

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,
V.
TORRANCE UNIFIED SCHOOL DISTRICT
OAH CASE NO. 2019011024

DECISION

Mother on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, referred to as OAH, on January 16, 2019, naming Torrance Unified School District. Torrance filed its response to Student's complaint on February 8, 2019. On February 21, 2019, OAH granted the parties' joint request to continue the hearing dates.

Administrative Law Judge Ted Mann heard this matter in Torrance, California, on July 16, 17, and 18, 2019, and August 6 and 14, 2019.

Bruce Bothwell and Jennifer Chang, Attorneys at Law, appeared on behalf of Student. Mother attended the hearing. Student did not attend the hearing.

Sundee Johnson, Attorney at Law, appeared on behalf of Torrance. Torrance's Compliance Director, Melinda Smith, attended the hearing.

The parties requested a continuance to allow them to submit written closing arguments. OAH continued the matter to September 4, 2019. The record closed upon timely receipt of written closing arguments and the matter was submitted on September 4, 2019.

ISSUES

1. Did Torrance deny Student a free appropriate public education, also called a FAPE, in the least restrictive environment in the individualized education programs,

also called IEP's, dated January 26, 2017 and March 27, 2017, as amended, by failing to:

- a. Offer appropriate behavior services;
- b. Offer appropriate speech and language therapy;
- c. Offer appropriate specialized academic instruction;
- d. Prevent Student from being subjected to bullying; or
- e. Offer appropriate goals in behavior, academics, socialization, and communication?

2. Did Torrance deny Student a FAPE in the least restrictive environment in the IEP dated January 22, 2018, as amended, by failing to:

- a. Offer appropriate behavior services;
- b. Offer appropriate speech and language therapy;
- c. Offer appropriate specialized academic instruction;
- d. Prevent Student from being subjected to bullying; or
- e. Offer appropriate goals in behavior, academics, socialization, and communication?

3. Did Torrance deny Student a FAPE in the least restrictive environment in the IEP's dated December 12, 2018, January 17, 2019, March 14, 2019, March 18, 2019, and May 22, 2019, by failing to:

- a. Offer appropriate behavior services;
- b. Offer appropriate speech and language therapy;
- c. Offer appropriate specialized academic instruction;
- d. Prevent Student from being subjected to bullying; or
- e. Offer appropriate goals in behavior, academics, socialization, and communication?

Student withdrew issues for each IEP related to the implementation of modifications and accommodations during the hearing. Following the hearing, Student

withdrew, by written notice, an issue related to the timely triennial assessment and associated triennial IEP team meeting. By agreement of the Parties, Student's Issue No. 3 was amended to specifically include the March 14, 2019, March 18, 2019, and May 22, 2019 IEPs, in lieu of "as amended".

SUMMARY OF DECISION

This Decision finds that Student did not prove by a preponderance of the evidence either that the offered behavior services or the offered specialized academic instruction failed to provide Student with a FAPE. Likewise, Student failed to prove by a preponderance of the evidence that the goals offered rose to the level of failing to offer Student a FAPE.

Student proved by a preponderance of the evidence that Torrance failed to prevent him from being bullied, and that the bullying affected his education such as to deny him a FAPE. Student also proved by a preponderance of the evidence that Torrance failed to offer him sufficient speech and language services for him to make reasonable progress in pragmatic speech.

FACTUAL FINDINGS

Student was 15 years of age at the time of hearing. He resided within Torrance's boundaries during the applicable time frame. Student received special education under the eligibility category of autism. Student's primary educational challenges arose from autism, and his related struggles with attention, behavior, and social-emotional skills.

Student attended Hull Middle School in Torrance during the sixth, seventh, and eighth grades. Student attended Torrance High School for ninth grade during the 2018-2019 school year.

JANUARY 28, 2016 – ANNUAL IEP

Torrance held Student's annual IEP team meeting on January 28, 2016, about halfway through Student's sixth grade school year. Parents and all required Torrance IEP team members, including Kristina Meleo, Torrance's speech-language pathologist, and Michelle Kaloper, Student's middle school counselor, attended the meeting. The January 28, 2016 IEP team meeting, and IEP offer, were outside the statutory period, but were presented as both background and evidence of Student's performance prior to the period in question.

The IEP team discussed Parents' concerns, Student's strengths and weaknesses, his progress on his goals, and that he was doing well in most academic areas. Student did not meet grade-level standards on his English and Math statewide testing. Student's Autism Spectrum Services Inclusion Support Torrance Team, often referred to by the acronym ASSISTT, proposed two new goals in the area of behavior and Ms. Meleo proposed a goal in pragmatics, or social language skills.

The first new proposed annual goal drafted by the ASSISTT behaviorist addressed Student's ongoing behavioral challenges in maintaining attention toward the teacher during instruction. At that time Student engaged in attending behaviors with 20 percent accuracy during a 10-minute observation period. The goal was for Student to demonstrate sustained attending behaviors, such as looking toward the teacher or his materials and remaining silent, during teacher instructional periods, with 80 percent accuracy as measured by data collection and observation by January 2017.

The second new proposed annual goal drafted by the ASSISTT behaviorist addressed Student's ongoing behavioral challenges with completing instructions given to the group by the teacher. At that time Student engaged in group instruction with 25 percent accuracy during a 10-minute observation period. The goal provided that Student would accurately respond to instructions presented to the group with 80

percent accuracy as measured by data collection and observation by January 2017.

Ms. Meleo reviewed Student's speech and language goals and presented a new goal in the areas of topic maintenance and conversational turn-taking based upon his present level. The goal required Student, during structured and unstructured therapy activities or when presented with a social scenario, to appropriately initiate, maintain a topic of conversation, and exhibit conversational turn-taking for a minimum of 3 verbal exchanges by commenting on and asking questions, with 80 percent accuracy in two of three trials. The goal permitted moderate prompting of 3-4 prompts, and would be measured by speech-language pathologist observations and recorded data.

The IEP offered Student specialized academic instruction in the Group Learning Center for five sessions per week for 50 minutes per session, or the equivalent of one period daily in a study skills class. The IEP offered 60 minutes per week for a behaviorist to consult with and supervise members of Student's educational team to address his behavior. The IEP also offered Student group speech-language services for 30 minutes weekly. The IEP team also discussed trialing a lunch club to assist Student's socialization and discontinuing formal counseling, and reducing it to an as needed basis. Parents agreed to the changes, and consented in writing to the IEP.

JUNE 20, 2016 AND DECEMBER 14, 2016 - AMENDMENT IEPs

On June 20, 2016, Parents and Torrance signed an amendment IEP, changing Student's specialized academic instruction from 50 minutes daily to 15 minutes of consult weekly in order to allow Student to take a tech class as his elective rather than the study skills class.

On December 14, 2016, Parents and Torrance signed an amendment IEP, changing Student's specialized academic instruction from 15 minutes of weekly consult to 50 minutes daily in the study skills class, effective January 3, 2017.

SPEECH-LANGUAGE TRIENNIAL ASSESSMENT REPORT – DECEMBER 15, 2016

Ms. Maleo prepared a speech-language assessment report, dated December 15, 2016, for Student's Winter 2017 triennial IEP meeting. Ms. Maleo had a bachelor's degree in psychology and a master's degree in communicative disorders. She held a speech-language pathology services credential, a California license in speech-language pathology, and a certificate of clinical competence in speech pathology. She had worked as a speech-language pathologist with Torrance since August 2012. Ms. Maleo was a credible witness who provided thoughtful, measured testimony within her area of expertise, resulting in her testimony being given significant weight.

Ms. Maleo conducted a detailed record review, including the prior triennial speech-language evaluation in 2014, a parent questionnaire, a student interview, an oral-facial examination, and behavioral observations of Student. She also used standardized assessment tools to complete her assessment of Student. The assessment tools included the Comprehensive Assessment of Spoken Language, often referred to as the CASL, and the Oral and Written Language Scales, Second Edition, often referred to as the OWLS-2.

Parent's questionnaire reported Student was irritable, moody, underactive, tired, stared off, and was oppositional and defiant, while also very smart and hilariously funny. Ms. Maleo reported that Student was a willing participant in the assessment, and cooperative and polite throughout. Student's speech was reported to be intelligible and generally within normal limits for his age and gender. Student had a history of disfluency that was noted to reappear during more stressful situations, and included some initial sound repetitions and whole word repetitions, resulting in speech fluency in the overall low average range.

The CASL assessment was a norm-referenced oral language assessment that encompassed language processing and oral comprehension, knowledge and use of

words, task-based use of oral language in higher cognition, and knowledge of language in communicative and social contexts. The assessment results were grouped in five categories, including synonyms, grammaticality judgment, nonliteral language, meaning from context, and pragmatic judgment, along with an overall composite score. Student was within average range overall with the exception of nonliteral language in which he was in the low average or mild delay range, and pragmatic judgement which was within the moderately delayed range. Student's results did not evidence a problem in expressive or receptive language, but did show some weakness in pragmatic language.

The OWLS-2 assessment was a standardized measure of receptive and expressive language ability, and assessed all areas of language, including lexical, semantic, syntax, supralinguistic, and pragmatic. The test assessed Student's oral language skills, including listening comprehension, or understanding of spoken language, and oral expression, or understanding and use of spoken language. Student's expressive and receptive language were within average range with no indication of any processing problems related to listening or speaking.

BEHAVIOR AND SOCIAL SKILLS ASSESSMENT – WINTER 2017

Eric Ishijima, Torrance's ASSISTT behavior analyst for Student, prepared a Behavior and Social Skills Assessment Report for Student's Winter 2017 triennial IEP team meeting. Dr. Ishijima had a bachelor's degree in psychology, a master's degree in education, and Ph.D. in education. He was a board certified behavior analyst, referred to as BCBA. He obtained his BCBA certification and worked for Torrance from September 2016. He had eight years of experience as a graduate or postdoctoral researcher at UCLA. He also worked as a behavioral therapist for 10 years prior to starting with Torrance. Dr. Ishijima testified clearly and consistently within his area of expertise and his testimony was given significant weight.

Student was referred for his triennial assessment amid continuing concerns about

his limited social skills and maladaptive behaviors. Dr. Ishijima conducted a detailed record review, including approximately five years of IEPs and prior triennial, ASSISTT, and speech-language assessments, along with Regional Center records. He also interviewed Mother; conducted three observations of Student, including a functional assessment observation; and used standardized assessment tools to complete his assessment of Student. The assessment tools included the Social Skills Improvement System, the Behavior Assessment System for Children, Second Edition, often called the BASC-2, and the BASC-2 Student Observation System.

Dr. Ishijima had teachers and a parent complete the Social Skills Improvement System rating scales to evaluate Student's social skills, competing problem behaviors, and academic competence. Social skills included such things as communication, cooperation, assertion, responsibility, empathy, engagement, and self-control. Competing problem behaviors included such things as externalizing, bullying, hyperactivity and inattention, internalizing, and autism spectrum behaviors. Academic competence included such things as reading achievement, math achievement, and motivation to learn. The rating scales had internal controls and measures designed to alert the assessor to problems with a respondent's response pattern and response consistency, and to provide an F-Index of a respondent's overall reliability as a means to evaluate the reliability of an individual respondent's responses.

