

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020010653

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL DISTRICT.

DECISION

JULY 13, 2020

On January 17, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents and Student, collectively referred to as Student, naming Castro Valley Unified School District. On January 31, 2020, Student's amended complaint was deemed filed and served. On March 16, 2020, OAH continued the matter for good cause. Administrative Law Judge Elsa H. Jones heard this matter by videoconference on May 12, 14, 15, 19, 20, 21, 26, 27, and 28, 2020.

Attorneys Eileen Matteucci and Roberta S. Savage represented Student. Student's mother, referred to as Mother, attended all hearing days on Student's behalf.

Attorney J. Sterling Elmore represented Castro Valley. Suzy Williams, Castro Valley's Director of Special Education, attended all hearing days on Castro Valley's behalf.

Sworn testimony and documentary evidence were received at the hearing. At the parties' request the matter was continued to June 22, 2020, for written closing briefs. The record was closed, and the matter was submitted on June 22, 2020.

ISSUES

1. Did Castro Valley fail to provide Student a free appropriate public education, referred to as a FAPE, from January 23, 2019, through the end of extended school year 2019, and during the 2019-2020 school year by:
 - a. Continually and intentionally withholding from and misrepresenting to Parents necessary information about Student's functioning at school?
 - b. Conducting an inappropriate educationally related mental health services assessment in February 2019?
 - c. Failing to offer Student appropriate
 - i. Goals
 - ii. Behavioral services;
 - iii. Emotional services;
 - iv. Social services; and
 - v. Placement?

The issues have been re-organized and re-numbered from the sequence set forth in the Prehearing Conference Order, to better comport with the manner in which the issues are addressed in Student's closing brief. Their content has not been changed.

JURISDICTION

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.) (All subsequent references to the Code of Federal Regulations are to the 2006 version.) 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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 (2006); Ed. Code, §§ 56501, 56502, and 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, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, Student has the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing, Student was eight years old years old and in second grade at Intermountain Residential, a residential treatment center in Montana. Intermountain is a California certified nonpublic school. At all relevant times, Parents resided within the geographical boundaries of Castro Unified.

Student is high-functioning and bright. In June 2016, when he was five years old, the California school district where he then resided found Student eligible for special education under the categories of autism and speech and language impairment. The family then moved to Pittsburgh, Pennsylvania, where Student repeated kindergarten at Parents' request and received special education services.

In March 2018, when Student's family returned to California, Student enrolled in Castro Valley. Castro Valley placed Student in a general education kindergarten classroom at Independent Elementary School.

Student continued attending Independent as a first grader during the 2018-2019 school year, as a special education student in Stephanie Keller's first grade general education class. Student remained enrolled at Independent and in Ms. Keller's class until May 23, 2019 when Parents placed Student at Intermountain.

ISSUE 1a: DID CASTRO VALLEY FAIL TO PROVIDE STUDENT A FAPE FROM JANUARY 23, 2019, THE END OF THE EXTENDED SCHOOL YEAR 2019, AND DURING THE 2019-2020 SCHOOL YEAR, BY CONTINUALLY AND INTENTIONALLY WITHHOLDING FROM AND MISREPRESENTING TO PARENTS NECESSARY INFORMATION ABOUT STUDENT'S FUNCTIONING AT SCHOOL?

Student contends Castro Valley failed to share information Parents requested regarding data as to Student's progress on his speech and language goal during the 2018-2019 school year, failed to share behavior data with Parents as agreed to at the September 28, 2018 IEP team meeting, and did not accurately report important information regarding Student behavioral functioning at school. Finally, Student contends that the February 2019 educationally related mental health services assessment did not include any information from Student's classroom teacher or other school staff or professionals with whom Student interacted most regularly regarding Student's need for social-emotional goals or mental health services.

Castro Valley contends that it provided Parents with all the information requested to ensure Parents' informed participation in the IEP process from January 23, 2019, forward. It also contends that, had any procedural violation occurred, Student failed to demonstrate that any such violation significantly impeded Parents' participation, impeded Student's right to a FAPE, or denied Student educational benefit.

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), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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 Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Andrew F. v. Douglas County School Dist.* (2017) 580 U.S. ___ [137 S.Ct. 988, 1000] (*Andrew F.*); *E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

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

- impeded the child's right to a FAPE;

- significantly impeded the parent’s opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the child; or
- caused a deprivation of educational benefits.

(20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

The IDEA emphasizes the importance of parental participation in a child’s education. “Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved or fully informed.” (*Amanda J., etc., v. Clark County School Dist.* (9th Cir., 2001), 267 F.3d 877, 892.) In the case of *Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, a school district failed to assess a student for autism, and did not disclose to parents its suspicions that student had autism. In finding the district liable for failing to assess the student in all areas of suspected disability, the court stated, “The creation of an IEP is not a unilateral enterprise by the school district, but rather, a collaborative process that necessitates parents' input. . . .the failure to obtain necessary information about student’s disorder prevented an informed discussion with his parents about his specific needs as an autistic child.” (822 F.3d at 1125-1126.)

Student’s contentions are rooted in the responses Student’s first grade teacher, Stephanie Keller, gave in completing the rating scales on two psychoeducational assessments. The first assessment was a private psychological assessment obtained by Parents from H. Nicole Hess, Ph.D., and Rebecca Schilling, Ph.D., which they performed in June and September 2018. This assessment is referred to as the Schilling assessment. The second assessment was the triennial psychoeducational assessment Castro Valley

conducted in February and March 2019. Ms. Keller's ratings on behavior scales in both of these assessments reflected Student had some emotional and behavioral challenges that fell into the clinically significant range, but Ms. Keller and other school staff did not observe Student engaged in any extreme behaviors at school. They only observed Student committing minor, typical first-grade behavioral infractions at school.

2018-2019 SCHOOL YEAR

After Student's family enrolled him in kindergarten in Castro Valley in spring 2018, Parents objected to the 30-day IEP developed by Castro Valley. This IEP included fewer behavioral supports than Student had received from his Pittsburgh school district. Further, Castro Valley denied Parents' request for an educationally related mental health services assessment. Therefore, Parents obtained an assessment from Rebecca E. Schilling, Ph.D., and H. Nicole Hess, Ph.D., to identify areas of Student's strengths, to obtain clarifications of his diagnoses and assist with educational planning.

In late summer 2018, during the pendency of the Schilling assessment, Student entered the general education first grade class at Independent taught by Stephanie Keller. Ms. Keller received her bachelor's degree in education in 1982 from the University of New Orleans, and holds a California multiple subject credential. She has been employed by Castro Valley for 18 years, all of them spent teaching first grade at Independent Elementary. Prior to her employment at Castro Valley, she was a teacher in other states for approximately 14 years.

Ms. Keller was the only adult assigned to her first grade classroom during the 2018-2019 school year. The general education classroom had several behavior supports, including a calm down box which contained various sensory and other

materials for students to access, separate seating areas where children could sit when they needed to focus or needed other types of additional support besides sitting at their own desk, and a visual schedule. The school also implemented a positive behavior intervention system, which included a token reward system, tracking of minor infractions, referred to as "uh-ohs," more serious infractions, and restorative justice. Uh-ohs were handled by the classroom teacher; other types of infractions were referred to the principal. From August 29, 2018, through November 15, 2018, Student had six uh-ohs. He had no uh-ohs after November 15, 2018. He had no major or serious infractions at any time.

THE SCHILLING PSYCHOLOGICAL ASSESSMENT

The Schilling assessors conducted their assessment on June 12, June 13, and September 14, 2018.

The assessors summarized Student's family, developmental, and educational history, the results of his previous assessments, and his special education and home services. In particular, Student had a long history of dysregulated mood, angry outbursts, anger, and noncompliance. These behaviors escalated when the family was in Pittsburgh, and Student then became aggressive toward family members. Student had a history of elopement, and when he was dysregulated, his statements and conduct usually concerned harming himself, his family, and classmates.

Student's behaviors improved somewhat when the family moved back to California, but significant behavioral challenges persisted at home. He continued to experience episodes of dysregulated mood. He demonstrated severe verbal rages and aggressive physical outbursts that were inappropriate for his age and the situation. At

one point, Child Protective Services was called because Student was holding one of his sisters tightly by the throat, and Student's family was referred to the Regional Center's crisis response team for 24-hour assistance when needed. In fall 2018, Student began to receive 15 hours per week of applied behavior analysis therapy.

The Schilling assessment results reflected that socially, Student had immature social cognitive skills, including perspective-taking, reading and responding to social cues, and understanding social dynamics. In conversation, he tended to follow his own train of thought, and talked at, rather than with, others. He tended to be rigid and literal in his thinking, and had deficiencies in the use of nonverbal communication. He engaged in several restricted and repetitive behaviors, and presented with hypo-and hyper-sensitivity to sensory stimuli.

The Schilling assessors administered the Behavior Assessment System for Children, Third Edition rating scales to Mother and Ms. Keller. Ms. Keller rated Student in the clinically significant range in the areas of hyperactivity, depression, withdrawal, anger control, developmental-social disorders, emotional self-control, executive functioning, negative emotionality, attention deficit hyperactivity disorder probability, and autism probability. The assessors determined that both Mother's and Ms. Keller's ratings were consistent with high probabilities of attention deficit hyperactivity disorder, autism spectrum disorder, and emotional dysregulation, with a significant level of functional impairment.

The Schilling assessors also administered the Vineland Adaptive Behavior Scales, 3rd Edition to Mother and Ms. Keller. The scales measured adaptive behavior, or the things people did to function in their everyday lives. Mother and Ms. Keller both rated Student in the moderately low range in communication skills, and in the low range in

daily living skills. Mother rated Student in the moderately low range in socialization, and Ms. Keller rated Student in the low range in that area. The adaptive behavior composite score for both Mother and Ms. Keller fell in the moderately low range.

On the Delis-Rating of Executive Functioning, the results reflected that Mother and Ms. Keller had similar concerns about Student's executive functioning, including attention, behavior regulation, and impulse control, but Mother's concerns were significant, and Ms. Keller's ratings were more moderate than Mother's.

The report included the results of Dr. Schilling's observation of Student at Independent during recess and in his general education classroom. She observed he engaged in interactions and reciprocal play with peers. Student needed occasional prompts, but was able to be redirected in class, and could focus on his assignment. He participated with his class in a counting game, and attempted to protest when eliminated from the game, but, when redirected, he sat and waited quietly while the game finished. Dr. Schilling did not report Student engaged in any disruptive or maladaptive behaviors during her observation.

Dr. Schilling and Dr. Hess assessed Student's cognitive, academic, executive control, verbal learning, and visual-motor integration skills, and evaluated him for autism and anxiety. They rendered diagnoses of Disruptive Mood Dysregulation Disorder and Attention Deficit Hyperactivity Disorder, Combined Presentation, and confirmed his previous diagnosis of Autism Spectrum Disorder. The assessors noted that Student demonstrated frequent emotional outbursts and engaged in a range of disruptive behaviors in both home and school settings, but his behavior was well-managed in his current educational placement.

The report concluded with four pages of recommendations including special education services based on a primary eligibility category of autism and a secondary eligibility category of other health impairment. The report did not recommend placement in a special education class, a smaller class, or a residential treatment center.

Castro Valley convened an IEP team meeting on September 28, 2018, to review the Schilling report. Dr. Schilling, Mother, Student's advocate, Ms. Keller, school principal Patrick Hansen-Schmitt and school psychologist Louise Lindgren attended the meeting, among others. The notes reflect that the Schilling assessment was discussed, and Ms. Keller's ratings were reported. Ms. Keller also reported an incident that occurred a few days before the meeting, when Student had written three X's on his neck with markers, and pointed his pencil at his neck. This incident had not been previously reported to Mother. The team decided to include a speech goal requiring Student to make a positive response to a peer after Mother voiced a concern that a similar previous speech goal had been dropped. Mother stated she believed an educationally related mental health assessment was needed, but the school psychologist said that staff was not seeing issues at school. The principal agreed to discuss counseling with the school counselor. Data on Student's speech goals and behavior were to be provided to Parent.

Student's mid-trimester progress report, dated October 13, 2018, was written by Ms. Keller and given to Mother. It stated Student was meeting standards and making progress. Student only needed to improve focus. There was no suggestion that Student engaged in dysfunctional, disruptive, or negative behaviors in class.

On October 17 and 18, 2018, Mother and Ms. Keller corresponded regarding several incidents involving Student. Ms. Keller reported to Mother two incidents at school involving other boys contacting or touching Student's genitalia. Ms. Keller

and/or Mr. Hansen-Schmitt spoke to the boys involved and these events were not repeated. Mother reported to Ms. Keller that Student had a panic attack the week before that caused Mother to take student to the emergency room. Mother wrote that she believed the panic attack was due to anxiety about events at school. Ms. Keller responded that she did not know what could have caused the panic attack, and expressed concern. Mother replied to Ms. Keller, expressing that she believed the panic attack was due to a teasing incident that occurred that morning. She stated Student's anxiety was increasing, and he took things literally, so that when peers teased him about being in a tree with a girl "k-i-s-s-i-n-g", as happened during summer 2018, or he imagined playing "war" at recess, he became very upset. The evidence at hearing reflected that this panic attack was actually caused by Student believing he was poisoned when he swallowed toothpaste. Moreover, staff promptly put a stop to the teasing regarding Student sitting in a tree and kissing a girl. There was no specific evidence that Student was subject to any other teasing or bullying at school

In her email, Mother also wrote that she was concerned when she first heard about the marks on Student's neck and the pencil to the neck incidents at the IEP team meeting. Mother wrote that her concern was heightened when Ms. Keller reported at a recent parent-teacher conference that he had done "the pencil thing" again, so Mother consulted the county crisis hotline and received a referral for evaluation with a children's mental health center for moderate to severe cases. Pending the appointment with the mental health center, Student's psychiatrist increased his medication to stabilize him. Mother emphasized it was important that the school inform her about such incidents.

Shortly after the September 2018 IEP team meeting, Ms. Lindgren discussed with Student the incident when he drew XXXs on his neck, and was satisfied that Student had

no intention to harm himself. She also requested Ms. Keller keep a log of Student's behaviors that were not uh-oh's. Ms. Keller logged 5 behaviors between September 25 and October 5, 2018. Besides the events described above involving the instances of putting his pencil to his neck and writing XXXs on his neck, they involved another instance of drawing on himself with markers, one instance of saying and spelling "bad words," and one instance of telling inappropriate and imaginative stories to peers. Ms. Keller discussed these events with Student, and the school reported them to Parents.

Independent's principal, Mr. Hansen-Schmitt, testified at hearing regarding two additional occasions he spoke to Student about his conduct. Once, Student cut his hair in class on "crazy hair" day. Another time, he observed Student and several other children debating on the playground whether a "bad word" was really a "bad word." Mr. Hansen-Schmitt considered these events, and all of Student's conduct during first grade, to be within the realm of typical first grade conduct.

IEP TEAM MEETING OF OCTOBER 29, 2018

Castro Valley convened Student's annual IEP team meeting on October 29, 2018. The team included Mother, a Castro Valley administrator, Ms. Lindgren, Ms. Keller, Mr. Hansen-Schmitt, speech and language pathologist Maureen Martin, and occupational therapist Sherin Thomas.

Student was eligible for special education under the primary category of autism and the secondary category of speech or language impairment. Student exhibited social or pragmatic language difficulties that sometimes impacted his ability to participate in and maintain peer relationships.

The team described Student as a happy, bright, articulate child with a good imagination. The team discussed Mother's concerns. Mother again expressed her concern about a "war" game at school which she believed Student thought was real. Ms. Keller explained it was a game the children played at recess. Mother was concerned about Student's social interactions, especially during unstructured times. She was also concerned with his executive functioning, and that he was losing possessions. Ms. Keller commented Student was doing well with the classroom token reward system, and was about to earn a reward. Mother related Student's complaints about and avoidance of handwriting tasks, including his homework. Parent and Ms. Keller discussed that it was not the content, but rather Student was resistant to writing tasks.

Mother was concerned Student would not be able to maintain his current level of functioning at school, and may not be able to control his emotions at school. Ms. Keller commented Student's taking a pencil and holding it to his neck or stomach was only attention seeking, and he was not threatening or intending to hurt himself. Parent expressed concern about this conduct, and that she was not advised every time such things occurred. Mother told the team that Student had mental health services outside of school in Pittsburgh, and Parents were seeking local mental health services.

The team considered Student's present levels of performance. He passed his hearing and vision screening. In the area of academic and functional skills, Student was meeting grade-level standards in language arts and math. He was challenged in maintaining his focus during math, but could be redirected. Student had a separate table in the classroom he could go to when working so that he was closer to the teacher and had more freedom to move around in his chair without distracting his peers. He did not value organization, and preferred things to be messy. He needed prompts to keep an organized desk. He was capable of good penmanship but did not maintain it.

Ms. Martin discussed Student's progress in speech and language. As to communication development, Student enjoyed interacting in the speech room. Lunch bunch, a group of Student and his peers, had started meeting in the speech room every week under the supervision and guidance of Ms. Martin. They practiced greetings and conversations, and then agreed on the game they played during the session. Student was performing well asking and answering questions with his peers. Student actively contributed to therapist-facilitated conversations during lunch bunch and kept conversations and play going when the therapist faded herself out of the group. Student looked forward to lunch bunch. Ms. Keller commented that she received positive feedback about lunch bunch, and different peers attended it each session.

Student met his two annual speech goals. The first goal related to Student identifying the thoughts/feelings of story characters/peers during structured activities, and Student could do that with 90 to 100 percent accuracy. He consistently identified one or two reasons why someone might be feeling a specific way, and consistently described his own feelings. He was a good model for the others in the speech room. Student's second goal required him to ask questions during structured activities. Student consistently asked questions 90 to 100 percent of the time. He actively engaged with others during structured opportunities in the speech room, directing questions to peers and helping facilitate interaction during the group, and did not need a model. He spontaneously asked questions during every therapy session to gain information from his therapist and peers. He showed patience and understanding when he knew more than his peers in the speech room, and discreetly corrected them by only whispering to Ms. Martin. He had a very good sense of humor.

Mother had concerns about Student maintaining peer relationships and being positive when topics were not of his choosing or interest. She reported he could be

negative or dismissive, and did not want him to adopt that attitude in peer relationships. Ms. Martin and Ms. Keller acknowledged that Student became frustrated in class when other peers did not know things he did, but that they were working on this.

Regarding gross and fine motor development, the occupational therapist's consultation services were focused on fine motor skills and sensory breaks. Student did well with certain tasks that required fine motor skills, such as cutting and origami.

Student could attend to the task at hand in class. He folded reward tickets that were meant to be sent home into origami, but would pay attention to the lesson while he was folding and answer correctly when asked a question. The occupational therapist recommended Student be provided with alternate paper to fold as a sensory break rather than papers that were supposed to go home. Student's gross motor skills were not an area of suspected disability.

In the social emotional and behavioral area, Ms. Keller and Ms. Martin reported Student was adapting positively to first grade. He could be direct with his peers in the classroom and on the playground, which led to some disagreements, but the level was not outside the norm of typical first grade behavior. Student negatively commented to a peer an average of twice a week in the classroom. In the speech room, Student engaged with his peers in a positive manner. He liked to win when playing board games but he did not demonstrate negative behaviors when he lost.

