opined that Aveson's response to intervention services were researched based interventions that were generally successful techniques, and appropriate for Student.

On November 1, 2017, Mother requested in writing that Aveson conduct a functional behavior assessment. On November 1, 2017, Aveson recommended and started developing an education plan under section 504 of the Rehabilitation Act of 1973 for Student because of Student's maladaptive behaviors. Section 504 of the

Rehabilitation Act of 1973 will be referred to as the 504 Plan.

At some point in early November, Mother requested to speak with a behaviorist. Ms. Gloyd spoke with Mother. Sometime in early to mid-November 2017, Ms. Gloyd interviewed Mother and Student's three teachers about Student's maladaptive behaviors and triggers, and observed Student in Flex.

Aveson had developed a behavior plan which was in place by the time Ms. Gloyd observed Student in November 2017. Neither party provided information on when the behavior plan had been in place, or who at Aveson developed the behavior plan. The behavior plan identified the following as triggers for maladaptive behaviors:

1. feeling left behind;
2. not understanding expectations;
3. unstructured time;
4. needing other's approval; and
5. self-imposed high expectations.

The behavior intervention plan identified providing frequent and specific praise, prompts, check-ins, and giving Student space as effective strategies to prevent maladaptive behaviors. It also identified providing structured ten minutes of work followed by a two-minute break and providing activities checklists as effective strategies to prevent maladaptive behaviors. It identified Student's maladaptive behaviors as cursing, screaming, crying, and grabbing teachers' hands or arms and shaking them. It suggested the following appropriate responses to address Student's maladaptive behaviors:

1. reminders of teachers' expectations;
2. calling the front office for support;
3. relocating Student, or if unsuccessful, relocating her classmates to a safe space;

4. Having support staff listen to Student explain her version of an incident; and
5. Redirecting Student to complete a task.

Aveson would suspend Student for inappropriate touching such as pushing, grabbing, scratching, holding onto staff and students, profanity directed at staff and students, and or refusals to follow explicit directions.

In November 2017, Ms. Gloyd observed Student in Flex for three hours. Student did not engage in any maladaptive behaviors. Although Student used profanity, Ms. Gloyd characterized the profanity used as non-aggressive, appropriate, and in context with Student's social interactions with her teenage peers. The teachers reported that verbal cues triggered maladaptive behaviors so Ms. Gloyd recommended giving Student nonverbal cues. Because Ms. Gloyd did not observe Student engaging in any maladaptive behaviors, she did not offer any additional strategies to the teachers. At that time, Ms. Gloyd opined that the behavior strategies that were in place in the behavior plan contained all the appropriate interventions.

On November 14, 2017, Ms. Marquez asked Mother to help Student revise a written assignment without using curse words to strike the proper academic tone. Ms. Marquez reported that Student refused to remove profanities from her written assignment when instructed, and cursed at her and other teachers. Mother informed the teachers she would work with Student on not cursing at teachers and on having Student remove curse words from her written work. Mother assured teachers that Parents were instituting consequences at home for Student's inappropriate language use at school.

On or about November 17, 2017, Student became upset during a field trip to the Doctors Without Borders museum exhibit when her peers joked about refugees. Student was upset because her peers did not take the exhibit as seriously as Student thought they should. Student cried, screamed, and yelled profanities at other students, museum docents, teachers, and parent chaperones. Student also inappropriately hugged the

docents to thank them for their work. Aveson could not identify Student's motivation for this incident. Because of the intervening Thanksgiving holiday, Aveson could not complete investigation of the incident until November 27, 2017. On that day, Aveson placed Student on a two-day mandatory home reflection, which Aveson did not consider as a suspension because it was not recorded in Student's file as a suspension. The mandatory home reflection required Student to be removed from school to reflect and discuss with Parents on the inappropriate language and behaviors. Upon return, Student and Mother met with the director of student support, Keith Simmons, and discussed how Student could have handled the situation differently.

Dr. Hancock completed her neuropsychological testing in late October 2017, and issued a report in November 2017. Despite Aveson's multiple requests, Parents never provided Dr. Hancock's report to Aveson, but eventually provided Aveson a summary of the report. Dr. Hancock identified Student as child with an autism spectrum and attention deficit hyperactivity disorders, depression or mood disorder, and gender dysphoria. Student exhibited giftedness in high cognitive ability. Student also exhibited anxieties, behavioral, and social-emotional deficits.

At hearing, Dr. Hancock characterized Student as twice exceptional, with a combination of giftedness with deficits. She opined that Student needed a challenging academic environment to address her cognitive abilities. She found that Student was self-conscious and anxious about asking questions, suffered from sensory overload in larger environments, and needed help to understand social situations. She recommended a small academic environment with a low teacher to student ratio so teachers could address Student's social processing challenges and academics effectively. Dr. Hancock did not recommend a specific placement, but opined that a classroom with thirty to forty students would be too large for Student.

Dr. Hancock opined that if Student attended a traditional public school program, she could require an IEP or 504 Plan, a dedicated behaviorist to help with social-emotional and behavior challenges, and coordinated counseling and supports. She also recommended preferential seating to avoid distractions, modified assignments, extra-time for assignment completion, computer and calculator use, and handouts instead of extensive note-taking. She opined that addressing Student's anxieties, social-emotional, and behavioral challenges would permit Student to better access her cognitive abilities.

On December 1, 2017, Aveson sent Parents an assessment plan. On December 14, 2017, Parents signed the assessment plan and consented to implementation of the 504 Plan.

The 504 Plan identified Student's physical and mental impairments as autism spectrum disorder, and attention deficit hyperactivity disorder. The 504 Plan identified anxiety, academics, behavior, and testing as areas of need requiring accommodations. The 504 Plan included several accommodations for Student's anxiety, which included:

- Transition reminders;
- Personal check-ins before leaving the classroom;
- Lightly tap a teacher to gain attention for communication;
- Activity and expectation checklists;
- Structured breaks of two minutes after 10 minutes of work;
- Personal check-ins every five to ten minutes;
- Use of a cue for break requests; and
- Alerts to changes in daily schedule.

Accommodations for Student's academics under the 504 Plan included extended time for assignment completion, use of class notes and handouts, and a calculator for math. Accommodations for Student's behavior under the 504 Plan included preferential seating near positive role models, frequent praise; reminder for behavior expectations,

and morning daily goals debriefing. Accommodations for Student's testing under the 504 Plan included extended time, separate seating, and breaks.

Student received Cs in all her classes at the end of the first semester.

In the Spring of 2017-2018, Student took English, math and science, physical education, projects, advisory, and two electives: one creative writing and one stand-up comedy. Aveson implemented the 504 Plan at the beginning of the second semester of the 2017-2018 school year, after the winter break.

On January 9, 2018, Student became upset when a teacher asked her to complete a non-preferred activity during English class. Student repeated three times for the teacher to "get the hell away". The teacher gave Student a few minutes to deescalate then checked back in with Student. Student pushed the teacher twice on the shoulder, and pushed a stool aside so the teacher could not sit next to Student. The teacher again gave Student a few minutes to deescalate then returned to remind Student of class expectations. Student then kicked the teacher three times. Aveson suspended Student two days because of her maladaptive behaviors. Aveson identified Student's motivation for this incident was to obtain adult attention.

On January 18, 2019, Mother informed Ms. Brownsmith that Student was behind on her lab report because of her recent suspension. Mother also shared that Student was afraid of participating in an experiment and asked for more information about the experiment so she could help alleviate Student's anxieties.

On January 23, 2018, Student repeatedly used profanities and threatening language including "f--king die" when asked to complete non-preferred work. The teacher gave Student space to calm, then re-engaged Student. Each time, Student could not calm down and persisted with inappropriate language including profanities use. Student was sent home and suspended one day for her maladaptive behaviors. Aveson was unable to identify Student's motivation for this incident.

On February 5, 2018, Student ignored her teacher's instruction to read a book during silent reading time, and continued using her Chromebook.

February 13, 2018 Speech and Language Assessment

Cindy Grellner, Aveson speech and language pathologist, conducted Student's speech and language assessment, but was not employed by Aveson at the time of the hearing. Dana Tappen, Aveson's current speech and language pathologist testified at hearing about Ms. Grellner's assessment. Ms. Tappen held a bachelor's, a master's, and a doctorate degree in speech and language pathology and was a licensed speech and language pathologist. She reviewed Ms. Grellner's assessment and, a week before the hearing, spoke with Ms. Grellner about the basis and conclusions of the assessment. Ms. Tappen also observed Student in two speech and language therapy sessions and supervised the speech and language pathologist assistant in providing services to Student in the spring of 2018. Ms. Tappen was familiar with Student's speech and language needs.

Ms. Grellner interviewed student's teacher and checked the box in her report indicating so. She also interviewed Mother, and administered standardized testing. She properly administered all tests in Student's primary language of English. She noted that a private psychiatrist had diagnosed Student with anxiety and depression associated with high functioning autism. She did not find that Student had problems with articulation, phonology, voice, or fluency.

She assessed Student with the Clinical Evaluation of Language Fundamentals, Fifth Edition, a standardized test. Ms. Grellner administered the pragmatics profile and the pragmatics activity checklist, known as the optional portion of the Clinical Evaluation of Language Fundamentals. Student scored in the poor range of the pragmatics profile, which was completed during structured group and one-on-one interactions. Student often had difficulty with nonverbal skills across all settings including during structured

and unstructured group activities. Ms. Grellner and Mother rated Student as sometimes exhibiting culturally appropriate facial cues and expressions. Ms. Grellner and Mother rated the frequency that Student exhibited the following skills during conversation:

1. Turn taking in class or social interactions;
2. maintaining eye contact;
3. introducing appropriate conversation topics;
4. making relevant contributions to the conversation;
5. avoiding repetitive information;
6. adjusting language based on the partner, topic, or place;
7. interacting in unstructured group activities; and
8. using strategies for responding to interruptions, or interrupting others.

Ms. Grellner and Mother also rated the frequency of Student's engagement in the following behaviors to obtain more information on Student's speech and language pragmatics skills:

1. giving or asking for event times;
2. responding when asked to change her actions;
3. responding to teasing, anger, failure, and disappointment; and
4. reading the social situation correctly and responding accordingly.

Student exhibited the same behavior deficits in her pragmatics activity checklist as in her pragmatics profile of the Clinical Evaluation of Language Fundamentals, further confirming that she had inadequate communication skills for her daily activities and required intervention in pragmatic language.

Ms. Grellner did not administer the receptive language, or the expressive language indices, known as the core language portion of the Clinical Evaluation of Language Fundamentals. Ms. Tappen opined that publisher's protocols did not require the optional portions to be administered with the core language portions of the Clinical

Evaluation of Language Fundamentals. Ms. Grellner did not explain in her speech and language assessment report why she chose to administer the optional, and not the core language portions of the Clinical Evaluation of Language Fundamentals. Ms. Tappen opined that although best practices dictate that an assessor explain the rationale for selecting the optional over the core language portions, not doing so did not invalidate the assessment.

Ms. Grellner administered the Expressive Vocabulary Test, Second Edition, a standardized test, to assess Student's one-word expressive vocabulary usage. Student scored above average in her expressive vocabulary skills. From the informal language sample, Ms. Grellner found that Student had a strong vocabulary, was capable of complex sentence construction, understood abstract and figurative language, and demonstrated overall core language skills in the above average range. However, Student had moderate difficulty in her overall pragmatic language skills such as turn taking, eye contact, topic maintenance, repetitive and unrelated information use, and difficulty reading social situations correctly.

Ms. Grellner observed Student during testing and with peers during passing periods and lunch, but could not observe Student during class because Mother requested that the assessment occur on days when Student was not in school. Although Ms. Grellner did not specify in her report that she did not observe Student in class because of Mother's request, she shared this with Ms. Tappen when they spoke a week before the hearing. Further, Ms. Grellner indicated in the report, by not checking the classroom observations box, that she did not conduct classroom observations. Ms. Grellner concluded that her testing observations of Student's speech and language abilities were consistent with Student's speech and language skills demonstrated during standardized testing. She was talkative, had an appropriate sense of humor, and was capable of communicating both verbally and nonverbally. Student spoke in

grammatically correct sentences, understood spoken language with minimal repetitions, and participated in conversation with good social reciprocity. However, she had difficulty with maintaining eye contact, topic maintenance, often dominated with her choice of topics, and needed moderate redirection for task completion.

Ms. Grellner concluded that Student showed appropriate articulation, core language, voice, and fluency skills. Student also showed above average oral comprehension and expression by demonstrating age appropriate semantics, syntax, morphology, and memory skills. However, Ms. Grellner opined that Student required speech and language services because of Student's significantly low pragmatic language skills. She recorded all of her assessment findings and conclusions in her Speech and Language Assessment Report dated February 13, 2018.

Ms. Grellner was qualified to assess and interpret the test results. She used all reliable instruments and widely accepted assessment tools, which yielded valid results. She properly administered all tests and interpreted the results consistent with the publisher's protocols. None of the assessments used were discriminatory on a racial or cultural basis. Student did not offer evidence to the contrary.

February 16, 2018 Functional Behavior Assessment

Ms. Gloyd held a masters in special education and had been a board certified behavior analyst for seven years. She was Aveson's board certified behavior analyst since 2017. She conducted a functional behavior assessment of Student. At the time she assessed Student, she had conducted approximately forty functional behavior assessments. Ms. Gloyd was qualified to assess Student's functional behavior. She testified at hearing.

Ms. Gloyd reviewed Student's records including Student's 2011 psycho-educational evaluation, 2012 speech and language evaluation, Student's 2013 IEPs while enrolled at California Virtual Academies, and a summary of the Dr. Hancock's

neuropsychological evaluation. The purpose of a functional behavior assessment was to address maladaptive behaviors that impacted safety, or that were socially unacceptable. Ms. Gloyd opined that Student's maladaptive behaviors were not safety concerns, but were socially unacceptable behaviors. She identified verbal and physical aggression as Student's target behaviors because they were pervasive, intense, and impeded Student's educational access. Verbal aggression for Student included profanity and threatening others. Physical aggression for Student included using her mouth, hands, arms, legs, or feet to pinch, hit, scratch, kick, or push others, or use an object to strike or move another's body or clothing. She did not identify inappropriate touching or personal space as a target behavior because, although inappropriate, this was not pervasive, intense, or a major concern that impeded Student's educational access. She opined that a functional behavior assessment would not list every one of a student's maladaptive behaviors as target behaviors, but identified the behaviors that were pervasive, high in intensity and frequency, and state on a hierarchical basis the behaviors that impeded with access to education.

Ms. Gloyd observed Student on five different school days at Flex from January 4, 2018, through February 12, 2018, each day for an hour to an hour and a half. After a total of five and half hours of observation, she collected data which showed that Student engaged in a minimum of thirty incidences of verbal aggression, and six incidences of physical aggression. Student engaged in verbal aggression at a rate of approximately 4.72 times per hour. Student used profanity an average of 3.63 times per hour. Student engaged in verbal threats on an average of 1.09 times per hour. Student engaged in physical aggression at a rate of approximately 1.9 times per hour. Ms. Gloyd used this data to identify the hierarchy of challenging behaviors for Student. She concluded that profanity use was the one Student engaged in most often, and that Student's physical aggression while inappropriate, was not of the type that was a safety concern.