Student's mother completed the social skills rating scale for Student. Her F-Index was acceptable, but her response pattern was rated "extreme caution" and her response consistency was rated "caution". In social skills, her responses showed problems in communication, engagement, and self-control. In problem behaviors, her responses showed what she considered significant problems in externalizing, internalizing, and autism spectrum behaviors.

Student's teacher, Summer Koepp, completed the social skills rating scale for

Student. Her F-Index was acceptable, as was her response pattern and response consistency. In social skills, her responses indicated problems in every subscale of social skills. In problem behaviors, her ratings indicated problems including hyperactivity and inattention, internalizing, and autism spectrum behaviors. In academic competence, her responses indicated difficulties in academic performance.

Another of Student's teachers, Jessica Lee, completed the social skills rating scale for Student. Her F-Index was rated at "extreme caution", although her response pattern and response consistency were rated "acceptable". In social skills, her ratings indicated problems in every subscale of social skills. In problem behaviors, her ratings indicated problems in hyperactivity and inattention, internalizing, and autism spectrum behaviors. In academic competence, her responses indicated difficulties in academic performance. Overall, Ms. Lee had very significant concerns about Student's behavior and social skills.

Dr. Ishijima also distributed the BASC-2 rating scale system designed to evaluate Student's behavior and self-perception and to allow the differential diagnosis and classification of emotional and behavioral disorders. The scores were differentiated as "clinically significant", "at-risk", and "within normal limits". Clinically significant scores suggested a high level of maladjustment. At risk scores identified a significant problem that may not be severe enough for formal treatment or a potentially developing problem requiring monitoring. The rating scales had internal controls and measures similar to the social skills scales. The BASC-2 produced five composite scores in the areas of externalizing problems, internalizing problems, school problems, behavioral symptoms index, and adaptive skills.

Mother completed the behavioral rating scale for Student. Her F-Index was acceptable, as was her response pattern and response consistency. She rated Student "clinically significant" for both the externalizing problems, and the behavioral symptoms index, and "at risk" in adaptive skills. She rated him "within normal limits" for

internalizing problems. No score was listed for school problems. Her particular areas of concern were hyperactivity, atypicality, depression, and withdrawal.

Student's study skills teacher at the time, Marilyn Ferrell, completed the behavioral rating scale for Student. Her F-Index was acceptable, as was her response pattern and response consistency. She rated Student "within normal limits" for externalizing problems, internalizing problems, school problems, and adaptive skills, and "at risk" in behavioral symptoms. Her particular areas of concern were attention problems, atypicality, and withdrawal.

Student's general education math teacher, Jessica Lee, also completed the behavioral rating scale for Student. Her F-Index was acceptable, as was her response pattern and response consistency. She rated Student "within normal limits" for externalizing problems and internalizing problems, "at risk" in school problems and behavioral symptoms, and "clinically significant" for adaptive skills. Her particular areas of concern were attention problems, atypicality, withdrawal, and social skills.

Dr. Ishijima observed Student using the Student Observation System during observations on three different days, across two different classes. During the observations, Student showed a significant level of positive adaptive behaviors in response to teacher or lesson, work on school subjects, and transition movement. He showed some level of problem behaviors in inappropriate movement and inattention. His observations did not evidence levels of behavior that would suggest the need for a one-to-one behavioral aide or equivalent levels of behavioral support.

Dr. Ishijima also partnered with para-educator, Elaine Day, to indirectly collect behavioral data for Student's behavior using the Functional Assessment Checklist for Teachers and Staff, often called FACTS. The FACTS system involved Dr. Ishijima interviewing Ms. Day to obtain data on Student behavior. She reported that Student was organized with good writing and had the ability to do well when focused and engaged

with a task. She also reported that Student had three main problem behaviors, including vocal self-stimulatory behavior, often called vocal SSB; work not done; and inappropriate language. The vocal SSBs and work not done were without observable antecedent, and the inappropriate language was frequently preceded by multiple verbal prompts or harsh prompts.

Dr. Ishijima conducted three approximately 45-minute observations of Student on January 5, 9, and 10, 2017. He observed periods of Student working effectively and other times when Student engaged in non-vocal self-stimulatory behaviors such as pen or pencil flicking, grimacing, or pulling or picking at his eyelids. He was at times easily distracted and at times had difficulty following directions. He was easily directed and redirected by the teacher. He was able to produce work during each of the observations, but was also occasionally inefficient, resulting in his getting behind on an assignment or having to take it home.

Dr. Ishijima concluded that Student engaged in various self-stimulatory behaviors during class that distracted him and interfered with his work production. Depending on the type of redirection used, Student could respond with verbal aggression. Student could also become engaged in his work, and then work effectively. Student was reported to generally be within normal limits for internalizing behaviors. Parent rated Student with elevated externalizing behaviors at home. Student was also reported to have poor social skills with peers. Dr. Ishijima recommended that Student might benefit from structured small group social opportunities led by the behavior intervention team, as well a consultation by the ASSISTT team in the general education classroom to address participation and on-task behavior.

PSYCHO-EDUCATIONAL TRIENNIAL ASSESSMENT REPORT – MARCH 27, 2017

Kathy Sheehan, Torrance's school psychologist, prepared a Psycho-educational Assessment Summary Report, dated March 27, 2017, for Student's Winter 2017 triennial

IEP team meeting. The referral for assessment was intended to determine Student's present level of function and his special education needs, including eligibility, placement, and services. Parent concerns for Student included autism-related behaviors, difficulty relating to peers, and pragmatic speech issues.

Ms. Sheehan conducted a detailed record review, including two prior triennial psycho-educational evaluations, a parent interview, a student interview, and observations of Student. She also used standardized assessment tools to complete her assessment of Student. The assessment tools included the Wechsler Intelligence Scale for Children, Fifth Edition; Test of Visual Perceptual Skills, Third Edition; BASC-2 parent and teacher scales; Gilliam Autism Rating Scale, Third Edition; and Woodcock-Johnson Tests of Achievement, Fourth Edition. Ms. Sheehan also referred to the rating scales obtained by Dr. Ishijima as part of her assessment.

The Wechsler Intelligence Scale is an individually administered, comprehensive clinical instrument for assessing the intelligence of children from six through 16 years of age. On the Wechsler, Student had a full-scale score in the "average" range, and also scored in the "average" ranges in the verbal comprehension and fluid reasoning clusters.

The Test of Visual Perceptual Skills measured a child's functioning in various areas of visual perceptual skills, essentially measuring the ability of a subject to make sense of visual information. Student's overall visual perceptual skills were within the average range with some scattering of scores among the sequencing cluster and the complex cluster. Areas of relative strength included the visual closure and visual memory subtests, and an area of significant weakness was visual discrimination, although no clear indications of a visual processing problem were found.

The Gilliam Autism Scale was a norm-referenced screening instrument used to identify persons who have severe behavioral problems that may be indicative of autism. The Assessment consisted of six subscales, addressing different areas of behavior that

may be affected by autistic-like behaviors. Ms. Lee completed the scales and rated Student as very likely to be autistic with reported concerns about his restricted or repetitive behaviors, social interaction, and emotional responses. Student's mother rated Student as very likely to be autistic with concerns about his social communication, emotional responses, cognitive style, and maladaptive speech.

The Woodcock-Johnson assessment measured the Student's academic achievement in the areas of reading, mathematics, and written language, and compared him to same age peers nationwide. The assessment was conducted by Ms. Ferrell, Student's special education case carrier for part of the seventh grade school year. She was also familiar with Student from her special education study skills class during the sixth grade. The assessment provided composite scores in five areas, including basic reading skills, reading comprehension, math calculation skills, math problem solving, and written expression. The assessment also provided subtests scores in a wide variety of areas of academics.

Student's Woodcock-Johnson scores were broadly average with some scatter into higher and lower ranges. Student did show low scores in reading rate, sentence writing fluency, and word reading fluency. Ms. Ferrell was of the opinion that Student's attentional issues and self-stimulating behaviors could negatively affect the three low scores as those tests were predicated on Student's speed or fluency.

Ms. Sheehan provided a summary of her conclusions along with possible special education eligibility considerations for Student. She found that he was average to high average range in cognitive ability and the low average to high average range in academic achievement. She also found that the autism assessment indicated likely autism, and that Student's social-emotional assessment suggested he struggled with managing his day-to-day environment at both home and school. In turn those struggles may have interfered with Student's academic and overall performance at school.

JANUARY 26, 2017 AND MARCH 27, 2017 IEPs

Torrance held Student's triennial IEP in two parts, on January 26, 2017, and March 27, 2017. Torrance offered Student an IEP on March 27, 2017. Parents and all required Torrance IEP team members, including Ms. Meleo, Ms. Kaloper, Dr. Ishijima, and Ms. Sheehan attended the meeting. The IEP team discussed Parents' concerns, which included bullying of Student by others, Student's difficulty making friends, and Student's focus and attention in class. The IEP team also discussed Student's strengths and weaknesses, his limited progress on his goals, his inconsistent academic progress, and Torrance's triennial assessments of Student in psycho-education, academics, speech-language, and behavioral and social skills. The Torrance members of the IEP team proposed five goals consisting of three new and two revised goals, including three from ASSISTT, one in pragmatics drafted by Ms. Meleo, and one in academics related to math calculation.

The first goal was in the area of pragmatics, and was drafted by Ms. Maleo to address Student's ongoing challenges based on his present levels with pragmatic skills in the areas of conversation initiation and conversational turn-taking, continuing with the previous year's pragmatics goal. The goal provided that, by January 2018, during structured and unstructured therapy activities or when presented with a social scenario, Student would appropriately initiate and exhibit conversational turn-taking by commenting on and asking questions with moderate prompts, meaning 3 to 4 prompts, with 80 percent accuracy in two of three trials, as measured by speech-language pathologist observations and recorded data.

The second goal, drafted by the ASSISTT behaviorist, addressed Student's ongoing behavioral challenges with maintaining attention toward the teacher during instruction. Student's present level was reported as demonstrating sustained attending behaviors in 42 percent of opportunities. The modified goal provided that Student

would demonstrate sustained attending behaviors such as looking toward the teacher or his materials and remaining silent during teacher instructional periods, with 70 percent accuracy as measured by data collection and observation by March 2018. This goal was a modification of the previous year's goal, and reduced the threshold for satisfying the goal to account for Student's slow progress in this area.

The third goal was in the area of behavior, to address Student's ongoing challenges with completing instructions given to the group by the teacher. Student spontaneously responded to group instructions in 38 percent of opportunities and responded appropriately with one repeat of the instruction in 46 percent more of the opportunities while exhibiting increased rates of self-stimulatory behavior. The modified goal provided that Student would accurately respond to instructions presented to the group by the teacher with 80 percent accuracy as measured by data collection and observation. This was a continuation of the standard set the prior year.