The team reviewed the ratings Ms. Keller gave on the Behavior Assessment Scale administered as part of the Schilling assessment. Ms. Keller discussed her responses, and described Student's social-emotional functioning. Student did not often become angry or overly frustrated, but when he did, he might shove papers in his desk or "huff and puff." When angry, he mumbled, but not loudly. When frustrated with a

peer's answer in class, he would mumble, "I can't believe they don't know this." This occurred inconsistently, perhaps every other week. His frustration did not last long when redirected, but he could persevere. Mother noted that Student was very literal, and that was how he perceived things. Ms. Martin stated she would work on this area in lunch bunch. Student liked to share his knowledge with peers and adults, and did not always understand when others did not want to talk about his interests.

The team agreed to add general education counseling support, which was available to all students. The counseling team would communicate with the speech and language therapist and then a counselor would provide tier 1 and tier 2 supports, both of which were general education services. Tier 1 supports were general supports given to a class, tier 2 supports were for students who needed additional support, such as pull-out and small group counseling services. At Mother's request, the team developed a plan for when Student did something that could be perceived as self-harm.

Mother stated that Student's anger and frustration built up at school and was expressed at home. At home, Mother observed Student in extreme distress. Parent reported significant issues with mood regulation and verbal hostility. Student engaged in negative self-talk, aggressive behavior, and wanting to get others in trouble. Ms. Keller and school staff did not see these behaviors. Mother reported that Student took Lamictal for mood stabilization.

The program specialist asked about family therapy. Mother and the team discussed calming techniques that could be used at home. Student liked music, origami, and yoga.

Student had sensory issues related to smell and noise, and did not like to be in the multipurpose room for lunch. He was content to sit outside and eat his lunch, and other children would join him and eat with him.

In the vocational area, Student followed classroom and school rules. As to adaptive and daily living skills, Student independently took care of his personal needs.

The team decided Student's area of need was social skills, and developed an annual goal in pragmatic language to meet that need. Parent reported Student directed negative comments to siblings and adults when he found something boring or not to his liking. Teacher reported Student did this one to two times per week at school. The goal stated Student would direct positive comments toward peers during facilitated conversations given a daily verbal reminder of lunch bunch rules, and repair any negative comment given a verbal prompt, in 8 out of 10 occurrences as measured by charting.

The team considered special factors, and specifically decided Student's behavior did not impede his learning or that of others.

The team agreed upon several classroom accommodations. These included Student would also have access to a calm down box or calm down corner in the classroom, or both, to relieve anxiety or stress.

The IEP team determined that Student or staff needed specified supports, which included Student having access to identified items of interest as necessary to motivate and calm him during transitions or times of anxiety or stress, use of a school-wide safety plan in the event of elopement at school or during field trips; verbal and nonverbal reminders that Student maintain personal space and use positive and neutral

communication with peers and adults; regular communication via email or in person between home and school to inform Parents of any signs of anxiety, staying on-task, and social interactions that may have an impact at home; and access to and use of social stories to outline expected behaviors for Student as situations arose.

The IEP offered group language and speech services totaling 210 minutes per month, and 100 minutes per year of consultation occupational therapy services for sensory needs. It also offered 20 minutes per week of individual and group specialized academic instruction consultation services by the resource specialist for assistance in executive functioning skills in the area of organization of work and supplies, transitions from one activity to another, and working in small groups.

The October 29, 2018 IEP offered placement in Student's general education class. The team determined Student did not need extended school year services, as they did not foresee that Student would regress in academic or social skills over the summer. Mother reported she sent Student to therapeutic camps during the summer. Mother agreed it was no longer necessary for Student to have an applied behavior analysis aide assist with his transition from home to school. Mother asked about updates from the counseling team and the resource specialist, and was told that progress would be sent at report card time.

Mother took the IEP home to read. Parents did not consent to the October 2018 IEP.

Shortly after the IEP team meeting, Mr. Hansen-Schmitt requested Wendy Pham, the school counselor, to observe Student in the classroom to learn his counseling needs. In November 2018, Ms. Pham observed Student in the classroom for approximately

45 minutes to an hour. She observed he needed to focus, but she did not note any behavioral or social problems. Ms. Pham intended to discuss her classroom observation with Mr. Hansen-Schmitt after the Thanksgiving break.

Castro Valley's schools were closed for a week for Thanksgiving break from Monday, November 19, through Friday, November 23, 2018. On Tuesday, November 20, 2018, Student was admitted to the Oakland Children's Hospital emergency room on a three-day psychiatric hold for aggressive behavior at home. Student punched his younger sister multiple times, and harassed his other younger sister by chasing her, repeatedly pulling her pants down, and one time sticking his hand in her pants. He was discharged on Wednesday, November 21, 2018, because he no longer met criteria for a three-day psychiatric hold. Mother contemporaneously emailed school staff about this event and attached a copy of the hospital's Closing Crisis Progress Note. The Closing Crisis Progress Note referred Student for therapeutic behavioral services, and identified mental health and social service agencies. It recommended a variety of services, including educationally related mental health services and increased interventions and academic modifications through the IEP process. It also included a Safety Plan, which included a list of warning signs that Student was becoming upset, such as having a fight with a friend, feeling sick, someone being mean to him, and being chased. The Safety Plan also included a list of internal coping strategies, such as play with toys, color and draw, fold paper to make origami figures, watch favorite TV shows, listen to music and sing, and use the computer.

On Saturday, November 24, 2018, Student was again admitted to the emergency room at Oakland Children's and placed on a three-day psychiatric hold because he was considered a danger to his siblings. The hospitalization was due to Student punching

one of his younger sisters multiple times, and then he bit, hit, and kicked Parents. Child Protective Services investigated both incidents.

Mother advised Suzy Williams, Castro Valley's Director of Special Education, of this hospitalization by email on Monday, November 26, 2018, and also mentioned that Student had been reported to Child Protective Services three times in the past six months, due to his aggressive behaviors at home. Ms. Williams responded by email on November 27, 2018, expressed her concern, and wrote that she would contact the County's mental health department. Also on November 27, the hospital discharged Student, with a Closing Crisis Progress Note that included a Safety Plan and was similar to the previous Closing Crisis Progress Note that Mother received. Mother provided a copy of the Closing Crisis Safety Plan to Castro Valley. No witness from the hospital who wrote or could explain the Closing Crisis Progress Notes and Safety Plan was called to testify at hearing.

Ms. Pham, the school counselor, and Mr. Hansen-Schmitt discussed the Safety Plan. They developed two general education counseling goals, based on the Safety Plan, by which Student was to be able to identify feelings, and to identify coping skills, and decided Ms. Pham would meet with Student for 30 minutes, one time per week, for eight weeks, to work on the goals. The plan was shared with Mother. This constituted a tier 3 intervention, available to all general education students who needed it. Ms. Pham did not provide special education counseling services, but she provided tier 1, 2, and 3 general education interventions, and served about 15 children at each of her assigned schools with such interventions.

Ms. Pham provided the first session of counseling services to Student on November 29, 2018, the day after he returned to school from his hospitalization. The

last session was on January 23, 2019. At that time, Student had made progress on the goals, as he could identify his feelings and use the coping strategies. Student shared with Ms. Pham he did not need coping strategies at school because he had no problems at school, but at home he used a glitter bottle he and Ms. Pham had made for him to use as coping strategy. Beginning February 6, 2019, Ms. Pham transitioned Student to a lower level of counseling and saw Student every other week to check in with him and to review and practice his skills. Mother was notified of this transition by email on January 23, 2019. Those check-ins ended prematurely on February 27, 2019, as Student did not return to school by the time of the next check-in session.

On December 2, 2018, Student filed a complaint for due process with OAH. Also in December 2018, Castro Valley referred Student to Alameda County Behavioral Health Care Services for an educationally related mental health services assessment, which is the subject of, and more fully described in Issue 1b, below. Castro Valley contracted with County Mental Health to conduct its educationally related mental health assessments. Castro Valley included in the referral packet reports of classroom observations performed separately by counselor Ms. Pham, Mr. Hansen-Schmitt, resource specialist Kate Carson, and by Ms. Keller, on various dates in December 2018. All of these reports reflected that none of those individuals observed Student acting in a disruptive manner or exhibiting dysfunctional or negative behaviors in class.

The parties settled Student's due process complaint on January 22, 2019. As part of the settlement, Parents waived all educational claims prior to January 23, 2019. As a result, the time frame for the claims that are the subject of this matter run from January 23, 2019. Events prior to that date are discussed in this Decision because they reflect material facts regarding Student's background, and the parties' knowledge and conduct.

The settlement agreement provided, among other things, that Student's October 19, 2018 IEP would be amended such that Student would receive an additional 10 minutes per week of specialized academic instruction, and Parents would consent to the IEP. The settlement agreement also provided Student's triennial assessment and triennial IEP team meeting would be advanced; and the triennial assessment would occur during winter and spring 2019.

EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

Ms. Lindgren, the school psychologist, who at the time of hearing was named Ms. Copp, compiled the referral packet Castor Valley provided to County Mental Health in December 2018. It included Mother's consent for the referral, Student's most recent IEP, all psychological assessments within the last three years, counseling reports, report cards, attendance records, progress on IEP goals, behavior data, and reports of behavior observations.

In addition to the reports of school staff of their classroom observations, and a summary of Ms. Martin's observations at lunch bunch, the packet included forms completed by Ms. Pham and Ms. Martin that described the respective services they provided to Student. With respect to counseling services, Ms. Pham noted Student's social emotional needs in the school setting were age appropriate and goals were not needed to address any behaviors. She reported the goals for her services were to support the hospital discharge plan and behaviors in the home setting. With respect to language and social skills services, Ms. Martin reported that her services were meeting Student's needs at school. She commented Parent had concerns at home.

Also in December 2018, Ms. Lindgren spoke with some of Student's outside providers, with parental consent, out of concern that Student's behaviors at home were

so different from those he exhibited at school. The supervisor for Student's applied behavior analysis services told Ms. Lindgren that the family needed support at home and the supervisor was worried about what would occur over Christmas break.

Ms. Lindgren also contacted a physician at Children's Hospital who had treated Student during his hospitalization. The physician discussed the supports being instituted at home, and also expressed concern regarding what would occur at home over Christmas break. Ms. Lindgren learned from Ms. Ramsey, Student's Regional Center case manager, and from Ms. Young, Student's therapist, that the information they had about Student's behaviors and abilities at school was incorrect. Ms. Lindgren corrected their misconceptions.

Shana Yi, a licensed marriage and family therapist with Alameda County Behavioral Health Care Services, conducted the educational mental health services assessment, and prepared a report dated February 15, 2019, that was revised on February 25, 2019. The report was approved by the Chief of the Children's Specialized Services section of the County Behavioral Health Care Services.

Ms. Yi found that Student qualified for educational mental health services. The sources of information for the assessment included the school referral file, and interviews with Mother, Student, Mr. Hansen-Schmitt, school psychologist Louise Lindgren; Regional Center Case Manager Catherine Ramsey, and Student's therapist from Eden Children's Services, Vicki Young. Ms. Yi unsuccessfully attempted to contact Ms. Pham, Ms. Martin, Ms. Keller, and a representative from Child Protective Services.

The assessment report included a brief summary of Student's development and family history. The report included brief comments from each of the non-familial

interviewees. Ms. Lindgren acknowledged the discrepancy between Student's behavior at school and the behavior Mother saw at home. She told Ms. Yi that Student exhibited age-appropriate behavior, did well in math and had friends. Mr. Hansen-Schmitt reported no serious concerns about Student's behavior but commented on some signs of attention deficit hyperactivity disorder. Ms. Ramsey expressed that Parents may need more support and parent training as they had endured multiple adjustments in the past few years, including the move to and from Pittsburgh. Ms. Young indicated Student had trouble regulating his emotions and that he likely did better in structured environments.

Mother reported that Student was hospitalized on a three-day psychiatric hold over Thanksgiving break due to aggressive behavior. She indicated that Student's demeanor and behavior changed when he started taking Risperdal and Focalin about a month prior to the assessment. She reported that Student had been very aggressive at home since age three-and-a-half, including biting, hitting, and kicking others in the home. She described him as very rigid and explosive and that his behavior was worse during the past year-and-a-half. His explosive behavior inhibited her from taking Student to public places at times. She reported feeling frustrated with Castro Valley because they were not reporting anything similar to what she saw at home, and she requested more support. Ms. Yi interviewed Student, and her report included only his comments on his family relationships. There was no evidence as to whether Student talked to her about any other topic. Ms. Yi used an emotions chart so he could identify his feelings when his sisters hit or annoyed him, and he pointed to the "angry" face.

Ms. Yi noted Student's previous diagnoses of autistic spectrum disorder, attention deficit hyperactivity disorder, and disruptive mood disorder. She concluded that, while Student may exhibit some attentional issues at school, he had not exhibited the

aggressive, emotionally dysregulated types of behavior often directed towards his siblings. She recommended continued individual counseling as well as family therapy to address his lack of emotional management and coping skills in order to maximize his performance in school. She noted that a therapeutic behavior services referral had been recently submitted by Student's therapist and Ms. Yi believed this type of support in the home would best address the concerning behaviors reported by Student's family.

Ms. Yi's report did not state that she conducted any standardized assessments. Ms. Yi recommended IEP goals in two areas, to be modified by the IEP team as needed. In the social-emotional behavior area, Ms. Yi recommended Student be required to identify situations and conditions in which he experienced a given emotion with 90 percent frequency, and to use learned methods of coping skills to reduce stress in real situations with 90 percent frequency.

In the self-awareness and self-esteem area, she recommended Student state his feelings by using affective vocabulary and non-verbal cues with 90 percent frequency, and make positive statements about his qualities and accomplishments 80 percent of the time.

MARCH 5, 2019 IEP TEAM MEETING

Castro Valley convened an IEP team meeting on March 5, 2019, to discuss the educational mental health services assessment and whether it was necessary to amend the October 29, 2018 IEP. The IEP team included Castro Valley Elementary School Services Coordinator Yoko Ostreicher; Castro Valley staff Ms. Keller, Ms. Martin, Ms. Lopez, Ms. Lindgren, Ms. Pham, and Mr. Hansen-Schmitt; Mother; Regional Center Case Manager Ms. Ramsey; a representative from Fred Finch Youth and Family Services,

and County Behavioral Health Clinical Manager Linda Hunt, who presented the assessment. Castro Valley's resource specialist, behavior specialist, and occupational therapist were excused from the meeting.

Mother emailed the team with an outline she created of incidents from the past year, and a letter from Colette Warden, a psychiatric/mental health nurse practitioner from Eden Children's Services, Student's mental health provider. Mother's outline was not offered into evidence. Ms. Warden's letter described Student's diagnoses and symptoms, and informed the team that despite behavioral therapy and psychotropic treatment, Student continued to present with irritability and explosive behaviors at home that were a significant safety concern. She wrote, "He required constant monitoring while at home, as he has often endangered himself and his young siblings. Student has been hospitalized on two occasions due to aggressive and uncontrollable behaviors, including hitting, pinching, and biting his younger siblings and parents. Student struggled to empathize and showed little remorse for his behaviors." Ms. Warden noted Student received intensive outpatient behavioral services since a young age yet continued to struggle with understanding social reciprocity empathy, and the ability to manage frustrations/limit setting. Her letter detailed Student's needs at home, but did not mention any behaviors or events at school.

Ms. Hunt presented Ms. Yi's educational mental health services assessment to the IEP team. The information described Student as having many difficulties at home, and not the same type of difficulties at school. At school he had attention issues and impulsivity, but he was able to do his work, compliant, and interacted well with others. The March 5, 2019 IEP notes stated, "No difficulties at school, but conflicts with siblings at school." Based upon the assessment report and the context of this sentence, the last reference to school should read "home."

Ms. Yi's educational mental health services assessment report concluded that Student's attention and impulsivity issues at school could be addressed through individual school-based counseling. It also recommended therapeutic behavior services at home. Ms. Hunt would follow up to help arrange those services. The representative from Fred Finch social services agency strongly recommended therapeutic behavior services as well, and she also agreed to follow-up.

Mother's advocate mentioned that the assessor did not reference input from the speech and language pathologist and the teacher, and a home observation was not completed. Parent asserted that the educational mental health services assessment was not complete and requested an independent educational evaluation. Mother mentioned concerns in the Schilling assessment regarding the teacher's responses in the clinically significant range on the Behavior Assessment Scales. Mother had significant and serious concerns about Student's behavior at home.

Parent shared that things were happening at school that Student was not able to cope with, so he was holding his emotions inside and exploding at home. Parent believed Student needed to live somewhere outside of the home to learn skills to avoid hurting other people.

Ms. Keller shared that at the beginning of year Student was angrier and more hesitant to follow directions. As he became better acquainted with Ms. Keller and learned to trust her, things became better. She did not see the same child now that she saw at the beginning of the year. She described how well he performed and behaved in class and interacted with his peers. He used to misinterpret imaginative play as real, but he no longer mentioned at school that such play bothered him. He was meeting grade-level standards and making academic progress. The inattention and impulsive behaviors

Ms. Keller observed in the classroom did not impede Student's ability to learn or her ability to teach. She wanted Student to work more towards his potential, and to understand other children's perspectives and feelings.

Ms. Martin described Student's progress with lunch bunch. She felt he enjoyed being in lunch bunch, and his peers liked to be there with him. He and his peers communicated with each other, and during lunch bunch Student made introductions, worked on follow-up questions, and showed interest. They were working on reading body language, and having conversations about what they thought other people would want to know. Ms. Martin believed her concerns about Student did not affect his ability to participate at school.

Mr. Hansen-Schmitt shared two minor behavior referrals and a referral for organization. His last uh-oh was in November 2018, four months earlier.

Ms. Pham discussed Student's eight weeks of school counseling following the Safety Plan generated by Student's hospitalization in November 2018.

Mother commented that Student was able to identify coping strategies but she did not observe Student having the ability to use coping skills at home. She mentioned a recent incident at home that led to hitting, kicking, and being aggressive towards Parent. Parent called crisis response and they spoke to Student over the phone and calmed him down, but once off the phone Parent stated Student escalated again. Parent noted one of Student's sisters was impulsive and antagonized Student, and that Student could not acknowledge when he did something wrong.

The team was advised the regional center considered putting Student in a group home, but believed it would be detrimental and not appropriate for Student.

The team discussed the school-based counseling recommended by Ms. Yi. Two of the three goals Ms. Yi suggested, and part of the third goal, that Student identify when he experienced a given emotion, use learned coping skills, and express his feelings, were already addressed by Student's counseling plan with Ms. Pham, and he had met them. Ms. Keller reported Student used coping strategies in the classroom, such as using the class calm down box. Student liked to draw and created small paper figures as coping skills.

Mother was concerned with Students' executive functioning skills, such as planning and organizing. The resource specialist was providing services to address executive functioning such as focus and attention. Even with the attention and focus difficulties, Student was making gains and academic progress. Ms. Keller commented Student did not need prompting more frequently than other students.

Mother expressed she would like Ms. Yi's proposed counseling goal and recommended services added to Student's IEP. The team feared that changing Student's counselor from school counselor Ms. Pham to one of the special education counselors would create a harmful inconsistency. The school psychologist and counselor agreed to join efforts, such that the counselor would provide services, and the school psychologist would report progress.