Ms. Gloyd interviewed Mother and Student's three teachers, Ms. Marquez, Ms. Brownsmith, and Ms. Duran-Perez to hypothesize the function of Student's verbal and physical aggression. These interviews included an unstructured portion and a standardized portion. The unstructured interview consisted of informal discussions with these individuals. Mother participated in an informal phone interview.

Mother informed Ms. Gloyd that she did not observe Student engaging in verbal or physical aggression at home. Therefore, Mother did not participate in the standardized portion of the interview involving those maladaptive behaviors. The standardized interview consisted of a formal administration of the Indirect Functional Assessment, a twelve question rating scale. Ms. Gloyd read specific questions to each interviewee separately, and recorded their responses. The rating scale asked the interviewees to rate the probability of Student's behaviors in given situations using never, sometimes, and always. The responses were assigned a number value which were scored to determine the hypothesis for Student's behavioral functions. Student's behavioral functions included attention, tangible, escape, and automatic. According to Ms. Marquez, Student's verbal aggression was a negative reinforcement for escaping from a non-preferred task, and a positive reinforcement for attention and access to tangibles. Student's physical aggression was a positive reinforcement for attention. According to Ms. Brownsmith, Student's verbal aggression was a negative reinforcement for escaping from a non-preferred task. Student's physical aggression was a positive reinforcement for attention. According to Ms. Duran-Perez, Student's verbal and physical aggression was a positive reinforcement for attention.

The most common antecedent for Student's verbal aggression was when teachers provided verbal feedback to Student. The consequence for the verbal aggression was that Student received attention from the teachers. The most common antecedent for Student's physical aggression was when teachers checked-in with her to provide

feedback. The consequence for the physical aggression was ignoring the physical aggression, and sometimes providing Student with attention for her aggressive behaviors.

Ms. Gloyd concluded that Student engaged in verbal and physical aggression as a function of social negative reinforcement to escape and avoid a task, certain individuals, and specific feedback from assignments. Ms. Gloyd developed a behavior intervention plan that included antecedent manipulation, teaching strategies, consequence strategies, and consistency of implementation.

Antecedent manipulation involved changing the environment and reducing the reinforcement value from the inappropriate behavior. These included giving frequent breaks, positive check-ins to reduce Student's anxiety towards teachers' presence; giving choices, priming for transitions and changes to routine, giving visual instead of verbal feedback, and limiting Chromebook access. Teaching strategies involved tolerance response training where teachers would lead Student through a hierarchy of tasks, having her complete the easier ones first, and allowing her to advance to more difficult tasks.

One consequence strategy included having Student sign a behavior contract on a weekly or monthly basis specifying expected behavior in exchange for a consequence and or reward. Another consequence strategy involved terminating a task when Student engaged in verbal or physical aggression, reintroducing it after she calmed, and minimizing teacher attention throughout.

The goal of the strategies was to remove the incentive to escape the non-preferred task. Ms. Gloyd recommended consistent implementation of the strategies in both school and home. Ms. Gloyd recommended that a behavior consultant, a board certified behavior analyst, develop a behavior support or intervention plan using applied behavior analysis principals for Student, with emphasis on increasing Student's tolerance

of non-preferred tasks and people. She also recommended that teachers continued data monitoring with the support of the board certified behavior analyst to ensure that the interventions continued to be appropriate.

Ms. Gloyd opined at hearing that consulting services from a board certified behavior analyst would be appropriate for Student. Although anxiety, panic attacks, and attention were also Student's challenges, these were issues addressed through mental health, and not through a functional behavior assessment. Student's anxieties and panic attacks manifested themselves in verbal and physical aggression, behaviors which were addressed in the functional behavior assessment.

Ms. Gloyd was qualified to assess and interpret the test results. The Indirect Functional Assessment was reliable and a widely accepted assessment tool. Ms. Gloyd administered and interpreted it consistent with the publisher's protocols and it yielded valid results. None of the assessments used were discriminatory on a racial or cultural basis. Student did not offer evidence to the contrary.

February 18, 2018 Occupational Therapy Assessment

Alexandra Alger conducted the occupational therapy assessment of Student to determine if Student qualified for occupational therapy services. She held a master's degree in occupational therapy and had been Aveson's occupational therapist since June 2017. She reviewed Student's records, including work samples, a prior IEP, treatment notes, a summary of Dr. Hancock's neuropsychological assessment, and properly administered all tests in Student's primary language of English. She could not observe Student in class because of Student's absences and Mother's request that Ms. Algers assess Student during the days that Student was not in class. She observed Student during formal testing.

Ms. Algers administered the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, a standardized test, to measure Student's motor function. She selected

the subtests based on her observations of Student during testing and her professional opinion as to Student's areas of concerns requiring testing. For example, she did not select the bilateral coordination subtest for Student because, based on her professional opinion after observing Student during testing, this was not an area of concern for Student. She did not list all of the subtests from the Bruininks-Oseretsky Test, nor did she explain why she selected, or did not select, each subtest in her report.

Ms. Algers opined that Student's fine motor precision and integration skills were average. Because both of these scores were in the average range they validated each other, and she did not calculate the individual fine motor composite scores. Student's handwriting was ninety-five percent legible. Student's letter sizing and formation were immature, which resulted in decreased writing stamina. Ms. Algers opined that Student could benefit from accommodations for handwriting tasks, including minimizing handwriting tasks. Student's manual dexterity skills were below average. Ms. Algers opined that Student's manual dexterity score was not reflective of Student's abilities because Student made only one error in the timed subtest, which resulted from Student's refusal to modify her speed despite reminders to move faster. Despite Student's below average score in manual dexterity, Ms. Algers opined that this was not an area of need for Student. She attributed the Student's refusal to move faster as behaviorally motivated. Her opinion was based on observations during testing which showed that Student was capable of manipulating classroom materials without assistance. Ms. Algers further opined that Student's strength, motion range, and coordination were functional and she was physically capable of safely accessing the school environment. Further, Student could function independently in school including managing self-care skills and her personal belongings. Nonetheless, Ms. Algers extrapolated from Student's performance in the timed subtest that extra time could help Student with transitions and help her complete tasks accurately.

Ms. Algers also administered the Sensory Processing Measure, Home Form, a standardized test, to assess Student's five sensory systems of visual, auditory, tactile, proprioceptive, and vestibular functioning. The Sensory Processing Measure was administered to students ages five to twelve years old. Student was twelve years and nine months old at the time Ms. Algers administered this standardized test. The Sensory Processing Measure had three stand-alone forms, the main classroom form, the school environment form, and the home form, and each form could be administered separately without the others. She did not administer the main classroom form because that form required the assessor's classroom observation to be valid, and Ms. Algers could not observe Student in the classroom. Ms. Algers did not administer the school environment form because that form was not typically used in school based assessments. She did not explain why she selected the home form over the two other available forms in her report, but opined that she did not deviate from the manufacturer's test protocols.

Mother completed the rating form. Based on Mother's responses, Student's social participation, vision, hearing, touch, and balance and motion skills were all in the typical range. Mother noted that Student had some problems with body awareness, specifically, Student jumped often and chewed on items. Mother also noted that Student had some problems with planning and ideas in that she frequently failed to complete multi-stepped tasks and had difficulty imitating demonstrated actions. Despite having an overall score in the typical range, Ms. Algers opined that Student could benefit from accommodations to address the two problem areas Mother identified.

Ms. Algers recommended the following supplementary aids and supports for Student:

1. extra time to complete assignments and tests;
2. collaboration between teachers and occupational therapist;
3. access to speech to text software to support writing;

4. reduced handwriting demands for written assignments; and
5. prompts before transitions to allow extra time to complete work and be ready for the next tasks.

Ms. Algers was qualified to assess and interpret the test results. She used all reliable instruments and widely accepted assessment tools and they yielded valid results. She properly administered all tests and interpreted the results consistent with the publisher's protocols. None of the assessments used were discriminatory on a racial or cultural basis. Student did not offer evidence to the contrary.

February 21, 2018 Psycho-Educational Assessment

Leslie Koh conducted a psycho-educational assessment of Student to determine if she qualified for special education services. Ms. Koh held a minor degree in psychology, a master's degree in educational psychology, and was an educational specialist in school psychology. She worked as Aveson's school psychologist since August 2015, and conducted approximately one hundred and twenty psycho-educational assessments. She reviewed Student's cumulative records including a special education file, and a summary of Dr. Hancock's neuropsychological assessment. She interviewed Mother, Ms. Marquez, and Ms. Brownsmith, observed Student in the classroom and during lunch, and properly administered all tests in Student's primary language of English. Ms. Koh was knowledgeable with Student's history at Aveson, including her suspensions, and that a behavior plan and a 504 Plan was in place for Student.

Ms. Koh observed Student on two days in her English class, in both of her elective classes, and during lunch. She saw Student asking questions, raising her hand, following directions, complimenting, and thanking her peers. Ms. Koh observed Student acting appropriately, without engaging in any maladaptive behaviors.

From the neuropsychological summary, Ms. Koh learned that Student met the

criteria for autism spectrum disorder and the associated attention deficit hyper-activity disorder diagnosis. Although Student met the criteria for disruptive mood dysregulation disorder, she did not meet the full criteria for a major depressive disorder. She exhibited significant depressive symptoms and behaviors. She had difficulty with compulsive behaviors and recurring verbal and physical aggression. She also had limited social skills, problems with peer relationships, anxiety, and difficulty with nonverbal communication and sensory processing sensitivities. Although Dr. Hancock opined that Student's scores were indicative of a reading disorder and executive function weaknesses, Dr. Hancock ruled out that a specific learning disorder afflicted Student. The neuropsychological summary also informed Ms. Koh that Parents reported clinically significant problems with executive functioning.

Ms. Koh interviewed Dr. Egan who opined that Student's anxiety and impulsivity impacted her overall function and emotional control deficits would impact her ability to participate and engage at school successfully. Dr. Egan also diagnosed Student with attention deficit hyper-activity and autism spectrum disorders. Ms. Koh also interviewed Dr. Hasse who opined that Student suffered from anxiety, depression and attention issues, and that medication helped Student function less anxiously and presented as significantly happier. Dr. Hasse also opined that Student was less mature both socially and emotionally than expected for her age because she had not been in school. Dr. Hasse also opined that Student needed school supports to develop social skills and confidence, and manage anxiety, behaviors, and sensory input in groups. She suggested breaks, talking through issues with teachers and staff, and that written feedback was more effective than auditory feedback, the receipt of which had been Student's biggest challenge. Both Dr. Egan and Dr. Hasse confirmed that Student had limited coping, social, and emotional skills. Ms. Koh interviewed educational specialist Paula Wilkes who

confirmed Student's difficulty in managing anxieties including her anxieties about her math abilities and challenges.

Ms. Koh administered the Kaufman Assessment Battery for Children, Second Edition, a standardized test, to measure Student's cognitive ability and processing skills. Student scored in the average to above average range, with the exception of verbal knowledge where she scored in the well above average range. Ms. Koh also administered the Comprehensive Test of Phonological Processing, Second Edition, and the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition, both standardized tests, to further evaluate Student's processing skills. Student scored well below average in her ability to retrieve information in timed, long-term memory tasks, but scored in the average range in her ability to retrieve information from short-term memory in the Comprehensive Test of Phonological Processing. The Comprehensive Test of Phonological Processing also measured Student's phonological awareness where Student scored in the average range. Student scored in the average range in her sensory and motor skills as measured by the Beery-Buktenica Developmental Test.

Ms. Koh also administered the Behavior Assessment System for Children, Third Edition, and the Conners, Third Edition, both standardized tests, to measure Student's attention skills. Ms. Koh gave the Behavior Assessment System for Children rating scale to Mother and Ms. Marquez. Mother rated Student's hyperactivity in the average range, and attention in the at-risk range. Ms. Marquez rated Student's hyperactivity in the at-risk range, and attention in the clinically significant range. Ms. Koh gave the Conners rating scale to Mother and Ms. Brownsmith. Mother rated Student's inattention, hyperactivity and impulsivity, executive functioning, and peer relations in the very elevated range. Mother rated Student's learning problems and defiance and aggression in the average range. Ms. Brownsmith rated Student very elevated in all areas, except for the learning problems scale on which she rated Student as average.

Ms. Koh administered the Child Depression Inventory, Second Edition, a standardized rating scale to Mother, Ms. Brownsmith, and Ms. Marquez. Mother rated Student in the average range in emotional and functional problems. Both teachers rated Student in the very elevated range in both categories. Ms. Koh also administered the Autism Spectrum Rating Scale, a standardized rating scale to Mother and Ms. Marquez. Mother rated Student as average in all areas of socialization, self-regulation, behavior rigidity, attention, and social communication, and slightly elevated to elevated in unusual behaviors, atypical language, and sensory sensitivity. Ms. Marquez rated Student in the elevated to very elevated range in all areas except for social communication where she rated Student as average.

The psycho-educational assessment included a nurse's assessment and report which concluded health was not an area of concern for Student as Student passed her hearing and vision tests. The nurse was aware that Student had been diagnosed with anxiety and depression by her psychiatrist.

The psycho-educational assessment also included an academic assessment by Ms. Jung. Ms. Jung administered the Wechsler Individual Achievement Test, Third Edition, a standardized test, to measure Student's academic skills of reading, math, and decoding. Student scored in the average to above average range in all areas of reading, listening and composition, but scored in the very low to low range in all math related areas such as numerical operations, math fluency, and multiplication. Student scored in the above average to superior range in decoding skills. Ms. Jung concluded that Student was performing below grade level in math. Student's performance on Measures of Academic Progress in reading and math, a computerized and untimed adaptive test to measure academic achievement, also showed that she scored above average in reading and below average in math. Ms. Jung compared Student's performance on the Wechsler

to her performance on the Measures of Academic Progress, and concluded that both tests corroborated areas of Student's strengths and weaknesses.

Ms. Koh concluded that cognitive conceptualizing and reasoning, expressions, association and processing, visual-spatial processing, decoding; short-term memory, phonological awareness, and sensory-motor were not areas of concern for Student. However, cognitive association related to time and long-term memory were areas of significant concern. She also concluded that Student qualified for special education eligibility under autism and emotional disturbance, and that Student also qualified under other health impairment on the basis of her attention issues. She further concluded that Student qualified for special education under specific learning disorder because of her processing deficits in timed, long term memory tasks, and because of the severe discrepancies between her cognitive ability and academic math function.

Ms. Koh recommended collaboration between the school staff, Parents, and Student's team of non-school professionals. She also recommended:

1. frequent breaks;
2. setting clear rules and expectations;
3. limiting distractions;
4. chunking information presentation;
5. repeating information;
6. providing opportunities for Student to seek clarification;
7. frequent check-ins with Student;
8. delivering instructions in both visual and auditory modes; and
9. social skills development with peers.

At hearing, Ms. Koh explained that during two assessment sessions she had Mother in the room, with her back to Student and Ms. Koh, for regulating Student's behavior. Mother's presence helped regulate Student's maladaptive behaviors of cursing

and crying. Ms. Koh opined that it was not standard practice to have Mother present in the room during standardized testing. However, Student's unregulated maladaptive behaviors during standardized testing would have impacted Ms. Koh's ability to obtain reliable results. She made a professional decision to have Mother present to help regulate Student's maladaptive behaviors so she could obtain reliable results.