The fourth goal was in the area of behavior and addressed Student's ongoing challenges with frustration tolerance. Student engaged in appropriate responses such as following an instruction, asking for help, or taking deep breaths for self-calming in only 50 percent of opportunities. The goal provided that by March 2018, when given verbal prompts or corrective feedback, Student would respond appropriately by following directions, including asking for help, asking to be left alone, asking for more time, or taking deep breaths, while refraining from engaging in inappropriate behaviors, including talking back or crumpling paper, in 80 percent of opportunities across 4 of 5 consecutive sessions as measured by data collection and observation.

The fifth goal was in the area of academics, and was drafted by special education teacher Ms. Ferrell. It addressed Student's challenges with math calculation. Student's present level was based upon Student's Woodcock-Johnson score of 84, representing a low average score, in math calculation. The new goal provided that by March 26, 2018,

when given a lesson, Student would solve multi-step real-life and mathematical problems involving positive and negative rational numbers in any form, including whole numbers, fractions, or decimals, using tools strategically and assessing the reasonableness of answers using mental computation and estimation strategies with at least 80 percent accuracy in four trials as measured by Student work samples or teacher records by data collection and observation by January 2017.

The team maintained Student's eligibility for special education under the primary eligibility of autism. The IEP offered Student specialized academic instruction in the Group Learning Center for daily sessions of 50 minutes. The IEP offered a behaviorist to consult with and supervise members of Student's educational team for 60 minutes per week. The IEP also offered Student group speech-language services for 30 minutes weekly. Parents consented in writing to the IEP.

MIDDLE SCHOOL BULLYING ISSUES – 2016-17 AND 2017-18 SCHOOL YEARS

During Student's seventh grade and eighth grade years at Hull Middle School, there were repeated allegations of teasing, mocking, harassment, and bullying reported to school personnel by Student or Mother. Additionally, the ASSISTT staff recorded such instances repeatedly in their behavior observations and notes. Parents reported their concerns with bullying both by e-mail to Torrance personnel, and by raising their concerns at IEP team meetings, as documented in the notes of the January 22, 2018 IEP. The problems continued until such time as Student was removed from school by his Parents to attend a Lindamood Bell program for reading comprehension beginning approximately March 5, 2018.

During his seventh grade year, the 2016-2017 school year, Student regularly sheltered in the school office to avoid harassment during physical education class, and during unstructured time such as lunch. Student had been repeatedly harassed and bothered by a Student, who will be referred to as "O" for privacy and confidentiality

purposes. Student "O" would startle Student by running up behind him and screaming, by attempting to provoke Student in class, and by engaging in other acts of harassment and bullying on a regular basis. Student "O" continued to be a problem for Student until Student left school to attend the Lindamood Bell program. Student "O" was well known to Torrance staff, and Student "O" had been repeatedly questioned and counseled by the staff, including Vice Principal Cynthia Leach.

ASSISTT notes from June 15, 2017 and June 21, 2017, documented Student having negative interactions with another student in physical education class and math class, respectively. ASSISTT notes from November and December of 2017 documented taunting of Student by Student "O" in the study skills class and taunting by a student who "taunts him on a regular basis" in English Language Arts class. According to Hull Principal, Patricia Girgis, she was unaware of any of the ASSISTT notes or observations of harassment or bullying of Student during classes, despite a strict campus policy on reporting bullying.

A series of incidents occurred in December 2017, and Mother wrote to Torrance staff members, including Ms. Leach, Ms. Girgis, and Student's counselor, Ms. Kaloper. On December 6, 2017, Student commented in frustration about burning the school down, following taunting in class by other students, including Student "O". The previous week, the same group of students had told Student he would be the first person shot at school by a school shooter. During this time period, Student's mother had requested that the school set up a meeting between her and Student "O"'s mother, but the school was unable to do so due to school policies. The ongoing harassment contributed to Student's escalating verbal aggression and outbursts in class, and resulted in him having a very difficult and emotional year where he was isolated from his peers and experienced decreased benefit from his education. Torrance's responses were reactive at

best, and never adequately addressed the problem as it continued over a span of more than one year.

JANUARY 22, 2018 – ANNUAL IEP

Torrance held Student's annual IEP team meeting on January 22, 2018, about halfway through Student's eighth grade school year. Student's father, along with all required Torrance IEP team members, including Ms. Meleo, Ms. Kaloper, Ms. Girgis, and William Dawson, Student's ASSISTT behavior analyst, attended the meeting. Student's father expressed detailed concerns about bullying of Student and its effect on Student, his academics, and his school experience. The IEP team also discussed Student's strengths and weaknesses, his academic performance, his progress on his existing goals, his accommodations and modifications, and possible placements for Student in high school for ninth grade. The IEP included four new proposed goals, including two from ASSISTT, an academic goal in math, and one in pragmatics drafted by Ms. Meleo.

On the Smarter Balanced Assessment Consortium, often referred to as the SBAC, statewide academic assessment, Student was overall at the "Standard Nearly Met" level in English Language Arts. In the English Language Arts topic areas, Student was at the "Standard Nearly Met" level for Writing, Speaking and Listening, and Research and Inquiry, and the "Below Standard" level in Reading. His overall math score was at the "Standard Nearly Met" level, and in the topic areas, he was at the "Standard Nearly Met" level in both Problem Solving and Data Analysis and Communication Reasoning, and "Below Standard" in Concepts and Procedures. These scores were a significant increase from the prior year. Student's second quarter progress report grades were an "A" in Physical Education, a "B" in Science, and "Cs" and "Ds" in four other academic classes, similar to his marks from the previous year.

Student had met three of his existing goals, including two of his three ASSISTT goals, and was close to meeting the other two existing goals. Student met his ASSISTT

general instructional behavior goal and his ASSISTT frustration tolerance goal. He came close to meeting his third ASSISTT goal of attending 70 percent of the time, by reaching 68 percent. Student also met his math goal, and made some progress on his speech-language goal in pragmatics, reaching 65 percent accuracy with a goal of 80 percent.

A proposed new academic goal was drafted by Wesley Black, Student's special education study skills teacher, to address Student's ongoing challenges with math. Student's present level was based upon his completion of his existing goal in math calculation. The new goal provided that by January 22, 2019, with notes and a calculator, Student would solve linear equations with rational number coefficients, including equations whose solutions require expanding expressions using the distributive property and collecting like items, with at least 80 percent accuracy in four trials as measured by Student work samples or teacher record.

A second new goal in the area of pragmatics was drafted by Ms. Maleo to address Student's ongoing challenges based on his present levels with pragmatic skills in the areas of conversation initiation and question asking, building off of the previous year's pragmatics goal. The goal provided that, by January 2019, to increase his pragmatic skills, Student would appropriately initiate conversations and exhibit conversational turn-taking by asking questions with moderate prompts, meaning 3 to 4 prompts, with 70 percent accuracy in two of three trials, as measured by speech-language pathologist observations and recorded data.

A third new goal in the area of behavior was drafted by the ASSISTT behaviorist to address Student's ongoing challenges with appropriate behavior and frustration tolerance. Although Student had met his prior goal of responding appropriately to instruction, he continued to have difficulty responding appropriately to actual or perceived teasing or rejection by peers. The goal provided that by January 2019, when

presented with frustrating peer situations, such as teasing, unfair play, or rejection, whether actual or perceived, Student would decipher if a peer performed an action intentionally or unintentionally, and respond by taking appropriate action, such as seeking adult assistance, removing himself from the situation, or using self-calming strategies, in 80 percent of opportunities, as measured by data collection and observation.

The fourth goal was a modification of a previous goal and addressed Student's ongoing challenges with maintaining attention toward the teacher during instruction. Student present level was reported to as demonstrating sustained attending behaviors in 68 percent of opportunities. The modified goal provided that Student would demonstrate increased sustained attending behaviors such as looking toward the teacher or his materials and remaining silent during teacher instructional periods with 80 percent accuracy as measured by data collection and observation by March 2018.

The January 22, 2018 IEP offered Student specialized academic instruction for one daily session of 50 minutes for the study skills class. The IEP offered Student to have a behaviorist consult with and supervise members of his educational team for 30 minutes per week. The IEP also offered 30 minutes per week in an ASSISTT social group. Additionally, the IEP offered Student group speech-language services for 30 minutes weekly. Parents consented in writing to the IEP.

STUDENT'S LINDAMOOD BELL PROGRAM – SPRING 2018

Parents notified Torrance on February 15, 2018, by way of e-mail to Ms. Girgis, Ms. Kaloper and other Hull staff, that they were removing Student from school for a 12-week Lindamood Bell program beginning March 5, 2018, and intended to seek reimbursement for the program's tuition costs. Parents' decision was based upon testing done by Lindamood Bell on January 25, 2018, indicating that Student's reading comprehension was that of a third grader, and representations by Lindamood Bell that

they had a program that could address Student's needs.

A March 2, 2018 IEP team meeting was held to address the Lindamood Bell assessment. Parents, along with all required Torrance IEP team members, including Ms. Girgis, Ms. Maleo, Ms. Sheehan, Ms. Kaloper, and Mr. Dawson, attended the meeting. Parents expressed their concerns about Student's reading comprehension, and their belief, based upon the Lindamood Bell assessment, that Student had a "curable reading deficit related to visualization and comprehension." Student's program specialist, Mr. Black, shared reading screening results for Student showing he ranked in the average range for reading overall, but significantly lower in reading comprehension.

On March 14, 2018, Torrance sent a prior written notice letter to Parents, denying the request for reimbursement based upon the Lindamood Bell program's failure to offer a FAPE in the least restrictive environment. In that letter, Torrance offered both a supplemental psychoeducational assessment addressing phonological processing, along with Student's participation in the Sonday System to provide him with reading comprehension intervention.

Lindamood Bell provided an unsigned report entitled "Learning Ability Evaluation Summary" following Student's completion of the 12-week program. The report indicated that Student had completed a 200-hour program entitled 'Visualizing and Verbalizing'. Lindamood Bell assessed Student by administering a series of standardized test to Student before and after the 200-hour program. The report included pre-evaluation results from January 25, 2018, post-evaluation results from May 18, 2018, and Lindamood Bell's recommendations for Student. The assessment tools included the Peabody Picture Vocabulary Test, Fourth Edition, Form A; the Detroit Tests of Learning Aptitude, Second and Fourth Editions; the Woodcock Reading Mastery Tests, Third Edition, Form A; the Slosson Oral Reading Test, R3 Edition; the Wide Range Achievement Test, Fourth Edition, Form Green; the Gray Oral Reading Test, Fourth Edition, Form A; the

Lindamood Bell Conceptualization Test, Third Edition; the Symbol Imagery Test; and the Informal Tests of Writing. The before and after assessments relied on the same tests, the same editions, and the same forms of the various assessment tools. No explanation was provided by Lindamood Bell regarding the potential retest effect of reusing testing instruments within four months of a previous administration.