School staff had not observed Student struggle to accept responsibility for his actions. The team noted Student had no incidents that warranted discipline at the after-school program he attended. This program was not related to Castro Valley. Student's behavior at school was different than what Parents saw at home.

The team agreed to draft a baseline for behavior in the educational setting to create a goal, since they did not believe the three goals recommended by Ms. Yi were

appropriate. Student had met two of the goals, and part of the third goal. As for the remainder of the third goal, which required Student to make positive statements about himself, neither Ms. Pham or Ms. Keller observed Student making negative statements about himself as of the time of the meeting, so they believed that the proposed goal was not appropriate.

Mother requested Student receive more than a consultation for the executive functioning goals. She also requested services to support Student in the development of coping skills, perspective-taking skills, advanced social skills, as well as push-in services to work on generalizing social skills. She also requested residential placement, and stated Student could not stay in the home. She wanted Student to learn skills and she needed to protect her other children.

Castro Valley's staff focused on placing Student in the least restrictive environment, that provided educational benefit socially and academically. They believed Student was gaining academic and social benefit in general education, and his behavior did not impede the learning of himself or others. Castro Valley staff were willing to create goals and services for the areas of need discussed, but they needed time to consider what goals and services would be appropriate. No changes were made to the October 29, 2018 IEP during this meeting, as the triennial IEP team meeting was scheduled for the following week.

STUDENT'S TRIENNIAL ASSESSMENT

Castro Valley assessed Student in preparation for his triennial IEP review. It performed Student's triennial assessment in February and March, 2019, and generated a report dated March 4, 2019. The members of the assessment team were school

psychologist Laura Lopez, Ms. Martin, and Kathryn Carson, the resource specialist. The three assessors collaborated on the assessment report.

Ms. Lopez received her bachelor's degree in psychology from San Diego State University in 2004, and her master's degree in school psychology from National University in November 2009. She received her pupil personnel services credential in school psychology in 2009, and expected to become a board certified behavior analyst in 2021. She has been a school psychologist since 2010, and employed as such by Castro Valley since August 2017.

The report described Student's home and health background based upon a questionnaire that Mother completed for the assessment. The report noted Student's diagnoses of disruptive mood dysregulation disorder, autism spectrum disorder, and attention deficit hyperactivity disorder—combined type, and medications.

The assessment report also summarized information obtained from Mother and school staff. Mother described Student's behavior at home as ranging from sweet, creative, and calm to irritable and explosive. His reaction to frustration and limits or demands was immediate and extreme. He demonstrated extreme aggression. He frequently misinterpreted social interactions and that led to paranoid thinking and anxiety. He expressed frustration and boredom with first-grade. Mother reported he would not do well with same-aged peers.

Ms. Keller described Student to the assessors as intelligent and a good reader. He quickly grasped new concepts in math and had good reasoning skills. He could complete class work quickly, but lacked neatness. His weaknesses were being inattentive, lacking empathy, not seeing the perspectives of others, and being hesitant

to share ideas or feelings. He got along with peers and had several friends. He liked chase games with imaginative settings.

Mr. Hansen-Schmitt described Student as highly intelligent. He was learning to see others' perspectives. He was easy to correct and accepted information easily. He seemed to make friends easily, and he regularly played with two close friends.

Ms. Pham described Student as bright, creative, self-motivated, friendly, and social. He needed to work on building positive coping skills and accessing them when frustrated or upset at home, as well as being able to identify feelings in the moment. At hearing, Ms. Pham noted that everyone should continue to work on such skills.

The site director for Student's after-school program reported Student was creative, imaginative, and friendly. His weaknesses included his temper, communication skills, one-sided conversations, and difficulty problem solving. He eloped and avoided talking about things. He required daily reminders, time-outs, and parent conferences. Student tended not to communicate problems or issues he had. He required daily reminders of appropriate behavior, he exhibited a temper, and seemed unaware of unkind acts towards him.

Ms. Lopez performed a records review, and listed Student's uh-ohs and other behavior incidents at school. Ms. Lopez observed Student in the classroom and on the playground on February 25, 26, and 27, 2019. She observed him across multiple settings, during math instruction, English language arts instruction, small group instruction, whole group instruction, and during recess. Additionally, she observed him on two other days, when she administered assessments to him. Student was able to express his needs and wants. He participated in the class activities during whole group and small group instruction. At times, he required redirection to the task because he

was talking to peers. In addition, she observed him leaving his seat without permission. He fidgeted and wiggled in his seat. He appeared to allot himself short breaks by requesting to use the restroom. He followed his teacher's instructions. However, at times he engaged in silly, off-task behavior. During recess he interacted appropriately with his peers and engaged in pretend play. In addition, he easily ran around the playground and accessed the play equipment and structures.

Ms. Lopez was a credentialed school psychologist qualified and trained to administer the assessment instruments used in the evaluation. The materials and procedures used for the assessment were selected and administered so as not to be racially, culturally, or sexually discriminatory. Testing and assessment materials and procedures were used for the purposes for which the assessments or measures were valid and reliable. The assessments were conducted in English, Student's primary language.

Student came willingly to the testing sessions. He attempted all the items presented to him and put forth good effort. He occasionally volunteered information and conversed. He required verbal reminders to continue to focus, and was wiggly and fidgeted with items on the table. At times, he lay the top half of his body on the table; at other times he stood by the table while responding to the test items. He sometimes hummed as he worked, or sang his answer choice. The assessor provided multiple breaks. When Student found a test difficult, he hesitated to say he did not know the answer. His motivation improved when told that he was not expected to know all of the answers. He demonstrated good problem-solving strategies, and he would self-correct. He asked clarifying questions, and related abstract designs to something familiar. During multiple choice items, he considered all of the answer choices. He took his time

responding to the items. He frequently asked whether his response was correct. At times, he responded to the items prior to listening to the instructions. During one testing session, Student came willingly to the testing room, but then began to cry. After the assessor persisted in finding out why he was crying, Student said that his class was going to draw and he wanted to be there to draw also. The assessor gave him the option to return to class, but Student said he wanted to continue testing. The assessor agreed to give him time to draw prior to returning to class.

Ms. Lopez summarized some of Student's previous assessment results. She assessed Student's cognitive abilities. His scores ranged from average to the upper extreme range.

On tests of Student's language processing and comprehension skills, his scores fell within the average to above average range and presented no concerns. Student's index score was in the below average range for visual memory, but Ms. Lopez asserted that the result should be interpreted with caution, as there were significant differences in Student's performance on the various subtests used to create the visual memory index. His index scores on other tests of memory and learning fell in the average range.

Ms. Lopez administered the Developmental Neuropsychological Assessment-II to Student, which was designed to assess neuropsychological development to obtain information regarding academic, social, and behavioral difficulties. Student scored in the average range on all of the subtests scored. His scores could not be calculated on a portion of the timed inhibition subtest, which measured attention and executive functioning, because Student stopped the examiner's stopwatch when Student made an error, despite the verbal instruction not to touch the stopwatch.

Ms. Lopez submitted the Vineland Adaptive Behavior Scales, 3rd Edition, for Mother and Ms. Keller to complete. Student's overall level of adaptive functioning was reflected by Mother's composite ratings in the low range, and by Ms. Keller's ratings in the moderately low range. Overall, Mother's ratings were lower than Ms. Keller's ratings. Ms. Lopez determined that Student demonstrated better communication and daily living skills at school. However, both Mother and Ms. Keller's ratings reflected concerns regarding Student's social skills.

Ms. Lopez administered the rating scales of the Behavior Assessment for Children, Third Edition, to Mother and Ms. Keller. The validity indicators of their ratings were in the acceptable range. The Behavior Assessment measured social emotional adjustment. A score in the clinically significant range suggested a high level of maladjustment. Mother rated Student in the clinically significant range in the areas of hyperactivity, aggression, conduct problems, adaptability, and activities of daily living. Mother's composite ratings were in the clinically significant range in externalizing problems, the behavioral symptoms index, and adaptive skills. Ms. Keller rated Student in the clinically significant range in the areas of depression, somatization, atypicality, withdrawal, adaptability and social skills. Ms. Keller's composite ratings in internalizing problems and the behavioral symptoms index fell in the clinically significant range.

Ms. Lopez administered to Student the self-report interview of the Behavior Assessment for Children. Student's answers placed him in the average range.

Ms. Lopez administered the Conners, Third Edition, rating scales to Mother and Ms. Keller. The Conners is a focused assessment of Attention Deficit Hyperactivity Disorder and its most common co-morbid problems and disorders in children. Mother's ratings fell in the very elevated range in the areas of inattention,

hyperactivity/impulsivity, executive functioning, defiance/aggression, and peer relations. Ms. Keller's ratings were only in the very elevated range in the area of peer relations. Their ratings were within normal limits of validity.

Mother and Ms. Keller completed the ratings scales on the Behavior Rating Inventory of Executive Function, Second Edition. Mother's ratings placed Student in the clinically elevated range for behavior regulation, emotion regulation, and executive functioning. None of Ms. Keller's index or composite ratings fell in the clinically elevated range. Both Mother's and Ms. Keller's ratings were within the acceptable range of validity.

Mother and Ms. Keller also completed the Autism Spectrum Rating Scales, designed to measure behaviors of children reported by parents or teachers that are associated with autism spectrum disorder. Both Mother's and Ms. Keller's ratings were consistent with Student's diagnosis of autism spectrum disorder. Ms. Lopez summarized Mother's and Ms. Keller's responses, which reflected Ms. Keller's observations that Student had poor social skills and difficulty with pragmatics, and several other negative characteristics related to Student's disabilities as a student with autism.

Finally, Mother and Ms. Keller completed the rating scales of the Emotional Disturbance Decision Tree, which is designed to assist in the identification of children who qualify for the special education category of emotional disturbance. The total score of Parent's ratings fell into the very high clinical classification and Ms. Keller's ratings was classified as moderate clinical. The overall results suggested that Student was demonstrating significant behavioral concerns in his home environment. However, at school Student demonstrated fewer behavioral concerns. Ms. Lopez postulated that the difference might be due to the structure and routines the school setting provided.

The cluster scores on the emotional disturbance scales were screening devices as to whether Student demonstrated characteristics of attention deficit hyperactivity disorder, social maladjustment, and possible psychosis/schizophrenia, and the level of severity of problem behaviors. Mother's ratings on the clusters were high clinical for attention deficit hyperactivity disorder, and moderate clinical for social maladjustment and possible psychosis. Ms. Lopez's report suggested Mother share her concerns in the latter area with Student's psychiatrist and therapist. Mother's level of severity rating was in the moderate severity range in other areas. Ms. Keller's scores on these scales were mild at risk for attention deficit hyperactivity and possible psychosis, and normal for social maladjustment.

Ms. Keller also rated Student on the educational impact cluster, which focused on the school setting, and incorporated items that addressed work completion, compliance with teacher direction/instruction, quality of work, behavior-related absences, the capacity for working without redirection, behavior-related suspensions, counseling, and behavior intervention plans, and whether these interventions were effective. Ms. Keller's ratings in this area fell in the mild impact range. A mild impact score was more likely to reflect problems that needed only mild support.

At hearing, Ms. Lopez affirmed that Ms. Keller's elevated ratings on some of the areas assessed did not necessarily mean Student needed a particular service or a particular placement. Rather Ms. Lopez was required to take into account all of the information she gathered during the assessment.

Ms. Martin conducted the speech and language portion of the triennial assessment, and her findings were included in the triennial assessment report.

Ms. Martin is a licensed California speech and language pathologist, who has been employed as a speech and language pathologist by Castro Valley since 1988. She received her bachelor's and master's degrees in speech and language pathology from California State University, Hayward. She received a Certificate of Clinical Competence from the American Speech Language Hearing Association.

Ms. Martin reported Student's school-based therapy focused on the area of pragmatic language. At the beginning of the 2018-2019 school year, she served Student in a small group, and Ms. Martin went to the playground during lunch recess twice a week to help facilitate Student's social interactions and help Student repair any communication breakdowns. After three weeks, Ms. Martin noticed that Student was successfully navigating peer interactions on the playground and there were no opportunities for her to model. Therefore, the services delivery mode changed to a lunch bunch group, which excited Student. At lunch bunch, Student was accompanied by two peers to the speech room twice a week during lunch to eat and practice conversational skills along with game etiquette, negotiating, and taking turns. Initially, Student chose the peers, but later, after a peer became resentful that Student had not chosen him for lunch bunch, Ms. Keller randomly chose the peers. Activities included making formal introductions, discussing the plan as outlined by the therapist, and using conversation cube starters. Student and his peers enjoyed lunch bunch and Student conversed and participated well.

Ms. Martin also described Student's smell sensitivity and his dislike of sitting in the lunchroom, which Student solved by choosing to eat lunch on a bench just outside the door. Other students joined him there. When other children ate foods that triggered his scent sensitivities during lunch bunch, he handled it politely. Sometimes it

sparked a conversation about smells that the other children disliked too. Overall, Student was successful using his social skills on the playground and in small groups.

Ms. Martin observed Student enjoyed the testing. He typically chose drawing as his break activity, and was cooperative through several testing sessions. Ms. Martin administered an in-depth test of Student's oral language skills. His subtest scores ranged from average to exceptional, and his index scores were all in the above average range. Student's receptive and expressive language skills across a wide variety of tasks were an area of considerable strength.

Ms. Martin administered a test designed to examine six critical-thinking and problem solving skills. It measures a student's ability to use language to express his or her thoughts and ideas about the completion of each situation. Student's index score on these skills placed him in the average range. Student's ability to read a situation based on visual cues and use that information to infer, predict, negate, and determine cause and outcome was at a level commensurate with his peers.

Finally, Ms. Martin had Ms. Keller complete a rating scale to help identify pragmatic language disabilities. Ms. Keller's rating placed Student's overall pragmatic abilities in the average range. She rated Student as slightly below average only in the area of personal interaction. Ms. Keller reported that Student had below average skills compared to his peers with regard to expressing feelings of empathy and sorrow, complimenting self or others, expressing affection both nonverbally and verbally, and using appropriate nonverbal gestures to communicate. Ms. Martin noted that Ms. Keller's perspective was based on Student's performance in a large group, and was also an area of concern expressed by Mother. Ms. Martin reported that she observed Student in smaller groups showing affection, appropriately engaging in nonverbal games, and comfortable enough to dance when he was off to the side.

Ms. Martin concluded that Student did not meet the eligibility criteria for speech and language impairment. However, given his autism eligibility and his challenges in expressing empathy, nonverbal communication skills, and personal social skills, she recommended that he continue to receive twice weekly services in this area.

Kathryn Carson, the resource specialist, performed the academic assessment, and the results were included in the triennial assessment report. She administered the Woodcock-Johnson IV. Student's scores ranged from high average in basic reading and reading comprehension to average in all other areas of reading, as well as math, and written expression.

The report summarized the assessment results. The assessors noted Student performed poorly on a memory subtest on the Wide Range Assessment because he had difficulty attending to the visual stimulus card, despite prompting, and he also had difficulty delaying his response. Ms. Lopez attributed his poor performance to his difficulty sustaining his attention for the required amount of time, and not to a visual processing disorder or deficit. Further, although Student's performance on the Attention/Concentration Index on the Wide Range Assessment was classified as average, Ms. Lopez noted contrary data. Mother's and Ms. Keller's ratings on several measures, as well as observations, reflected that Student demonstrated behaviors consistent with attention deficit hyperactivity disorder and trouble with executive functioning skills, particularly when he had to inhibit a response and self-monitor his behavior. This difficulty was also demonstrated on the Neuropsychological Assessment, when Student touched Ms. Lopez' stopwatch and required her to discontinue the test.

The assessors found Student did not appear to meet the eligibility criteria for specific learning disability. They also found that Student did not meet the eligibility

criteria for emotional disturbance, and noted Student demonstrated very different behaviors at home than at school. The assessors concluded although Student demonstrated some inappropriate, impulsive behaviors at school, they were not demonstrated to a marked degree and did not appear to adversely affect Student's educational performance.

The assessors determined that Student did not meet eligibility standards for speech or language impairment.

The assessors found that Student appeared to meet the eligibility category under autism. The team also determined Student appeared to meet eligibility standards for other health impairment, as he demonstrated limited vitality or alertness due to the behavioral characteristics associated with his attention deficit hyperactivity disorder, which adversely affected Student's educational performance.

The assessors concluded the report with a variety of recommendations. They suggested that goals be drafted in the areas of social skills and executive functioning skills. Student should continue to be provided with a work space away from distractions. He might benefit from checklists and direct instruction on how to monitor his own behavior, and continue to have access to the calm down box. His teachers might allow Student to take on leadership tasks, which would allow him to take movement breaks and further develop his social skills and leadership skills. Student should be allowed to take short breaks as needed, and be given preferential seating. He should continue to participate in the lunch bunch group. He should be provided a box with activities to access when he completed his work quickly.

The triennial assessment also included an assessment to determine whether Student needed a one-to-one behavior aide at school. Elise Brown performed this assessment during February and March 2019, and wrote a report dated March 7, 2019. Ms. Brown received her bachelor's degree in psychology from the University of Missouri, Kansas City, in 2008, and her master's degree in applied behavior analysis from the Chicago School of Professional Psychology in 2014. From 2017 to the present she has been employed as a behavior specialist with Castro Valley. She is a board certified behavior analyst. She had training from the Crisis Prevention Institute, and was a Crisis Prevention Institute trainer for Castro Valley.

Ms. Brown conducted a series of 15-minute observations of Student over the course of nine days, at various times of day, during structured and unstructured times. She sent input forms requesting information from Ms. Keller, Ms. Martin, and Mother. She also reviewed an applied behavior analysis assessment, goals, and behavior plan developed by Student's in-home behavior support provider.

Ms. Martin reported Student was meeting grade-level standards in the general education classroom, and described the speech services and resource support he received. Ms. Keller described the class schedule posted for both daily and weekly activities, which Student independently followed. He enjoyed going to lunch bunch. Student performed at or above grade-level and had potential to do much more. He did well doing his work, turning it in, and then starting another task with little or no prompting. Student currently did not need any accommodations or modifications to complete classwork or participate in lessons. At the beginning of the year, he had a few behavioral issues, such as arguing with peers, and displaying frustration when others did not share his views. He became upset if others did not know as much as he did.

Student had not displayed any challenging behavioral issues since the first part of the year, over six months ago. At the time of the assessment, Ms. Keller reported Student was able to appropriately share his thoughts and had not displayed any concerning behaviors, although he still had difficulty appreciating the viewpoints of others. When explaining and processing conflict or social situations, he needed thoughts to be broken down into small parts so he could process them. He displayed appropriate interactions with peers. At the beginning of the year he was very shy and played by himself more, but at the time of the assessment he interacted and played with others. He smiled much more and displayed trust and happiness with peers and staff. Academically, he was very disorganized at the beginning of the year and could not always find his work so he could turn it in. His desk was still messy at times, but he knew how to find everything. He turned in work on time and stayed engaged in lessons and activities. He moved himself to alternative seating if necessary to help him concentrate. He still needed to work on perspective taking and organization of his work space.