Ms. Koh was qualified to assess and interpret the test results. She used all reliable instruments and widely accepted assessment tools and they yielded valid results. She properly administered all tests and interpreted the results consistent with the publisher's protocols. Mother's presence did not compromise any of Ms. Koh's testing results. None of the assessments used were discriminatory on a racial or cultural basis. Student did not offer evidence to the contrary.

Student's behaviors did not improve, and worsened in January 2018.

February 21, 2018 IEP Team Meeting

At the February 21, 2018 IEP team meeting, Ms. Koh, Ms. Grellner, Ms. Gloyd, Ms. Alger, and Ms. Jung presented their assessments, reports, and results to Mother and Dr. Hasse. Both Mother and Dr. Hasse had the opportunity to participate and ask questions of Aveson's IEP team. Although Student scored slightly above average to average cognitively, Ms. Koh concluded that Student exhibited deficits in social emotional function, timed long term memory tasks, and attention, but that her auditory processing and sensory motor skills were not areas of concern. Ms. Jung found that Student had superior to average reading and writing skills, low to very low math skills, and had difficulty with time, money, and calendar use.

Ms. Alger opined that Student did not qualify for occupational therapy, but could benefit from accommodations to address Student's naturally slower pace and problems with body awareness, planning, and ideas. Ms. Alger recommended occupational

therapy consultation services to help with occupational therapy accommodations for Student.

Similarly, Ms. Grellner opined that Student did not qualify for a speech and language special education eligibility because she had strong language skills, but could benefit from speech and language services to support pragmatic language skills including appropriate language use.

Ms. Gloyd discussed Student's functional behavior assessment which identified verbal and physical aggression as the targeted maladaptive behaviors. Escape, especially from teacher feedback, was the main function of Student's maladaptive behaviors.

The IEP team discussed Student's special education eligibility categories. The IEP team ruled out other health impairment and specific learning disorder as special education eligibility categories for Student because they were not the primary cause of Student's educational challenges even though Student qualified under both of those categories. After discussion and consideration of the appropriate special education eligibility categories, the IEP team concluded that Student qualified for special education under the primary category of autism and secondary category of emotional disturbance. After two hours, the IEP team agreed to continue and reconvene another IEP team meeting because they did not have enough time to complete the IEP team meeting. Aveson did not have any available IEP dates for two months because of other students' IEP team meetings and a two-week Spring break. Aveson offered to reconvene the IEP in April 2018.

April 19, 2018 IEP Team Meeting

The IEP team reconvened on April 19, 2018. The team discussed Student's present levels of performance, goals, objectives. Aveson made its first FAPE to Student. Mother and Dr. Hasse attended. Both Mother and Dr. Hasse had the opportunity to participate and ask questions of Aveson's IEP team.

The IEP team proposed a speech and language, a math, a writing, an individual counseling, and two behavior goals. Student's pragmatic speech and language goal targeted social skills of eye contact, topic maintenance, conversational turn-taking, and non-verbal communication in small group structured activities. The math goal was to solve two-step equations using visual strategies including a problem checklist. The writing goal required Student to write a four to six sentence paragraph when given a debatable topic which included a claim or position supported by two pieces of evidence and a counter-argument. Student's counseling goal required Student to independently identify and use appropriate coping strategies such as deep breathing, counting to ten, and break requests. The behavior goals required Student to use appropriate words and tone of voice to communicate her desires. The behavior goals also required her to tolerate a minimum of fifteen minutes of a non-preferred activity without breaks and without engaging in the maladaptive behaviors set forth in her behavior intervention plan.

Aveson's IEP team presented a chart and explained the continuum of the least to the most restrictive environment placements to Mother. The IEP team determined that placement in the general education setting was the least restrictive environment for Student. They agreed that the general education setting, under either the Flex or full-time site based program, would meet Student's academic needs. The Aveson IEP team opined that the full-time, site based program would be appropriate for Student. The full-time, site based program required Student to attend school five days a week, and transition to different classes for the five periods during the school day. Mother was concerned that Student would have difficulty transitioning from class to class. Mother preferred Flex because it lessened Student's anxiety to have the flexibility to stay home two days out of the week.

Aveson offered Student placement in the Flex program after discussion and

taking into consideration Mother's preference. Aveson also offered forty-five minutes per week of specialized academic instruction in each of math and English, thirty minutes per week of direct speech and language services, and forty-five minutes per week of direct, individual counseling in a separate school setting. An inclusion specialist, or an assistant under her supervision, would provide the direct specialized academic instruction in collaboration with the general education teachers. The speech and language pathologist, or an assistant under her supervision, would provide the direct speech and therapy service.

Aveson offered Student twenty minutes monthly of collaboration between the inclusion specialist and the general education teachers, and twenty minutes per month collaboration between the occupational therapist and the general education teachers. These collaboration services were listed as offered in the supplemental aids and support section of the IEP.

Aveson offered the following IEP accommodations and modifications:

1. math problem solving step guide;
2. multiplication table;
3. graphic organizer and editing checklist to support writing;
4. written comments and feedback for all classes;
5. frequent check-ins for work completion;
6. check for instruction comprehension;
7. twenty minutes of work followed by a five-minute break;
8. speech to text software;
9. use of non-touch methods to gain Student's attention;
10. preferential seating in quiet settings and away from distracting peers;
11. extra time for assignment and test completion;
12. signal to Student when an important point was to be made;

13. use of visual tools; prompt before transitions;
14. chunk multi-step assignments; and
15. calculator use.

The IEP team discussed Student's behavior intervention plan. The behavior intervention plan stated that a board certified behavior analyst and teachers would be responsible for daily monitoring. Nonetheless, Ms. Gloyd explained at hearing that the teachers were responsible for daily monitoring and implementing the behavior intervention plan, and that she would be available to consult with the teacher. Ms. Gloyd also explained at hearing that she and another board certified behavior analyst provided consultation behavioral services for all students whether or not they had an IEP. Together, Ms. Gloyd and the other board certified behavior analyst were at Aveson for forty hours per week. Aveson did not offer any behavior services for any specified amount of time to Student at the April 19, 2018 IEP team meeting. Mother consented to the IEP. Ms. Jung opined that Student moved from tier two to tier three of the response to intervention services on April 19, 2018, when Mother consented to the IEP.

On May 10, 2018, Ms. Tappen informed Ms. Jung, Ms. Koh, and Ms. Gloyd that after observing Student in a group speech and language services session she was concerned that Student's mental health affected her social interactions. Specifically, Ms. Tappen shared that Student's cursing, negative self-talk, mimicking behaviors, and inappropriate comments during group session were negatively affecting her access to speech and language services in the group speech and language session. Her peers did not want to be in her group speech and language session because of Student's maladaptive behaviors. The teachers confirmed that the maladaptive behaviors Ms. Tappen observed were consistent with Student's classroom behaviors. Ms. Tappen was concerned that Student was not offered any behavior services on her April 19, 2018 IEP, and that Student, at the time, had not attended any school counseling sessions. Based

on her observations, Ms. Tappen did not believe the group speech and language services offered to Student were appropriate because of Student's maladaptive behaviors and mental health issues. Ms. Tappen opined that behavioral and mental health issues were beyond the scope of her expertise and needed to be addressed before Student could access group speech and language services.

On May 15, 2018, Student and her teachers signed a Student Behavior Contract, as proposed in Ms. Gloyd's behavior intervention plan, with Student promising to use appropriate language and behaviors. She agreed not to curse, or threaten others, and to refrain from inappropriate hugging, holding and putting her head on others' shoulders. Teachers would check on Student every twenty minutes to see if she needed a break or call Mother. She earned points for refraining from inappropriate language and behaviors. If she earned four points in sixty minutes, she could choose a preferred activity during her five-minute break. If Student used inappropriate language or behaviors, teachers would remind her of her goals, instruct her to take a break away from her classmates, ask her to leave the classroom, or call her Mother. If Student cursed or gave the middle finger, she would have to complete a reflection assignment during lunch.

June 19, 2018 IEP Team Meeting

Aveson convened this IEP team meeting to discuss Student's placement and speech and language services. Ms. Tappen explained that Student's behavior was impeding her access to speech and language services and that she needed to generalize her speech and language skills by practicing with peers at school more consistently. Ms. Gloyd was concerned about Student's behaviors and that she spent too much time away from the school environment. Ms. Gloyd explained that increased days at school would help Student meet her behavior goals by giving her more opportunities to practice and generalize her behavioral skills. Ms. Tappen also opined that increased days at school

would give Student more peers for group speech services. Aveson's IEP team opined that the increased school days would provide Student with the consistent and structured setting to help Student make bigger strides in accessing her education.

Aveson offered Student a general education placement in its five days, full-time, site based program. For the 2018-2019 school year, the full-time, site based program had twenty, or fewer, students per class. Mother was concerned that Student would be exhausted and dysregulated if she were required to attend school for two more days. Mother was also concerned with Student's ability to navigate multiple class periods each day. Ms. Marquez shared that Student had been successful with navigating her classes under the Flex schedule and would benefit from a consistent structure the full-time, site based program offered. The rest of Aveson's FAPE offer of services and accommodations were the same as in the April 9, 2018 IEP. Mother needed to consult with Student's therapist and her family about increasing the number of in-school days. Mother did not consent to the change to the full-time, site based program at Aveson.

Aveson's staff opined at hearing that the full-time, site based session offered at the June 19, 2018 IEP was appropriate because Student had not made enough progress since the April 19, 2018 IEP offer of the Flex program. Staff also opined that a full-time, site based program would allow more days for Student to access her related services of speech and language and counseling.

During the second semester of 2017-2018 school year, Student was allowed to call Mother to take her home if she felt she was unable to calm and regulate herself. Mother took Student home between five and ten times based on Student's request during this period. Student called Mother once or twice during speech and language therapy sessions when she had a panic attack.

In the second semester of 2017-2018 school year, Student received Bs in all her classes except for physical education, which she failed. Neither party presented facts

explaining why Student failed physical education. Ms. Brownsmith opined that getting Bs at Aveson was not easy, considered a real accomplishment and evidence that Student understood and grasped Aveson's rigorous curriculum.

Throughout the 2017-2018 school year, Student attended school consistently on Mondays, Tuesdays, and Thursdays, sometimes arriving late, or leaving early. Student rarely attended Aveson on Wednesdays and Fridays, the two optional days. Student's elective courses on Mondays had approximately twenty students and comprised of students from the full-time, site based and the Flex program who selected the same elective. Student's classes on Tuesdays and Thursdays had approximately fifteen to seventeen students, all from the Flex program. However, some days Flex had five to ten students. On Tuesdays and Thursdays, approximately ten additional Flex program students, who have the option of attending classes on Tuesdays and Thursdays as part of their flexible schedule, may also attend Student's class. All of Student's classes were staffed with three teachers, Ms. Marquez, Ms. Brownsmith, Ms. Duran-Perez, and by October 2017, one instructional aide, for a total of four adults. During Tuesdays and Thursdays, one adult worked with the ten additional students who attended class on their optional days. The teacher to student ratio for Student's Flex classes at Aveson during the 2017-2018 school year was one teacher to four or five students depending on the day.

During the 2017-2018 school year, Dr. Hasse provided therapy to Student during crisis, but did not see her consistently. Crisis included when Student was suspended. She helped Student talk through regulating her inappropriate language and behaviors. Dr. Hasse held a bachelor's degree in psychology, a master's and doctorate degree in clinical psychology, and was a licensed marriage and family therapist. Dr. Hasse opined that Student was developing her "going to school" skills, and lacked depth of understanding of social situations. If Student misinterpreted a social situation, she would

react with aggression. Dr. Hasse opined that Student's maladaptive behaviors were a function of her anxiety, which she experienced from thinking about the consequences of her actions. She opined that Student was a perfectionist, sensitive to negative criticism, and required frequent praise and encouragement. She also opined that applied behavior analysis worsened Student's behaviors and anxiety and that artificial consequences were ineffective on changing Student's behavior. She opined that Flex was a program designed for students who required emotional support to attend school because of depression, anxiety, or other emotional issues. Dr. Hasse concluded that Flex was an inappropriate placement for Student based on information Student and Mother provided during therapy sessions. Student was unable to self-manage her schoolwork, emotions, or social environment. Dr. Hasse had not observed Student at Flex, and was not familiar with its program. June 21, 2018, was last day of the Aveson's 2017-2018 school year.

On August 29, 2018, Parents notified Aveson by letter that they would place Student in a school that specialized in educating twice exceptional children and were specifically considering Stem 3 Academy or Bridges Academy for the 2018-2019 school year because Aveson did not offer Student a FAPE. Parents also informed Aveson that they were seeking reimbursements for the placement and related services.

On September 4, 2018, the first day of its 2018-2019 school year, Aveson responded in writing to Parents' August 29, 2018 letter. Aveson informed them that it would not fund Parents' unilateral placement for Student because Aveson offered Student an appropriate educational setting in the least restrictive environment and appropriate related services and supplementary aids and supports. Aveson also stated that its psycho-educational, health, academic, speech and language, functional behavior, occupational therapy, and educationally related mental health services assessments all supported that Aveson's June 19, 2018 IEP offer was a FAPE. It also reiterated that per

Parents' request for continued placement discussions at the June 19, 2018 IEP team meeting, Aveson scheduled a September 27, 2018 IEP team meeting. Aveson included a copy of the procedural safeguards informing Parents of their rights with its September 4, 2018 letter. Although Stem 3 was a non-public school, and Bridges was a private school, Aveson did not separately characterize each of them as such in the September 4, 2018 letter. Aveson also did not use the term twice exceptional in its September 4, 2018 letter.

2018-2019 SCHOOL YEAR

Student attended Stem 3 during the 2018-2019 school year, starting on September 5, 2018. Stem 3 was a non-public school for academically advanced students with special needs. It taught state standards, but allowed the teachers to develop their own curriculum, allowed for project based and a lecture based approach to classroom instruction. Stem 3 typically had ten to fourteen students with one teacher per class. When Student enrolled at Stem 3, she was emotionally dysregulated. She yelled, used expletives, refused to comply with teacher's directions, and physically grabbed and pushed teachers to get attention. Student's maladaptive behaviors revolved around peer conflicts. When Student was upset and unable to calm, the principal would call Parents to take Student home.

November 5, 2018 IEP Team Meeting

Parents rescheduled the September 27, 2018 IEP team meeting which was convened on November 5, 2018. Aveson convened an IEP team meeting to further discuss Student's placement because Mother did not consent to the full-time, site based program at Aveson offered at the June 15, 2018 IEP team meeting. At the November 5, 2018 IEP team meeting, Mother shared with the IEP team that she placed Student at Stem 3 because Mother was concerned with Student's academic progress and safety at

Aveson because Aveson did not have a plan to handle Student's panic attacks or elopement. Aveson's IEP team shared that Student only eloped once during her enrollment at Aveson, and that Mother had mistaken that Student eloped a second time, as a teacher had been with Student. Aveson did not know that Student attended Stem 3 until the November 5, 2018 IEP team meeting.