On the Peabody assessment, Student initially obtained a stand score of 98 and later scored a 103. On the Detroit Tests for word opposites and verbal absurdities, Student's scores increased, but on the Detroit Tests for oral directions, Student's score decreased significantly. On the Woodcock, Slosson, and Wide Range Achievement tests, Student's score showed the slightest increases, but remained essentially the same statistically. On the Gray Oral Reading assessment for overall paragraph reading, Student obtained a greater than twelfth grade equivalent on both test administrations, although Student performed significantly worse on the latter administration of the test for fourteenth grade passage reading.

On the Gray Oral Reading assessments for reading rate, accuracy, fluency, and comprehension, Student showed slight increases in standard scores and the accompanying percentile rankings. On the Lindamood Bell Auditory Conceptualization assessment, Student's standard score and percentiles actually decreased, although remaining essentially the same statistically. On the Symbol Imagery Test, Student showed a significant decrease with his standard score decreasing from the 96th percentile to the 77th percentile. On the Informal Tests of Writing, Student's scores were very similar before and after the Lindamood Bell program.

The recommendations from Lindamood Bell indicated that Student had received sensory-cognitive instruction, and asserted that the retest of May 18, 2018, showed his "rate of learning had increased substantially in a short period of time." The report did not explain the basis for this conclusion, nor did it explain the many areas where

Student's scores remained the same or actually decreased. The report recommended that Student continue with a further Lindamood Bell program entitled "Visualizing and Verbalizing for Language Comprehension and Thinking" for an additional seven to nine weeks. The report went on to suggest that Student would benefit from attending Lindamood Bell as a private school on a daily basis. Parents paid Lindamood Bell \$22,788.00 for the 12-week program, and seek reimbursement from Torrance in that amount.

APRIL 11, 2018 – TRANSITION IEP

On April 11, 2018, Torrance held a transition IEP for Student's transition from middle school to high school. Parents and Student, along with all required Torrance IEP team members, attended the meeting. The IEP team discussed Student's transition to Torrance High School for his ninth grade year. The IEP team discussed Student starting the year with both study skills and English as special education classes, with the opportunity to adjust the schedule to a more restrictive environment once his high school program began. The IEP offered a behaviorist to consult with and supervise members of his educational team for 30 minutes per week. The IEP also offered 30 minutes per week in an ASSISTT social group, and group speech-language services for 30 minutes weekly. Parents consented in writing to the IEP.

NOVEMBER 15, 2018 – PSYCHOLOGICAL EVALUATION BY DR. JOHNSON

Dr. Helena Johnson conducted an independent psychoeducational evaluation of Student in May and October 2018 and prepared a report of her findings. Dr. Johnson held a PhD in clinical psychology, and had been licensed by the State of California as a psychologist since 2006. She maintained a private clinical practice at the time she assessed and diagnosed Student in 2018. She had a certificate in applied behavior analysis issued in 2007, but she was not a board certified behavior analyst, a licensed

speech-language pathologist, or a trained educational psychologist. She assessed Student over three days of testing in May of 2018, and approximately two and one-half hours of observation on October 4, 2018, and documented her findings a report dated November 15, 2018.

The assessment included standardized psychological testing of Student, interview and observations of Student, Parent report, teacher input, Parent and teacher rating scales, and a review of records. Psychological testing instruments included: Adaptive Behavior Assessment System, Third Edition; Autism Diagnostic Observation Schedule, Second Edition; Behavior Assessment System for Children, Third Edition; Social Responsiveness Scale, Second Edition; Behavior Rating Inventory of Executive Functioning, Second Edition; Test of Auditory Processing Skills, Third Edition; Wechsler Intelligence Scale for Children, Fifth Edition; Wechsler Individual Achievement Test, Third Edition; and Woodcock-Johnson Tests of Achievement, Fourth Edition, Form B.

Dr. Johnson reported Student to have long-standing challenges with compliance, attending, peer social interaction, and social communication. She reported Parent concerns with bullying and peer rejection, socialization, reading and academics, and autism related to communication and social interaction. Parents reported that Student developed an aversion to school and an eating disorder in Spring of 2017 because of bullying at school. Overall, Parents reported great concerns with many aspects of Student's performance and behavior at school.

On the Behavior Assessment System composite scores, teachers rated Student in the normal range in all areas, with the exception of Ms. Woo, who rated Student slightly "at risk" for adaptive skills. The unidentified "Parent" on the other hand rated Student as having "clinically significant" issues with behavioral symptoms and adaptive skills. Dr. Johnson did not list any F-Index scores for any of the four teachers, and as a result the reliability and consistency of their reporting was not addressed or analyzed. On the

Behavior Assessment System scales, out of sixteen scale scores, the parent had Student “at risk” in three areas, and “clinically significant” in three others. The parent was reported to have an F-Index score in the caution range, indicating a negative overall view of Student’s behavior. Overall, the reporters listed anxiety, atypicality, withdrawal, social skills, and functional communication with withdrawal as the most frequent concerns. Dr. Johnson failed to provide any explanation of the significant discrepancies between the Parent’s scores and those of the teacher.

On the adaptive behavior assessment, only an unidentified parent completed the responses. Although a teacher rating form is mentioned by Dr. Johnson, she failed to include any teacher responses to the adaptive behavior assessment instrument. That instrument assessed adaptive behavior and related skills to evaluate levels of adaptive skills and specify treatment goals for individuals with varying disabilities or challenges. Parent rated Student in the “extremely low” range overall. There was no F-scale or other reliability measure reported for Parent’s scoring.

Dr. Johnson administered social responsiveness scales designed to aid in diagnosis and treatment planning, and to measure severity of autism spectrum symptoms as they occur in natural settings. An unidentified Parent and two teachers filled out the scales, and only one teacher and the parent completed the scales, as Ms. Woo’s answers were incomplete. Parent rated Student in the “severe range” for five of six subscales. The teacher total score from Ms. Marks was on the lower boundary for a “mild range” score. Four of the six subscales for Ms. Marks were in the normal range. There was no reporting of an F-Index or other score reliability measure for the scores, and Dr. Johnson provided no analysis or explanation for the extreme divergence between the Parent and teacher scores.

Dr. Johnson administered behavior rating inventories to assess Student’s executive functioning in the home and school environments, and to provide an

understanding of everyday behavior associated with specific areas of self-regulated problem solving and social functioning. Assessment results are scored in three indices and one global executive composite score. Two of Student's special education high school teachers, Ms. Marks and Ms. Sorensen, completed the scales. Both teachers rated Student as within the average range for the global executive composite score, although Ms. Sorenson rated Student as "clinically elevated" in emotional regulation. There was no reporting of an F-Index or other score reliability measure for the scores.

An intelligence scale was administered to assess cognitive functioning in five major composite domains, including verbal comprehension, visual spatial, fluid reasoning, working memory, and processing speed. Each domain renders respective IQ composite scores and the composite scores were typically combined to produce a full scale IQ score. Student obtained composite scores ranging from high average to extremely low. Due to the significant variability among the composite scores a full scale intelligence score could not be validly generated according to Dr. Johnson.

The Wechsler Individual Achievement Test was administered to measure academic achievement levels. The test consisted of 16 subtests that were used to generate eight composite scores in oral language, total reading, basic reading, reading comprehension and fluency, written expression, mathematics, math fluency, and total achievement. Dr. Johnson only reported six subtest scores, and no explanation was provided for the omission of the other ten scores. Three of the six subtests were in the below average range, including reading comprehension, oral reading fluency, and oral reading accuracy. Three composite scores were reported, with one composite, reading comprehension and fluency, rated below average.

Dr. Johnson administered the Woodcock-Johnson to measure academic achievement levels. Student's scores ranged from average to very low. Student scored in the low average to very low range on sentence writing fluency across four different

achievement clusters. He also scored very low in math facts fluency. He consistently had issues with fluency across academic domains, indicating that speed of response was a serious shortcoming for Student. In clusters and sub-tests not dependent on speed, Student consistently scored in the average range. Dr. Johnson's results were somewhat inconsistent on the low side when compared with earlier results obtained by Ms. Ferrell as part of the March 27, 2017 triennial assessment.

The Test of Auditory Processing Skills assessed various areas of an individual's auditory perceptual skills. The assessment looked at nine sub-test areas and reported three index standard scores in the areas of basic phonological index, auditory memory, and auditory cohesion. Student had very low scores in the auditory comprehension and auditory reasoning subtests, average scores in six other subtests, and an above average score in phonological segmentation. No overall score was calculable due to significant variability among the composite test scores. Dr. Johnson failed to persuasively address the effect of Student's attentional issues and self-stimulatory behaviors on these results.

The Autism Diagnostic Observation Scale was administered to measure Student's social communication and social behavior. The test is designed as a diagnostic indicator for autism spectrum disorders. Student's use of language was noted to be largely correct, fluent, and complex. He demonstrated many autistic-like behaviors. He demonstrated stimulatory behavior, non-responsiveness, and limited social communication, all of which impacted rapport with the assessor.

Dr. Johnson assessed Student's behavior during direct observations while Student underwent standardized assessment. Dr. Johnson had difficulty creating or maintaining a rapport with Student. She observed much behavior she found to be off-putting that evidenced poor socialization and communication skills. She observed attentional and behavioral issues that interfered with Student's assessment performance, including inattention, extended pauses, and self-stimulatory behaviors, including reported self-

injurious behaviors, and the need for prompting, redirection, and explanation. When compared with other assessors' reports, Dr. Johnson reported much more severe problems in working with Student, and categorized his behavior as much more severe.

Dr. Johnson observed Student at Torrance High School on October 4, 2018, for two and a half hours during his English class, math class, and during lunch. During the English class, Dr. Johnson observed Student to be on task during 30 percent of the observation period, compared to a "comparison peer" at 90 percent. Student evidenced inattention, possible inattention, and self-stimulatory behavior during the class with gazing, hand movements, and smiling. Student was able to answer some of the questions directed to the group by the teacher, and he worked on and turned in written class work. He had minimal interaction with peers while in class.

In his math class, Student was directed out of class to take a test in a separate study skills room. The room was much less quiet than the English classroom, with students chatting quite a bit. Student engaged in more frequent and more vigorous physical self-stimulatory behaviors in this room. Student completed the math test and then was seemingly teased by several classmates, eliciting a loud abrupt response from Student. Student spent the first few minutes of his lunch break reviewing assignments with his math teacher with accompanying self-stimulatory behaviors.

Student went to lunch four minutes late, and while walking to the cafeteria engaged in repetitive behaviors and exhibited an unusual walking gait. He retrieved food from the cafeteria line, and sat himself at a table occupied by two other students with whom he did not communicate. Two other students crowded Student away from the table where he was sitting, and took his chocolate milk in the process. Student then proceeded to walk to a ledge near a palm tree and sit for the approximately 20 remaining minutes of lunch without interacting with peers.