Mother reported the medication Student took had significant side effects. She reported that Student used a significant amount of energy each day at school trying to hide things that may be challenging to him because he did not want to ask for help. Mother reported that due to this occurring at school, Student displayed higher levels of aggression and challenging behaviors at home. Student struggled with emotional regulation and had a low tolerance for feelings of frustration. He also struggled with attention/focus and impulse control. Student would be very rigid with his thinking and could easily get frustrated if things did not go the way he anticipated them going. Mother reported that at times he became delusional and paranoid.

Mother also reported that since starting applied behavior analysis therapy two-and-one-half years ago, Student had shown some growth in social/emotional behavior. Academically, he improved his willingness to do work he did not like, but still struggled in completing homework without a severe meltdown. She noted he was able to complete work in the classroom. Student improved his ability to have reciprocal conversations, and improved the ability to accept the viewpoints of others that differed from his own. Mother wanted Student to continue to work and grow in a variety of areas, including the areas of executive functioning and social emotional.

During Ms. Brown's observations, Student followed the class schedule and was aware of and flexible with changes. He navigated the classroom and school grounds. Student followed group instructions the first time. He raised his hand and participated in class activities. He raised his hand to ask for teacher assistance. He moved himself to alternative seating when necessary to increase his attentiveness. He appropriately interacted with peers in social situations across environments at school. He turned in completed work and would begin another task that was appropriate and not disruptive. She observed no challenging or concerning behaviors. He was very respectful to those around him and independently engaged in social activities where he displayed age-appropriate behavior.

Ms. Brown acknowledged Mother's report that Student displayed challenging behavior at home. However, Student was currently succeeding in the general education setting and required minimal individual prompts to complete work or stay on task. She observed no challenging behaviors. She concluded that Student did not need to receive additional one-to-one support from a paraeducator during the school day. Ms. Brown's recommendations included continuing monitoring of Student's behavior within the

school setting, considering the use of an individual daily schedule that Student could learn to fill out himself, and that the IEP team consult with counseling team members to develop visual supports to help with social emotional processing that may be a trigger to challenging behavior.

As part of the triennial assessment, Christina Davis, a Castro Valley occupational therapist, conducted an occupation therapy evaluation of Student.

At the time of this assessment, Ms. Thomas, Student's occupational therapist, was providing 100 minutes of occupational therapy consultation to address his sensory needs. Ms. Thomas reported to Ms. Davis there were some sensory concerns, but that Student used strategies, such as eating lunch outside the cafeteria and folding origami in class, to manage those needs. In the area of sensory processing, Mother was concerned about Student's ability to know what was going on with his body. He liked origami and used it as a tool, but she was not sure he knew when to use it for it to be most effective. Ms. Keller reported that Student's sensory processing challenges did not appear to affect his ability to participate in the classroom. His needs required a certain level of understanding to meet, but Student was not the only Student that required support. As part of her assessment, Ms. Davis observed Student's performance in class. She did not observe Student engage in any maladaptive behaviors, and he had positive peer interactions.

Ms. Davis concluded Student did not demonstrate a need for direct occupational therapy. She recommended Student have access to breaks when overwhelmed by sensory input; an alternative setting for lunch if the lunchroom were too loud; the option to use headphones or sit near the back if assemblies were too loud; access to alternative

seating in the classroom with reduced sensory input, monitoring of pain in his thumb, and offering pencil grip if Student were interested.

STUDENT'S HOSPITALIZATION

On the evening of March 6, 2019, the day following the IEP team meeting to discuss the educational mental health services assessment, Mother took Student to the Children's Hospital emergency room. Student was out of control, and repeatedly punched one of his younger sisters in the chest and stomach. The emergency room held Student overnight, and discharged him at around noon on March 7, 2019. Mother then brought him to the Kaiser Oakland hospital emergency room late in the afternoon of March 7, 2019, because he was explosive and aggressive, despite the presence of several at-home therapists and service providers. Kaiser placed him on a three-day psychiatric hold, and sought in-patient psychiatric treatment for him. On the next day, March 8, 2019, Kaiser transferred Student to the children's unit of a psychiatric facility in Vallejo. Mother advised Mr. Hansen-Schmitt of all of these events by email, as they occurred. The Vallejo facility was not within the district boundaries of Castro Valley. Nevertheless, while Student was in the Vallejo facility, Castro Valley offered to provide Student some educational materials. Parents declined the offer, and there was no evidence Parents made any effort to obtain educational services for Student from the responsible educational agency in Vallejo.

TRIENNIAL IEP TEAM MEETINGS

Student's triennial IEP team meeting occurred over the course of three separate dates: March 12, 2019, March 25, 2019, and May 15, 2019. The IEP team members at the March 12, 2019 meeting were Mother, Student's Regional Center case manager, Ms. Davis, Ms. Brown, Mr. Hansen-Schmitt; Ms. Keller, Ms. Martin, Ms. Carson, Ms. Lopez,

and marriage and family therapist Angela Hicks from the Fred Finch social services agency.

The completed IEP document reflected Student's primary eligibility remained autism, but the team changed his secondary eligibility to other health impairment, based upon the triennial assessment results and his attention deficit hyperactivity disorder. Student exhibited social pragmatic difficulties which might impact his ability to participate in and maintain peer relationships. Student also exhibited low vitality or alertness due to behavioral characteristics of attention deficit hyperactivity disorder.

Parent reported that at home, Student was more flexible, and went to school without displaying behavioral issues. His ability to converse improved, and he was more tolerant when his opinion differed from that of others. Mother continued to be concerned about emotional regulation, impulse control perspective taking, rigidity, and moments of delusion and paranoia.

Student's strengths included that he was a bright and articulate child, who enjoyed Pokémon, drawing, and learning in-depth facts about topics of interest. He was a creative problem solver, and very loyal. He enjoyed school, had friends, and completed classroom work in a timely manner.

At the March 12, 2019 team meeting, Mother expressed concern about Student's low tolerance at home for feelings of frustration, as well as his difficulties with maintaining attention and focus. He also had impulse control issues. Student still struggled with completing homework and she reported that this continued to cause meltdowns. Mother expressed concerns regarding his placement, and that he possibly needed a residential placement. She also expressed concern for the safety of others. Mother advised that Vallejo and Kaiser were looking for placements for Student to be

discharged, because they did not feel Student should be discharged to home at this time. Mother reported she met with a therapist from the Fred Finch social services agency the day before the IEP team meeting to assist with decisions about next steps after hospitalization. Mother was considering residential placements.

At the March 12, 2019 IEP team meeting, the team reviewed the triennial assessment reports, addressed concerns Mother raised, and recorded information Mother provided. As to the psychoeducational assessment report, which Castro Valley had provided Mother prior to the meeting, Mother noted that there were some interactions or incidents that occurred at school in the past which continued to upset Student. During the discussion of the Behavior Assessment System rating scales, the team noted that more externalizing behaviors were seen at home, and more internalizing behaviors seen at school. Mother pointed out that what happened at school was directly related to the behavior that was seen at home. Mother saw contradictions in the results of the rating scales, questioned the impact of the rating scales on the decisions regarding Student's eligibility and services, and felt there were some ratings that showed Student had more issues than were being reported. Mother said Student could often be out of control at home. She also said Student was uncomfortable sharing what happened at school. The team felt they were taking into consideration the characteristics of autism and other health impaired along with what was seen and reported at home and at school. Mother felt since the ratings showed Student was internalizing problems at school and he was acting out at home, the team should address the internalizing issues better.

The team was unable to complete the IEP at the meeting on March 12, 2019. Castro Valley convened the second session of the IEP team meeting on March 25, 2019. The IEP team included Mother, Mr. Hansen-Schmitt Ms. Hicks, Ms. Martin, Ms. Carson,

Ms. Lopez, Ms. Ostreicher, Ms. Keller, and Regional Center supervisor Kim Limato. Counsel for Student and counsel for Castro Valley also attended the meeting. Mother consented in writing to excuse the occupational therapist and behavior specialist.

Mother shared that Student was still hospitalized in Vallejo. The hospital environment was calming, and he was not having behavior problems. Student liked the structure there, and there were many preferred activities. She reported that he was not doing schoolwork.

Student's counsel reported that this was a family emergency. She explained Student was about to be discharged, however, he could not return home and the family did not have a placement for him. She advised the family was consulting with many agencies to assist, and counsel also requested the school district to recommend and fund or contribute to funding a residential placement. A discussion ensued regarding how the meeting should proceed. Castro Valley's counsel asserted the need to follow the IEP process before discussing placement.

Therefore, Mother and Student's attorney announced they would leave, stating they did not have time to meet then because of the urgency to find Student a placement. Castro Valley's counsel explained that Castro Valley would proceed with the IEP team meeting in their absence. Before Mother left, Castro Valley provided Mother with the amended psychoeducational report with updates she requested, and a draft IEP that the team would review in her absence. Student's counsel requested that the IEP be mailed to Parents. When Mother and Student's counsel left, the social service agency representatives also left the meeting.

The remaining team members audio-recorded the remainder of the IEP team meeting to share the recording with Parents. They also decided to invite Parents back to meet with the team for further discussion and input.

The team discussed Student's strengths. Student did well when his schedule was consistent. He always turned in work on time and then independently moved on to other appropriate activities. Ms. Martin shared that Student had a lot of friends and liked school. The team recalled Mother's concerns, such as Student's behaviors at home, impulse control issues, and his struggles to complete homework. The team noted that she was seeking a residential placement for Student and was concerned with the safety of Student's siblings.

The team summarized Student's present levels. In the academic functional skills area, Student met grade-level standards in English language arts and math. His current report card showed he had progressed.

In the communication area, Ms. Martin, who worked with Student since the family moved from Pittsburgh, reported Student came to lunch bunch with some of his peers and really enjoyed it. In previous assessment interviews, Ms. Martin noted that Mother reported he had difficulty with non-verbal communication. Ms. Martin said that in the past Student sometimes talked only about preferred topics, but his recent interest in Pokémon was a great catalyst for social opportunities. The occupational therapist had earlier been excused from the meeting, but her information was shared. The team discussed adding an accommodation that Student use headphones for assemblies, based on the occupational therapist's recommendation.

In the social emotional area, Ms. Keller and Ms. Martin reported Student made great growth during the school year. He was well-liked by his peers and school staff.

Student used to get upset when others did not know what he knew, and he wanted to constantly share his views, to the point of becoming argumentative. He was now able to appropriately share his thoughts with teachers and peers. He had more confidence, interacted appropriately in class, and appeared happy.

The team determined Student's areas of need were social skills-pragmatic language; executive functioning, specifically planning and using organization tools to independently complete work; and social-emotional. Ms. Carson noted Student was messy, but always able to find his supplies. Ms. Keller noted Student made a lot of progress in the area of completing his work, but this was still a challenge for him.

Student's behavior did not impede his learning or that of others. Ms. Keller expressed Student was not disruptive in the general education environment. The team discussed and drafted new goals in the areas of executive functioning and pragmatic language to address those areas of need. The team expected the goals would likely be revised at the next session of the IEP when Mother had reviewed them.

The team reviewed FAPE offer and the continuum of placements. The team considered placements on the continuum of placement options, from general education to general education with related services; therapeutic counseling-enriched small day class; nonpublic school; and residential placement. Student was benefitting from the services he currently received, and the current general education placement benefitted him academically and socially. Ms. Martin felt that the general education setting with speech and language and resource specialist support to address organizational skills would best meet his needs in the least restrictive environment. Ms. Keller told the team that she agreed based on Student's progress in academics, socially, organization, work completion, and socializing with other peers in a general education setting. Ms. Carson,

the resource specialist, told the team she also agreed. She reported that she worked with Student on organization, and Student made progress. He seemed happy and engaged with his peers both inside the classroom and at recess. He sat with a friend at lunch outside the cafeteria and they had a nice relationship. He always greeted other students and appropriately interacted with them. She observed that his performance was average or above-average, and she recommended pull-out specialized academic instruction to build specific skills in executive functioning. Ms. Martin reported that Student had friends and engaged appropriately for his age. She agreed pull-out sessions were appropriate because there were not as many teachable moments in a busy general education classroom. The team noted that Student was more by himself at the beginning of the year, but now Student became upset when he did not arrive at school early enough to socialize with his peers before school, and he always engaged with his peers in the classroom and at recess. His behaviors or need for prompts caused no distractions in the classroom. The team members present felt that these factors favored continued placement in the general education setting.

Ms. Carson discussed the potential harmful effects of more restrictive settings, such as not having appropriate models, or access to typical peers, as children cannot learn skills in isolation. She noted that often students learn better from peers than from a teacher. She also noted that Student could be harmed by a more restrictive setting because students can learn more negative behaviors in a more restrictive setting, such as a special day class. The team believed Student was successful in the general education class, and would be harmed by placement in a more restrictive setting.

The team discussed accommodations and modifications, which included use of a graphic organizer for organizing thoughts and access to a calm down box or calm down

corner or special seating in the classroom to relieve anxiety or stress, as needed, to be determined or scheduled by the school psychologist and classroom teacher. Additionally, Student should have access to a break area or headphones during assembly or school-wide events, and access to an alternate area for lunch, to accommodate his sensory needs.

The team also discussed and agreed upon additional supports. Student would have access to identified areas of interest as necessary to motivate and calm him during transitions or times of anxiety or stress; verbal or nonverbal reminders to be given to Student to maintain personal space; and use of positive and neutral communication with peers and adults. Additionally, there was to be regular communication between home and school to inform parents of any signs of anxiety, staying on task, and social interactions that may have an impact at home. Student was also to have access to and use of social stories to outline expected behaviors as situations arose.

The team discussed and concluded that the IEP would offer 100 minutes per year of occupational therapy consultation services for sensory needs, and 30 minutes per week of specialized academic instruction, to consist of group pull-out services to develop skills to timely and accurately complete his work. When mastered independently, the IEP would be amended to convert this services to a push-in model. Student would receive 25 minutes for 7 times monthly of pull-out group speech and language services, in the form of lunch bunch, as part of lunch recess.

The team discussed extended school year services, and decided Student did not need them. None of Castro Valley's team members had observed any significant regressions over school breaks. The draft IEP placed Student in the general education setting at Independent, where he would be in the regular class 94 percent of the time,

and the remaining 6 percent of the time he would receive resource services and speech and language services. The meeting ended, but the remaining team members agreed that the IEP would not be finalized until a meeting to include Mother could be arranged.

Castro Valley contacted Parents to schedule another meeting. Staff sent Parent the audio recording of the March 25, 2019 team meeting session and the IEP documents reviewed at the meeting.

Castro Valley convened the third and final session of the triennial IEP team meeting on May 15, 2019. The team included Mother, her educational specialist, Ms. Martin, Ms. Lindgren, Ms. Carson, Ms. Ostreicher, Ms. Davis, Mr. Hansen-Schmitt, Ms. Keller, counsel for Castro Valley, Ms. Davis, and counsel for Student.

At the time of this meeting, Student had been at the psychiatric facility in Vallejo for over nine weeks. The team learned Student had no educational program at the Vallejo facility up to the time of this meeting. Student's counsel believed Castro Valley needed to offer a residential placement.

The team reviewed Student's strengths, Mother's concerns, and Student's present levels again.

Mother again reported behavioral issues at home, and that homework resulted in meltdowns. Student told Mother he had a hard time at school and it makes him anxious and upset. Mother stated that peer interactions that Student witnessed make him very anxious. He was not always willing to share, but he did talk about some incidents. Student reported to Mother he did not want anyone to know his difficulties. Mother reported his reactions at home were extreme. The educational consultant commented that when she interviewed Student, he stated he was a danger to others.

Mother again expressed her concern regarding the discrepancy between what staff saw at school and what occurred at home. Mother saw Student react violently when he had to do homework. She believed his behavior escalated when faced with something difficult. Ms. Keller mentioned that the homework was review and should not be a problem. The team agreed to add no homework as an accommodation. At hearing, the evidence showed that homework in Student's first grade class was merely to practice skills which Student already possessed. Homework performance and completion did not impact grades in Ms. Keller's class.

The team reviewed the proposed goals. For Student to receive educational benefit, the school team members developed goals to address Student's needs in the areas of social skills/pragmatic language; executive functioning, and social emotional.

The executive functioning goal addressed Student's tendency to present his work to the teacher without editing it or checking it for completion. The goal provided that, when given an assignment with multiple steps and a work completion checklist, Student would independently, with no more than one prompt, check his work for accuracy and completion for three out of four assignments.

One of two pragmatic language goals was based upon Student rating a 1, on a rating scale of 1 to 9, in the area of respectful language. He also did not give compliments in lunch bunch. The goal required Student to give a compliment to a teacher or peer at least once per session during structured activities, with 80% of opportunity in four out of five sessions.

The second pragmatic language goal was based upon Student not understanding when others were frustrated with his behavior. He also was not observed asking about personal information during lunch bunch unless it was modeled for him. The goal

required Student to independently identify something he knew about an area of interest or personal information about a peer in his group, a family member, or a teacher at least once during his session, and make a good guess as to why they felt that way, with 80 percent of opportunity in 4 out of 5 sessions.

Teacher was asked why Student received such a low score in the area of respectful language, and she responded he would blurt out a comment without thinking about it, such as "Why don't you know it?" With respect to the conversational turn-taking goal, Student would be dismissive of a topic, for example, a Princess topic.

The social emotional goal was based on the Student's behavior record at school, which the baseline noted included 11 uh ohs. In fact, Student's behavior records showed six uh-ohs, including such conduct as having an unorganized desk, saying "bad" words, being disrespectful, "fooling around," and jumping on the custodian's cart when going to the bathroom, and five other behaviors recorded on Ms. Keller's log. On a few additional occasions, Student engaged in behaviors that did not break school rules but warranted an email home and a discussion with Ms. Keller, and perhaps other school staff, such as the school psychologist or Mr. Hansen-Schmitt. None of these incidents occurred after November 15, 2018, and none of them required any discipline or suspension. The goal required Student to implement an appropriate coping strategy rather than engaging in an unexpected behavior with no more than one unexpected behavior per month.

Student's counsel believed Castro Valley should offer a residential placement. Mother felt she made it clear for over a year that Student was violent at home.

The team reviewed and discussed the continuum of placement options again. Based on information provided by Mother and her educational consultant, who assisted

Student's family in locating a residential placement at Intermountain, the team discussed Intermountain in detail, including its use of restraints, the medical or other need for the placement, and possible alternative placements by other agencies. Mother reported that Student stated that he "will hurt people when he comes home." Mr. Hansen-Schmitt reported that defusing problematic behaviors through conversation with Student was successful in getting Student back to class or on task. Castro Valley's team members expressed Student was happy and successfully in general education. They expressed their concerns that Student's education and social skills would be stunted at a placement like Intermountain.

The IEP offered placement in general education at Independent. The services offered were consultative occupational therapy for 100 minutes annually, to address Students' sensory needs; speech and language services in a group, for 175 minutes monthly, as lunch bunch; specialized academic instruction for 30 minutes weekly to focus on mastering work completion checklists to finish work independently; and 60 minutes per month of individual counseling, provided in four 15-minute sessions per month, to support Student's social emotional goal.