Mother shared that Student was educated at Stem 3 in a classroom of eight to ten other students with one teacher under the traditional, direct teaching method. Mother shared that Student was learning well at Stem 3; and that Student's math abilities have increased and her attendance had been regular. Mother reported that she provided Stem 3 with Student's IEP, but that Stem 3 had only provided Student with specialized academic instruction, and did not provide Student with any counseling, behavioral, or speech services because Student did not require them there. Mother shared that Student still struggled with emotional regulation but reduced outside counseling services for financial reasons.

Ms. Bean suggested that Student transition back to Aveson's full-time, site based program, with appropriate supports, so Student could be with typically developing peers. She explained to the IEP team that Aveson's full-time, site based program had seventeen students, and two adults and used the direct teaching method. Ms. Bean also explained that the placement continuum required Aveson to consider and offer the least restrictive environment to Student, and that a non-public school was an unreasonable leap for Student.

Further, the Aveson IEP team did not have any data to justify placing Student at Stem 3. The next program on the placement continuum for Student after the Flex program was the full-time, site based program at Aveson, not a non-public school.

Mother's attorney suggested that Aveson conduct assessments to support Student's Stem 3 placement. Aveson declined on the basis that Student had been

assessed less than a year ago. Parent provided a release to Aveson to speak with the staff at Stem 3 and to allow staff to provide input to the Aveson IEP team. Mother's attorney suggested reconvening the IEP team meeting after Aveson had an opportunity to obtain input from Stem 3's staff.

At the November 5, 2018 IEP team meeting, Aveson offered Student the same FAPE offer, including accommodations and modifications, as it did at the June 15, 2018 IEP team meeting. However, it modified its offer of specialized academic instruction in math to ninety minutes per week and direct individual counseling to ninety minutes twice per week. It also added sixty minutes of direct behavior intervention services by a board certified behavior analyst. Aveson increased specialized academic instruction and counseling and added behavior services because Aveson's staff opined that Student needed them to transition back to Aveson from Stem 3.

Dr. Hasse observed Student at Stem 3 on March 15, 2019. She opined that Student appeared on task, happy, confident, and displayed appropriate social skills. She opined that Stem 3 met all Student's needs, and did not require any special education services other than speech services. Student's anxieties were reduced and did not exhibit any fear of making mistakes or getting in trouble.

Dr. Hancock observed Student at Stem 3 on April 2, 2019. She did not observe Student engaging in any maladaptive behaviors. She found Student to be pleasant, comfortable, engaged and totally different than when she had assessed Student in 2017. Dr. Hancock did not observe Student at Aveson, and was unfamiliar with its programs, or Student's IEPs, and therefore did not opine on whether Aveson was an appropriate placement for Student.

Student's teacher Michelle Harwood at Stem 3 opined at hearing that Student had progressed because by February 2018, Student no longer used profanity when frustrated and anxious. She also did not grab or push people for attention. Ms. Harwood

opined that Stem 3 taught Student to express disagreement appropriately and to work with non-preferred peers. She also opined that Stem 3 provided a safe place for Student to ask questions and unafraid to make mistakes. She developed positive peer relationships, remained in class the entire period, was responsive to teacher's directions and was generally happy. Ms. Harwood opined that Student needed a small teacher to student ratio because Student needed constant feedback. She also opined that one teacher to twenty-five student ratio would be inappropriate for Student. When working on assignments, Student needed to discuss them with Ms. Harwood and ask Ms. Harwood questions. Ms. Harwood further opined that when Student became upset, she required a lot of time for talking and coaching. Student also required immediate staff intervention to avoid reactive and explosive responses, and to deescalate.

At hearing, Mother opined that the occupational therapy assessment did not address Student's sensory input difficulties. Mother shared that when Student was overwhelmed by sensory input, it manifested in maladaptive behaviors. She opined that the Fall 2017 hiking meltdown occurred because Student had difficulty regulating her emotions. She disagreed with Ms. Alger's opinion that Student did not need direct occupational therapy services and opined that Student had sensory integration problems.

Mother shared at hearing that Student had panic attacks during speech and language therapy sessions and requested to go home once or twice. Mother understood that the speech and language therapy sessions were to help Student implement speech and language pragmatic skills which Student learned in the abstract, but had difficulty implementing. For example, Student learned that she was to make eye contact when speaking with others, but had a hard time doing so when she was emotionally dysregulated. Mother shared that Student became upset during a speech and language session, when the speech and language pathologist or assistant stated,

"You have your head down, now. We're trying to talk to you. Is that how you talk to people?" Student believed that everyone was laughing at her, and asked Mother to take her home. Mother did not believe the speech and language therapy sessions were effective to address Student's needs in that area.

Mother also opined at hearing that the functional behavior assessment did not address all of maladaptive behaviors that interfered with Student's curriculum access. Mother felt that Student's screaming, anxiety, attention and social deficits, executive function deficits in work organization, inability to follow directions, and inappropriate holding onto teachers should have been included as target behaviors in the functional behavior assessment and in developing Student's behavior intervention plan. Mother had no training or experience in conducting function behavior assessments.

On Wednesdays and Fridays when Student worked from home, Mother spent most of the day helping Student with her work. Like Ms. Marquez, Ms. Mother found that Student required constant reinforcement, explanation, and feedback to complete schoolwork. Ms. Marquez opined that Student functioned below grade level behaviorally, and could not complete assignments without one-on-one support. However, Ms. Marquez explained at hearing that one-on-one support did not mean a one-to-one aide, but that Student required constant check-ins and immediate feedback from teachers and daily check-ins with Mother. Mother shared at hearing that Student could not find online math assignments by herself. During her non-school site days, Mother helped Student locate assignments, review and explain sample problems, and chunking and separating out the assignment steps. When Student could not do the work, she would panic, lose focus, and required redirecting to stay on task.

Ms. Jennifer Lovers, Aveson's licensed marriage and family therapist, held a master's degree in marriage and family therapy. Ms. Lovers conducted the mental health assessment of Student as part of Aveson's initial assessment of Student and supervised

Jaime Griffins, a licensed marriage and family therapist trainee who provided counseling to Student in the spring of 2018. The counseling sessions addressed Student's anxiety, panic attacks, and social skills based on Student's IEP goal. Anxiety and dysregulation impacted Student's behaviors. Counseling targeted Student's emotional regulation by teaching Student evidence based coping skills so she could participate and access her education including using appropriate social skills. Student's first counseling session was scheduled for April 20, 2018, after Parent consented to the IEP. Between April 2018 and the end of the 2017-2018 school year, Student attended only three counseling sessions, May 18, 2018, June 1, and June 15, 2018. Ms. Griffins' cancelled one session. Parent did not bring Student to the other scheduled counseling sessions.

At hearing, both Ms. Gloyd and Ms. Jung opined that Aveson offered Student consultation behavior services from a board certified behavior analyst of sixty minutes per month. They opined that Student needed the consultation behavior services from the board certified behavior analyst. They also opined the behavior services were especially helpful to facilitate Student's transition into the full-time, site based program proposed at the June 19, 2018 IEP team meeting. Neither of them could identify in the February 21, 2018, April 19, 2018, or the June 19, 2018 IEP documents where Aveson offered this service. They relied only on the November 5, 2018 IEP team meeting notes summarizing that the June 19, 2018 IEP offered consultation services of sixty minutes per month from a board certified behavior analyst. Because, the February 21, 2018, April 9, 2018, and the June 19, 2018 IEP documents did not support Ms. Gloyd and Ms. Jung's hearing recollection, their opinion on this issue was not as persuasive as the February 21, 2018, April 19, 2018, and the June 19, 2018 IEP documents. Aveson did not offer any behavior services for any specified amount of time to Student at the April 19, 2018 or June 19, 2018 IEP team meetings.

Mother paid three thousand eight hundred twenty-six dollars and sixty-seven

cents each month for Student's tuition at Stem 3 for September 2018 through June 2019. She paid Dr. Hasse a total of two thousand dollars, two hundred dollars each for eight therapy sessions for Student from August 31, 2017 to February 21, 2018, and four hundred dollars for Dr. Hasse to attend an IEP team meeting. She also paid Dr. Egan a total of eighteen hundred dollars for psychiatric sessions.

Mother opined at hearing that mileage for two roundtrips from her home to Stem 3 was eighty-four miles per day. Aveson did not contradict her opinion. June 19, 2019 was the last day of Aveson's 2018-2019 school year.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION – USE OF LEGAL CONCEPTS THROUGHOUT THE DECISION

In this discussion, unless otherwise indicated, this introduction's legal citations are incorporated into each issue's conclusion. All references to the Code of Federal Regulations are to the 2006 version.

LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. §1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The Individuals with Disabilities Education Act is often referred to as the "IDEA." The main purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for 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).)

A free, appropriate public education, often called a FAPE, means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's Individualized Education Program, commonly called an 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, or supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

In general, an IEP is a written statement that is developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, needs, and academic and functional goals related to those needs. It also provides a statement of the special education related services, which include transportation, other supportive services, program modifications, and accommodations that will be provided for the child to work towards the stated goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39 Cal. Code Regs., tit. 5, § 3001, subd. (p).)

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 pp. 200.) Instead, *Rowley* interpreted the FAPE requirement 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.)

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 circumstances.” “Every child should have a chance to meet challenging objectives.” (*Ibid.*) *Endrew F.* explained that “this 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.) The Court noted that “any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” (*Id.* at pp. 999.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.* The Court acknowledged that Congress had not materially changed the statutory definition of a FAPE since *Rowley* was decided and so declined to change the definition itself. The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.).

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, assessment, 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).) Generally, a party is limited to filing a request for due process two years from the date the person knew or should have known of the

facts which form the basis for the request for a due process hearing.

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] (*Schaffer*); see 20 U.S.C. §1415(i)(2)(C)(iii).) In this case, Student has the burden of proof as to her issues; Aveson has the burden of proof as to its one issue.

STUDENT'S ISSUE 2: CHILD FIND

Student contends that Aveson violated its child find obligations starting in August 2017 when Mother met with Ms. Marquez and informed her of Student's difficulties with anxiety. Aveson contends that it acted reasonably in waiting until December 1, 2017, to take data and to see Student's response to various interventions before starting special education assessment.

Pursuant to California special education law and the IDEA, school districts have an affirmative, ongoing duty to identify, locate, and evaluate all children with disabilities residing within their boundaries. (20 U.S.C. § 1412(a)(3); Ed. Code, § 56300 et seq.) This ongoing duty is referred to as "child find." The district's duty is not dependent on any request by the parent for special education testing or referral for services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518 (*Reid*).) A district's child find obligation toward a specific child is triggered where there is knowledge of, or reason to suspect a disability, and reason to suspect that a student may need special education services to address that disability. (*Dept. of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at pp. 1195.) A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot

circumvent that responsibility by way of informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121 (*Timothy O.*)). At the same time, a medical or psychological diagnosis pursuant to the Diagnostic Manual is not synonymous with eligibility under the IDEA. (Office of Special Education Programs, *Letter to Coe*, 32 IDELR 204, Sept. 14, 1999.)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, and that special education services may be necessary to address the disability must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (citing *Fuhrmann v. East Hanover Bd. of Ed.* (3rd Cir. 1993) 993 F.2d 1031).)

The relationship between the duty to assess, the duty to provide special education services, and the duty to utilize general education resources where appropriate was summarized in *Los Angeles Unified School District v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 819-820:

To prevent districts from 'over-identifying' students as disabled, Congress mandated that states develop effective teaching strategies and positive behavioral interventions to prevent over-identification and to assist students without an automatic default to special education. (20 U.S.C. § 1400(c)(5)(f).) Schools, however, are charged with the 'child find' duty of locating, identifying and assessing all children who reside within its boundaries who are in need of special education and related services. (20 U.S.C. § 1400(a)(3); [Ed. Code, §§ 56300-56303].) If a school district suspects that a general education student may have a disability, it must conduct a special education assessment to determine whether the student qualifies for special education services. (20 U.S.C. § 1414(a)(1)(a); [Ed. Code, § 56320].) However, a student 'shall be referred for

special education instruction and services only after the resources of the regular education program have been considered, and, where appropriate, utilized. ([Ed. Code, § 56303].)

Although a district is required to consider and utilize the resources of its regular education first, it may not delay its assessment of a student with a suspected disability on the basis that it is utilizing a response to intervention approach to accommodate the student in the regular education program. A district may deny a request to evaluate a student if it does not suspect a disability, but it must notify the parent of the basis of the decision and that basis cannot be that the district is waiting to see how the student responds to general education interventions. (Office of Special Education Programs (OSEP) *Memorandum to State Directors of Special Education*, (January 21, 2011) 56 IDELR 50.)

States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483, superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007), 496 F.3d 932, 939.) (*Target Range*). Citing *Rowley, supra*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but indicated that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at pp. 1484.) Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*) These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or
3. caused a deprivation of educational benefits.

(20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); See *Target Range, supra*, 960 F.2d at 1484.)

Aveson's child find obligation was triggered as of November 1, 2017. By November 1, 2017, Student had been at the Flex program for two months, with consistent attendance, where the general education teachers' interventions were unsuccessful in managing Student's maladaptive behaviors. By November 1, 2017, Aveson was aware that Student suffered not only from anxiety, but also exhibited maladaptive behaviors including cursing, screaming, crying, using threatening language, pushing, grabbing, and exhibiting non-compliance to teachers' instructions which interfered with Student's and her peers' access to the curriculum. By November 1, 2017, Aveson was aware that Student was on Prozac, and had been working with an educational therapist, a psychologist, and a psychiatrist.

Aveson was also aware of the severity of Student's maladaptive behaviors and understood that they were not isolated or minor incidences. Aveson started documenting Student's maladaptive behaviors as of September 21, 2017. It started implementing behavioral strategies and increasing the general education teacher's assistance and accommodations after the September 26, 2017 incident. Among other documented incidences, Student engaged in two documented incidences per day on October 3, 2017, and October 31, 2017, with the latter incident resulting in a one-day suspension. The October 31, 2017 incident culminated in Aveson calling Mother to calm and persuade Student to get up from prostrating face down, pants down, clawing at the dirt, and crying because the teachers had no effective strategies to manage Student's

extreme maladaptive behaviors. The intensity of Student's outbursts and meltdowns changed little after the late September 2017 incidents.

Aveson developed a behavior plan for Student which had been in place before Ms. Gloyd observed Student in the Flex program in November 2017. By November 1, 2017, Student had already undergone one or two levels of general education response to interventions with limited success. At that point, Student's continued maladaptive behaviors should have, at the very least, triggered a suspicion by Aveson that Student had an impairment affecting her educational performance which demanded an immediate assessment for special education eligibility. Further, on November 1, 2017, Mother formally requested a functional behavior assessment which should have also triggered Aveson's child find obligations.

Aveson was reasonable in using general education program resources in late September 2017 when Student had only been in school for three weeks, or approximately nine in-school days. In late September 2017, the special education team acted appropriately in instructing the teachers to collect data and observe Student's response to further general education interventions before conducting a functional behavior assessment. However, Aveson should not have continued to rely on wait and see as a basis for delaying assessment by November 1, 2017. (See, OSEP *Memorandum of State Directors of Special Education, supra*, 56 IDELR 50.)