Dr. Johnson also obtained information from several of Student's teachers. None

of the information provided was remarkable, although he was reported as doing fine academically in the limited time since the school year had begun.

Based upon her testing, observations, and record review, Dr. Johnson underscored Student's struggles with autistic-like behavior and its effect on his attention, behavior, and socialization, along with the concomitant effects of those challenges on his academics. She recommended that Student maintain his primary special education eligibility of autism. She also recommended a secondary eligibility of specific learning disability related to reading comprehension, and recommended further Lindamood Bell programs, along with a one-to-one aide and one-to-one academic instruction for Student.

In her report summary, Dr. Johnson advocated for Student by over-emphasizing teacher reports on the behavior and social responsiveness scales that were remarkably unexceptional given Student's levels of self-stimulatory behaviors and other autistic-like behaviors. In contrast, teacher testimony and reports largely downplayed the importance of Student's self-stimulatory behaviors in the classroom as Student was generally successful academically, particularly once the ninth grade started. Dr. Johnson also ignored or minimized the unidentified Parent's concerning F-Index on the Behavior Assessment System, an issue that had also arisen on other Parent scale responses during other assessments, and failed to address the Parent's extremely high and contrasting scales compared to those of Student's teachers on the BASC, Adaptive Behavior Assessment, and Social Responsiveness Scale.

Dr. Johnson suggested an underlying reading comprehension disability, possibly due to a processing disorder, but failed to explain how Student's self-stimulatory behaviors, attentional issues, and other autistic-like behaviors might have caused or affected his supposed processing issues. Such an analysis was particularly important given Student's low scores on assessments related to fluidity of any kind, and his

observed struggles with inattention and self-stimulatory behaviors in the classroom, particularly when stressed, all of which slowed his rate of work production. Likewise, she recommended a full-time, one-to-one behavioral aide for Student without explaining why Student needed that level of classroom management to access his education, or addressing the effect on Student given her concerns that he was already prompt-dependent.

During her testimony, Dr. Johnson exhibited similar heightened advocacy for Student that significantly detracted from her credibility as an independent expert. In her testimony, Dr. Johnson concluded that Student's teachers were overworked, overextended, and inattentive to Student, despite there having been no credible evidence to that effect. She criticized the ASSISTT program, and the behavioral report prepared by Dr. Meleo, despite not being a board certified behavioral analyst herself. Similarly, she expressed a variety of educational opinions, often contradicting trained and experienced educators, without evidence of academic qualifications or experience to offer such opinions.

Dr. Johnson testified to an extensive relationship with Student's counsel's office, including referral of clients back and forth, and testifying repeatedly for that office, without comparable appearances as an expert for school districts, suggestive of a lack of underlying independence in her testimony. Her casual dismissal on cross-examination of Parent's F-Index scores, and the reliability of Parent's responses also lessened her credibility.

Dr. Johnson also reduced her credibility by dismissing the potential retest effect in the Lindamood Bell post-program retesting, and in testing generally, which served to undermine the credibility and reliability of her opinions as an expert. Her responses were frequently dismissive and self-serving. In sum, it was found that Dr. Johnson's testimony, while not directly contradicted by a retained expert for Torrance, was neither reliable,

nor credible with regard to Student.

SEPTEMBER 11, 2018 – AMENDMENT IEP

On September 11, 2019, Mother executed an IEP amendment page, agreeing to change Student's biology class from a general education class to a special day class. This was undertaken to allow Student to have an educational setting more suited to his then-current academic needs, while maintaining his diploma track status.

DECEMBER 18, 2018 AND JANUARY 17, 2019 – ANNUAL IEP

Torrance held Student's annual IEP team meeting over two sessions, on December 18, 2018 and January 17, 2019, about halfway through Student's ninth grade school year. Mother, along with all required Torrance IEP team members, including Ms. Meleo, Mr. Dawson, Ms. Sorensen, Student's case manager, and school psychologist Jessica Haugen, attended both meetings. Ms. Woo and Mr. Bothwell also attended the first meeting, and Dr. Johnson attended by telephone. Heather Bae, Torrance behavior analyst, and Sara Marks, Torrance special education English teacher, attended the second meeting.

Mother expressed concerns about Student's reading comprehension being below grade level, the occurrence of bullying, accommodating Student's sensitivity to loud noise, Student's classroom focus, and Student's social isolation and awkwardness. Dr. Johnson presented her assessment, and the IEP team discussed her findings and recommendations. In response, the IEP team agreed to a series of assessments to follow-up on Dr. Johnson's report, including occupational therapy, speech-language, functional behavior, academics, and assistive technology. The team discussed Dr. Johnson's recommendation that Student have specific learning disability as a secondary disability, but agreed to wait for additional data before making a recommendation.

Student was earning good grades in the first half of his ninth grade year. His first

quarter marks included an "A" in Study Skills, an "A" in Physical Education, a "C" in English 1, an "A" in Algebra 1, a "B" in Health, and a "B" in Biology 1. His second quarter progress report showed that he was earning an "A" in study skills, an "A" in physical education, an "A" in English 1, an "A" in Algebra 1, a "C" in Health, and an "A" in Biology 1. Reports by each of his teachers indicated that Student was generally working hard, enjoying successful, if limited interaction with peers, having some behaviors, but progressing in his ability to self-regulate, and performing successfully academically.

The IEP team also discussed Student's strengths and weaknesses, his academic performance, his progress on his annual goals, his accommodations and modifications, and possible changes to Student's program and services, including the use of a full-time, one-to-one behavioral aide. The IEP team proposed five new annual goals, including two from ASSISTT, academic goals in math, reading comprehension, and one in pragmatics drafted by Ms. Meleo.

The first goal was in the area of academics, and drafted to address Student's ongoing challenges with mathematics. Student had met his annual math goal, and needed to take a next step with mathematical analysis. The new goal provided that by December 2019, when given use of a calculator and notes as necessary, Student would distinguish between situations that can be modeled with linear functions and with exponential functions with at least 85 percent accuracy in three out of four trials as measured by Student work samples or teacher records.

The second goal was in the area of behavior, and was drafted by the ASSISTT behaviorist to address Student's ongoing challenges with lack of socialization and interaction with peers, particularly during non-structured time. Student was reported to be walking around by himself during breaks and lunch, and finding isolated areas in which to sit. Student did not interact with peers or participate in group work or activities without one to two verbal prompts. The new goal provided that by December 2019, in

structured social settings, Student would demonstrate social skills by entering, maintaining, and exiting social interaction, including greetings, farewells, body orientation, showing interest in others, and giving one or more compliments, in 70 percent of opportunities, with no more than one prompt, as measured by observation and data collection.

The third goal addressed Student's ongoing challenges with reading comprehension. Student was able to answer questions with prompting and using context clues after reading a given text. The new goal required Student to determine a theme or central idea of a text and analyze its development as measured by curriculum-based assessments, work samples, oral assessments, etc., on three out of four trials with 85 percent accuracy.

The fourth goal was drafted by the ASSISTT behaviorist to address Student's off-task, non-attending behaviors. Student, during 15-minute observations, engaged in 15 off-task, non-attending behaviors, such as gazing around the room for more than five seconds and playing with, and focusing on, items other than class materials and instruction. The goal required that Student use self-management strategies such as behavioral checklists, self-monitoring schedules, or other cues to reduce off-task, non-attending behaviors to an average of five or fewer per 15-minute observation, across the span of three observations, over a two-week period, as measured by observation and data collection.

A fifth goal in the area of pragmatics was proposed by Ms. Maleo to address Student's pragmatic skills in the areas of conversation initiation and conversational turn-taking. It continued the previous year's pragmatics goal by requiring Student to increase his pragmatic skills by initiating conversations with peers and adults, including using greetings and engaging in four to five conversational exchanges by asking and answering questions with minimal prompts, meaning one to two prompts, with 70

percent accuracy, as measured by speech-language pathologist observations and recorded data.

The IEP offered Student specialized academic instruction for three daily sessions of 52 minutes each. It offered to have a behaviorist to consult with and supervise members of Student's educational team for 30 minutes per week. The IEP also offered 30 minutes per week in an ASSISTT social group and 30 minutes per week inclusion support for self-management. Additionally, the IEP offered Student group speech-language services for 30 minutes weekly, and 30 minutes per month speech-language pathologist consultation for pragmatic skills in the classroom. Parents did not consent to the IEP.

FUNCTIONAL BEHAVIOR ASSESSMENT – SPRING 2019

Heather Bae prepared a functional behavior assessment following the December 12, 2018 IEP team meeting, and presented the report at the March 14, 2019 IEP team meeting. Ms. Bae had a bachelor's degree in child and adolescent development and a master's degree in applied behavioral analysis with an emphasis in autism. She was a Board Certified Behavior Analyst, or BCBA. She had worked as a behavioral analyst Torrance since December 2018.

Ms. Bae conducted a record review, interviewed teachers, performed direct observation, and collected data. She also used a standardized assessment tool to measure Student's social skills.

Student was referred for the functional behavior assessment by the IEP team at the December 12, 2018 IEP meeting. The behaviors of concern reported by the IEP team were Student's physical stereotypy, and included any instance of Student using repetitive behaviors such as fidgeting with and locking fingers, rapidly flicking elongated items such as a pencil, shaking or rotating his head, arm or leg flapping, running back and forth, or palm banging, for longer than two seconds.

Ms. Bae interviewed five of Student's teachers in preparing the functional behavior analysis, including his Study Skills teacher, biology teacher, physical education teacher, algebra teacher, and health teacher. The teachers generally described Student working effectively in class, being shy and withdrawn, but interacting occasionally with peers, having some problems with task initiation and attention, and not exhibiting excessive behaviors. Ms. Sorensen described Student as being able to use stress-relieving techniques to reduce anxiety as positive progress.

Ms. Bae used social skills rating scales to broadly assess Student's social skills. She obtained completed scales from five teachers and Mother.

Mother completed the social skills rating scale for Student. Her F-Index was acceptable on the reliability index, but her response pattern and response consistency were both rated "extreme caution". In social skills, her responses showed problems in communication, empathy, engagement, and self-control. In problem behaviors, her responses showed problems in internalizing and autism spectrum behaviors. Mother's scores were broadly consistent with those obtained in the Winter of 2017 by Dr. Ishijima, and evidenced similar F-Index response and reliability concerns along with continuing very heightened concerns for Student.

Student's Study Skills teacher, Alison Glaeser, completed the SSIS rating scale for Student. Her F-Index was acceptable, as were her response consistency, but her response pattern was rated "caution". In social skills, her responses showed with problems in communication, assertion, and engagement. In problem behaviors, her responses showed problems in hyperactivity and inattention, and autism spectrum behaviors. In academic competence, her responses showed some concern with Student's academic performance. Of the five teachers, her results were the most similar to Mother's results.