The team reviewed accommodations and modifications. The accommodations and supports were the same as those discussed at the March 25, 2019 meeting session, and the team added the modification of no homework.

At some point over the three IEP team meetings, Ms. Martin reported that as of March 11, 2019, Student had met his previous pragmatic language goal to direct positive comments toward peers during facilitated conversations given a daily verbal reminder of lunch bunch rules, and repair any negative comment given a verbal prompt, in 8 out of 10 occurrences, as measured by charting. Ms. Martin wrote on the progress

report that Student met the goal as he had not demonstrated negative comments directed at peers during his time in lunch bunch. His teacher reported to her that Student made negative comments less than once per week, and followed her direction to amend his comments to peers. She also wrote that Student was showing more flexibility and coping appropriately when others were not interested in the depth of his knowledge of certain topics.

Mother and Student's attorney requested another copy of the prior goals and progress reports, as well as any data to support the progress reports.

In his closing brief, Student contended that Castro Valley continually and intentionally withheld and misrepresented necessary information from Mother about Student's functioning at school, as alleged in Issue 1a, by not giving her requested data and by misstating Student's social emotional and behavioral functioning.

The record reflected that Mother asked for data to support Student's pragmatic speech goal at both the September 28, 2018 IEP team meeting, and also at the end of the May 25, 2019 session of the triennial IEP team meeting. Since the issues in this case only involve conduct from January 23, 2019, onward, due to the January 22, 2019 settlement agreement in which Mother waived all educational claims through that date, Mother's initial request for the information is not at issue here. Mother also requested that she be sent data on the speech goals in the October 2019 IEP, discussed below, but that request is not at issue here, either. At that time, Student was receiving his speech and language services at Intermountain, where Student was unilaterally placed, and not from Castro Valley.

Mother did not define “data” in her request. Mother testified at hearing she did not receive “data” regarding Student’s progress on the speech and language goal. At hearing, Ms. Martin explained that she believed that sometime after the triennial IEP team meeting she was asked to submit her speech and language service logs to the school district, and she did so. She assumed the logs were sent to Mother, but there was no evidence as to whether they were.

The speech logs did not contain a real-time tally or statistics regarding Student’s progress on the pragmatics goal, as Ms. Martin did not feel it was appropriate to overtly take data in a social skills situation. Instead, she observed Student working on and meeting the goal throughout the lunch bunch sessions, just as she reported on the progress report on the goal. He was not argumentative or sarcastic or engaging in eye rolling, rather, he asked a question of a peer, and listened, and asked follow-up questions. He did not make any negative comments toward peers, so there was nothing to repair. Ms. Martin also generally discussed his progress on the goal when she reported his present levels of performance at his IEP team meetings, and she reported his conversational skills in her triennial speech and language assessment.

In any case, Student did not demonstrate that a procedural failure of Castro Valley to provide the service logs impeded his right to a FAPE, caused a deprivation of educational benefits, or significantly impeded Parents’ participation in the decisionmaking process. The evidence was undisputed that Ms. Martin’s speech services were reasonably calculated to enable Student to make appropriate progress, and he did. The evidence demonstrated that Student met the goal, and engaged in pleasant back-and-forth conversations with his peers in lunch bunch and elsewhere at school. One entry in the speech log stated, “lots of positive talk.” Another entry

described Student helping his peers successfully play a game, and another showed Student expressed tolerance for other children's tastes and preferences. His conversational skills were also reported by Ms. Martin in her triennial speech and language assessment. Student received educational benefit from his speech services. Accordingly, there was no evidence that any failure to provide "data" on Student's progress on the goal impeded Student's right to a FAPE or caused a deprivation of educational benefits. There was no evidence that he did not make the reported progress.

Mother received copies of all of Student's assessments conducted in February and March 2019 in preparation for Student's triennial IEP review. Mother was present, sometimes with her advisors or attorneys, at two sessions of the triennial meeting at which these assessments and Student's speech and language present levels of performance were discussed, with reports of progress by multiple school district team members, including Ms. Martin. The IEP notes do not reflect Mother was inhibited at any time from inquiring into details of Student's progress or present levels of performance.

There was no evidence that any failure of Mother to receive "data" significantly impeded Parent's right to participate in the decisionmaking progress regarding Student's IEPs, especially as Mother and her counsel had already predetermined that Student required a residential placement because of his conduct at home. There was no evidence as to what skills or training Parents possessed to interpret the data, or how it would have made their participation more meaningful. Access to data underlying a student's progress report is not required to ensure a parent's meaningful participation in the IEP process. (*T.K. by & through C.K. v. Mercer Island Sch. Dist.* (W.D. Wash., Mar. 17, 2020, No. C19-556 MJP 2020 WL 1271519, at **6-7.)

Under these circumstances, Castro Valley did not deprive Student of a FAPE with respect to any failure to provide “data” regarding Student’s progress on his speech and language goal.

Student also contends that Castro Valley failed to provide “data” on Student’s behavior. Student partially based this claim on the request Student made at the September 28, 2018 IEP team meeting. However, as set forth above, that IEP meeting is subject to Student’s waiver of educational all claims arising before January 23, 2019.

Regardless, to the extent that “data” refers to information as well as statistics, the evidence reflected Mother received an abundance of data regarding Student’s behaviors. First, Student’s behaviors were discussed in the many emails exchanged between Mother and school personnel whenever Mother inquired about or mentioned Student’s behaviors. Second, Student’s behaviors were discussed in Ms. Yi’s February 2019 educational mental health services assessment report, and throughout Ms. Lopez’s triennial assessment report, as well as in the assessment reports written by Ms. Davis and Ms. Brown, the behavior specialist. Indeed, Ms. Brown’s report contained actual statistical data regarding Student’s observed behaviors. Finally, Student’s behaviors were discussed at all IEP team meetings convened after January 23, 2019. Mother attended all of those meetings, except for the March 25, 2019 session of the triennial meeting, and she was usually accompanied at those meetings by either her lawyer or an advocate. There was no evidence that Mother was impeded from participating in the IEP team discussions about Student’s behaviors.

Student contends that Mother particularly required Castro Valley to provide behavioral information about Student because Student played chasing games on the playground at school, and colored, drew, and folded origami in the classroom. These

activities were mentioned in the Safety Plans included in the Closing Crisis Progress Notes written in November 2018, in connection with Student's discharge from his hospitalizations. The Safety Plans identified "I am being chased" as an indicator that Student was getting upset, and coloring, drawing, and folding paper to make origamis were coping strategies. Significantly, none of the individuals who treated Student during his hospitalizations or who wrote the discharge reports regarding his hospitalizations testified at hearing, so there was no definition of what the Safety Plan meant by "I am being chased." One would think that if the term encompassed the typical chasing, racing, tag, and hide-and-go-seek games young children typically play on school playgrounds and in parks and yards, the author of the Safety Plan would have so specified. All testimony and reports from those who observed Student running around with other children on the playground were that he was willingly participating in, and enjoying, the typical play of first graders. Indeed, his running and chasing on the playground was mentioned in assessment reports that were given to Parents. There was no evidence that Student's chasing other children, or being chased, on the playground, signified that Student was experiencing any emotional distress or difficulty. Parents did not demonstrate that they were unaware of this specific playground activity, or that there was a need for anyone at Independent to take data regarding it.

Similarly, there was no evidence that Student's interest in coloring, drawing and folding origami at his desk was ever concealed from Parents, or that there was any need to take data on it. These activities were mentioned in many of the assessment reports, as well as at nearly all of the IEP meetings, and they were often mentioned in conjunction with his sensory needs or as coping skills, but they were also mentioned as things he enjoyed doing. Indeed, during the occupational therapist's triennial assessment, Mother commented that Student liked origami and used it as a tool.

The evidence did not reflect that Mother ever raised any concerns when school staff mentioned these activities. Parents demonstrated no need for Student's teachers to take data on these frequent activities and report them, and they did not request the school to do so.

Student's claims relating to Castro Valley concealing or not reporting behavior information are rooted in Ms. Keller's responses to the rating scales in both the Schilling and triennial assessments, which reflected that she observed Student displaying elevated behaviors. Yet, Ms. Keller's comments regarding Student's behaviors as reported in those assessments, and as recorded at IEP team meetings, reflected that Student's behaviors in her classroom were more mild than her ratings reflected, and not nearly as elevated as the behaviors Parents observed at home.

Ms. Keller testified at hearing. She stated, consistent with the information she provided at IEP team meetings, that Student's behaviors at the beginning of the semester, during the time of the Schilling assessment, were somewhat elevated, but they improved as the school year proceeded, and they were never unmanageable. She admitted that she was surprised that her responses to the rating scales on the triennial assessment yielded results that showed Student's behaviors in various areas were in the clinically significant range, because she did not see such elevated behaviors in the classroom, especially as the year progressed and at the time of the triennial assessment. She commented that the time frame for the ratings she gave on the Behavior Assessment rating scale during the triennial assessment, which requested that she rate Student's behaviors during "the last several months," were unclear. Significantly, Ms. Keller made no effort to change her answers to the rating scales after she submitted them, and there was no evidence that Ms. Lopez, or anyone else from Castro Valley, would have permitted her to do so. Ms. Keller confirmed at hearing that

Student's behavioral infractions were minor, and he did not engage in dysfunctional, disruptive, aggressive, or maladaptive behaviors whether in class or on the playground.

Ms. Keller's testimony and narrative reports that Student's behavior in her classroom was not dysfunctional, disruptive, or maladaptive was supported by *every* individual who observed Student in Ms. Keller's class at Independent and on the playground. He was observed by Dr. Schilling, Ms. Keller, Ms. Pham, Mr. Hansen-Schmitt, Ms. Carson, Ms. Lopez, Ms. Davis and Ms. Brown, on various days at various times, and some of these observers conducted multiple observations. Not a single person reported that they observed any disruptive, dysfunctional, aggressive, or maladaptive behavior in the classroom or on the playground. None of those who observed Student reported anything but normal play. All of the observations basically described Student as a cooperative, compliant, and obedient first-grader, who interacted well with peers and staff.

Further, Ms. Pham, Mr. Hansen-Schmitt, Ms. Lopez, Ms. Carson, Ms. Davis, and Ms. Brown, all testified credibly at hearing regarding Student's behaviors. None of them reported Student engaged in dysfunctional, disruptive, aggressive, or maladaptive behaviors whether in class or on the playground.

Additionally, Student's educational records do not reflect that Student engaged in disruptive or dysregulated and elevated behavior at school. Student had no suspensions. He had no detentions. He displayed no aggression toward anybody while at school. He did not disrupt the class. He was not a danger to himself or others, and his behaviors did not interfere with his learning or that of others. He had a few uh-ohs and other minor behaviors towards the beginning of the school year, but none after November 15, 2018, and none of those incidents were out of the ordinary for a first-

grader. He never repeated his behavior with pointing pencils at himself, or drawing "on himself with markers, after his discussions with Ms. Keller and Ms. Lindgren, the school psychologist, that he should not engage in those activities.

There was no specific evidence as to why Ms. Keller rated Student as she did on each item on the rating scales, such that her ratings, taken as a whole, reflected that some of the behaviors she observed placed Student in the clinically significant range. Student did not demonstrate that he engaged in any of the dysregulated and aggressive behaviors at school that he engaged in at home. Student did not demonstrate that Castro Valley engaged in, or could engage in, any cover-up of any such behaviors. Indeed, if Student engaged in the impulsive and uncontrolled behaviors at school that Student displayed at home, such as kicking, biting, and hitting others at the slightest provocation, Student's classmates would witness it and report it to their parents, siblings, friends, and teachers. Such reports would reach Parents in short order. If Student had attacked or injured another child at school as Student attacked or injured his siblings, the child's parents would report that to the school, and Parents would ultimately learn about it. If Student were physically injuring his teachers, it is unlikely that the teachers would keep that a secret from their co-workers or the principal, and that Student would escape discipline. In short, if Student were behaving at school as he behaved at home, Castro Valley would be unable to cover up or conceal such obvious misdeeds. Further, there was no evidence that Castro Valley would be motivated to cover-up or conceal any such behaviors.

Finally, the evidence reflected that, as the 2018-2019 school year progressed, Student had good peer relationships at school. He played with his peers on the playground, they sat with him outside the cafeteria at lunch, they joined him at lunch

bunch, and his classmates enjoyed being with him. If Student's behaviors at school were like those he displayed at home, it is likely that he would have no friends at school, rather, his peers would purposely avoid him.

The evidence reflected that all of Student's behaviors at school were set forth in the assessment reports, "uh-oh" reports, or communications between the school and Parents. Mother attended, often with an advocate or attorney, each IEP team meeting at issue in this case during the 2018-2019 school year, at which the subject assessment reports and Student's school performance and behaviors were discussed, with the exception of the March 25, 2019 IEP team meeting from which Mother absented herself. There was no evidence that any behavioral information was concealed from Parents such that they were unable to fully participate in those meetings. Student's contentions regarding this issue focus on the 2018-2019 school year when Student attended Castro Valley; but there was also no evidence that Parents were unable to fully participate in the October 2019 IEP team meeting, discussed in Issue 1c below, which was held after Student had left Castro Valley to attend Intermountain.

Student also bases this claim on Ms. Yi's allegedly deficient educationally related mental health assessment, contending that it did not include sufficient information, and therefore provided another example that Castro Valley withheld behavioral information from Parent. The appropriateness of the educationally-related mental health assessment is separately discussed in Issue 1b, below, and that discussion is incorporated by this reference. For the reasons stated below in Issue 1b, Student did not demonstrate that Castro Valley withheld behavior information from Student with Ms. Yi's assessment.

Student did not meet his burden of demonstrating that Castro Valley intentionally withheld from, or misrepresent to, Parents necessary information about Student's social, emotional, and behavioral functioning at school from January 23, 2019, through the 2019-2020 school year. Further, Student did not demonstrate that any lack of providing "data," had it occurred, impeded Student's rights to a FAPE, caused a deprivation of educational benefits, or significantly impeded Parents' ability to participate in the decisionmaking process as to Student's education. Castro Valley did not deprive Student of a FAPE on this ground.

ISSUE 1b: DID CASTRO VALLEY FAIL TO PROVIDE STUDENT A FAPE, FROM JANUARY 23, 2019, THROUGH THE END OF THE EXTENDED SCHOOL YEAR 2019, AND DURING THE 2019-2020 SCHOOL YEAR, BY CONDUCTING AN INAPPROPRIATE EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT IN FEBRUARY 2019?

In his complaint, Student contends that the educational mental health services assessment was deficient and deprived Student of a FAPE because Ms. Keller, Ms. Pham, and Ms. Martin, who had direct contact with Student during the school day, were not available to the assessor. Castro Valley contends that the assessment incorporated input from those individuals, and those individuals also provided input at the March 5, 2019 IEP team meeting at which the assessment was discussed. Castro Valley further contends that any procedural violation with respect to this assessment did not deprive Student of a FAPE, because it did not impede Student's right to a FAPE, significantly impeded Parents' ability to participate in the decisionmaking process, or caused a deprivation of educational benefit.

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

As relevant here, assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).)

In conducting the assessment, the assessor must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. (20 U.S.C. § 1414(b)(2)(A)(i).)

Assessments must be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d); 34 C.F.R. § 300.304(c)(3).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

The failure to appropriately assess a student is a procedural violation of the IDEA and the Education Code. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

Ms. Yi, a licensed marriage and family therapist, and assessor with the County Behavioral Health Care Services Department, was both knowledgeable of Student's disability and competent to perform the mental health assessment. However, her assessment was not sufficiently comprehensive to identify all of Student's mental health needs as she did not include interviews with Ms. Keller, Ms. Martin, or Ms. Pham, three individuals who had significant contact with Student at school. Without their input, Ms. Yi failed to gather relevant functional information about Student's social and emotional functioning in his general education setting. The referral packet included their reports, but their knowledge of Student and his behaviors at least merited personal interviews, if not the completion of rating scale assessment instruments. Interview or rating scale responses from Ms. Keller, Ms. Martin and Ms. Pham were necessary to ensure that accurate information about Student's school-based emotional and behavioral functioning was obtained for the IEP team. Ms. Yi' failed to appropriately assess Student's educationally related mental health needs.

A failure to appropriately assess is a procedural violation. However, a procedural violation only constitutes a denial of a FAPE if it impeded a Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE, or caused a deprivation of educational benefit.

Student did not meet his burden of demonstrating that the inappropriate educationally related mental health assessment deprived Student of a FAPE, because Castro Valley took three effective steps to mitigate any harm caused by the deficiencies in Ms. Yi's assessment. First, Ms. Keller, Ms. Pham, and Ms. Martin attended the March 5, 2019 IEP meeting at which Ms. Yi's assessment was presented, and contributed to the discussion. Moreover, their comments reflected that Student's behavior was well-

regulated in the school setting. Second, the triennial assessment, which was completed at approximately the time of the March 5, IEP team meeting when Ms. Yi's assessment was discussed, explored sources of information missing from Ms. Yi's assessment. The triennial assessment, as discussed above, contained a plethora of information regarding Student's emotional and behavioral functioning. Ms. Keller reported to Ms. Lopez during the assessment. Ms. Lopez also reported information provided to her by Ms. Pham and the site director for Student's after-school program on feedback forms. The triennial assessment also included Ms. Martin's speech and language assessment, which included Ms. Martin's report of Student's social behavior during lunch bunch and on the playground, and input from Ms. Keller on Student's pragmatic language and social skills. Additionally, the triennial assessment included Ms. Brown's behavioral assessment to determine whether Student required a paraeducator, and Ms. Brown's report included an interview with Ms. Keller about Student's classroom behaviors, as well as written information from Ms. Martin about Student's progress.

Moreover, Ms. Lopez's assessment included a variety of assessment instruments to evaluate Student's behaviors and social-emotional status, as well as assessment instruments to assess executive functioning, autistic-like behaviors, and behaviors consistent with the eligibility category of emotional disturbance. All of the triennial assessments were discussed at the IEP team meeting on March 12, 2019, just days after the March 5, 2019 team meeting where Ms. Yi's assessment was discussed. The triennial IEP that emerged from the three-part triennial IEP team meeting included several of the goals and services Mother requested at the March 5, 2019, IEP meeting, such as resource services to work on the executive functioning goal, a coping skills goal to be addressed by counseling with the school psychologist, and a perspective-taking goal to be worked on with Ms. Martin.

The information Ms. Pham, Ms. Keller, and Ms. Martin contributed to Ms. Lopez's triennial assessment, Ms. Lopez's use of a variety of assessment instruments to evaluate Student's emotional and behavioral functioning, and Ms. Brown's behavioral assessment, all served to affirm and supplement Ms. Yi's conclusions that Student was in need of educationally related mental health services. The supplemental information provided by these individuals and Ms. Lopez's and Ms. Brown's assessment also led to the development of more appropriate goals than Ms. Yi proposed in her assessment. Furthermore, Ms. Lopez, Ms. Martin, and Ms. Brown were present at the March 12, 2019, session of the triennial IEP team meeting, along with Mother, and discussed their assessment reports then.

Finally, Castro Valley granted Mother's request, made at the March 5, 2019 IEP meeting, for an independent educational mental health services assessment. Such an independent educational mental health services assessment was part of Dr. Payson Hays's psychological assessment, discussed with respect to Issue 1c, below.