Aveson's proposal of a 504 Plan for Student on November 1, 2017 was not a good reason to delay assessing Student by November 1, 2017, both in light of the Student's past unmanageable maladaptive behaviors and Mother's request for assessment. Aveson did not offer any evidence supporting a finding that waiting to assess Student was appropriate or permissible under the IDEA until Aveson tried the 504 Plan accommodations or Student spent more time under various tiers of its response to interventions.

Although Ms. Gloyd opined that the behavior plan which had been in place before formal assessments had been conducted was appropriate and Student did not need additional behavioral strategies, her opinion was unpersuasive because it was based on her one-day observation of Student when Student did not engage in maladaptive behaviors. Albeit a three-hour observation was not an insignificant amount of time, Ms. Gloyd's observation on that day was non-reflective of Student's typical school presentation. The documented incidences of maladaptive behaviors since late September 2017, including the October 31, 2017 incident where none of Aveson's staff had been successful in calming Student, showed that Student had significant maladaptive behaviors. (See, *Timothy O.*, *supra*, 822 F.3d at 1121.) Ms. Gloyd's informal observations in November 2017 and her opinion that Student had appropriate interventions did not obviate Aveson's need to assess Student for special education.

By November 1, 2017, Student had exhibited symptoms of a disability, mentally or behaviorally, covered under the IDEA and triggering assessment regardless of whether Mother made a request. Yet, it did not do so despite Mother's November 1, 2017 request for assessment, until December 1, 2017. Therefore, Mother met her burden of proving that Aveson procedurally violated the IDEA by failing to timely assess Student for eligibility under the IDEA.

To prevail, Student must also demonstrate that as a result of Aveson's failure to timely assess her, Student was deprived of educational benefit, her right to a FAPE was impeded, or that it substantially interfered with parent's ability to participate in the decision-making process. Student met her burden of proof on this element of her claim. Ms. Koh's February 21, 2018 psycho-educational report established that if Aveson had timely assessed Student when its child find obligations had been triggered on November 1, 2017, Student would have qualified for special education under multiple categories including autism and emotional disturbance. She would also have received

special education supports and services before April 19, 2019. Accordingly, Student met her burden.

In conclusion, Student proved that Aveson failed in its child find obligations to Student between November 1, 2017 and April 19, 2018. Student's remedy is discussed in a separate section below.

STUDENT'S ISSUES 1 A, B, C, D, AND E: ASSESSMENTS

Student contends that Aveson did not appropriately assess Student's psycho-educational, occupational therapy, speech and language, functional behavior, and social skills needs. Aveson contends that it appropriately assessed Student in all areas.

Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) "The purpose of the child-find evaluation is to provide access to special education." (*Fitzgerald v. Camdenton R-II School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) Children identified in the child find process are assessed to determine whether the child qualifies as a student with a disability under the IDEA and, if so, to determine the nature and extent of the special education and related services the child needs. (20 U.S.C. § 1414 (a)(1)(C)(i); 34 C.F.R. § 300.15.)

A request for an initial evaluation to determine whether a student is a child with a disability in need of special education and services can be made by either the parent or a public agency, such as a school district. (34 C.F.R. § 300.301(b).) Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that particular disability or disorder. (See *Timothy O.*, *supra*, 822 F.3d at 1119). The Ninth Circuit Court of Appeals in *Timothy O.* held a school district's failure to assess a child for autism using standardized tests and relying on informal staff observation during its initial evaluation of the child resulted in substantially hindering parents' ability to participate in the child's educational program, and seriously depriving the parents, teachers and district staff of the information necessary to develop an appropriate educational program with appropriate supports and services for the child. (*Id.*)

To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, §56381, subd. (a).) Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. §1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2). The parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent. (Ed. Code, § 56321, subd. (c)(4); Ed. Code §56043, subd. (b).) The school district has 60 days from the date it receives the signed and consented to assessment plan to complete the assessment and hold an IEP to discuss the assessment results. (Ed. Code, §§ 56321, subd. (a), (c)(4), 56302.1).)

The assessment must be conducted in a way that:

1. uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;

2. does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and
3. uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

The assessments used must be:

1. selected and administered so as not to be discriminatory on a racial or cultural basis;
2. provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
3. used for purposes for which the assessments are valid and reliable;
4. administered by trained and knowledgeable personnel; and
5. administered in accordance with any instructions provided by the producer of such assessments.

(20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd.

(h).)

The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where the concern prompting the assessment was reading skills deficit].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).) Assessors must be knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd. (g).)

The personnel who assess the student shall prepare a written report that shall include, without limitation, the following:

1. whether the student may need special education and related services;
2. the basis for making that determination;
3. the relevant behavior noted during observation of the student in an appropriate setting;
4. the relationship of that behavior to the student's academic and social functioning;
5. the educationally relevant health, development, and medical findings, if any;
6. if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and
7. consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment.

(Ed. Code, § 56327.)

A student may be entitled to an independent educational evaluation if he or she disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].) Federal law uses the term "evaluation" instead of the term "assessment" used by California law, but the two terms have the same meaning and are used interchangeably in this Decision.

A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process; or
3. caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); See *Target Range, supra*, 960 F.2d at 1484 superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007), 496 F.3d 932, 939.)

Issue 1 A: Occupational Therapy Assessment

Ms. Algers appropriately conducted the February 18, 2018 occupational therapy assessment. It met all legal requirements. She reviewed Student's records including work samples, a prior IEP, treatment notes, and a neuropsychological assessment summary to familiarize herself with Student's background. She used a variety of tools including standardized tests and observations during formal testing to assess Student.

Ms. Algers observed Student during formal testing which, together with the standardized assessment results, provided sufficient information on Student's motor and sensory functions. For example, Ms. Algers persuasively explained that Student's average scores in both the fine motor precision and integration skills subtests of the Bruininks-Oseretsky Test validated one another such that she did not need to calculate the individual fine motor composite scores to conclude that Student did not have deficits with her motor function. Although Student argued that Ms. Algers should have observed Student in the classroom, she did not show that not doing so compromised the assessment. Further, Mother specifically requested that Ms. Algers only assess Student during days when she was not attending class. Student did not present any evidence rebutting Ms. Algers' opinion other than counsel's argument.

Student argued that Ms. Alger did not list all available subtests of the Bruininks-Oseretsky Test, or explain why she selected certain subtests over others. Student did not present any evidence and did not cite to any case or legal authority to support her position beyond counsel's argument that doing so was required.

Student also argued that the Sensory Processing Measure was an inappropriate test for Student because it was intended for students ages five to twelve years old, and Student was twelve years and nine months old at the time of test administration. Student was still within the age range contemplated under the test because she was still twelve years old, and not yet thirteen years old, at the time of the assessment. Ms. Algers opined that she did not deviate from the testing protocols when administering this test. Student did not present any evidence to rebut Ms. Alger's opinion, such as citing to any case, legal authority, or testing protocols to support her position.

Student further argued that Ms. Algers did not explain why she did not administer the classroom form. This was inaccurate. Ms. Algers explained at hearing that she was unable to use the classroom form because that form required the assessor to conduct a classroom observation to be valid. Ms. Algers did not observe Student in class at Mother's request not to assess Student during school days. Student did not present any evidence in response to Ms. Alger's explanation or rebut her opinion that the forms she used to assess Student were inadequate. Student also did not present any testimony to refute Ms. Algers' conclusions of Student's motor and sensory functions were non-reflective of Student's classroom motor and sensory functions.

Student argued in her closing brief that the assessment was inappropriate because it did not include a teacher's or Mother's interviews. She argued that had those interviews been conducted, they would reveal Student had executive functioning and sensory deficits. Again, Student did not support either argument with evidence. Student also did not show that executive function was within the purview of an occupational

therapy assessment. Ms. Algers issued the home rating form for Mother to share her view of Student's occupational therapy needs. Based on Mother's responses, Student's social participation, vision, hearing, touch, balance, and motion skills were all in the typical range. Student did not present any evidence and did not cite to any case or legal authority to support her position beyond counsel's argument, in the closing brief only, that an interview with a teacher, or one with Mother, in addition to the rating form, was necessary to an appropriate occupational therapy assessment. Further, Student failed to present evidence, beyond conjecture, as to what Ms. Algers would have found if she interviewed Mother or the teacher that would have necessitated further assessment.

Even if Student had been successful in showing that Aveson's failures to conduct a classroom observation and to interview teacher and Mother were inappropriate, these would be procedural defects. Student did not offer evidence that any of these procedural defects deprived Student of a FAPE, significantly impaired Student's ability to access her education, or deprived Parents meaningful opportunity to participate in the decision making process. Counsel's arguments were not evidence.

The evidence supported Ms. Alger's conclusion that Student was independent, could navigate the school environment and manipulate classroom materials without assistance, and did not have occupational therapy needs beyond the supplemental aide and supports she recommended. Ms. Algers set forth her findings and recommendations in the February 18, 2018 occupational therapy assessment report. Student did not offer any evidence contradicting Ms. Alger's findings and recommendations.

Student did not prove that the February 18, 2018 occupational therapy assessment was inappropriate. Therefore, Student was not entitled to an independent occupational therapy assessment at the public's expense.

Issue 1 B: Speech and Language Assessment

A student is eligible for special education and related services under the category of speech and language impairment if he or she demonstrates difficulty understanding or using spoken language under specified criteria and to such an extent that it adversely affects his or her educational performance, which cannot be corrected without special education. (Ed. Code, § 56333.) The criteria are:

- a. Articulation disorder: the child displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention;
- b. Abnormal voice: a child has an abnormal voice, which is characterized by persistent, defective voice quality, pitch, or loudness;
- c. Fluency Disorders: a child has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener; and
- d. Language Disorder: the pupil has an expressive or receptive language disorder, in pertinent part, when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile, for his or her chronological age or developmental level, on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics.

(Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b) (11).)

The February 13, 2017 speech and language assessment was appropriately conducted. Ms. Grellner was aware that Student had been diagnosed with anxiety and depression associated with high functioning autism by a private psychiatrist. Ms. Grellner used a variety of tools including personal observations during formal testing, passing periods, and lunch, as well as interviews with teachers and Mother, and multiple

standardized tests to assess Student. Ms. Grellner explained that she did not observe Student in the classroom because Mother requested that Student not be assessed during school days. Ms. Grellner persuasively showed that her speech and language assessment appropriately identified Student's deficits in speech and language pragmatics. Student did not present any evidence to rebut any of Ms. Grellner's findings.

Student questioned the propriety of Ms. Grellner's choice of using the optional components instead of the core components of the Clinical Evaluation of Language Fundamentals. However, Student did not present any evidence to support that her choice was inappropriate. Ms. Tappen opined that publisher's protocols did not require the optional portions to be administered with the core language portions of the Clinical Evaluation of Language Fundamentals, and Student did not present evidence to the contrary.

Student also argued in her closing brief that Ms. Grellner inappropriately failed to conduct teacher interviews which would have provided insights into Student's pragmatic speech and language deficits. This argument was not supported by any evidence at hearing. Counsel's argument was not evidence. The assessment report showed that Ms. Grellner interviewed teachers as that box was checked in the report. Ms. Tappen, the supervising speech pathologist opined that Ms. Grellner's speech and language assessment identified Student's pragmatic language deficits that were consistent with the deficits Ms. Tappen observed of Student in group speech therapy. Student did not present evidence contradicting Ms. Tappen's opinion that the speech and language report was valid and had properly identified Student's speech and language pragmatic deficits.

Although Ms. Grellner should have stated in her report why she was unable to conduct classroom observations, and why she chose to administer the optional portions of the test instead of the core language portions, Student did not show that failure to

do so invalidated the report. Ms. Tappen opined the speech and language assessment was valid despite the absence of these explanations. Student did not provide any evidence rebutting Ms. Tappen's opinion.

Even if Student established that Ms. Grellner's failures to conduct a classroom observation were inappropriate, or that she conducted inadequate interviews with teachers, these would be procedural defects. Student did not offer any evidence that any of these procedural defects deprived Student of a FAPE, significantly impaired Student's ability to access her education, or deprived Parents of meaningful opportunity to participate in the decision making process. Ms. Grellner set forth her findings and recommendations in the February 13, 2018 speech and language assessment report. Student did not offer any evidence contradicting Ms. Grellner's findings, recommendations, or her conclusion that Student needed speech and language services to address pragmatic language skills, or that she had other speech and language deficits beyond Ms. Grellner's findings.

Student had the burden to prove that the February 13, 2018 speech and language assessment was inappropriate, and failed to introduce evidence to sustain this burden. Therefore, Student was not entitled to an independent speech and language assessment at the public's expense.

Issue 1 C: Psycho-Educational Assessment

The February 21, 2018 psycho-educational assessment was appropriately conducted. Ms. Koh concluded that Student qualified for special education eligibility under autism, emotional disturbance, other health impairment because of her attention deficit hyperactivity disorder, and specific learning disorder because of her math deficiencies. She made her recommendations to the IEP team to discuss and make a final determination based on her assessment findings.

Student argued that having Mother present in the room to help regulate

Student's maladaptive behaviors compromised the psycho-educational assessment. Student did not present any evidence, expert or otherwise, at hearing to show that Dr. Koh's assessment results were inappropriate, incorrect, or not reflective of Student's abilities. Dr. Koh used multiple standardized tests, observations, and interviews, and her results corroborated the opinions of Student's out-of-school support team consisting of Dr. Hancock, Dr. Hasse, Dr. Egan, and Ms. Wilkes. Student's independent neuropsychological assessor, Dr. Hancock, also had Mother in the room for behavior regulation when she conducted her neuropsychological assessment. Dr. Hancock opined at hearing that having Mother in the room was necessary for Dr. Hancock to obtain results reflective of Student's abilities. Dr. Koh's and Dr. Hancock's findings of Student's abilities were similar. They both found that Student had average to above average cognitive abilities impacted by her maladaptive behaviors, anxieties, and attention issues. They both found autism and emotional disturbance impacted Student. Ms. Koh found that Student's math deficits showed a discrepancy between her cognitive ability and math performance. Dr. Hancock came to the same conclusion but with respect to Student's reading deficits. In her capacity as a school psychologist, Ms. Koh concluded that Student was also eligible for special education under the category of specific learning disorder. Student did not dispute any of Ms. Koh's findings.

Student's counsel's argument in the closing brief that Aveson denied parental participation because of Ms. Koh's failure to inform and consult Mother that her presence in the testing room was not standard procedure before deciding to have Mother in the testing room was unsupported by evidence, and therefore unpersuasive. Student also did not cite to any authority where a school psychologist was required to seek parental input before exercising her professional opinion to determine the proper assessment environment.

Even if Student were successful in showing that Ms. Koh's psycho-educational assessment was inappropriate because of her decision to have Mother in the room, this would be procedural defect. Student did not offer any evidence that any procedural defect deprived Student of a FAPE, significantly impaired Student's ability to access her education, or deprived Parents meaningful opportunity to participate in the decision making process, especially as Ms. Koh's findings were substantially similar to information provided by Student's private assessors and providers.