Student's physical education teacher, Scott Peppard, completed the SSIS rating

scale for Student. His F-Index was acceptable, as were his response pattern and response consistency. In social skills, his responses showed problems in assertion, empathy, and engagement. In problem behaviors, his responses showed problems in autism spectrum behaviors. In his later testimony at hearing, Mr. Peppard described Student experiencing significant growth in social skills and reduction of problem behaviors over the course of Student's participation in his class. Mr. Peppard was a credible witness and described Student with both affection and enthusiasm, and his testimony regarding Student was persuasive in this area.

Student's English teacher, Sara Marks, completed the SSIS rating scale for Student. Her F-Index was acceptable, as were her response pattern and response consistency. In social skills, her responses showed problems in empathy and engagement. In problem behaviors, her responses showed problems in autism spectrum behaviors. In her later testimony at hearing, Ms. Marks described Student as working to her expectations as a diploma-track student, and largely able to manage his attentional and self-stimulatory behaviors with minimal prompting from her. Mr. Marks, as an experienced special education teacher, was a persuasive witness who credibly addressed Student's behavior and performance in her ninth grade special education English class.

Student's Algebra teacher, Tracy Woo, completed the SSIS rating scale for Student. Her F-Index was acceptable, as were her response pattern and response consistency. In social skills, her responses showed problems in empathy, engagement, and self-control. In problem behaviors, her responses showed problems in autism spectrum behaviors. In academic competence, her responses showed only mild concerns with Student's academic performance.

Student's Biology teacher, Charlotte Sorensen, completed the SSIS rating scale for Student. Her F-Index was acceptable, as were her response pattern and response consistency. In social skills, her responses placed Student in the average range with

problems in engagement only. In problem behaviors, her responses showed problems in autism spectrum behaviors, but only at a level slightly above average. In academic competence, her responses showed Student performed well academically in her class.

In her later testimony at hearing, Ms. Sorensen credibly described Student working well overall in her class and making progress in his social development. As an experienced special education teacher with excellent qualifications, Ms. Sorensen testified persuasively regarding Student's successful academic performance in her special education biology class. She also credibly, and in detail, described student as largely functioning at an adequate level in social skills in her class and able to work with other Students in class, albeit reluctantly at times.

Mother's scores once again placed Student in the extreme range for lack of social skills and problem behaviors. The teachers found problems in social skills and the presence of problem behaviors, but at levels of much less significance than Student's mother. The teachers' scores were generally consistent with Student's reasonable academic performance, and the relative lack of impact of Student's poor pragmatics and other autistic-like behaviors on his academic performance.

Ms. Bae conducted direct observations of Student in four different classes across four days. She also had an ASSISTT educational assistant, Vinnie Tanza, observe Student in five different classes across five days. She observed Student engaging in physical stereotypy from 13 percent to 37 percent of the time in her sampling protocols. She observed off-task behaviors from 13 percent to 26 percent of the time in her sampling protocols. Mr. Tanza observed physical stereotypy from 10 percent to 43 percent in his observations, and off-task behaviors from 20 percent to 70 percent. He also observed minimal initiation, joining, and responding to peers, and varied task initiation and completion from zero to 100 percent.

In her functional behavior analysis, Ms. Bae did not find any common antecedent

to Student's physical stereotypy. The behavior was reported to occur across environments and throughout the school day, although the behavior was noted to occur more often during passive or difficult tasks for Student. Although the duration of the physical stereotypy was relatively short, Student was only able to successfully redirect himself 31 percent of the time. Otherwise, Student needed one or more prompts to resume working. Appropriate alternative behaviors to the physical stereotypy included increased on-task behaviors, self-monitoring, and self-advocacy. Ms. Bae hypothesized that the physical stereotypy was not socially mediated and was automatically maintained, and that the behaviors may produce sensory stimulation that acts as a reinforcer. Ms. Bae recommended that Student might benefit from small group structured social opportunities led by the behavior intervention team, along with inclusion support in the classroom.

SPEECH-LANGUAGE ASSESSMENT REPORT – MARCH 5, 2019

Ms. Maleo prepared a speech-language assessment report, dated March 5, 2019, and presented the report at the March 14, 2019 IEP team meeting.

Ms. Maleo conducted a detailed record review, including her prior triennial speech-language evaluation in 2016, a parent questionnaire, a student interview, and four observations of Student. She also used standardized assessment tools to complete her assessment of Student. The assessment tools included the Goldman-Fristoe Test of Articulation, Third Edition; the CASL-2; the OWLS-2; and the Clinical Evaluation of Language Fundamentals, Fifth Edition, Pragmatics Profile, often referred to as the CELF-5.

Ms. Maleo tested Student over eight testing sessions between January 8, 2019 and March 5, 2019. Student consistently greeted her, and on one occasion complemented her on her appearance. Student had differing and appropriate remarks at the end of each session, as well as high-fiving Ms. Maleo on the last day of testing. He

engaged in social conversation, and expressed his thoughts and feelings. He exhibited varying moods over the testing sessions varying from anxious, to happy, to distracted, and exhibited some self-stimulatory behaviors on occasion. Overall, Ms. Maleo had a good rapport with Student. She also observed him four times, twice at lunch and twice in the classroom. Student exhibited a fair degree of inattention and self-stimulatory behavior in the classroom. He was observed alone at lunch, not interacting with peers, and on one occasion not eating lunch.

Ms. Maleo administered the Goldman-Fristoe Test to Student. The test is an individually administered standardized assessment used to measure speech sound abilities in the area of articulation. The mean standard score was 100, and scores from 85 to 115 were considered to be in the average range. On the Sounds-in-Words portion of the assessment and the Sounds-in-Sentences portion, Student's results did not evidence a problem as he scored in the average range.

The CASL-2 assessment was an in-depth evaluation of an individual's oral language skills. The assessment consists of a battery of 14 stand-alone tests, each of which measures a specific oral language skill. The CASL-2 also produced a general linguistic index, and five index scores.

In lexical and semantic tests, including receptive vocabulary, antonyms, synonyms, expressive vocabulary, and idiomatic language, Student scored in the average range. Student's expressive vocabulary was a particular area of strength, although Ms. Bae considered each area to be a relative strength of Student's.

In syntactic tests, including sentence expression, grammatical morphemes, sentence comprehension, and grammaticality judgment, Student scored in the average range. In sentence comprehension, involving auditory comprehension of syntax in spoken sentences that have similar structures and words, Student scored in the average range. Ms. Bae considered each area to be an area of relative strength for Student.

In supralinguistic and pragmatic tests, including nonliteral language, meaning from context, inference, double meaning, and pragmatic language, Student scored in the average range, except for meaning from context which was in the below average range. Ms. Bae considered all but the meaning from context area to be areas of relative strength for Student, and that area was considered an area of relative weakness for him.

Student obtained a general language ability index standard score in the low average range. He also obtained a low average standard score in the supralinguistic index. In the receptive language, expressive language, lexical and semantic language, and syntactic indices, Student obtained scores in the average range.

The OWLS-2 assessment was a standardized measure of an individual's receptive and expressive language ability, and assessed all areas of language, including lexical and semantic, syntax, supralinguistic, and pragmatic. Student was specifically assessed on his oral language skills, including in listening comprehension to measure his understanding of spoken language, and oral expression to measure his understanding and use of spoken language. He obtained an oral language composite score in the average range, indicating oral expressive and receptive language in the average range. In oral expression, Student obtained a standard score in the average range. In listening comprehension, Student obtained a standard score in the average range, without indication of a listening comprehension problem.

The CELF-5 assessment was an individually administered clinical tool for identification, diagnosis, and follow-up evaluation of language and communication disorders in students' ages five to twenty-one years. The pragmatic profile was a checklist of speech intentions that are typically expected skills for social and school interactions in classrooms. The profile is used to identify verbal and non-verbal deficits that may negatively influence social and academic communication. The profile was completed by the assessor with input from Student's mother and Ms. Sorensen, and

based upon a four-tiered scoring system for each expected skill. Student obtained a scaled score in the low to very low range, consistent with his existing issues with pragmatics.

ACADEMIC ASSESSMENT REPORT – MARCH 14, 2019

Ms. Sorensen prepared an academic assessment report, dated March 14, 2019, and presented it at the March 14, 2019 IEP team meeting. The additional assessment was undertaken due to concerns by the IEP team about Student's reading comprehension, and the supplemental testing of Student's reading levels was done using the Woodcock-Johnson testing protocols. Student's grades for the first semester of ninth grade, included in the report, were an "A" in Study Skills, an "A" in Physical Education, a "B" in English 1, an "B" in Algebra 1, a "B" in Health, and a "B" in Biology 1.

Ms. Sorensen administered the Woodcock-Johnson Tests of Achievement, Fourth Edition to Student. The assessment produced eight composite scores related to various areas of reading and writing. Individual sub-section scores were also obtained in nine areas.

Student's scores ranged from very superior to low in the composite scores. In reading comprehension, Student obtained a standard score in the average range, and in reading fluency, Student obtained a standard score in the low range, consistent with earlier tests involving fluency.

Student's scores ranged from superior to low in the sub-section scores. In sentence reading fluency, Student obtained a standard score in the very low range, and in sentence writing fluency, Student obtained a standard score in the low range. In reading recall, Student obtained a standard score of 80, in the low average range.

Ms. Sorensen administered the Woodcock-Johnson Tests of Oral Language, Fourth Edition to Student. The assessment produced four cluster standard scores related to oral language and listening abilities. In oral language, Student obtained a standard

score in the average range. In broad oral language, Student obtained a standard score in the low range. In oral expression, Student obtained a standard score in the low average range. In listening comprehension, Student obtained a standard score in the very low range.

MARCH 14, 2019 – IEP TO REVIEW ASSESSMENTS

Torrance held an IEP team meeting on March 14, 2019, to review assessments that were requested during the December 12, 2018 IEP meeting. Mother, along with all required Torrance IEP team members, including Ms. Meleo, Ms. Bae, Ms. Sorensen, and both Student's and Torrance's attorneys, attended the meeting. The functional behavior assessment by Ms. Bae, the speech-language assessment by Ms. Meleo, and academic assessment by Ms. Sorensen were each presented by their authors and discussed by the IEP team. The IEP team discussed adding specific learning disability as a secondary eligibility due to Student's problems with listening comprehension, and ultimately agreed to also list speech-language eligibility in the IEP. Testimony at hearing indicated that the IEP team members wanted to try to accommodate Parent's concerns, even though the evidence of listening comprehension deficits did not discriminate between an underlying learning disability and an issue with listening comprehension derived from inattention and stimming.

Ms. Maleo proposed a new speech goal focused on pragmatics. Ms. Sorensen agreed to draft a listening comprehension goal. Ms. Bae reviewed three new behavior goals in self-advocacy, social skills, and self-management, and recommended adding two 15-minute individual behavior intervention sessions weekly. The IEP team agreed to trial a 30-day program with a para-educator assisting Student at lunch to initiate and develop social interactions with peers. The meeting was adjourned pending review of additional assessments.