Due to the participation of Ms. Keller, Ms. Martin, and Ms. Pham at the March 5, 2019 IEP meeting where Ms. Yi's assessment was discussed; the comprehensive examination regarding Student's emotional and behavioral functioning which were performed as part of the triennial assessments, which included information from Ms. Pham, Ms. Keller, Ms. Martin, and others; the reporting of those assessments and development of goals at the triennial IEP meeting sessions, and Mother's participation in the discussions at two of those meeting sessions, Parents had a full picture of Student's social emotional status as of the triennial IEP. Student did not meet his burden of showing that the deficits in Ms. Yi's mental health assessment significantly interfered with Parent's opportunity to participate in the IEP process. Parents may not have agreed with the information in the triennial assessment, and they may have had questions and

concerns as to Ms. Keller's responses on the ratings scales, but, as was discussed above with respect to Issue 1a, there was no evidence that Castro Valley concealed from Parents any information about Student's behaviors or social-emotional functioning at school. Rather, the evidence reflected that Mother fully participated in the mental health discussions at the two segments of the triennial IEP team meeting which she attended, and she would have been able to fully participate in the March 25, 2019 session of the triennial IEP meeting had she stayed.

Student not only failed to demonstrate that Castro Valley concealed or misrepresented pertinent information, but also failed to demonstrate that Castro Valley deprived Student of an educational benefit, impeded his rights to a FAPE, or significantly impaired Parents' ability to participate in the decisionmaking process pertaining to Student's IEPs.

Furthermore, as a result of Dr. Payson Hays's psychological assessment, combined with the information Castro Valley provided in the triennial assessment and triennial IEP, Parents' opportunity to fully participate in the decisionmaking process as to Student's October 18, 2019, IEP was not impeded. Mother may not have agreed with the IEP, and Parents may have had different opinions than did Castro Valley regarding how to address Student's needs, but Parents had at least as much information as Castro Valley had at that time regarding Student's needs at Intermountain, and Mother was able to fully participate in that IEP team meeting.

Student did not demonstrate that alleged the flaws in Ms. Yi's educational mental health services assessment impeded his right to a FAPE, caused a deprivation of educational benefits, or significantly impeded Parents' right to participate in the decisionmaking process regarding Student's IEPs. The flaws in Ms. Yi's assessment were mitigated and addressed, such that Castro Valley did not deprive Student of a FAPE.

ISSUE 1c: DID CASTRO VALLEY FAIL TO PROVIDE STUDENT A FAPE FROM JANUARY 23, 2019 THROUGH THE END OF THE EXTENDED SCHOOL YEAR 2019 AND DURING THE 2019-2020 SCHOOL YEAR BY FAILING TO OFFER STUDENT APPROPRIATE GOALS, BEHAVIORAL SERVICES, EMOTIONAL SERVICES, SOCIAL SERVICES, AND PLACEMENT?

Student contends that Castro Valley failed to provide sufficient goals, services, and a residential placement to Student, despite the recommendations of outside assessors and experts, and knowledge of Student's intensifying social-emotional and behavioral difficulties. Castro Valley contends that it consistently offered appropriate goals in all areas of need, services which allowed Student to make reasonable progress on his goals, and an appropriate placement in the least restrictive environment.

The factual findings regarding Student's previous assessments and IEPs with respect to Issue 1a and 1b are incorporated into this issue.

APPROPRIATE GOALS AND SERVICES

In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).) The IEP must also include an assortment of information, including a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals designed to meet the child's needs that result from his disability to enable the child to be involved in and make progress in the general education curriculum, and, when appropriate, benchmarks or short-term objectives, that are based upon the child's

present levels of academic achievement and functional performance. (20 USC § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320.)

The IEP must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee* (1st Cir. 1993) 998 F.2d 1083, 1089.) A school district is required to provide 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 the instruction. (*Rowley, supra*, 458 U.S. 176, 188-189; *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1468.) (*San Diego*.)

An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) As the court noted in *Andrew F., supra*, 137 S.Ct. at p. 999, crafting an IEP required a prospective judgment, and judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether it is regarded as ideal.

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, not that preferred by the parent. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) In *Gregory K.*, the court determined that if a school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another

program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

STUDENT'S ENROLLMENT AT INTERMOUNTAIN

Parents did not consent to the March 15, 2019 triennial IEP. At some point, Castro Valley agreed to fund independent psychoeducational, educational mental health, and speech and language assessments. The first two independent assessments are discussed below; the independent speech and language assessment is not relevant to this matter.

Student remained hospitalized in the Vallejo facility until May 21, 2019. At first he was there on two involuntary psychiatric holds, a three-day hold and then a 14 day hold. A few days into the 14-day involuntary psychiatric hold, Parents agreed to keep Student in the Vallejo facility on a voluntary psychiatric hold. Parents agreed to the voluntary hold because they did not believe they could control Student's behaviors at home and his siblings and the family would be endangered.

While Student was hospitalized, Parents attempted to locate residential placements for him. On April 1, 2019, Parents retained an educational consultant to assist them in their search, and they found Intermountain. Student's application to Intermountain stated his presenting problems were "Ongoing aggression at home with siblings. Difficulty with emotional regulation and impulse control." The application described Student's behaviors in school in milder terms: "Largely internalizing behaviors. . . .Persistantly [sic] negative at times, rushes through tasks, but isn't careful in his work. . . .Can be silly to gain peer attention, especially at transitions." Student was admitted to Intermountain, and on May 2, 2019, Student's counsel wrote Castro Valley's counsel to

advise that Student would be attending Intermountain and Parents were seeking reimbursement from Castro Valley.

Student never returned to Castro Valley. His Castro Valley report card for the 2018-2019 school year covered the first two trimesters, since he was not present for the third trimester. His grades were all 2s, which signified proficient--meets first grade standards, or 3s, which signified advanced--strongly meets first grade standards. His behaviors were generally rated as good to satisfactory. He needed improvement in the first trimester in managing time effectively, staying on task, demonstrating organizational skills, and respecting people and property. In the second trimester, he needed improvement in completing and returning homework on time, and demonstrating organizational skills. Ms. Keller's comments were positive for both trimesters, but Ms. Keller noted in the first trimester he needed to focus more on his work so he could complete his classwork faster.

Student enrolled at Intermountain on May 23, 2019., and remained there through the hearing. Intermountain serves children from ages four to 13 with social-behavioral difficulties. It provides a therapeutic environment, with 24-hour behavioral services available. The children live in small groups in cottages, and Students at Intermountain ordinarily attend its small school separate from the cottages. As a result of the world-wide coronavirus pandemic, Student's education has also occurred in the cottage.

Student's class when he entered Intermountain consisted of six to eight students, with a teacher and two aides. Student was evaluated when he arrived, and his therapeutic plan was developed. Student had two therapeutic goals when he enrolled, both of which were based on Student's verbal and physical reactions and aggressions toward his parents and siblings. The initial treatment plan did not refer to school,

school-based behaviors, or peer interactions, and there was no evidence that Parents gave Intermountain staff permission to speak to Castro Valley when Student was first admitted.

Children usually stay at Intermountain for 15 to 20 months. They progress through recognizable stages during that time. At first there is a “honeymoon/engagement” stage, and then there is a “working through” stage, during which behaviors deteriorate while the students worked through issues in therapy. In later stages, behaviors improve and the child is discharged.

Intermountain’s rate chart for July 2019-2020 shows the following rates: Education at \$182.50 per day for 210 school days per school year, Mental Health support at \$260.00 per day for 365 days, Room and Board at \$50.00 per day for 365 days, and a one-time enrollment fee of \$1,500. Services beyond instruction and these residential services are available at an additional cost. Parents have thus far paid a total of \$148,997.32, which includes charges for Student’s educational consultant, round-trip travel for family and Student between home and Intermountain, tuition and room and board, and costs for IEP services. These expenses do not include charges for residential treatment from February 28, 2020, through August 31, 2020, for which there is insurance coverage.

PSYCHOLOGICAL ASSESSMENT BY SALLY PAYSON HAYS, PH.D.

Sally Payson Hays, Ph.D., performed an independent psychological and educationally related mental health services assessment of Student at Intermountain, at Castro Valley’s expense. Dr. Payson Hays received her bachelor’s degree in English and history in 1985 from Tufts University, her master’s degree in educational psychology

from the University of Southern California in 1993, and her Ph.D. in education, cognitive development, and school psychology from the University of California, Berkeley, in 2000. She received her clear pupil personnel services credential in 2002, and became a licensed psychologist in California in 2011. Since July 2019 she has been a faculty lecturer in the School Psychology Program at the University of California, Berkeley Graduate School of Education. Since August 2017, she has been the director of the clinical school psychology training program and clinical supervisor for the Jefferson Union High School District in Daly City, California. She also has maintained a private practice since August 2011, which includes providing individual, group, and family therapy, and psychological and educational assessments.

Dr. Payson Hays began her assessment of Student on June 25, 2019, when Student had been at Intermountain for about five weeks, and she wrote a report of the assessment dated September 17, 2019.

Dr. Payson Hays's report provided a detailed narrative of Student's health and developmental history, his previous services and therapies, his educational history, his previous assessments, and Mother's and her advocate's interpretations of events.

Dr. Payson Hays included a chronology of Student's behaviors at home. She summarized a report written by Vicki Young, Student's therapist at Eden, dated October 29, 2018. Ms. Young noted that at school, and in his after school program, Student had difficulty following directions, focusing on teacher directions, implementing those directions, doing class work, organizing classwork, turning in his classwork, understanding classroom exceptions, and social interactions with peers and educational staff.

Ms. Young's report described Student's extreme home behaviors "Student has severe difficulty at home with his peers. Due to his reactivity on physical and emotional outbursts, he is triggered with long tantrums often. When triggered he hits or bites family members. He has severe difficulty being contained." She reported that Student could easily be triggered by his younger siblings' behavior, but his actions were extreme, and included three hour tantrums, hitting, and aggression without being able to stop without mother or father containing and intervening physically.

Dr. Payson Hays also cataloged an incident that occurred on February 26, 2019, based on a Child Protective Services report. Student punched his younger sister in the eye, which resulted in a slight bruise. A few days earlier, he hit his brother on the nose and gave him a slight bruise. These incidents occurred a few days before the incidents that resulted in Student's hospitalizations at Kaiser and then in Vallejo, which were described in Issue 1b, above.

Dr. Payson Hays described Student's current educational functioning at Intermountain. She described Intermountain's program, and observed Student in class, in his residential cottage, and during assessment. She interviewed Student's teacher Kathleen Slack, Student's therapist in the cottage Ashley Van Dyke, and Parents. She concluded that the difficulties Student demonstrated at Intermountain indicated that while Student's struggles may be setting-dependent, and worse in a non-structured home environment than in a structured environment, they were not person-dependent, not isolated to difficulties with his immediate family, as she stated that the evaluations conducted by Castro Valley implied.

Dr. Payson Hays observed Student in his class. Student was always on task, and was one of the more on-task students. He actively participated in whole class activities

and interacted with the teacher. There was little to no verbal peer interaction, and Student generally ignored all peers.

Student and his peers largely engaged in parallel play on the yard. Student seemed to desire contact both with adults and peers, but his efforts generally consisted of drawing attention to his own interests. Student had few reciprocal interactions with his peers, and few reciprocal interactions between or among his peers. Dr. Payson Hays also reported on her observation of Student in the cottage.

Dr. Payson Hays reported Student was mostly cooperative during assessment, but he expressed flashes of irritation throughout testing. He maintained a flat affect. He was cooperative with testing, but occasionally he did not try. He could identify things that made him angry, annoyed, or upset, but he could not describe in detail what made him happy or relaxed. He seemed not to notice any physical manifestations of emotions. He did not know why he was good at school and not at home, except that family was harder to deal with. Overall, he demonstrated strength in expressive verbal communication and vocabulary, and a rich imagination. He demonstrated weaknesses in understanding how he affected others, his own emotionality, showing empathy, understanding the perspectives of others, little social communicative reciprocity, and hyper-focus on specific topics of self-interest.

Dr. Payson Hays interviewed Ms. Slack when Student was still in first grade, and followed up with her when Student was in second grade and off of his medications. Overall, Ms. Slack described Student as very smart, a fine reader who was good at math and engaged in class activities. He was imaginative but had some highly restricted interests. Although he had difficulty in perspective-taking, he was better at it than most of his peers at Intermountain. He was academically on grade-level and had high

reading skills. In first grade, Ms. Slack reported Student was interested in others and wanted to have friends. In the second grade follow-up, Ms. Slack noted Student seemed to get along well with all of his classmates and enjoyed interacting with them. His relationships with adults were fine. His behavior continued to be "great." He demonstrated no disruptive behaviors at school.

Dr. Payson Hays interviewed Ms. Van Dyke, Student's therapist at Intermountain. Ms. Van Dyke worked with Student in the "milieu" or cottage setting. Ms. Van Dyke reported Student was mostly resistant to therapy, often refused to talk with her, and often became angry when she attempted to get him to talk about his feelings. Ms. Van Dyke said that Student struggled with lack of control and perseveration on ideas. He was a black and white thinker and struggled to understand gray areas. He continued to need to work on peer relationships. He demonstrated defiance, impulsivity, angry outbursts, low self-esteem, poor self-image, nightmares, and low frustration tolerance. He consistently struggled with adult control as well as lack of trust in adults to meet his needs. He struggled with accountability and often blamed others.

Dr. Payson Hays interviewed Parents, including a structured interview with Mother. Parents agreed that Student's areas of difficulty were his poor impulse control and emotional self-regulation and difficulty with empathy. Student had coping skills, but had difficulty using them in moments of heightened emotionality. They believed that Student was a black and white thinker who often felt persecuted by others. Their greatest concern was that Student became dysregulated seemingly without warning and could not be calmed. Mother reported that she heard he struggled with bullies at Independent in Castro Valley, and believed that his difficulties after school were due to him "keeping it together" there and then releasing his frustrations at home. Because his behaviors were worse at home after Student had a difficult day, she believed that

Student's challenges at home were related to school, that he did worse at home during the school year, and his most extreme behaviors began after coming home from school. Dr. Payson Hays noted that most of the reports from Child Protective Services or visits to the emergency room during the previous 16 months occurred on school days, there were no reports in summer, and Student seemed to have the most difficulty at home during the time he was enrolled at school. Dr. Payson Hays failure to acknowledge Student's psychiatric hospitalization over Thanksgiving break in 2018 is discussed below. Mother reported Student's ongoing feeling of boredom, constant irritability, and past and present aggression. She reported that ever since Student was three years old, he had tantrums that could last hours, and those episodes included screaming, hitting, kicking, and punching. He struggled socially, he had rigid ideas of how others should behave and communicate, and he demonstrated deluded thinking and perseveration. Mother reported symptoms consistent with anxiety, including separation anxiety, and denied that Student demonstrated psychosis or suicidal ideation.

Student was capable cognitively and academically. Dr. Payson Hays concentrated in areas that she believed were either not explored fully in previous assessments, or were more subject to changes in environment or conditions, such as rating scales from teachers and Parents, and assessments of social-emotional and behavioral functioning.

Dr. Payson Hays administered selective subtests of the Developmental Neuropsychological Assessment, 2nd Edition. Student demonstrated significant variability on the subtests in the memory and learning domain. Overall findings reflected that Student may require more time for memory recall. He could suffer from a cognitive overload as information became more complex and required him to tap into visual and auditory memory simultaneously. This may frustrate Student, as he may not be able to process information as expected given his intelligence.

Dr. Payson Hays assessed Student on auditory processing and language, and visual and spatial processing. His scores did not raise any concerns. Dr. Payson Hays assessed Student's attention and executive functioning using the Behavior Assessment System-Third Edition Executive Functioning Summary, the Neuropsychological Assessment attention/executive functioning domain subtests, and the Comprehensive Executive Function Inventory. She administered the Behavior Assessment System Executive Functioning Summary ratings scales to Parents, and to Student's therapist, case manager, and teacher at Intermountain. The ratings reported by Parents, the therapist, and the case manager reflected elevated to extremely elevated concerns in one or more areas, whereas Student's teacher, Ms. Slack, rated Student in the not elevated range in all areas. Dr. Payson Hays noted there were some significant concerns regarding Student's executive functioning, but these difficulties might be less apparent in a structured classroom setting than in less structured settings.

Student's scores on the Neuropsychological Assessment attention and executive functioning domain showed that he was weak in flexibility and in generating multiple ways to understand and categorize visual information. The scores also generally showed that Student's inhibitory control was weak, but he was able to learn tasks and did better with practice.

Dr. Payson Hays administered the Comprehensive Executive Function Inventory to Parents and Ms. Slack. The ratings of Student's Parents reflected Student was in the well below average range, but Ms. Slack rated him in the superior range overall. Dr. Payson Hays noted that Student's class at Intermountain was highly structured with a very low student-adult ratio, and Student was still taking medication at the time of her assessment. More recent feedback from Ms. Slack, after Student's medication was

discontinued, suggested that Student was struggling more with both initiation and staying on task.

Dr. Hays assessed Student's autism and adaptive behavior by administering the Autism Spectrum Rating Scale and the Adaptive Behavior Assessment System--Third Edition. Mother and Ms. Slack completed the Autism Spectrum Rating Scales. The ratings reflected Student's diagnosis of autism spectrum disorder was characterized more by deficits in social understanding, reciprocity, and behavioral rigidity rather than other characteristics of autism spectrum disorder. The results of the Adaptive Behavior assessment reflected that Student continued to perform significantly lower than same age peers for adaptive skills.

Dr. Hays assessed Student's social emotional functioning by way of the Beck Youth Inventories-2nd Edition; the Behavior Assessment System, Scales for Assessing Emotional Disturbance—2nd Edition, and Projective Measures.

Student's self-report on the Beck reflected that he did not rate himself as having any emotional difficulties except extreme anger and disruptive behavior. Dr. Payson Hays considered his responses consistent with Ms. Van Dyke's observations that Student did not truly appreciate and take responsibility for his experience. Dr. Payson Hays considered it notable that Student did not see himself as anxious, in view of the opinions of the professionals at Intermountain who worked with him.

Dr. Payson Hays administered the Behavioral Assessment Scale to Parents, Ms. Slack, Ms. Van Dyke, and Student's case manager in the cottage. She warned that Mother's response pattern and consistency patterns reflected that her responses should be interpreted with caution. Additionally, Ms. Van Dyke's responses were somewhat inconsistent and should be interpreted with caution.

Dr. Payson Hays noted a fair amount of variability among the raters regarding Student's social-emotional functioning. Everyone except Ms. Slack rated Student as demonstrating significant difficulty across domains. Ms. Slack only considered Student as demonstrating difficulty in the area of withdrawal, for which she rated him in the at-risk range, but otherwise rated Student in the normal range across all domains. Ms. Slack wrote that Student had "a set of self-calming skills." The scores of the other four raters reflected Student may present as demonstrating symptoms consistent with deficits in anger and emotional self-control, executive functioning deficits, negative emotionality, and attention deficit hyperactivity disorder.