Student did not prove that the February 21, 2018 psycho-educational assessment was inappropriate. Therefore, Student was not entitled to an independent psycho-educational assessment at the public's expense.

Issue 1 D: Functional Behavior Assessment

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b); Ed. Code, § 56341.1, subd. (b)(1).) The legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) A person recognized by the National Behavior Analyst Certification Board as a board certified behavior analyst may, but is not required to, conduct behavior assessments and provide behavior intervention services for individuals with exceptional needs. (Ed. Code, § 56525, subds. (a) and (b).) An IEP that does not appropriately address behaviors that impede a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-68.)

The February 16, 2018 functional behavior assessment was appropriately conducted. Ms. Gloyd used a variety of tools including five different days of classroom

observations, unstructured interviews with the teachers and Mother, and standardized interviews with the teachers using the Indirect Functional Assessment to hypothesize the function of Student's behaviors. Ms. Gloyd persuasively explained that she conducted a phone interview with Mother, and did not need to administer the standardized Indirect Functional Assessment to Mother because Mother shared during the unstructured phone interview that she did not observe any verbal or physical aggression from Student at home.

Ms. Gloyd also identified verbal and physical aggression as Student's target behaviors because, based on data during the five-days observation, those were the most pervasive maladaptive behaviors that interfered with Student's access to education. She then identified the various functions of Student's behaviors based on the standardized Indirect Functional Assessment results. She also identified the antecedents to Student's two target behaviors and recommended strategies for managing those behaviors, and developed a behavior intervention plan for Student from her functional behavior assessment. Ms. Gloyd set forth her findings and recommendations in the February 16, 2018 functional behavior assessment report.

Student argued that the functional behavior assessment was inappropriate because Ms. Gloyd only identified two target behaviors. She also argued the assessment did not include other behaviors such as anxiety, panic attacks, attention, inappropriate touching and personal space, running away or elopement, crying, screaming, non-compliance which also impeded Student's learning. Ms. Gloyd persuasively explained that the reason she did not include anxiety, panic attacks, and attention was because these were not challenges which were addressed in a functional behavior assessment, but addressed by the mental health discipline and assessment. She also explained that running away or elopement only occurred once and that inappropriate touching and personal space issues occurred infrequently and did not *impede* Student's or her

classmates' access to education. Further, anxiety and panic attacks manifested in Student's target behaviors of verbal and physical aggression. Student's screaming and crying were part of Student's verbal aggression. Ms. Gloyd opined that a functional behavior assessment did not typically include every maladaptive behavior as target behaviors, but only identified the maladaptive behaviors that intensely and frequently impeded Student's access to education.

Although Student argued that Ms. Gloyd's decision not to include other target behaviors was inappropriate, Student did not present any evidence to rebut Ms. Gloyd's opinion other than counsel's argument and Mother's opinion. Counsel's argument was not evidence. Mother's opinion as to what should be included as target behaviors in a functional behavior assessment was not as persuasive as Ms. Gloyd's opinion. Ms. Gloyd was a board certified behavioral analyst, experienced in conducting functional behavior assessments.

Even if Student was successful in showing that Ms. Gloyd's failure to include other target behaviors were inappropriate, this would be a procedural defect. Student did not offer any evidence, other than counsel's argument, that this procedural defect deprived Student of a FAPE, significantly impaired Student's ability to access her education, or deprived Parents a meaningful opportunity to participate in the decision making process.

Student did not prove that the February 16, 2018 functional behavior assessment was inappropriate. Therefore, Student was not entitled to an independent functional behavior assessment at the public's expense.

Issue 1 E: Social Skills Assessment

Ms. Grellner's speech and language assessment and Ms. Gloyd's functional behavior assessment also assessed the level of Student's social skills. Through the use of two standardized tests, the Clinical Evaluation of Language Fundamentals and the

Expressive Vocabulary Test, Ms. Grellner concluded that Student experienced moderate difficulty in her pragmatic language skills such as turn taking, eye contact, topic maintenance, repetitive and unrelated information use, and difficulty reading social situations correctly. Those standardized tests also provided information on Student's conversation skills level. Specifically, Student exhibited culturally appropriate facial cues and expression, but had difficulty with eye contact, staying on relevant topics, dealing with conversation interruptions, responding when asked to change her actions, and reading social situations correctly. Ms. Grellner also concluded from her assessment that Student had an appropriate sense of humor and exhibited appropriate social conversation reciprocity, but needed help learning not to dominate conversations. Through the functional behavior assessment's standardized Indirect Functional Assessment, Ms. Gloyd concluded that Student's cursing, threatening language, and physical aggression such as using her body to push or hit peers were socially unacceptable and needed strategies to manage and eliminate.

Student argued that Aveson did not conduct a formal social skills assessment, but never presented any evidence at hearing supporting that argument. Unlike the school district in *Timothy O.* which did not conduct any testing and relied only on informal staff observations and information from a non-educational assessment for its student's initial assessment, Aveson conducted thorough assessments. The evidence showed that Aveson obtained information about Student's social skills abilities through a variety of assessment tools including standardized testing, assessor observations, and interviews with teachers and Mother. Aveson had detailed information on the strengths and deficits of Student's social skills and developed pragmatics goals based on her social skills deficits. Aveson's experts from different disciplines recorded their results in their assessment reports which contained recommendations to develop Student's social skills to access her education. Aveson had a clear picture of Student's social skills. Student did

not refute any of Aveson's evidence on this issue.

Student did not prove that Aveson failed to conduct a social skills assessment or did not have adequate information on Student's social skill deficiencies. Therefore, Student was not entitled to a social skills assessment at the public's expense.

STUDENT'S ISSUE 3 A: UNTIMELY ASSESSMENT PLAN

Student contends that Aveson failed to timely provide Parents with an assessment plan on August 22, 2017. Aveson contends that Parents first requested assessment on November 1, 2017, and that it provided an assessment plan on December 15, 2018.

"If an assessment for the development or revision of the individualized education program is to be conducted, the parent or guardian of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent or guardian agrees, in writing, to an extension. However, in any event, the assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by each district's school calendar for each pupil for whom a referral has been made 10 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 15-day time shall recommence on the date that the pupil's regular schooldays reconvene." (Ed. Code, § 56321, subd. (a).)

Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).) The parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision. The 15-day response time shall restart on the date regular school days reconvene. (Ed. Code, § 56321, subd. (a).) The assessment may

begin immediately upon receipt of the consent. (Ed. Code, § 56321, subd. (c)(4); Ed. Code §56043, subd. (b).)

An IEP team meeting that is required as a result of an assessment must be held within 60 calendar days of the date the assessment plan was signed, excluding days between regular school sessions and school holidays in excess of five days. (Ed. Code, § 56344, subd. (a).)

Although Student argued that Mother requested a special education assessment at the August 22, 2017 initial meeting with Ms. Marquez, this was unsupported by any evidence at hearing. The evidence showed that in preparation for Student's enrollment at Aveson, Mother shared Student's educational background including that Student suffered from anxiety during the August 2017 initial meeting. She did not ask that for an assessment at the August 22, 2017 initial meeting, nor share that Student had an IEP from a prior school district. Similarly, the evidence showed that during the September 26, 2017 meeting with teachers, Mother did not ask for an assessment or specifically request a functional behavior assessment. This was supported by facts showing that the teachers and Mother agreed to implement the general education strategies proposed at the September 26, 2017 meeting and monitor Student's response to those strategies before conducting a functional behavior assessment. The teachers' testimony at hearing and Mother's email stating her belief that a functional behavior assessment was not needed two days later, on September 28, 2017, also supported that while a functional behavior assessment was part of a strategy discussion amongst Mother and the teachers, Mother ultimately did not request one in September 2017.

However, Mother requested a functional behavior assessment in writing on November 1, 2018. In response, Aveson should have given Parents an assessment plan by November 16, 2017, and held an IEP team meeting by February 3, 2018. However, Aveson did not give Parents an assessment plan until December 1, 2018, and did not

convene an IEP team meeting until February 21, 2018.

Because Aveson only allotted two hours for the February 21, 2018 initial IEP team meeting, the IEP team did not have enough time to conclude, and had to reconvene Student's initial IEP team meeting. Because of Aveson's schedule, it could not reconvene the IEP team meeting until April 19, 2018. The first time Aveson made an offer of special education services to Student was on April 19, 2018. This offer was approximately sixty-three days late, excluding non-school days in excess of five days. February 3, 2018, was the date Aveson should have made its initial offer of special education services to Student, had Aveson timely given Parents an assessment plan and timely concluded an IEP team meeting.

Although Aveson argued that it offered several dates to Parents for the reconvened IEP team meeting in its closing brief, this was not supported by the evidence at hearing. Aveson offered its available date of April 19, 2018 because of the two-week Spring break at the end of March 2018, and because Aveson's schedule was already booked with other IEP team meetings for several months after the February 21, 2018 IEP team meeting. An approximate two-month delay to complete an IEP meeting between February 21, 2018, and April 19, 2018, primarily because of Aveson's scheduling difficulties, was unreasonable and left Student without any special education services. This delay impeded Student's right to a FAPE and caused a deprivation of educational benefits because Student did not receive an offer of special education services to help access her education until April 19, 2018.

Student met her burden of proving that Aveson's untimely offer of an assessment plan when Parents requested assessment on November 1, 2017 denied her a FAPE for approximately two months. Student's remedy is discussed in a separate section below.

STUDENT'S ISSUE 3 B I: PRIOR WRITTEN NOTICE TO PARENTS' AUGUST 29, 2018 LETTER

Student contends that Aveson failed to provide an adequate prior written notice in response to her August 29, 2018 letter requesting an educational program specializing in twice exceptional children and requesting additional counseling. Aveson contends that it properly responded to Parents' August 29, 2018 letter with its September 4, 2018 letter.

A parent must be provided written prior notice when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include a description of the action refused by the school district, an explanation of why the district refuses to take the action, a description of each evaluation procedure, test, record, or report used as a basis for the refused action, a description of any other factors relevant to the district's refusal, a statement that the parents have protection under the procedural safeguards of IDEA, and sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

Student contends that Aveson's September 4, 2018 letter was an inadequate prior written notice. She argued that Aveson did not specifically respond to Parents' request for a twice exceptional program, or Parents' request for placement at Bridges—a private school. Student seized upon Aveson's reimbursement denial of a unilateral non-public school placement as inadequate because Bridges was a private school. Student argued that Aveson's prior written notice needed to specifically deny placement at Bridges as a private school.

Student's argument was unpersuasive because Aveson stated that its September 4, 2018 denial letter was in response to Parents' August 29, 2018 letter which requested

reimbursement for a unilateral parental placement. Aveson's response was inclusive of both of the schools Parents proposed in their August 29, 2018 letter regardless of whether Parents later selected Stem 3 or Bridges. The fact that Aveson did not specifically characterize Bridges as a private school in the September 4, 2018 letter, instead referencing only a non-public school, was inconsequential under the facts of this case. Aveson stated that it denied unilateral parental placement reimbursement on the basis that it offered a FAPE in the least restrictive environment at Aveson with appropriate related services, aids, and supports.

Student also argued that Aveson did not use the term twice exceptional in its prior written notice when denying the unilateral parental placement. While Student preferred Aveson's letter to state it would not fund the twice exceptional programs of Stem 3, a non-public school, and Bridges, a private school, there was no legal requirement that Aveson did so. Student did not cite to any legal authority supporting her position. Aveson adequately communicated that it would not fund Parents' unilateral placement, the reasons why, and the assessments it conducted which supported Aveson's reasons for denial. Further, Aveson gave Parents a copy of the procedural safeguards informing them of their rights. Aveson included all that was legally required for a prior written notice under the facts of this case.

Student argued that Aveson's reference to a future September 27, 2018 IEP team meeting for a continued placement discussion of the June 21, 2018 IEP team meeting proved that Aveson did not have sufficient data to deny Parent's unilateral placement. The argument was irrelevant as the issue was whether Aveson provided an adequate prior written notice which, for the reasons discussed above, it was.

Despite contending that Aveson did not provide Student a prior written notice to Parent's request for additional counseling in Parents' August 29, 2018 letter, Student did not provide any evidence at hearing that Parents requested additional counseling in

their August 29, 2018 letter. To the extent Student intended additional counseling to be included under related services in Parents' August 29, 2018 letter, as discussed above, Aveson's September 4, 2018 prior written notice was legally adequate to address all of the requests in Parents' August 29, 2018 letter.

Student did not meet her burden of proving that Aveson's September 4, 2018 prior written notice was legally inadequate.

STUDENT'S ISSUE 3 B II: PRIOR WRITTEN NOTICE REGARDING PLACEMENT FOLLOWING THE JUNE 15, 2018 IEP TEAM MEETING

Student contends that Aveson did not provide it with a prior written notice before changing Student's offer of placement at the June 15, 2018 IEP team meeting. Aveson contends that it did not need to provide Student with a prior written notice for the proposed placement change because it was discussed and offered at the June 15, 2018 IEP team meeting.

Mother attended the June 15, 2018 IEP team meeting at which the Aveson IEP team discussed with Mother and offered Student special education placement and related services. Aveson provided the IEP document to Parents after the meeting, setting forth the basis and description of the IEP offers. This was all of the notice Parents were entitled as an IEP document itself can serve as prior written notice. (71 Fed.Reg. 46691 (Aug. 14, 2006).) No requirement existed that Aveson provide additional notice in a separate document following an IEP team meeting. Aveson was in compliance. As to Student's contentions that Parents were entitled to some type of written notice after the IEP team meeting, Student did not provide any legal authority to support her argument.

Further, Student did not meet her burden of proving that any meaningful participation rights were abrogated at the June 15, 2018 IEP team meeting, or that Aveson's failure to provide notice following the June 15, 2018 IEP team meeting was inappropriate. There was no legal requirement that any additional notice be provided

following an IEP team meeting for offers made during the IEP team meeting. Therefore, Student did not meet her burden of proving that Aveson needed to give Parents prior written notice regarding changing the offer of the Flex program to the full-time, site based program following the June 15, 2018 IEP team meeting.

STUDENT'S ISSUES 4 A, B, C, D, AND E: PLACEMENT AND SERVICES

Student contends Aveson denied her a FAPE because it did not offer appropriate placement and services at the April 19, 2018 and the June 19, 2018 IEP team meetings. Aveson contends it offered Student a FAPE at both IEP team meetings.

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. (See *Gregory K. v. Longview School Dist. (Gregory K.)* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

Issue 4 A: Placement

In determining the educational placement of a child with a disability a school district must ensure that:

1. the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;

2. placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
3. unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
4. in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
5. a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(34 C.F.R. § 300.116.)

"Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services" and that providing a continuum of alternative placements includes "the alternative placements listed in the definition of special education" and "supplementary services" to be provided in conjunction with regular class placement." 34 C.F.R. § 300.115. (See *M.S. v. Los Angeles Unified School Dist.* (9th Cir. 2019) 913 F.3d 1119, 1121; *R.V. v. Simi Valley Sch. Dist.* (C.D. Cal. April 10, 2008, CV 05-8949-GHK (VBKx) 2008 WL 11335016, *9; *A.D. v. New York City Department of Education*, (S.D.N.Y., March 19, 2013, No. 12-CV-2673 (RA)), 2013 WL 1155570, *8 (*A.D.*) [Once the district determined the appropriate least restrictive environment where student could be educated, it was not obligated to consider and inquire into more options on the continuum].)