MARCH 18, 2019 – IEP TO REVIEW ASSISTIVE TECHNOLOGY ASSESSMENT

Torrance held an IEP team meeting on March 18, 2019, to review an assistive technology assessment that had been requested during the December 12, 2018 IEP meeting. Mother, along with all required Torrance IEP team members, attended the meeting. The team discussed the assistive technology assessment and its recommendations, and the team agreed to those recommendations. The IEP team also discussed a 30-day trial of a para-educator at lunch, and Student's proposed 2019-2020 school year courses, including geometry, special education English, special education world history, chemistry, Japanese, and physical education.

MAY 22, 2019 – IEP TO REVIEW PARA-EDUCATOR TRIAL

Torrance held an IEP team meeting on May 22, 2019, to review the trial of the lunchtime para-educator for Student, and to discuss changes or modifications to Student's services.

Student's mother expressed her concern that Student was regressing in his peer interaction skills. The IEP team reviewed the para-educator trial program, and the accompanying notes and data. Mr. Dawson reviewed Student's present levels for behavior and his current behavioral services.

Teacher reports indicated that Student was successful academically, and not exhibiting disruptive or non-compliant behavior. The lunchtime para-educator program was somewhat successful, although Student intermittently requested to spend lunchtime by himself.

The IEP was amended to add a Torrance para-educator three days per week for 30 minutes at lunch to facilitate social interactions with peers, and 80 minutes per month of behavioral supervision by a Board Certified Behavior Analyst to supervise social skills facilitation. The May 22, 2019 IEP was given to Parents for their review.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA

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 main purposes of the Individuals with Disabilities Education Act, referred to as the "IDEA," are to ensure:

- 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
- 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, referred to as a FAPE, means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (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 general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176; *Endrew F. v.*

Douglas County School Dist. (2017) 580 U.S. ____ [137 S.Ct. 988, 1000]; *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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).)

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., supra*, 811 F.2d at p. 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.*) An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is "a snapshot, not a retrospective." (*Ibid.*, citing *Fuhrmann, supra*, 993 F.2d at p. 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Id.*)

STUDENT'S ISSUES 1A, 2A, 3A: FAILURE TO OFFER APPROPRIATE BEHAVIOR SERVICES IN STUDENT'S IEPs

Student contends that Torrance denied him a FAPE in the least restrictive environment by failing to offer appropriate behavior services in the IEPs from January 26, 2017, through May 22, 2019. Torrance contends that it offered appropriate behavior services throughout that time period.

An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum, and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) When appropriate, the IEP should include short-term objectives that are based on the child's present levels of academic achievement and functional performance, a description of how the child's progress toward meeting the annual goals will be measured, when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(iii); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code § 56345, subd. (a)(7).) The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).)

Federal and state laws require school districts to provide a program in the least

restrictive environment to each special education student. (Ed. Code, §§56031; 56033.5; 34 C.F.R. § 300.114.) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2).) 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.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's syndrome].) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instruction in hospitals or institutions. (Ed.

Code, § 56361.)

The methodology used to implement an IEP is left up to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149-1150; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Committee* (1st Cir. 2004) 361 F.3d 80, 84 (*citing Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992.)) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled student. (*Rowley, supra*, 458 U.S. at pp. 207-208.)

Student did not establish by a preponderance of the evidence that he was denied a FAPE as a result of a failure to offer appropriate behavioral services. Although Student's behavior in the classroom was at times difficult and even problematic, he was able to continue to access his education and make educational progress. Student's academic success was essentially consistent with his abilities, and he generally received average or better grades. In January of 2018, Student was at the "Standard Nearly Met" level on the SBAC statewide exam in both English language arts and math. By the end of his ninth grade year, Student was earning primarily "A's and was able to keep up with high school work, regardless of his stereotypic behaviors.

The behaviors primarily evidenced by Student included inattention, off-task behavior, and self-stimulatory behaviors with those behaviors decreasing over the period at issue here. Such behaviors never escalated to the point where he created a significant disruption in the classroom or placed himself, his peers, or Torrance staff and administration at any risk of physical harm. Teachers reported that Student was readily re-directable with simple prompts. Although Dr. Johnson complained of prompt dependency by Student, Student could typically be redirected back to a task with a

reasonable number of minor prompts. In fact, Student was at his most irascible when overly or aggressively prompted.

Student alleges that Torrance's ASSISTT program failed to provide him with sufficient behavioral services to prevent or eliminate his problem behaviors, but that is not the operative legal standard here. Student exhibited deficits in pragmatic speech and peer relations, and those were areas to be addressed through Student's speech-language services and goals. Given the level of Student's autistic-like behaviors, Student did not prove Torrance failed to provide Student with appropriate behavioral services during the period in question.

STUDENT'S ISSUES 1B, 2B, AND 3B: FAILURE TO OFFER APPROPRIATE SPEECH-LANGUAGE SERVICES IN STUDENT'S IEPs

Student contends that Torrance denied him a FAPE in the least restrictive environment by failing to offer appropriate speech-language services in the IEPs from January 26, 2017 through May 22, 2019. Torrance contends that it offered appropriate speech-language services throughout that time period.

Student established that he failed to make appropriate progress with pragmatics given the level of speech-language services provided during the period in question. Student struggled with pragmatics, particularly social speech and socialization with peers throughout that period, and Torrance's continued use of 30 minutes of group speech-language services throughout that time was simply inadequate given Student's level of need. Student was isolated during non-structured activities like lunch, and was largely unable to initiate or maintain conversations with peers, or consistently distinguish the intent of peers' communication. He simply did not make reasonable progress during the period at issue, as shown by his minimal progress on his year over year goals in pragmatic speech. He simply failed to progress enough to meet the standard of reasonable progress appropriate to his circumstances.

Torrance argues that Student made sufficient progress to receive a FAPE, but his goals year over year in pragmatic speech remained essentially the same, and his ability to conduct a meaningful conversation with his peers remained significantly stunted. Student was an otherwise bright and motivated student, but his continuing inability to make progress in the language and communication skills necessary for adequate or appropriate social interaction with his peers underscores Torrance's failure to provide him with adequate services to effect reasonable progress in pragmatics. Student proved Torrance failed to offer Student appropriate speech-language services during the period in question.

STUDENT'S ISSUES 1C, 2C, AND 3C: FAILURE TO OFFER APPROPRIATE SPECIAL ACADEMIC INSTRUCTION SERVICES IN STUDENT'S IEPs

Student contends that Torrance denied him a FAPE by failing to offer appropriate special academic instruction services in the IEPs from January 26, 2017 through May 22, 2019. Torrance contends that it offered appropriate special academic instruction services.

Student did not establish by a preponderance of the evidence that Torrance failed to offer him appropriate specialized academic instruction. Student made academic progress year over year during the period in question. Student matriculated successfully from middle school to high school, and achieved passing grades and made reasonable academic progress during each of the school years at issue. At Torrance High School, Student achieved good grades across courses, earning "A's" and "B's" for his final grades for the first semester of ninth grade. Student's middle school and high school teachers consistently reported that Student was making academic progress, was a good student in class with light to moderate prompting, and was able to perform grade-level work sufficiently well to earn good grades in both general education and special education settings.

Student argues that he could have made even more progress had sufficient additional resources been provided to him, but that does not comport with the legal standard under the IDEA. While any parent would want the best possible program for their child, that is not the applicable standard here. Student made progress appropriate in light of his circumstances during the period in question. Student did not prove Torrance failed to provide Student with appropriate specialized academic services at any time during the period in question.

STUDENT'S ISSUES 1D, 2D, AND 3D: FAILURE TO PREVENT BULLYING OF STUDENT IN STUDENT'S IEPs

Student contends that Torrance denied him a FAPE by failing to prevent him from being bullied. Torrance contends that it adequately prevented or Student from being bullied or otherwise properly responded to instances of bullying.

In a 2013 joint letter providing guidance on the IDEA, the U.S. Office of Special Education and Rehabilitative Services, also known as OSERS, and the Office of Special Education Programs, also known as OSEP, the offices representing the division of the United States Department of Education charged with administering the IDEA and developing its regulations, described bullying as follows:

"Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (*e.g.*, excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors ..."

(*Dear Colleague Letter*, (OSERS/OSEP August 20, 2013) 61 IDELR 263; 113 LRP 33753 (*Dear Colleague 2013*).)

California has a more expansive definition of bullying than this federal guidance interpreting the IDEA. The Education Code defines bullying as “a severe or pervasive physical or verbal act or conduct by a pupil or group of pupils ... directed toward one or more pupils” that causes or is “reasonably predicted” to cause a reasonable student to experience one or more of the following:

- fear of harm to his or her person or property;
- a substantially detrimental effect on his or her physical or mental health;
- a substantial interference with his or her academic performance; or
- a substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(Ed. Code, § 48900, subd. (r).)

A “reasonable student” is a pupil, including an exceptional needs pupil, who exercises average care, skill, and judgement in conduct for a person of his or her age, and with his or her special needs. (Ed. Code, § 48900, subd. (r)(3).)

If the bullying of a student with a disability causes the student not to receive meaningful educational benefit, it can constitute a denial of a FAPE under the IDEA. (*Dear Colleague Letter*, OSERS (August 20, 2013) 61 IDELR 263.) It does not matter whether the bullying is related to the student’s disability. (*Id.*, at p. 2.) Therefore, a determination of whether bullying has denied a student a FAPE requires a two-step analysis: whether bullying occurred, and whether the bullying resulted in the student not receiving educational benefit within the meaning of *Rowley*. There is a “strong likelihood” that bullying of a disabled student will result in the denial of a FAPE. (*Dear Colleague Letter*, OSERS (October 21, 2014) 464 IDELR 115 *2.)

Confrontations between students that are not characterized by an imbalance in power generally do not constitute bullying. (*A.L. v. Jackson County Sch. Bd.*, 64 IDELR 173 (N.D. Fla. 2014) (an isolated instance of rough play between peers did not amount

to bullying).)

"Although there are no hard and fast rules regarding how much change in academic performance or behavior is necessary to trigger the school's obligation to convene the IEP team or Section 504 team, a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral interruptions, or a rise in missed classes or sessions of Section 504 services would generally be sufficient." (*Dear Colleague Letter*, OSERS (October 21, 2014) 464 IDELR 115 *3.)

A school district must also be given the opportunity to respond to reports of bullying. In *M.L. v. Federal Way School District* (9th Cir. 2005) 394 F.3d 634 (*M.L.*), the Ninth Circuit addressed whether a student who was subject to teasing was denied a FAPE. There, the fact that parents removed the student from school after only five days did not allow the district a reasonable opportunity to prevent or address the teasing. Further, the parents failed to demonstrate that the teasing affected the student, interfered with his education, or resulted in the loss of an educational benefit. "If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied a FAPE." (*Id.*, 394 F.3d at pp. 650-651 citing *Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 633 [holding that to violate Title IX "harassment ... [must be] so severe, pervasive, and objectively offensive that it bars the victim's access to an educational opportunity or benefit."].)