Dr. Payson Hays administered the Assessing Emotional Disturbance scales to Ms. Slack, Ms. Van Dyke, and Student's case manager. Ms. Slack rated Student in the not indicative range for all indicators of emotional disturbance. His therapist and case manager, who worked with Student in the cottage, rated him in the indicative range for emotional disturbance in the areas of relationship problems and unhappiness or depression. The case manager also rated Student in the indicative range of emotional disturbance in the area of physical symptoms or fears.

Dr. Payson Hays administered a measure of social adjustment, and Student's responses did not reach a level typical of the truly socially maladjusted.

Dr. Payson Hays tested Student' using the "Guess Why" game in which Student was given a sentence about a boy who experienced something in his life at home or at school, and Student was to explain why the event happened. Student demonstrated significant difficulty with imaginative flexibility on this task, and he had an extreme, if, brief, negative response to an item on the test that included a prompt such as "Robert sometimes gets nervous and upset at school, why?" Student was infuriated at

the use of the ambiguous word "sometimes." The remainder of his answers reflected negative affect both at home and school. Also notably, Student endorsed a couple of indicators of suicidality, but specific risk assessment led to the conclusion that Student was not currently at high risk of self-harm. In answer to three wishes, Student wished to be rich, to have superpowers, and to go home from treatment. Student told Dr. Payson Hays that the cottage was harder for him than school and was more like home, and he did "really bad there."

Dr. Payson Hays summarized the results of Student's social emotional assessment. She reported they indicated significant anxiety, negative emotionality, and hyper-reactivity in response to frustration. Student demonstrated much denial and anger in response to difficulty, and a need for control over others, as well as brittle self-esteem. Student was aware he did not do well at home and in the cottage, but appeared not to be able to use techniques to stay calm. Prior to being at Intermountain, Student's self-regulation difficulties were most apparent in the home setting. Dr. Payson Hays commented that in earlier assessments by the mental health services evaluator and Castro Valley, Student's lack of control was primarily an issue at home due to weak parenting skills. Ms. Payton Hays felt the fact that Student struggled at Intermountain in a milieu staffed by adults highly trained in social-behavioral support indicated that Student was very ill-equipped to handle the expectations and challenges of less-structured settings, regardless of who provided the discipline. She further believed that while Student's difficulty did not seem to be an issue at school in the early grades, as he moved on to an academic setting where he was expected to operate more independently and to handle less clear-cut messaging, the challenges currently seen at home would likely also be seen at school.

Dr. Payson Hays summarized her conclusions. She reported that assessment outcomes indicated that Student displayed significant inattention as well as impulsivity and self-regulation difficulties at home and in the cottage setting, but less so at school. In class, he demonstrated the ability to remain on task in comparison to his peers in some classes more than in others, but he had more difficulty since going off all medication. She noted weaknesses at home and in the school setting for adaptive behavior, and emotional self-regulation, anxiety, depression, and negative emotionality at home and in the milieu setting. She also determined that her findings supported student's diagnosis of autism, attention deficit hyperactivity disorder combined type, and disruptive dysregulation mood disorder. She also believed that a diagnosis of generalized anxiety disorder could be added. Dr. Payson Hays also confirmed Student's eligibility for special education under the criteria for autism and other health impairment. Further, she believed that Student's emotional difficulties warranted specific goals in his IEP and services to address those areas of need.

Dr. Payson Hays's recommendations included a smaller school setting; smaller class sizes, and structured behavioral support in all academic subjects; and specific measurable therapeutic goals written into his IEP; particularly regarding improving coping skills to help him to deal with frustrating and ambiguous situations both socially and academically. She also recommended Student remain in the therapeutic milieu setting, although she did not specify that he required a residential treatment center. Her other recommendations included school based therapeutic supports; and a program to address his social-emotional needs while simultaneously supporting his superior cognitive abilities and challenging his academic level.

Dr. Payson Hays's recommendations were influenced by her opinions that Castro Valley was likely "trying very hard" to draw a line between obligations for mental health

support at school and in the community, and that children, like most people, usually do not have a clear boundary between their mental health functioning in one setting over the other. She also believed that while it was “absolutely possible” for Student to hold it together at school, as Mother asserted, the trajectory of his difficulties and the indicators of his social-behavioral distress identified in her assessment suggested that his difficulties were occurring regularly at Independent. In this regard, Dr. Payson Hays criticized Ms. Lopez’s triennial assessment for discounting Ms. Keller’s ratings of Student’s behaviors on the various rating scales which reflected that Student’s behaviors were in the clinically significant or other elevated range. In her report Dr. Payson Hays also focused on Ms. Lopez’s summaries of Ms. Keller’s responses to the rating scales regarding Student’s difficulties with social communication and peer relations to support her opinion that Student was regularly having behavioral difficulties at Independent.

Dr. Payson Hays’s opinions, however, were not necessarily well-founded. Dr. Payson Hays did not interview anybody from Independent as part of her assessment. This is particularly noteworthy, because Dr. Payson Hays freely criticized Ms. Lopez for not obtaining input from other people, such as Student’s outside therapists, during the triennial assessment. Additionally, Dr. Payson Hays believed Mother’s and Student’s reports that Student was bullied at school, when there was no bullying. Dr. Payson Hays had not observed Student at Independent. She demonstrated no knowledge of the behavior supports that were embedded in Student’s classroom. She discounted or ignored all of the information from *everybody* who observed Student at Independent, including Dr. Schilling, that Student exhibited no dysfunctional, disruptive, or other elevated behaviors at school. She discounted or ignored the fact that Student had no detentions or suspensions, but only uh-ohs and a few additional minor behaviors that occurred only once or twice. She ignored that fact that he did not have uh-ohs or any

other behavior incidents after November 15, 2018. She discounted Student's comments to her that he was "good" in school back in California, but not at home. Dr. Payson Hays did not explain why she emphasized Ms. Keller's ratings over Ms. Keller's comments about Student's behaviors at school as reported in Student's IEPs, and in the triennial assessments performed by Ms. Lopez, Ms. Martin, and Ms. Brown, which were available to Dr. Payson Hays. She did not explain why she considered Ms. Lopez's summaries of Ms. Keller's responses on the rating scales regarding Student's difficulties with social or peer relations as an indicator that Student was not doing well at Independent, as opposed to merely a description of a child with autism and attention deficit hyperactivity disorder. She ignored and did not address the theory posited in the Schilling assessment report that Student behaved at school because his behavior was well-managed at Independent.

In support of Mother's belief that Student's behaviors at home were influenced by what happened at school, Dr. Payson Hays stated that most of Student's emergency room visits and crisis incidents occurred on school days, but failed to address that Student's first two psychiatric hospitalizations in November 2018 were generated by events that occurred at home over the Thanksgiving break.

Finally, Dr. Payson Hays's implicit criticism that Castro Valley was "trying very hard" to draw a line between its obligations for mental support at school and in the community, betrayed a lack of knowledge of Castro Valley's obligations under special education law. As is explained below, the IDEA requires Castro Valley to be acutely aware of that line.

For all of these reasons, Dr. Payson Hays's opinions and recommendations were not persuasive.

On March 12, 2020, while this matter was pending, Dr. Payson Hays prepared a report of a second psychological evaluation of Student. The report updated Student's status at Intermountain. It did not contain any substantive changes to Dr. Payson Hays's opinions as expressed in her initial report.

GOALS AND SERVICES RE: IEP OF MARCH 5, 2019 AND MARCH 15, 2019 TRIENNIAL IEP

The IEP team convened on March 5, 2019, to discuss Ms. Yi's educational mental health services assessment report. At that time, Student was doing well academically and socially at Independent, and exhibited no maladaptive or negative behaviors. He was also identifying negative feelings and implementing coping strategies, and met his counseling goals with Ms. Pham. In view of the conclusion of the educational mental health services report that Student was eligible for educational mental health services, the team agreed to work on developing new social emotional goals based on the results of the educational mental health services assessment. The goals proposed by the assessment were either already met as a result of Ms. Pham's services, or, with respect to the proposed goal pertaining to self-talk, did not address a behavior that Castro Valley staff observed at school. Therefore, the IEP team deferred making any changes to the operative October 29, 2018 IEP, and agreed to gather baseline data and propose new social-emotional goals at the upcoming triennial IEP scheduled for March 15, 2019. In essence, then, the March 5, 2019 amended IEP served to confirm that Student was entitled to educationally related mental health services, and was a precursor to the triennial IEP of March 15, 2019, ten days later, at which Student's educational mental health needs, and goals, services, and placement were discussed.

The following day, Student was admitted to Kaiser, placed on a three-day involuntary psychiatric hold, and ultimately transferred to a psychiatric facility in Vallejo, outside of Castro Valley's boundaries.

Student's triennial IEP team, over three sessions, identified Student's needs based on Student's triennial assessment and team input. The team identified needs in the areas of social skills/pragmatic language, executive functioning, and social emotional.

The IEP offered goals in these areas that were designed to meet those needs. Ms. Martin's triennial assessment result shows that Student was slightly below average in the area of personal interaction on the pragmatic language skills inventory. Ms. Keller, who completed that rating scale, reported Student had below average skills compared to his peers in expressing feelings of empathy and sorrow, and complimenting or praising self or others. Mother also expressed concerns about these pragmatic language and social skills. Ms. Martin had never seen Student give a compliment during lunch bunch. Therefore, pragmatic language goal number 1 required Student to give a compliment to a peer or teacher at least once per session. Assessment also reflected that Student had weaknesses in conversational turn-taking, and not understanding when others were frustrated by his behavior, and he had not been observed asking for personal information during lunch bunch. On the Vineland, both Mother and Ms. Keller scored Student as low in the interpersonal relationship subdomain. Therefore, pragmatic language goal number 2 required Student to independently identify something he knew about an area of interest/personal information about a peer in his group, a family member, or a teacher, and make a good guess as to why they might feel that way. The goal is directed at improving Student's ability to engage in conversational turn-taking about another person's interests or

personal information and drawing inferences about the other person's perspective based on the conversation.

Student's social-emotional goal was based on his uh-oh slips. The baseline was not totally correct, as he had only six uh-ohs, not 11, but he had five additional incidents noted on Ms. Keller's behavior log and in Ms. Lopez's assessment report that resulted in conversations with Ms. Keller and/or other staff, and notification to Parent. Assessment, including the Vineland, reflected Student had a weakness in coping skills, and this was also a concern of Mother's. Therefore, the goal was addressed to Student's occasional idiosyncratic or mildly inappropriate behaviors, and required him to implement an appropriate coping strategy rather than engage in such behaviors.

Student's executive functioning goal was based on classroom observations, during which Student would present work to the teacher that he thought was complete, only to be sent back to his desk to correct it or to complete the assignment. The purpose of the goal was to improve Student's ability to correctly complete his work, by providing him a work completion checklist to use with one or less prompt to check his work for accuracy and completeness.

The IEP offered services designed to help Student achieve these goals and meet those needs. These services included lunch bunch, which contributed so much to Student's progress in pragmatic communication and social skills at the time of the IEP, counseling to address coping skills, and specialized academic instruction to address his executive functioning need to accurately complete his work. Based on all of the information the IEP team had with respect to Student at the time of this IEP, the goals, services, and supports in this IEP addressed Student's identified needs. The IEP did not

include behavior goals, because, at the time of the IEP, Student did not demonstrate negative behaviors in the school setting.

A central aspect of Student's assertion that the goals and services in the triennial IEP did not offer Student a FAPE, related to Ms. Keller's responses to the rating scales she completed during the triennial assessment, and Dr. Payson Hays's opinion that Student indeed displayed dysfunctional and negative behaviors at the school site. Student asserts that the triennial IEP was deficient because it failed to include goals and services to meet the behavioral and social-emotional needs that were reflected in Ms. Keller's responses to the rating scales and which Mother observed at home.

As was discussed above with respect to Issue 1a, however, Ms. Keller's responses to the rating scales on the triennial, for whatever reason, did not reflect Student's classroom behaviors at the time of the triennial assessment, as she reported at the three sessions of the March 12, 2019 triennial IEP. Further, the classroom observations performed by numerous individuals and included in the triennial assessments, as well as the IEP team's discussions of Student's behaviors at school, supported that, at the time of the IEP, the IEP team had no information that Student displayed any elevated, dysfunctional, or disruptive behaviors at school. Under the snapshot rule, the IEP team had no information that Student required any goals or services to address these behaviors. Student did not demonstrate any elevated behaviors at school that required any goals or services other than those that were included in his IEPs.

Student offered no specific or direct evidence that contradicted the reports of numerous professionals that Student's behavior at school was not aggressive, disruptive, dysfunctional, dysregulated, or otherwise maladaptive. Mother posited at the IEP team meetings and in emails to Independent staff that Student's behaviors at school were due

to his suppressing his frustration, anger, and anxiety while at school, such that he would lose control at home and explode when he came home. This belief was mentioned by Dr. Payson Hays in her report, but her comment that it was “absolutely possible” did not constitute full-throated support of Mother’s theory, and she only endorsed Mother’s theory at hearing. However, there was no specific evidence to support Mother’s theory. Indeed, Dr. Payson Hays’s theory, expressed in her report, that Student did not repress his behaviors at school, but rather expressed them, tended to contradict Mother’s theory.

Finally, Student generally contends that all of Student’s IEPs at issue from January 23, 2019, and thereafter were deficient in that they failed to include goals, services, and placement to address the social-emotional and behavioral deficits Student manifested in the home setting. Parent relies solely on the case of *L.J. v. Pittsburg Unified School Dist.* (9th Cir. 2017) 850 F. 3d 996 (*L.J.*) in support of this claim. However, *L.J.* is distinguishable. *L.J.* involved an elementary school student who was diagnosed with attention deficit disorder, oppositional defiant disorder, and bipolar disorder. He had a history of demonstrating aggressive and disruptive behaviors at school over the course of several years. Ultimately, by the time *L.J.* was in fifth grade, he had been suspended from school several times. School staff had to call parent to pick him up from school on numerous occasions. He had a suicidal ideation at school, and several suicide attempts outside of school, and he had numerous psychiatric hospitalizations. He injured or threatened to injure students and staff at school. When he was able to attend school, his academic performance was satisfactory. The school district did not find him eligible for special education both because student did not have any qualifying disability and, if he did, he did not demonstrate a need for special education services because his academic performance was satisfactory.

By the time the matter reached the Ninth Circuit, the critical issue on appeal was whether student demonstrated a need for special education services. The court found that many of the services and accommodations student received at school to help manage his behaviors, such as a one-to-one aide, were in fact special education services, not general education services, which was a clue that student indeed required special education services. The court also noted that student's emotional disturbance, which resulted in numerous suicide attempts, interfered with school performance, even though the suicide attempts occurred outside of school. The suicide attempts resulted in psychiatric hospitalizations which caused him to be absent from school and interfered with his academic performance and education. Student also had needs related to his medications, and school counselors repeatedly expressed their concern regarding student's medication management and its effect on his school functioning.

In *L.J.*, the court determined that whether student's behavior occurred at home or at school, the determining factor for eligibility purposes was whether his disability of emotional disturbance interfered with his education and necessitated special services.

In this case, as opposed to the *L.J.* case, the issue was not eligibility, or whether Student was entitled to special education and related services. Here, Student was found eligible for special education long before he enrolled in Castro Valley. Castro Valley always acknowledged that Student's disabilities qualified him for special education services, and that he required special education and related services. *L.J.* does not address the issue here, which is whether Castro Valley was required to provide special education services beyond those that it already provided to Student in the school environment, for aggressive and dysfunctional behaviors that occurred only in the home environment, and which, the evidence demonstrated, did not affect his school performance.

Rather, this case is governed by *San Rafael Elementary School Dist. v. California Special Education Hearing Office* (N.D. Cal. 2007) 482 F. Supp. 1152 (*San Rafael*). Citing *County of San Diego v. California Special Education Hearing Office, supra*, the *San Rafael* court stated that behavioral and emotional goals are properly addressed through an IEP only to the extent that those problems affect the student's educational progress. (*San Rafael, supra*, 482 F. Supp. 2d 1152 at 1161.) "*County of San Diego* does not require a school district to address all of the emotional or behavioral problems a student may have, regardless of where and when those problems manifest." (*Ibid.*)

Pursuant to *San Rafael*, the issue then simply becomes whether Student's dysfunctional home behaviors affected Student's educational progress, such that he needed additional goals and services included in his IEP to address them. Student did not demonstrate that this was the case with respect to the triennial IEP. Rather, the evidence was undisputed that Student made academic progress during the 2018-2019 school year at Independent. Student contends that Student's education was impacted by his psychiatric hospitalizations which were due to his at-home behaviors. There was no evidence that Student's psychiatric hospitalizations over Thanksgiving break in November 2018, which caused him to miss two days of school, negatively affected Student's educational progress whatsoever. To assist in his transition back to school after that absence, Castro Valley developed goals based upon Student's hospital Safety Plan and provided short-term general education counseling to Student.

Student's next psychiatric hospitalization, on March 6, 2019, also caused him to miss two days of school when he was initially hospitalized and placed on a three-day psychiatric hold. Student was discharged on March 7, 2019, but Mother brought him back to the emergency room later that day. On March 8, 2019, Student was transferred from Kaiser to Vallejo, and was no longer within the boundaries of Castro Valley. He

was on a three-day involuntary psychiatric hold at Vallejo, and then placed on a 14-day involuntary psychiatric hold. After a few days passed during the 14-day involuntary hold period, Parents permitted Student to remain in Vallejo on a voluntary hold basis. Student's lack of school attendance for approximately nine weeks (not counting a school vacation) while in Vallejo was largely the result of Parents' refusal to let Student return home, out of fear for the well-being of Student's siblings and the safety of the family. Parents housed Student in Vallejo while they sought a residential placement for him. Consequently, the bulk of Student's absence from school while he was at Vallejo was due to Parent's preference. If this extended absence impacted Student's academic progress, Student did not demonstrate that it was caused by his disabilities.

Further, special education students who are placed in a psychiatric hospital for medical purposes are the educational responsibility of the local educational agency in which the hospital is located. (Ed. Code, § 56167, subd. (a).) There was no evidence that Parents contacted the school district in which Student was hospitalized to attempt to obtain educational services for him so that he could keep up with his studies.

However, there was no evidence that Student's voluntary nine-week stay outside of Castro Valley's district boundaries affected his educational progress. Immediately upon leaving Vallejo, Student travelled to and was enrolled at Intermountain, where he completed first grade. Ms. Slack, his teacher at Intermountain, affirmed Student was a good student from the time he entered her class. She reported his academic performance to be at grade-level, with high reading and good math skills. His Intermountain report card at the end of the 2018-2019 school year showed he performed at grade-level in all subjects, and he performed well on his Star Reading and Math assessments. His study habits and work habits were rated excellent across all categories, and his social behavior ranged from excellent to satisfactory.

Under these circumstances, Castro Valley had no obligation to develop goals and services to address Student's aggressive and dysfunctional behaviors at home. The goals in Student's March 15, 2019 triennial IEP appropriately addressed all areas of need, and the services were designed to allow Student to make reasonable progress on his goals.

IEP TEAM MEETING OF OCTOBER 18, 2019

On October 18, 2019, Castro Valley convened another IEP meeting, to consider Dr. Payson Hays's independent assessment. The IEP team included Ms. Ostreicher, Mr. Hansen-Schmitt, Ms. Martin, Ms. Carson, Ms. Lopez, Ms. Davis, Castro Valley general education teacher Diana Saliba, Intermountain case manager Jager Kechely; Intermountain therapist Ms. Van Dyke; Student's Intermountain teacher Ms. Slack, and an Intermountain speech and language therapist. These Intermountain personnel attended by phone. Student's attorney and Castro Valley's counsel also attended the meeting.

Intermountain staff reported on present levels. Student was settling in at Intermountain. Twice he hit staff when frustrated, in the cottage setting. Student stated he did not need counseling services. He threatened to elope. Student was doing well in class. He followed directions, liked school, and was doing well academically. He sometimes argued against following a direction, but was easily redirected and compliant once the direction was explained. He was not disrespectful. He was taken off all of his medication. When initially taken off his medication, he needed to adjust to focus and self-start, but he was doing well with both at the time of the IEP team meeting. Socially, he was willing to play alone or with others. He struggled with reading complex directions and comprehending them. His handwriting was messy but legible. He

struggled a bit with appropriate boundaries, particularly with adults. He sometimes did not raise his hand to gain the teacher's attention. He tended to experience some anxiety in the classroom when other students had a meltdown. He initially had some anxiety in music class, but when he learned expectations he was fine. The Intermountain speech and language therapist observed Student's anxiety when he was presented with a new game or task. His initial reaction was that he did not want to participate, but he usually changed his mind when he understood the expectations and saw his peers participating. He also demonstrated some anxiety when collaborating with classes of older students.

His current classroom included second grade to fourth grade. There were eight students in the class, with three adults. The program was highly structured, with a predictable routine. Student were given notice when change was about to occur, and there was a set transition routine. Ms. Van Dyke described his daily classroom schedule. Ms. Van Dyke provided one hour of individual and family therapy weekly.

Dr. Payson Hays presented her report, and the team discussed her findings. Castro Valley personnel said they did not see the same issues when Student was at Castro Valley as Dr. Payson Hays raised in the report. Dr. Payson Hays stated that first and second grade were latent periods for students on the autism spectrum. Third grade was more challenging, as children have less structure and more abstract thinking. Mr. Hansen-Schmitt noted that older grades have continued structure even as tasks get more abstract or complex. He also noted that Student's behaviors were on par with or better than his peers while he attended Independent. Dr. Payson Hays agreed that most of the behavioral concerns she mentioned were from when Student was in Pittsburgh.

The IEP team discussed amendments to the March 2019 IEP based on updated present levels and Dr. Payson Hays's report. The team added an accommodation to the IEP, which gave Student more time to process complex multi-step directions and tasks. Dr. Payson Hays noted in her assessment that was an area of weakness for Student. Dr. Payson Hays said Student would need a social emotional goal. The team agreed to modify the current coping skills goal to add an example of coping strategies and to develop a new goal regarding identifying emotions. The team agreed to add additional counseling to support the new goal.

Student's amended social/emotional goal required Student to implement an appropriate coping strategy that he learned during his counseling session, such as a movement break, quiet space break, sensory break, access to fidgets, listening to soft music, deep breathing, or going for a brief walk, rather than engaging in an unexpected behavior, with no more than one unexpected behavior per month.

A new social emotional goal was added, based on Student's active resistance to verbalizing his emotions at Intermountain, and his visible discomfort when expected to discuss his emotions. Student was only consistently able to identify or express feelings of anger or annoyance. The goal required Student to accurately identify his feelings/emotions when presented with real situations or what a person may be feeling when presented with imagined situations in four out of five trials.

The team reviewed the continuum of placement options. Intermountain staff recommended continued residential treatment center placement and said that a discharge plan would be implemented and discussed several months before his transition from Intermountain. Dr. Payson Hays raised the option of a smaller environment near home that could meet Student's autism spectrum disorder related

needs and also challenge Student academically. Castro Valley staff expressed concerns about placing Student in a more restrictive environment given how well he was doing in the school setting before he was removed because of issues at home. The Castro Valley education specialist raised the option of a one-to-one aide in the general education setting. Dr. Payson Hays felt that a one-to-one aide would be more restrictive and inappropriate for Student given his autism spectrum disorder. The team discussed home behaviors versus school behaviors. Castro Valley offered continued placement in a general education classroom with special education supports.

Intermountain staff left the meeting. The team discussed the additional supports needed for Student's transition back to school. The team discussed adding a transition plan with check-ins and check-outs in the morning and afternoon, and coordinating with Intermountain regarding discharge plans for transition planning. The team also discussed counseling services. Castro Valley offered to increase individual counseling services from 60 minutes per month to 30 minutes per week. Dr. Payson Hays recommended that the counseling provider have cognitive behavior therapy training. Student's attorney asked what counseling services would look like and the qualifications of the school psychologist. Ms. Lopez discussed what counseling sessions would look like and noted the qualifications of the school psychologist who served Independent, which included cognitive behavior therapy training.

Dr. Payson Hays recommended being pro-active with Student's supports to promote well-being and growth across all settings and prevent future challenges.

The IEP offered placement in the general education class at Independent. The team decided upon the same accommodations and program modifications as were

included in the triennial IEP of March 15, 2019, and added extra time to process and complete multi-step tasks.

The IEP offered occupational therapy services of 100 minutes yearly, to be served in consultation with staff for sensory needs; group language and speech for 175 minutes monthly; specialized academic instruction for 30 minutes per week, to focus on mastery of completing checklists to finish work independently, and individual counseling, of 30 minutes per week.

The IEP also offered transition activities to support Student's transition from Intermountain. Castro Valley would collaborate with Intermountain on a transition plan and increased transitional supports. The plan would include increased check-in and check-out, and increased time with the school psychologist and other support staff upon Student's initial return to Castro Valley.

Parents did not consent to the IEP. Mother sent a 12-page letter to Castro Valley dated November 4, 2019, responding to the IEP. The first five pages of Mother's letter contained questions about the goals, and criticisms about numerous aspects of the IEP. Many of her criticisms consisted only of Mother's arguments and opinions, and many of her objections were not presented as issues in Student's complaint or at hearing. Several of them were based on facts that were not supported by evidence at hearing, especially as Mother did not testify regarding most of the matters raised in the letter. In his closing brief, Student summarized the letter, but did not provide any details regarding Mother's objections and concerns raised in the letter, relate them to the issues or evidence in this case, or cite any exhibits or law to support them. The letter was considered in that it signified Mother's lack of consent to the IEP, but the specific contents of the letter will not be further addressed in this Decision. On

December 13, 2019, Castro Valley sent Parents a prior written notice letter responding to Mother's November 4, 2019 letter.

The amended IEP of October 18, 2019 contained appropriate goals to meet Student's areas of need of pragmatic language, social-emotional, and executive functioning. The two pragmatic language goals of the triennial IEP remained to promote Student's social skills. As was discussed above, those goals were appropriate at the time of the March 15, 2019 triennial IEP, and there was no information presented to this IEP team that those goals were no longer appropriate. The executive functioning goal of the triennial IEP targeting work completion also remained and, there was no information presented to the IEP team that the goal was no longer appropriate. Indeed, the team added an accommodation to the IEP to support the goal, by providing more time for Student to process and complete multi-step tasks.

The IEP team determined that the social emotional goal in Student's triennial IEP should be amended, to include examples of coping strategies learned through counseling, and the team developed an additional social emotional goal regarding Student identifying his feelings and emotions. Dr. Payson Hays participated in the discussion and development of these goals, and they were based on the information provided by Intermountain and contained in Dr. Payson Hays's report. Accordingly, the goals in that IEP were appropriate. Again, this IEP did not include behavior goals, because, based upon the information available at the time of this IEP meeting, including Dr. Payson Hays's assessment and Intermountain reports, Student did not demonstrate significant behavioral problems in the school setting. The discussion above regarding behavior goals with respect to the triennial IEP is incorporated here. Pursuant to *San Rafael*, the October 18, 2019 IEP appropriately amended the triennial IEP to address Student's needs in the educational setting. Student was exhibiting good behaviors and

peer relationships in school at Intermountain at the time of this IEP. The goals in Student's October 18, 2019 amended IEP appropriately addressed all areas of need.

The IEP increased Student's counseling services to 30 minutes per week to address these changes, such that the services offered in support of Student's social emotional goals was appropriate. The speech and language and specialized academic instruction services remained the same as in the triennial IEP. The speech and language services consisted of lunch bunch, where Student learned and practiced social skills. The specialized academic instruction services addressed Student's executive functioning skills. The IEP team had no information at the time of this IEP that those services needed to be changed, and they remained appropriate.

Dr. Payson Hays's recommendation at the IEP team meeting that team consider Student's possible future needs in developing his IEP was rightly rejected by Castro Valley. An IEP is developed based on a Student's present needs, not potential future needs. For example, an IEP need only contain annual goals. (20 USC § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320.)

The goals in Student's October 18, 2019 IEP appropriately addressed all areas of need, and the services were designed to allow Student to make reasonable progress on his goals.

PLACEMENT

Both federal and state law required Castro Valley to provide Student special education in the least restrictive environment appropriate to meet his needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2)(i); Ed. Code, § 56040.1.) This means that Castro Valley must educate a special needs pupil with nondisabled peers "to the

maximum extent appropriate,” and the pupil may be removed from the general education environment only when the nature or severity of the student’s disabilities is such that education in general classes with 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)(ii); Ed. Code, § 56040.1.)

As a corollary to the requirement that a school district determine the least restrictive environment, the school district must make available a continuum of placement options. (34 C.F.R. 300.115.) In California, this includes, from least restrictive to most restrictive: regular education programs; resource specialist programs; related services; special classes; nonpublic, nonsectarian school services; and other listed settings; to instruction in the home, in hospitals, and in other institutions. (Ed. Code, § 56361.) The continuum of placement options is to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment appropriate for them. (71 Fed. Reg. 46,586-46,587 (Aug. 14, 2006).)

The Ninth Circuit Court of Appeals, in *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398 (*Rachel H.*), set forth standards to determine whether a general education classroom is the least restrictive environment for a child with a disability. The court adopted a balancing test that required the consideration of four 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 would have on the teacher and children in the regular class;
- and
4. the costs of mainstreaming the student. (Id. At p. 1403.)

If the IEP team determines 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 considering the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050 (*Daniel R.R.*); *B.S. v. Placentia-Yorba Linda Unified School Dist.* (9th Cir. 2009) 306 Fed.Appx. 397, 400.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

In selecting the least restrictive environment, the IEP team should consider any potential harmful effect on the child or on the quality of services that the child needs. (34 C.F.R. §300.116(d).) A placement must foster maximum interaction between disabled students and their nondisabled peers “in a manner that is appropriate to the needs of both.” (Ed. Code, § 56000, subd. (b).) To the maximum extent appropriate, special education students should have opportunities to interact with general education peers. (Ed. Code, § 56040.1.)

The factual findings regarding Student’s previous assessments and IEPs with respect to Issues 1a and b are incorporated here.

Student relies upon *L.J., supra*, to support his position that the March 15, 2019 and October 18, 2019 IEPs failed to offer him a FAPE because Castro Valley was required to offer him a residential placement to address the aggressive and dysfunctional behaviors he demonstrated at home. However, *L.J.* is not applicable here. *L.J.* addressed standards for eligibility for special education services; it did not address the issue of placement in a residential treatment center.

The IDEA provides that a student requires placement in a residential treatment center if such placement is necessary to provide the student with special education and related services. (34 C.F.R. § 300.104.) In the recent case of *G.R., etc. v. Del Mar Union School Dist.*, (S.D. Cal., Apr. 22, 2020, No. 319CV00132AJBMSB) 2020 WL 1939020 (*G.R.*), the court discussed the law regarding when a residential placement is necessary. "The Ninth Circuit has identified three possible tests for determining when to impose responsibility for residential placements on the special education system: (1) where the placement is 'supportive' of the pupil's education; (2) where medical, social or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement is primarily to aid the student to benefit from special education.' *Cty. of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (9th Cir. 1996). Additionally, in *Clovis Unified School District v. California Office of Administrative Hearings*, 903 F.2d 635 (9th Cir. 1990), the Ninth Circuit ruled that reimbursement under the IDEA for a residential placement depends on 'whether [the child's] placement may be considered necessary for educational purposes or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process.' Thus, the analysis for determining whether [a residential treatment center] is appropriate ultimately centers on whether the placement is necessary for educational purposes." (*G.R., supra*, 2020 WL 1939020, at *5.)

In another recent case, *N.G. v. Placentia Yorba-Linda School Dist.* (9th Cir. 2020) 807 Fed.Appx. 648, the Ninth Circuit also applied the standard of whether placement in a residential treatment center was necessary for educational purposes. The Ninth Circuit upheld the school district's denial of a student's request for placement in a full-time residential treatment program. Student's parents wanted placement in the program because the behavioral progress she had made at school in controlling her aggressive

and self-injurious behaviors was not reflected at home. At home, Student's her self-injurious and aggressive behavior continued and negatively affected her twin sister, who also had significant disabilities. Student had been making significant educational and behavioral progress at school prior to parents' unilateral placement at the residential treatment center. The court affirmed the ALJ's decision that the school district offered a FAPE, that Student did not require a residential placement for educational purposes, and there was no relevant time when a residential placement of Student was necessary to provide special education and related services.

PLACEMENT OFFERED IN THE MARCH 15, 2019 TRIENNIAL IEP

The March 15, 2018 triennial IEP offered Student placement in a general education classroom at Independent. Student contends that Student required residential placement when he was discharged from Vallejo.

The least restrictive environment analysis of *Rachel H., supra*, supports placement of Student in a general education setting, with related services. *Rachel H.* prescribes consideration of four factors: the educational benefits of placement full time in a regular class; the non-academic benefits of such placement; the effect the student would have on the teacher and children in the regular class; and the costs of mainstreaming the student.

Applying the *Rachel H.* factors to this case, a general education setting was appropriate at the time of the triennial IEP. The evidence demonstrated that Student received educational benefit while in the general education setting at Independent. His pragmatic language skills improved, he performed well academically, and he accessed grade-level curriculum.

Student also was unable to obtain non-academic benefits in the general education classroom. He made friends, he learned to get along with peers and his teachers, and being with typical peers provided social interaction and role models.

Turning to the third *Rachel H.* factor, Student's behaviors were minor, and did not adversely affect Ms. Keller's ability to teach and the ability of the other students in his general education classroom to learn.

There was no evidence pertaining to the fourth *Rachel H.* element, which is the relative cost of the general education classroom with supports and services versus placement at Intermountain. However, the evidence regarding the other factors demonstrated that a general education environment with special education supports, such as what Student had so successfully received at Independent, was suitable for Student. Accordingly, the March 15, 2019 triennial IEP offering placement in the general education setting offered Student a FAPE in the least restrictive environment.

Pursuant to *G.R., supra*, Student did not demonstrate that placement at Intermountain, or any residential placement, was necessary for educational purposes, as opposed to merely necessary quite apart from the learning process. The evidence reflected that Student's extreme, dysfunctional, and uncontrollable behaviors occurred at home, where he frequently acted aggressively towards his siblings and his Parents. Student did not demonstrate that any of the dysfunctional behaviors he demonstrated at home occurred in the classroom and negatively affected his education. He also did not demonstrate that his dysfunctional behaviors at home negatively affected his education in Ms. Keller's class such that it was necessary for him to attend Intermountain for educational reasons. It is true his behaviors at home negatively affected his ability to do homework, but the evidence was undisputed that his homework in first grade was

merely to practice his skills, and he did not need the practice. The triennial IEP provided that Student would not have homework. His difficulty completing his homework did not impact his grade, and there was no evidence that a lack of homework completion impacted his educational progress. Further, as was discussed above, there was no evidence that Student's hospitalizations affected his educational progress.

Mother requested a residential placement from at least the time of Student's March 5, 2019, IEP, because Student's behaviors at home were jeopardizing her family's safety. Parents kept Student at Vallejo for weeks because they feared for their family's safety. Further, Student's initial goals at Intermountain were based on Student's emotional and behavioral dysregulation at home. The evidence demonstrated that Student's behaviors at home, and not any problems at school, prompted Mother's request for a residential placement. Under these circumstances, Student did not demonstrate an educational need for a residential placement in the triennial IEP.

Furthermore, an IEP team must consider a parent's input, but it need not necessarily follow a parent's wishes. As the court stated in *Gregory K., supra*, if a school district offered a program that was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. Here, Parents preferred a residential placement, but they did not demonstrate that Student required such a placement for educational purposes.

Based on the information available to the IEP team at the time of the IEP, the March 15, 2019 triennial IEP was reasonably calculated to provide Student educational

benefit and make progress appropriate in light of his circumstances. The triennial IEP offered Student a FAPE in the least restrictive environment.

PLACEMENT IN THE OCTOBER 18, 2019 AMENDMENT IEP

The IEP team met on October 18, 2019, while Student was attending Intermountain, to review Dr. Payson Hays's independent assessment.

The October 18, 2019 IEP continued to offer placement in the general education classroom at Independent, and the IEP team developed a transition plan to assist Student in moving back to Independent from Intermountain.

Student again contends that this IEP did not offer an appropriate placement and that he required a residential placement at Intermountain to address the behaviors and challenges he demonstrated outside of school, but not in school. Therefore, the analysis set forth above remains largely the same, and is incorporated here, as applicable. Pursuant to *Rachel H., supra*, the least restrictive environment for Student at the time of this IEP was a general education placement at Independent. Further, pursuant to *G.R., supra*, Student did not demonstrate that, at the time of this IEP, he required a residential placement for educational purposes. Student's therapeutic problems were still the same problems that he was working on when he first arrived at Intermountain, and both of those involved dysfunctional and dysregulated behaviors toward his family in the home environment, not the school environment. Parents preferred a placement at Intermountain, but, as was stated in *Gregory K., supra*, an IEP team need not follow a parent's wishes, as long as the IEP offers a FAPE.

For all of the reasons set forth above, based upon Castro Valley's information at the time of this IEP, the October 18, 2019 amendment IEP was reasonably calculated to

provide Student educational benefit and make progress appropriate in light of his circumstances in the least restrictive environment. The October 18, 2019 amendment IEP offered Student a FAPE in the least restrictive environment.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Issue 1a: Castro Valley did not fail to provide Student a FAPE, from January 23, 2019, through the end of extended school year 2019, and during the 2019-2020 school year by continually and intentionally withholding from and misrepresenting to Parents necessary information about Student's functioning at school. Castro Valley prevailed on Issue 1a.

Issue 1b: Castro Valley did not fail to provide Student a FAPE, from January 23, 2019, through the end of extended school year 2019, and during the 2019-2020 school year, by conducting an inappropriate educationally related mental health services assessment in February 2019. Castro Valley prevailed on Issue 1b.

Issue 1c: Castro Valley did not fail to provide Student a FAPE, from January 23, 2019, through the end of extended school year 2019, and during the 2019-2020 school year, by failing to offer Student appropriate

- i. Goals
- ii. Behavioral services;
- iii. Emotional services;

- iv. Social services; and
- v. Placement.

Castro Valley prevailed on Issue 1c, subsections i, ii, iii, iv, and v.

ORDER

All of the relief sought by Student is denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Elsa H. Jones

Administrative Law Judge

Office of Administrative Hearings