To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate:

1. that children with disabilities are educated with non-disabled peers; and
2. that special classes or separate schooling occur only if the nature or severity

of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors:

1. "the educational benefits of placement full-time in a regular class";
2. "the non-academic benefits of such placement";
3. "the effect [the student] had on the teacher and children in the regular class";
- and
4. "the costs of mainstreaming [the student]."

(*Sacramento City Unified School Dist. v. Rachel H.* 9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R. v. State Board of Ed.* 5th Cir. 1989) 874 F.2d 1036, 1048-1050])

In *Letter to Anonymous*, 55 IDELR 172, (*Letter to Anonymous*) (January 13, 2010). the Office of Special Education Programs cogently explained the contours of a school district's obligation to twice exceptional students, stating:

The IDEA is silent regarding "twice exceptional" or "gifted" students. It remains the Department's position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations. Under 34 C.F.R. §300.8, a child must meet a two-prong test to be considered an eligible child with a disability: (1) have one of the specified impairments (disabilities); and (2) because of the impairment, need special education and related services. For example, a

child with high cognition and ADHD could be considered to have an 'other health impairment,' and could need special education and related services to address the lack of organizational skills, homework completion and classroom behavior, if appropriate.

The legal authorities cited under Student's Issue 4 A through 4 E above applies to Aveson's Issue 6 below, and are incorporated without restatement there.

Although Mother preferred a non-public school placement that specialized in students with the twice exceptional profile, Student did not cite to any evidence supporting that the general education setting Aveson offered at either the April 19, 2018, or the June 19, 2018 IEP team meetings were inappropriate. As *Letter to Anonymous* explained, twice exceptional students were not eligible under the IDEA for special education placement and services because of their high cognitive abilities, or gifted profile. Under both the IDEA and California law, a student would be eligible for special education placement and services if they qualified under the specified eligibility categories under the IDEA. Twice exceptionality was never a special education eligibility category under the IDEA, or any law. Aveson's IEP team arrived at the placement decision through its initial 2018 assessments in all areas of suspected need and found her eligible for special education under autism and emotional disturbance categories because her needs in those areas impeded her education access. Therefore, Student's needs as a student with autism and emotional disturbance were appropriately the focus of the special education placement and services Aveson must provide to Student; and not because Student's fell into the twice exceptional learning profile. Nonetheless, the evidence supported that Aveson's general education setting offer was appropriate to address Student's special education needs, including her twice exceptional learning profile. Student did not cite any authority to the contrary.

Here, when considering the *Rachel H.* factors, Student could be educated in the general education setting. She had high cognitive abilities, but had math deficits, and some difficulties in writing. As a result, Aveson offered specialized academic instructions in both math and English so Student could make the progress that was appropriate and reflective of her abilities. Her special needs also manifested in anxieties, maladaptive behaviors, and deficits in speech and language pragmatics and social skills which also impacted her education. Aveson could and did provide related services to address Student's special needs in the general education setting. See detailed discussion below regarding the related services at issue in this hearing.

The non-academic benefits of interacting and learning social skills from her general education peers also supported placement in the general education setting. The teacher to student ratio at either the Flex, or the full-time, site based program was low. Therefore, the teachers could provide Student with frequent check-ins, prompts, and other accommodations and supports offered by both the April 19, 2018 and June 19, 2018 Aveson IEP teams without impacting their ability to educate other students. There was no evidence that mainstreaming Student would be cost prohibitive or would be outweighed by placement in a special, or non-public, school.

Aveson was located in the city where Student resided. In the fall of 2017, Student achieved passing grades in all her classes without any educationally related services. The evidence showed that with appropriate related services and accommodations Student could have her academic needs met at Aveson's general education setting, either the Flex or the full-time, site based programs.

Aveson's IEP team was knowledgeable about Student from working with her since September 2017. That knowledge together with information obtained from the initial assessments proved that Aveson properly determined that the general education setting was appropriate for Student even with her twice exceptional learning profile.

Student did not provide any evidence to the show otherwise.

The April 19, 2018 Aveson IEP team explained and discussed the least restrictive environment with Mother. Mother preferred the Flex program over the full-time, site based program because it gave Student the flexibility to stay home two days out of the week. Because both programs were in the general education setting, and Student had already been in Flex since September 2017 with passing grades, the Aveson IEP team reasonably and appropriately agreed to offer Flex along with related special education services and accommodations at the April 19, 2018 IEP team meeting.

The Aveson IEP team properly offered the full-time, site based program at the June 19, 2018 IEP team meeting. Between April 19, 2018 and June 19, 2018, it became clear that Student had difficulty accessing her special education related services because she was not in school often enough. The full-time, site based program was not a change of placement from the Flex program as both were in the general education setting. Student only attended three counseling sessions between April 19, 2018, and June 19, 2018. Ms. Lovers persuasively opined that counseling was crucial to help Student with anxiety and dysregulation which manifested in maladaptive behaviors and inappropriate social skills impacting Student's education access. Student's experts Dr. Hasse and Dr. Hancock also opined that anxieties impacted Student's education access. Further, Dr. Tappen opined that Student's behavioral and mental health issues interfered with, and needed to be addressed, before Student could access group speech and language services.

Dr. Tappen also opined that Student had difficulty finding peers to practice speech and language pragmatics and social skills in the Flex program and that the full-time, site based program gave Student access to more peers with whom she could engage socially. Aveson's staff opined that Student had not made enough progress since the April 19, 2018 IEP offer. They attributed the lack of progress to Student not

being in school more and not attending her counseling sessions. They also attributed the lack of progress to Student not having enough opportunities to practice engaging in pragmatic speech and language and social skills, and not having enough opportunities to practice and engage in appropriate behaviors. At hearing, Aveson's staff credibly opined that Student required more school days to progress academically by generalizing her behavior and pragmatics speech and language and social deficits. Student did not present any evidence rebutting any of those opinions, or rebutting that the full-time, site based program was appropriate for Student by June 19, 2019.

Student presented evidence showing that Parents preferred to have Student educated in a non-public school that specialized in educating students with the twice exceptional profile. However, a non-public school would only be an appropriate placement if the nature or severity of Student's disability was such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. A non-public school was not the least restrictive environment for Student. Aveson's general education setting was the appropriate placement for Student because Student could be successfully educated with proper related services and accommodations in the general educational setting.

Aveson was not required to place Student at Stem 3, regardless of whether Stem 3's specialization in educating students with twice exceptional profiles could benefit, or was a better program for Student. Student did not demonstrate that a non-public school was the least restrictive environment for Student, or that Aveson's programs, whether Flex or the full-time site based program, could not meet Student's needs. (*Gregory K., supra*, 811 F.2d at 1314.)

Dr. Hasse opined at hearing that Aveson, and specifically the Flex program, was not an appropriate placement for Student, and that Stem 3 met all of Student's needs. Dr. Hasse's opinion was not as persuasive as Aveson's IEP team on this issue because Dr.

Hasse was unfamiliar with any of Aveson's programs. Dr. Hasse's opinion was not based on Aveson's obligation to educate Student in the least restrictive environment under the IDEA, but based on her observation of Student doing well at Stem 3 in March 2019 and information Student and Mother shared with her during therapy sessions. Dr. Hasse never observed Student at Aveson. Because she was uninformed about Aveson's program, Dr. Hasse's opinion that it was inappropriate was unpersuasive.

Student did not prove that the general education setting placement offered at the April 19, 2018 and June 19, 2018 IEP team meetings were inappropriate for Student.

Issue 4 B: Counseling Services

Although Student argued that the counseling services Aveson offered were inappropriate because Aveson did not offer a wraparound program, Student did not present any evidence at hearing to support that she required a wraparound program. Student's counsel argued in his closing brief that Student needed a wraparound program to coordinate and address Student's needs of support, counseling, and parent training. Student offered no evidence showing the type of training Parents needed from Aveson, or that Parents required any training. The evidence showed that Mother did not require any training. She had homeschooled Student for approximately six years before Student enrolled at Aveson, and provided Aveson's teachers with strategies and information on Student's anxiety and emotional triggers since September 2017.

Student also argued that the counseling services Aveson offered were inappropriate because Aveson did not coordinate with Dr. Hasse to discuss the depth of Student's counseling needs. Dr. Hasse attended the February 21, 2018 and April 19, 2018 IEP team meetings with Mother. Dr. Hasse heard Aveson's IEP team present Student's initial assessment results. Dr. Hasse also heard the IEP team's discussion about Student's goals, strengths, deficits, and FAPE offer of placement and services. She had the opportunity to share her opinions about Student with, and ask

questions of, the IEP team. Student did not present any evidence at hearing supporting what more Aveson could have done to elicit Dr. Hasse's concerns, if any, about the counseling services Aveson offered Student at the two IEP team meetings.

Aveson offered forty-five minutes of direct, individual counseling services to Student at both IEP team meetings. However, between April 19, 2018 and June 19, 2018 IEP, Student only attended three counseling sessions. Ms. Lovers persuasively opined at hearing that counseling was crucial to help Student with anxiety and dysregulation which manifested in maladaptive behaviors and or inappropriate social skills. Therefore, the evidence showed that Student did not attend or access the counseling sessions offered, not that the counseling services Aveson offered were inappropriate.

Student did not prove Aveson's offer of counseling services at the April 19, 2018 and June 19, 2018 IEP team meetings were inappropriate.

Issue 4 C: One-to-One Aide

The only evidence Student offered to support her claim that she required a one-to-one aide was an out of context interpretation of a statement made by Ms. Marquez. Ms. Marquez stated that Student was unable to complete assignments without one-on-one support during her interview with Ms. Koh in connection with the psycho-educational assessment. However, Student's interpretation of Ms. Marquez's statement was taken out of context. Ms. Marquez explained at hearing that one-on-one support did not mean one-to-one aide, but rather that Student required constant check-ins and immediate feedback. Ms. Marquez was persuasive because her explanation at hearing was corroborated by Ms. Koh's direct quote of Ms. Marquez's statement in the psycho-educational assessment report which stated the same thing. Student did not offer any evidence to refute Ms. Koh's testimony or opinion.

Student's counsel argued in his closing brief that Student required a one-to-one aide because Student's behaviors impeded her education. Counsel's argument was not evidence. Student offered no evidence to support the claim.

Student did not prove that Aveson denied her a FAPE by failing to offer a one-to-one aide at the April 19, 2018 and June 19, 2018 IEP team meetings.

Issue 4 D: Behavior Intervention Plan

Student argued that that the behavior intervention plan was inappropriate because it did not include other behaviors such as anxiety, panic attacks, attention, inappropriate touching or personal space, running away or elopement, crying, screaming, and non-compliance which also impeded Student's learning. Ms. Gloyd persuasively explained that she did not include anxiety, panic attacks, and attention because they were not challenges addressed by a functional behavior assessment. Those behaviors were more typically addressed by the mental health discipline and or assessment.

She also explained that running away or elopement only occurred once. Inappropriate touching or personal space issues occurred infrequently and did not occur with enough frequency to actually impede Student's educational access. Anxiety and panic attacks manifested in verbal and physical aggression which were target behaviors in the behavior intervention plan. Student's screaming and crying occurred together in documented incidences with, and were part of, Student's verbal aggression which was also a target behavior of the behavior intervention plan.

Ms. Gloyd opined that a functional behavior assessment and the resulting behavior intervention plan did not typically include every maladaptive behavior as target behaviors. Instead it only identified the maladaptive behaviors that were intensely and frequently impeding Student's educational access.

Although Student argued that Ms. Gloyd's decision not to include other target

behaviors was inappropriate, Student did not present any evidence to rebut Ms. Gloyd's opinion but instead relied only on counsel's argument and Mother's opinion. Counsel's argument was not evidence. Mother's opinion as to what should be included as target behaviors in a functional behavior assessment was not as persuasive as the opinion of Ms. Gloyd, who is a board certified behavioral analyst, experienced in conducting functional behavior assessments.

Student also argued that the behavior intervention plan was inappropriate because it was not developed in collaboration with Dr. Hasse. However, Student did not show why Dr. Hasse's opinion on a behavior intervention plan at school would be relevant, let alone indispensable. She never observed Student at Aveson. She was not familiar with any of Aveson's programs. In fact, Dr. Hasse opined that applied behavior analysis was ineffective in altering Student's behavior.

While Dr. Hasse opined at hearing that she believed Student's maladaptive behaviors were a function of her anxiety, her opinion on this issue was not as persuasive as Ms. Gloyd's findings on the functions of Student's maladaptive behaviors which were gleaned from the teachers, who actually taught and observed Student frequently during class. Student offered no evidence that Dr. Hasse had any experience developing behavior intervention plans.

Nonetheless, Dr. Hasse attended the February 21, 2018 and April 19, 2018 IEP team meetings with Mother. Dr. Hasse heard Aveson's IEP team present Student's initial assessment results. She also heard the IEP team's discussion about Student's goals, strengths, and deficits. She heard Aveson's FAPE offer of placement and services which included a discussion about the functional behavior assessment and the resulting behavior intervention plan. She had the opportunity to share her opinions about Student with Ms. Gloyd, and ask questions of the IEP team. Student did not present any evidence supporting what more Aveson could have done to elicit Dr. Hasse's opinions, if

any, about the behavior intervention plan offered Student at the two IEP team meetings.

Student further argued that the behavior intervention plan was inappropriate because it required daily implementation by the teachers, in consultation with a board certified behavior analyst, but Aveson did not offer any board certified behavior analyst's services in either the April 19, 2018 and the June 19, 2018 IEP team meetings. Student was correct. The fact that both Ms. Gloyd and another board certified behavior analyst were also available to consult with teachers about students regardless of whether they had an IEP, did not alter the fact that Aveson failed to offer behavior services to Student. Without behavior services from a board certified behavior analyst which were integral to the success of the behavior intervention plan, the behavior intervention plan would be ineffective.

The evidence showed that the interventions in the behavior intervention plan Aveson offered Student were appropriate. However, Aveson's failure to offer behavioral services to Student rendered its offer of the behavior intervention plan inappropriate. Aveson's own expert, Ms. Gloyd, recommended consultation behavior services from a board certified behavior analyst after conducting her functional behavior assessment. Both Ms. Gloyd and Ms. Jung opined at hearing that Aveson offered behavioral services to Student in the spring of 2018 because Student needed them. Yet, inexplicably, Aveson did not offer any behavior services at either the April 19, 2018 and the June 19, 2018 IEP team meetings. Aveson's teachers, staff, and experts all opined that Student's maladaptive behaviors impacted her access to education. Student's behavior intervention plan specifically called for the services of a board certified behavior analyst, and the evidence was uncontroverted that she required them to receive a FAPE.

Student proved that the behavior intervention plan Aveson offered at the April 19, 2018 and the June 19, 2018 IEP team meetings was inappropriate because Aveson did not offer any behavior services from a board certified behavior analyst at either of

the IEP team meetings. Student's remedy is discussed in a separate section below.