Student established that he was subjected to both severe and pervasive offensive conduct by both Student "O" and other students that placed Student in fear for his person, that he suffered a substantially detrimental effect on his physical and mental health, that Student suffered a substantial interference with his academic performance, and that Student suffered a substantial interference with his ability to participate in or

benefit from the services, activities, or privileges provided by his school during the period from January 24, 2017, through March 5, 2018, when Student was unilaterally transferred to Lindamood Bell by Parents.

From January 24, 2017, through the end of the 2017-2018 school year on June 30, 2018, representing approximately half of Student's seventh grade year and all of his eighth grade year, Student was subject to pervasive bullying at Hull Middle School. Student "O", in particular, was established to be his principal tormentor at that time, although other students also participated in the offensive conduct. December 2017 represented a period of almost continual offensive conduct directed toward Student as evidenced by behavior notes and logs, reports to Hull staff by Parents and Student, and testimony from Student's mother and multiple members of the Torrance staff or administration. The effect on Student was significant as he developed an eating problem and suffered through a bad year according to his Parents and Ms. Maleo. At school, the offensive conduct caused Student to melt down in and out of class, and forced him to retreat to the school's office during unstructured time so as to separate him from his tormentors, causing interference across Student's school experience academically and socially. Student received some relief from his tormentors when he attended the Lindamood Bell program from March 5, 2018 through the end of the 2017-2018 school year, but that was due to the actions of Student's parents, and not as a result of any affirmative action by Torrance.

Torrance argues both that Student imagined or misunderstood the behavior of other students toward him, and that when offensive conduct did occur that the school administration handled the matters appropriately. Although Student had difficulty distinguishing the intent of others' behavior at times, nonetheless, the sheer scope and intensity of the problem eclipsed Student's level of misapprehension, and in fact, constituted pervasive bullying.

Torrance took some action in response to the bullying. However, this response was not appropriate to the ongoing situation, nor did the response extinguish or markedly reduce the problem prior to Student leaving for the Lindamood Bell program around March 5, 2018. For instance, Torrance conducted investigations and used its discipline matrix to address the events, however the bullying continued, seemingly unabated. As a result, Torrance failed to prevent Student from being bullied during the period from January 24, 2017 to June 30, 2018.

Student's ninth grade year at Torrance High School is another matter. Student failed to establish by a preponderance of the evidence that he was subjected to bullying during the relevant portions of the 2018-2019 school year. The one incident cited in Dr. Johnson's report where students crowded Student away from the lunch table where he was sitting did not rise to the level of bullying, and even were it to have done so, there was no evidence that Student was subjected to repeated, severe, or pervasive physical or verbal acts or conduct by a pupil or group of pupils during that year.

STUDENT'S ISSUES 1E, 2E, AND 3E: FAILURE TO OFFER APPROPRIATE GOALS IN BEHAVIOR, ACADEMICS, SOCIALIZATION, AND COMMUNICATION IN STUDENT'S IEPs

Student contends that Torrance denied him a FAPE by failing to offer appropriate goals in behavior, academics, socialization, and communication in the IEPs from January 26, 2017, through May 22, 2019. Torrance contends that it offered appropriate goals in each identified area.

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

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

The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County Sch. Dist. Two*, 57 IDELR 128 (D.S.C. 2011) (the use of percentages tied to the completion of discrete tasks is an appropriate way to measure student progress).)

A failure to offer an appropriate goal is a procedural violation of the IDEA. However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 [superseded in part by statute on other grounds by 20 U.S.C. § 1414(d)(1)(B)] (*Target Range*) ["... procedural inadequacies that result in the loss of educational

opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE.".) The hearing officer "shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program." (Ed. Code, § 56505, subd. (j).) While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892; *L.M. v. Capistrano Unified School District* (9th Cir. 2010) 556 F.3d 900, 910.)

Student did not prove by a preponderance of the evidence that Torrance failed to offer him appropriate goals in behavior, academics, socialization, or communication from January 26, 2017 through May 22, 2019. The goals offered by Torrance during the time period at issue may not have been optimal in the view of Student's expert, but they were based upon Student's present levels of academic achievement and functional performance and Student had a reasonable chance of attaining them within a year. The goals permitted the IEP team to determine whether Student was making progress in an area of need, and were adequate for Student to make progress in each of the areas at issue.

Student argues that some goals were repeated or only slightly modified from year to year. Student progressed adequately with his academics and behavior and Student did not establish that those goals were inadequate. In regard to Student's speech-language goals, although the goals were largely repeated or only slightly modified, that reflected the inadequate speech-language services offered, not the sufficiency of the goals themselves. Torrance did not fail to provide Student with

appropriate goals in behavior, academics, socialization, or communication during the period in question.

REMEDIES

Student prevailed on Issues 1b, 2b, and 3b and Issues 1d and 2d by proving that Torrance failed to offer Student sufficient speech and language therapy during the years in question, and failed to protect Student from bullying during the period from January 24, 2017 through the end of the 2017 – 2018 school year. Torrance's failures denied Student educational benefit and a FAPE.

As remedies, Student requested:

1. A prospective in-home intensive individual behavior therapy program provided and supervised by a nonpublic agency experienced in working with autistic children, on a year-round basis, and reimbursement for privately funded therapy and compensatory behavior therapy.
2. Prospective daily individual academic instruction, reimbursement for privately funded academic instruction, including Lindamood-Bell services in the amount of \$22,788.00, and compensatory individual academic instruction.
3. An independent speech and language evaluation and increased speech and language therapy.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).)) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 244, n. 11 (*Forest Grove*).) Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide

a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington, supra*, 471 U.S. at pp. 369-371.) When a school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is “appropriate” in light of the purposes of the IDEA. ALJs have broad latitude to fashion equitable remedies appropriate for a denial of a FAPE. (*Id.* at 369-370; *Forest Grove, supra*, 557 U.S. at 244, n. 11.)

Reimbursement may be reduced or denied in a variety of circumstances, including considering whether a parent acted reasonably with respect to the unilateral private placement. (20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); Ed. Code, § 56176; see *Patricia P. v. Bd. of Education of Oak Park* (7th Cir. 2000) 203 F.3d 462, 469 [reimbursement denied because parent did not allow district a reasonable opportunity to evaluate student following unilateral placement].)

There is broad discretion to consider equitable factors when fashioning relief. (*Florence County Sch. Dist. Four v. Carter by & Through Carter* (1993) 510 U.S. 7, 16 [114 S.Ct. 361].) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) Factors to be considered when determining the amount of reimbursement to be awarded include the existence of other, more suitable placements; the effort expended by the parent in securing alternative placements; and the general cooperative or uncooperative position of the school district. (*Target Range, supra*, 960 F.2d at 1487; *Glendale Unified School District v. Almasi*, 122 F.Supp.2d 1093, 1109.)

In *C.B. v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3d 1155 (*Garden Grove*), the Ninth Circuit set forth the standards to be applied in determining whether a private placement is appropriate for the purpose of reimbursement. There, a student had benefited substantially from a private placement, but parents were awarded only

partial reimbursement because the placement did not address all of the student's special education needs. (*Id.* at pp. 1157-1158.) The Court of Appeals held that parents were entitled to full reimbursement because the IDEA "does not require that a private school placement provide all services that a disabled student needs in order to permit full reimbursement." (*Id.* at p. 1158.) In reaching this conclusion the Ninth Circuit relied upon a standard set forth by the Second Circuit. The Court concluded that, for a parent to qualify for reimbursement, parents need not show that a private placement furnished every special service necessary to maximize their child's potential. They need only to demonstrate that the placement provided educational instruction specially designed to meet the unique needs of a child with a disability, supported by such services as are necessary to permit the child to benefit from instruction. (*Id.* at p. 1159 [quoting *Frank G. v. Bd. of Education* (2d Cir. 2006) 459 F.3d 356, 365 (citations and emphases omitted)]).)

The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain 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); Ed. Code, § 56506, subd. (c).) An independent educational evaluation at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School District v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-3.)

Here, Student established that he was entitled to a remedy for Torrance's failure to offer him appropriate speech and language therapy and for Torrance's failure to protect him from bullying.

Student is entitled to a publicly funded independent educational evaluation in speech-language in order to address continuing deficiencies in Torrance's speech-language services for Student. Student is awarded a publicly funded independent speech-language evaluation by an assessor of Parents' choosing who meets District's

guidelines for independent assessors in terms of cost and qualifications.

Student's request for reimbursement of \$22,788.00 for the cost of Student's 12-week program at Lindamood Bell is denied as an inappropriate equitable remedy. Parents did not act reasonably in placing Student at the Lindamood Bell program. That program did not afford Student any advantage over the placement offered by Torrance in the relevant IEPs, and instead placed Student in a highly restrictive environment. Significantly, by placing Student at the Lindamood Bell program, Parents removed Student from any contact with typical peers, eliminating the opportunity to make progress on his social skills goal. Similarly, the private placement removed Student from a full-service campus to a small, sequestered placement. Student made reasonable progress in academics and on his math and behavior goals at Hull middle school prior to the private placement. Significantly, Student failed to establish by a preponderance of the evidence that he made any progress, or received any benefit, from his program at Lindamood Bell. The pre-program and post-program testing done by Lindamood Bell failed to evidence any colorable benefit to Student, and that is without factoring in the test re-test problem associated with Lindamood Bell's reuse of tests approximately four months apart. The preponderance of the evidence did not support Dr. Johnson's conclusion, particularly in consideration of credibility concerns regarding her testimony, that Student had a specific learning disability, and absent such a disability there was no basis for an intensive program such as Lindamood Bell. Parents did not prove that reimbursement for the Lindamood Bell program was an appropriate equitable remedy for Torrance's educational failures with regard to speech-language or bullying.

Likewise, Student's requested remedies of prospective daily individual academic instruction, reimbursement for privately funded academic instruction other than Lindamood-Bell services, and compensatory individual academic instruction are denied. Student did not prevail on Issues 1c, 2c, or 3c, and thus there was no basis for the

requested services, either compensatory or prospective, for academic instruction.

Student also requested remedies including prospective in-home intensive individual behavior therapy program provided and supervised by a nonpublic agency experienced in working with autistic children, on a year-round basis, reimbursement for privately funded therapy, and compensatory behavior therapy. Student did not prevail on Issues 1a, 2a, or 3a, and thus there was no basis for the requested services, either compensatory or prospective, for behavior.

ORDER

Torrance shall fund an independent speech-language evaluation of Student by an assessor of Parents' choosing who meets Torrance's guidelines for independent assessors in terms of cost and qualifications.

All other requests 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. Parents prevailed on Issues 1b, 2b, and 3b and Issues 1d and 2d. Torrance prevailed on the remaining issues presented.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

DATED: October 14, 2019

/S/

Ted Mann

Administrative Law Judge

Office of Administrative Hearings