Issue 4 E: Social Skills

Student did not prove that Aveson's decision not to offer social skills services at the April 19, 2018 and the June 19, 2018 IEP team meetings was inappropriate. The evidence showed that Aveson was aware that Student had deficits in mental health, behavioral, and pragmatics speech and language. Aveson offered direct counseling services, a behavior intervention plan, and group speech and language pragmatic services to work on Student's deficits, among which were her inability to maintain eye contact and remain on topic during conversations. Student did not offer any evidence supporting a finding that Student required social skills services beyond the related services Aveson offered, or what those social skills services would look like, other than relying on counsel's conclusory argument, which was not evidence.

Student did not prove Aveson's failure to offer social skills services at the April 19, 2018 and June 19, 2018 IEP team meetings was inappropriate.

ISSUE 5: PEER REVIEWED RESEARCH BASED INTERVENTION PROGRAM

Student contends that Aveson did not offer any research based interventions to address her twice exceptional learning profile. Aveson contends that it used research based interventions to address Student's special education needs.

Title 34 Code of Federal Regulations part 300.320(a)(4) provides that the special education and related services offered in an IEP should be based upon peer-reviewed research to the extent practicable. Peer reviewed research refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published. (71 Fed. Reg. 46,664 (August 14, 2006).)

In *Letter to Anonymous*, the Office of Special Education Programs explained that student's special education services were only required to address her needs under her the IDEA disability category of emotional disturbance, and need not specifically address her twice exceptional profile.

The IDEA and the Education Code required Aveson to provide Student with peer-reviewed research based interventions, to the extent practicable, pertaining to her needs as an autistic and emotionally disturbed student, eligibility categories recognized under the IDEA. The twice exceptional learning profile was not a special educational eligibility category under the law. Student did not cite to any authority requiring Aveson to provide peer-reviewed research based interventions to a learning profile that was not identified as a special education eligibility category. Further, Student did not provide any evidence supporting that it was *practicable* for Aveson to provide research-based interventions specific to Student's twice exceptional learning profile. Finally, Student did not show that Aveson failed to provide appropriate services to address Student's special education needs with respect to her eligibility categories under the IDEA.

Aveson used peer-reviewed research based interventions to address Student's special needs including her anxiety and maladaptive behaviors, along with necessary accommodations. The evidence showed that twice exceptionality was a learning profile where a student had high cognitive capabilities combined with a disability. Aveson's curriculum addressed Student's cognitive abilities. Student demonstrated special needs in math and difficulties with writing. Aveson offered specialized academic instruction to assist Student in both areas. All except one of Student's grades improved from Cs to Bs from the fall to the spring semester. Aveson addressed Student's behavioral needs with a behavior intervention plan once she qualified for special education, and a peer reviewed research based behavior strategies before that.

Student's access to education was impacted by mental, behavioral, and pragmatic speech and language deficits. Aveson addressed them by providing direct counseling, a behavior intervention plan, and group speech and language pragmatics services along with accommodations once she qualified for special education. Aveson's staff opined that all the interventions it offered to Student, both before and after she qualified for special education services, were peer-reviewed research based interventions. Student did not offer any evidence to refute Aveson's evidence.

Student did not prove that Aveson failed to appropriately provide peer-reviewed research based interventions to address her special education needs. Student did not prove that Aveson was legally required to provide peer-reviewed research based interventions to specifically address the twice exceptional learning profile when it was not an IDEA recognized special education eligibility category.

AVESON'S ISSUE 6: NOVEMBER 5, 2018 IEP OFFER OF PLACEMENT AND SERVICES

Aveson contends its November 5, 2018 IEP team meeting offered Student a FAPE and included increased related services to aid with her transition back to Aveson. Student contends that the placement inappropriate because it did not properly address her twice exceptional learning profile. Student contends that the related services were inappropriate because Aveson did not have updated information from the Stem 3 staff who had been working with Student during the 2018-2019 school year. The legal authorities cited under Student's Issue 4 A through 4 E above applies to Aveson's Issue 6, and are incorporated here without restatement.

Issue 6: Placement

Aveson met its burden of proving that the placement it offered at the November 5, 2018 IEP team meeting was appropriate. The November 5, 2018 Aveson IEP team explained and discussed the least restrictive environment with Mother, and

demonstrated that a non-public school was too restrictive for Student. Non-public school should only occur if the nature or severity of Student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Student received mostly Bs at the end of the 2017-2018 school year, when she was last placed in Aveson's general education Flex program. She was capable of doing well in the general education setting. She had difficulty with her behaviors and had difficulty attending her counseling and speech and language sessions while only attending class three days per week.

At hearing, Aveson's staff opined that Student required more school days to progress academically by generalizing her behavior and pragmatic speech and language and social deficits. Student did not dispute any of this. Aveson's general education setting was the appropriate placement for Student because Student could be successfully educated with proper related services and accommodations in the general educational setting. Aveson's full-time site based program was also appropriate for Student so she could have more days at school to access her related services. The same discussion of the appropriate general education setting placement, including the *Rachel H.* factors in Student's Issue 4 A through 4 E above applies to Aveson's Issue 6, and are incorporated here without restatement.

Student did not present any evidence to rebut Aveson's evidence that a general education setting was the least restrictive environment for Student based on the *Rachel H.* factors. Although Mother preferred Stem 3 and Student liked and progressed at the Stem 3 non-public school, this was irrelevant to the analysis of whether the general education setting Aveson offered was appropriate under *Rachel H.* As *Letter to Anonymous* explained, twice exceptional students were not eligible under the IDEA for special education placement and services because of their high cognitive abilities, or

gifted profile. Under both the IDEA and California law, a student would be eligible for special education placement and services if they qualified under the specified eligibility categories under the IDEA. Twice exceptionality was never a special education eligibility category under the IDEA, or any law. Therefore, Student's needs as a student with autism and emotional disturbance were appropriately the focus of the special education placement and services Aveson must provide to Student. Student's classification as having a twice exceptional learning profile was not the determining factor. Nonetheless, the evidence supported that Aveson's general education setting offer was appropriate to address Student's special education needs, including her twice exceptional learning profile. Student did not cite any authority to the contrary.

Issue 6: Related Services

Aveson did not have the necessary information from Stem 3 teachers to make an appropriate offer of related services for Student, or have any way of persuasively showing that the related services they offered constituted FAPE. At the November 5, 2018 IEP team meeting, Aveson increased the related services to help Student transition back to Aveson from Stem 3. Aveson increased its offer of specialized academic instruction in math to ninety minutes per week; increased direct individual counseling to ninety minutes twice per week; and added sixty minutes of direct behavior intervention services by a board certified behavior analyst.

Although Aveson was reasonable in increasing these related services, Aveson did not have updated information and input from Student's teachers at Stem 3 during the November 5, 2018 IEP team meeting to determine what level of related services and accommodations was a FAPE for Student. Dr. Hasse opined at hearing that Student did not require any related services at the Stem 3 non-public school. However, Aveson had no information on whether that would be the case in the least restrictive environment of a general education setting. Aveson also had no information on which accommodations

Student was provided, if any, at Stem 3, upon which they could extrapolate to determine what Student required upon transitioning back to Aveson.

Although Aveson proved that its offer of the general education setting placement was the appropriate least restrictive environment for Student, it did not meet its burden of proving that its November 5, 2018 IEP offer of the related services was a FAPE because it did not have updated information on Student's current behavioral, speech and language, counseling, or academic support needs.

Aveson did not prove that its November 5, 2018 IEP offer was a FAPE and that it was appropriate to implement its November 5, 2018 IEP without parental consent.

REMEDIES

Student requests reimbursement for Stem 3 tuition for the 2018-2019 and 2019-2020 school years, and for Dr. Hasse's and Dr. Egan's services from the 2017-2018 school year as compensation for Aveson's FAPE denials. Aveson contends no remedies were appropriate because Student did not meet her burden of persuasion on any issue.

Aveson requests an order for it to implement its November 5, 2018 IEP offer without parental consent. Student contends that Aveson did not meet its burden of persuasion on its one issue, and should not be entitled to any remedy.

Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Burlington v. Department of Education* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996, 85 L.Ed. 2d 385].) In addition to reimbursement, school districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at pp.1496.)

Parental private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c).) If the hearing officer finds

that a procedural violation significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, pp. 892-895 [school's failure to timely provide parents with assessment results significantly impeded parents' right to participate in the IEP process, resulting in compensatory education award]; *Target Range, supra*, 960 F.2d at pp. 1485-1487 [when parent participation was limited by district's pre-formulated placement decision, parents were awarded reimbursement for private school tuition during time when no procedurally proper IEP was held].) Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit, even if not all necessary educational benefits are provided. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1159).

An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at pp 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid, supra*, 401 F.3d at 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Id.*)

Reimbursement may be denied based on a finding that the actions of parents were unreasonable. (20 U.S.C. § 1412(a) (10) (C)(iii)(III); 34 C.F.R. § 300.148(d)(3).) The cost of reimbursement may be reduced or denied if:

1. at the most recent IEP team meeting the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a FAPE to their child, including stating their concerns and their intent to enroll

- their child in a private school at public expense; or
2. at least ten business days prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information;
 3. if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
 4. upon judicial finding of unreasonableness with respect to actions taken by the parents.

(34 C.F.R. § 300.148 (d).)

Aveson denied Student a FAPE by failing in its child find obligations. It also denied Student a FAPE by failing to timely offer an assessment plan, hold and complete an initial IEP team meeting and make a FAPE offer to Student. Aveson should have timely completed an initial IEP team meeting and made a FAPE offer to Student on February 3 2018. However, it did not offer Student any special education placement and services until the April 19, 2018 IEP team meeting. Aveson denied Student a FAPE for sixty-three days, approximately two months, between February 3, 2018 and April 19, 2018, excluding the two-week spring break.

When Aveson finally offered Student a special education placement and services at the April 19, 2018 IEP team meeting, the offer was not a FAPE. Aveson denied Student a FAPE at both the April 19, 2018 and the June 19, 2018 IEP team meetings because it did not offer Student an appropriate behavior intervention plan with services from a board certified behavior analyst. Parents gave written notice to Aveson on August 29, 2018, stating that they intended to place Student at either Stem 3 or Bridges at the

beginning of the 2018-2019 school year, and stated the reasons for so doing. Parents' August 29, 2018 notice to Aveson was only five business days before they placed Student at Stem 3. Therefore, Parents' notice was five business days shorter than required by law. ALJ considered these five days when calculating the remedy. Aveson also did not offer Student a FAPE by the time Student filed for due process on November 2, 2018. While Aveson offered Student behavioral services from a board certified behavior analyst for the first time at the November 5, 2018 IEP team meeting, it still did not offer Student a FAPE. Aveson's November 5, 2018 IEP offer was not a FAPE because it did not have updated information as to Student's needs from her teachers at Stem 3. Aveson continued to deny Student a FAPE between April 19, 2018 and November 2018, for approximately four months and six days, excluding the 2018 summer break.

Student demonstrated that her placement at Stem 3 was reasonable for compensatory reimbursement because her twice exceptional learning profile aligned with Stem 3's students' twice exceptional learning profiles, and she progressed at Stem 3. Both Dr. Hancock and Dr. Hasse opined that Student did well at Stem 3. Aveson did not rebut that Student progressed while at Stem 3. Aveson was correct that Stem 3 was not the least restrictive environment and not a FAPE for Student. The IDEA charged Aveson as the local educational agency, not Parents, to provide Student a FAPE. Aveson did not provide any legal support mandating that a parental placement must meet the criteria of a FAPE *for purposes of seeking compensatory reimbursements when a school district denied students a FAPE*. Therefore, Aveson's arguments that Stem 3 was not the least restrictive environment for Student was unpersuasive *for purposes of determining whether Aveson should reimburse Parents* for Stem 3 as a compensatory remedy.

Aveson denied Student a FAPE for total of six months between February 3, 2018, and Student's November 2018 due process filing. The approximation, or calculation, of

Aveson's six-month FAPE denial took into account that Parents only provided Aveson with five business days' notice before placing Student at Stem 3. It would be unreasonable and disruptive to transition Student back to Aveson for the three remaining months of a nine-month school year. Because of Aveson's continued FAPE denials to Student as of November 2018, and Parents' approximate one-month rescheduling and delaying of the September 27, 2018 IEP team meeting to November 5, 2018, Aveson shall reimburse Parents for tuition at Stem 3 for eight months of the 2018-2019 school year. Aveson shall reimburse Parents a total of thirty thousand, six hundred and thirteen dollars and thirty-six cents for tuition at Stem 3, calculated by multiplying three thousand eight hundred twenty-six dollars and sixty-seven cents per month by eight months.

Aveson shall also reimburse Parent's mileage for two roundtrips, eighty-four miles per day from Student's home to Stem 3, for eight months. Mileage shall be calculated at the Internal Revenue Service rate per mile from September 2018 through May 2019. Parents shall provide mileage calculations and proof of Student's attendance dates at Stem 3 from September 2018 through May 2019 to Aveson within forty-five days of this Decision. Aveson shall reimburse Parents for mileage within forty-five days after Parents provide Aveson with this information.

Aveson shall also reimburse Parents a total of two thousand dollars that Parents paid to Dr. Hasse, for eight therapy sessions and attendance at the February 21, 2018 IEP meeting. Although Parents paid for seven of the sessions from the beginning of the 2017-2018 school year, reimbursement for these sessions was reasonable because had Aveson timely given Parents an assessment plan, timely assessed under its child find obligations and offered Student special education services on February 3, 2018, she would have been entitled to one direct counseling session per week, eight weeks earlier

than when Aveson offered her direct counseling services at the April 19, 2018 IEP team meeting.

Student was not entitled to receive reimbursement for psychiatric services rendered by Dr. Egan because Student did not demonstrate that her receipt of those services was educationally related. Dr. Egan's services were for Student's drug prescriptions which were considered medically related services.

Aveson was not entitled to any relief because it did not meet its burden of proving it offered Student a FAPE at the November 5, 2018 IEP team meeting.

ORDER

1. Within 45 days of this Decision, Aveson shall reimburse Parents for eight months of the 2018-2019 school year tuition at Stem 3 for a total of thirty thousand, six hundred and thirteen dollars and thirty-six cents.

2. Within forty-five days of this Decision, Aveson shall also reimburse Parents for therapy cost from Dr. Hasse, including an IEP team meeting attendance in the total amount of two thousand dollars.

3. Aveson shall also reimburse Parents mileage for two round-trips, eighty-four miles per day from Student's home to Stem 3, for eight months. Mileage shall be calculated at the Internal Revenue Service rate per mile from September 2018 through May 2019. Parents shall provide mileage calculations and proof of Student's attendance dates at Stem 3 from September 2018 through May 2019 to Aveson within forty-five days of this Decision. Aveson shall reimburse Parents for mileage within forty-five days after Parents provide the information for reimbursement set forth in this paragraph.

4. All other request for relief 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, Student was the prevailing party as to Issues 2, 3 A, 4 D, and 6. Aveson was the prevailing party as to Issues 1 A through E, 3 B I, and B II, 4 A, 4 B, 4 C, 4 E, and 5.

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: August 2, 2019

/S/

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearing