

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080552

DECISION

The due process hearing in this matter proceeded on February 6, 7, 8, 9, 14, 15, 16 and 17, 2012, in Ventura, California, before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Attorney Andrea Marcus appeared on behalf of Student. Student's Mother and/or Father (Parents) were present throughout the hearing. Attorney Melissa Hatch appeared on behalf of Ventura Unified School District (District). Special Education Director Robin Faigin or General Counsel Anthony Ramos attended the hearing for District.

On August 15, 2011, Student filed a Request for Due Process Hearing (complaint). On October 25, 2011, Student filed an amended complaint, resetting all timelines. On November 16, 2011, OAH granted a continuance of the due process hearing, for good cause, pursuant to the parties' joint request. On February 17, 2012, at the close of hearing, the parties were granted permission to file written closing arguments by March 5, 2012. Upon receipt of the written closing arguments, the record closed and the matter submitted.

ISSUES

- (1) Did the District violate its Child Find obligation, as of October 17, 2009, by failing to offer an assessment of Student in all areas of suspected disability?
- (2) Was District's March 28, 2011 psychoeducational assessment of Student (conducted by Debbie Erickson and revised on May 6, 2011), which determined that Student was not eligible for special education services, appropriate?

(3) Should Student have been found eligible for special education as of the time of the District's psychoeducational assessment in 2011?

(4) Are Student's parents entitled to reimbursement for the January 2011 unilateral placement of Student at Logan River Academy residential treatment center (RTC)?

FACTUAL FINDINGS

1. Student is an 18-year-old,¹ general education senior at Pacific Continuation High School (Pacific). He has attended schools within the District from Kindergarten into 10th grade at Buena High School (Buena). In the 2010-2011 school year, Student started 11th grade at a charter school, but returned to the District in October 2010. Student's parents (Parents) unilaterally placed Student in a residential treatment center (RTC) in January 2011, where he remained until June 2011. Student has never been found eligible for special education.

Childhood to Adolescence

2. At 10 months of age, Student suffered from urethral reflux, which was surgically corrected. Both kidneys suffered damage and function in a limited capacity, affecting Student's blood pressure, for which he takes medication. He is under the care of a nephrologist.

3. In sixth grade, District conducted a screening of Student and found that Student demonstrated behaviors indicative of attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD). The school psychologist recommended that Parents follow up with medical diagnosis and intervention with a family physician or child psychiatrist. In 2006, pediatrician Dr. Joshua C. Scott formally diagnosed Student with ADD and prescribed Concerta. In 2007, Dr. Marcel Goldberg changed Student's medication to Focalin. The following year, Dr. Russell Spadaro adjusted the Focalin dosage because Parents reported Student was having mood swings.

4. Both Father and Mother testified at the hearing. They described Student as having tics and quirks, mood swings, and unusual reactions to common stimuli since a child. These increased in frequency and/or intensity as Student aged. Student would chew on his shirt until wet, make unusual sounds in his throat, have nightmares, compulsively wash his hands, and become oppositional with Parents. Student exhibited these behaviors intermittently for certain periods, disappearing and reappearing over time.

5. Parents stated that getting Student to do his schoolwork became increasingly difficult as Student aged into middle school. Student's seventh grade final marks for the

¹ Student turned 18 years old on March 12, 2012, following the hearing.

2006-2007 school year were two B's, three B-'s, and one C- (math). In 2008, Parents believed that Student's grades were suffering, possibly because of side effects from the ADD medication. Student's 8th grade final marks for the 2007-2008 school year were two A's, three B's and one C- (science).

High School – 9th Grade

6. In 2009, Dr. Kristin Pena changed Student's ADD medication to Strattera, which elevated Student's blood pressure. Dr. Pena then discontinued all ADD medication.

7. Student started ninth grade at Buena for the 2008-2009 academic year. He turned 15 years old on March 12, 2009. Around this time, Student started to abuse marijuana. Parents also reported that Student was becoming increasingly oppositional and angry at home. They described Student as depressed, refusing to follow rules, not doing his homework, and overreacting to common situations.

8. Student did not exhibit any inappropriate behaviors at school. The school has no records of any oppositional, disrespectful conduct during Student's 9th grade. Student's grade reports have no negative remarks regarding Student's citizenship or conduct. Student was not disciplined or sent to the principal's office, for any reason.

9. Shaun C. Strople first became acquainted with Student at the beginning of 9th grade in the 2008-2009 school year. Student was in his Algebra 1A class. Mr. Strople testified at the hearing. Mr. Strople obtained a bachelor of arts in business and economics from University of California, Santa Barbara, and his single subject mathematics credential from California State University, Long Beach. He was pursuing a master's in business administration from California State University, Channel Islands. He had worked four years at the District and previously taught high school at the Torrance Unified School District. Mr. Strople had been a math teacher for nine years.

10. Mr. Strople had substantial experience in teaching children with individualized education programs (IEP's) and other learning challenges. These pupils had ADD, ADHD, physical disability, poor eye sight, autism spectrum disorder, and emotional disorders. He taught one-on-one home hospital for students with depression. If Mr. Strople became concerned with a child's ability to do class work, he would talk with the pupil's counselor and seek guidance by way of a professional opinion.

11. Student quickly demonstrated an understanding of all material. He completed all of his assignments and thought the material was slow. Therefore, Mr. Strople suggested Student immediately move onto Algebra 1B. Student agreed and changed classes. Though Student did very well in Algebra 1A, Mr. Strople testified that Student did not perform well after he transferred to Algebra 1B.

12. Student's 9th grade final marks for the 2008-2009 school year were an A- (Art), two B+'s (Spanish and Geography), a C+ (English), a D (Biology), and a D- (Algebra

1B). Student's attendance was consistent. For the second semester, Student was tardy one time for one class and missed about three days of school.

High School – 10th Grade

13. Ms. Mateos-Bendinelli was Student's 10th grade high school counselor at Buena. She testified at the hearing. In 2003, she earned a bachelor of arts in sociology (with a minor in education) from the University of California, Los Angeles. In 2009, she received a master of science in counseling from California State University, Northridge, from which she had previously earned her pupil personnel services credential in 2005. She is a member of the California Association of School Counselors, the California Teachers Association, the Ventura County School Counselors Association and the Ventura Unified Education Association. As part of her credentialing process, she interned as a school counselor at Cabrillo and Los Cerritos middle schools, as well as Buena.

14. Ms. Mateos-Bendinelli has worked for the District as a school counselor since 2005. She was previously a teacher at Vista del Mar Hospital in 2004 to 2005, credentialed to work with at-risk youth, ages 12 to 17 years, and teach general education subjects. She was a District substitute teacher in 2004.

15. As a high school counselor at Buena, she assists students in academic, career, personal, and social development. She monitors progress toward graduation and college entrance requirements for approximately 380 students. She evaluates student transcripts, test scores and teacher evaluations to recommend appropriate course placement or alternate placement, if necessary. Ms. Mateos-Bendinelli develops individual support service plans or positive behavior support plans for at-risk students and monitors progress. She participates in student assistance program teams (SAP), student success teams (SST), IEP, Section 504 and school attendance review team (SART) meetings.

16. Mother had been Ms. Mateos-Bendinelli's Spanish teacher in college. They recognized each other when Mother came to the Buena campus. In early summer 2009, Mother told Ms. Mateos-Bendinelli that she was concerned Student was not meeting the University of California "a-g" requirements.² Ms. Mateos-Bendinelli pulled Student's 9th grade transcript, which showed a D in two courses, confirming Mother's concern.

17. Ms. Mateos-Bendinelli said she and Mother communicated well with each other. Mother shared that Parents were having difficulty with Student at home. Mother said

²Although the California Department of Education and individual school districts have high school graduation requirements, the University of California (UC) lists seven academic eligibility requirements for admission to UC which are more rigorous than the high school graduation requirements. These are commonly referred to as the UC "a-g" requirements.

that Student was not doing what Parents asked of Student. Mother did not say that Student was depressed.

18. In July 2009, Mother emailed Ms. Mateos-Bandinelli and said she had talked to Student about his 10th grade schedule. Mother said Student agreed with retaking Biology and Algebra (the two classes in which he had received a D) in an effort to improve his record. Ms. Mateos-Bandinelli responded in August 2009, as the school year was about to begin. She provided the times that Student could meet with her to review his classes and possible schedule. Ms. Mateos-Bandinelli affirmed Student's desire to retake the classes and meet the "a-g" requirements for the state universities. She thereafter met with Student regarding his class schedule.

19. By email to Ms. Mateos-Bandinelli dated September 30, 2009, Mother said she was very concerned about the direction Student's year was taking. Mother mentioned that Parents had enrolled Student during 9th grade in Buena's Advisory for Relationship and Knowledge (BARK) program, which was a school wide program that provided students with academic support and encouragement. BARK did not produce any positive results. Mother asked about enrollment in AVID (Advancement Via Individual Determination), which was a program that prepared students to qualify for four-year university study. She also asked for suggestions of programs, tutors or strategies that might help.

20. Ms. Mateos-Bandinelli responded the same day, saying she would check in with Student that day. She told mother that the BARK program was no longer available, though Mother had already said it did not help Student. She told mother about the list of available tutors and a tutoring center, offering to send the list home with Student. She said that Student could access help from his individual teachers before school, during break, during lunch, or after school. She encouraged Mother to check with Student's teachers. Ms. Mateos-Bandinelli said she was aware that Student was retaking some courses to be eligible for a four-year university. She promised to reiterate the necessity of improving his grades when she met with Student.

21. Ms. Mateos-Bandinelli then met with Student. She discussed his performance and posed the possibility of AVID, which was a voluntary program which gave students an additional push to get ready for college. A student loses an elective to participate. Student said he was not interested in AVID participation.

22. Ms. Mateos-Bandinelli also considered the Buena Vista High School Program, which was a ninth and 10th grade program within the auspices of Buena High School and was designed to offer students an alternative high school setting. Pupils who participated usually had attendance or performance problems. Buena Vista was not a college preparatory curriculum. The program would not have enabled Student to meet the "a-g" requirements, which was one of Parents' primary concerns.

23. Ms. Mateos-Bandinelli did not know if Parents followed her suggestions regarding tutors or contacting Student's teacher to schedule personal assistance. Parents

noted that the tutor list included other students and did not obtain tutor support. There was no evidence that Student or Parents accessed his teachers for additional help in his courses.

24. Ms. Mateos-Bendinelli reviewed Student's first semester 10th grade report card dated February 5, 2010. She did not see any improvement in Student's performance. Student had a grade of F in History, B in Physical Education (PE), C in English, C- in Spanish, a D- in Algebra 1, and an F in Biology.

25. Mr. Strople was Student's 10th grade Algebra 1 teacher for the 2009-2010 school year. Algebra 1 was a college preparatory class and different from Algebra 1A. Mr. Strople noted that college preparatory classes include a "P" in the course title. Looking at Student's 10th grade schedule, Mr. Strople identified all of Student's classes as college preparatory, except for PE.

26. Student was a typical teen in class. Mr. Strople observed him joke with friends before and after classes. Student seemed to enjoy class, and was willing to answer if called upon. Mr. Strople did not see any appearance of depression. Mr. Strople would occasionally redirect Student by asking him to stay on task and focus. Student always quickly responded to redirection. For the entire year, he was absent from Algebra 1 only four times, with no tardies.

27. In the October 2, 2009 progress report, Mr. Strople noted that Student was "inconsistent in completing his homework. His exam scores are struggling as a result." Student's Algebra 1 grade was a D+. Mr. Strople made significant efforts to talk to Student about the poor exam results in an attempt to identify the cause. He encouraged Student to come to his office for additional help at any time. Mr. Strople did not refer Student to an SST or to Student's counselor. Mr. Strople believed that Student was capable of doing the material based upon his class experience with Student. However, Student lacked motivation. Mr. Strople asked Student why he was not motivated, but never received a specific answer. After discussions with Student, and observations of his work, Mr. Strople concluded that Student simply did not practice his Algebra by doing his homework. Therefore, the material never got into Student's long-term memory, which resulted in poor examination performance.

28. Student had raised his quarter Algebra 1 grade up to a C+, which demonstrated Student improved when he made the effort. Mr. Strople believed his one-on-one support helped. However, his grades decreased thereafter to a C-, D-, and then an F, which was Student's final grade. On each progress and grade report, Mr. Strople commented that Student was not completing homework or turning in his assignments, which impacted his exam grades.

29. Other than contact with Student's Father at the back-to-school night early in the academic year, Parents had no contact with Mr. Strople about Student's performance in Algebra 1. He reviewed his emails and records and found no communication from Father or

Mother. Also, neither Father nor Mother ever communicated to him that Student was depressed.

30. By email of February 21, 2010, Mother told Ms. Mateos-Bendinelli that Parents were very worried about Student's grades and overall performance. Parents wanted to meet to discuss the situation. Ms. Mateos-Bendinelli wrote back the next day and provided possible meeting times. She met with Parents on Friday, February 26, 2010.

31. At this meeting, Mother claimed in testimony that she told Ms. Mateos-Bendinelli that the Student was seeing a counselor, mentioned his tics (noises in throat), and nightmares. Mother also testified that she told her that Parents were having trouble getting Student to school, saying that he would stay in bed and there was nothing they could say to convince him to get up. Ms. Mateos-Bendinelli testified that she had no recollection of Mother telling her any of these comments, other than Mother thought Student was depressed. She testified that if Mother had actually shared such information with her, she would have referred Student to an SST. (See Factual Findings 55, here-in-below.)

32. Ms. Mateos-Bendinelli met with Student and tried to assist as his counselor. She spoke with Student about his poor grades and discussed how he could improve. Ms. Mateos-Bendinelli concluded that Student knew what he had to do to improve his grades, but he was not motivated. Student said that he did not feel like making the effort, even though he acknowledged his grades were low because he did not study and pass the tests.

33. Ms. Mateos-Bendinelli did not perceive any learning disability. If so, she would have referred Student for assessment. She also saw no signs of Student being depressed. Though she was not qualified to diagnose depression, her experience at Vista del Mar Hospital provided her with unique insight regarding emotionally disturbed adolescents.

34. Following the February 2010 meeting with Parents, Ms. Mateos-Bendinelli started the process of referring Student to a SAP team. She sent out forms to each of Student's teachers. She scheduled Student to take the Scholastic Reading Inventory (SRI), which was a computer-based reading assessment that provided data on Student's reading level and growth. She arranged to bring Student's situation to the next SAP team meeting of March 2, 2010.

35. Michael A. Cromie was Student's 10th grade history teacher for the 2009-2010 school year at Buena. He testified at the hearing. Mr. Cromie obtained in 2001, a bachelor of arts in music and religious studies from University of California, Santa Barbara, from which he thereafter earned a master of education. He has worked for the District since 2006 as a social science teacher at Buena. He was a substitute and student teacher in the Santa Barbara School District and, prior to that, worked in Japan as an assistant language teacher for three years.

36. As part of his graduate school education and training, Mr. Cromie studied the development of adolescents, human development and self-awareness, adolescent brain

development, and the warning signs of substance abuse like marijuana. These were general courses, which better enable him to identify potential issues so that he could discuss them with a student's counselors or school psychologist.

37. In Mr. Cromie's first period history class, Student was like many other adolescent boys who would often "goof around" with a female student, in a joking manner. Student would banter back and forth, in typical teenage fashion. Student was always respectful and never defiant. Student did not exhibit any behaviors that would have warranted referral to the principal's office. Mr. Cromie never saw Student cry, withdraw, get angry, or isolate himself. Student never exhibited any inappropriate behaviors. Throughout the year, Student had good attendance.

38. While in class, Student did his work. His quality was not the best nor the worst, usually somewhere in the 60 to 70th percentile in performance. Sometimes Student would surprise Mr. Cromie by getting a higher score of 90 to 100. For the fall semester, Student received a grade of F in Mr. Cromie's history class, with a "satisfactory" mark for citizenship, no tardies, and two absences. Student started the new spring semester with progress report and quarterly grades of D-.

39. Ms. Mateos-Bandinelli contacted Mr. Cromie for purposes of referring Student to SAP. The SAP is for students who need some academic help or encouragement, but do not require more serious intervention like the student success team (SST). Ms. Mateos-Bandinelli said that Parents sought additional help because Student's grades were poor.

40. On March 2, 2010, Ms. Mateos-Bandinelli brought Student's case to the SAP team, consisting of the counselor and four teachers: Mr. Cromie, Patricia Kochel, Diane Elrod, and Monica Cervantes. They discussed Student's performance and what other teachers had reported in response to the counselor's inquiries. No one reported any inappropriate or suspicious behaviors on the part of Student. The SAP set three goals. First, have Student SRI tested. Ms. Mateos-Bandinelli shared that Student scored as an "advanced reader" on the SRI, with a Lexile score 1384, equivalent to first year college. She also emailed the SRI results to Mother.

41. Second, the SAP team wanted Mrs. Kochel to talk to Student and see if he would join one of the SAP support groups on campus. Mrs. Kochel was an English teacher and trained to assist students in the SAP support groups. After speaking to Student, Mrs. Kochel reported to Ms. Mateos-Bandinelli that Student was not motivated to attend a SAP group. Student said he felt he was unfairly compared to his sister and that he had a poor relationship with his Father.

42. Third, the SAP team wanted to provide Student with a mentor. Since Mr. Cromie saw Student each day, the SAP team decided that Mr. Cromie would check in with Student on a daily basis and affirmatively mentor him in his class of 36 to 38 students. At that point, Student was receiving a grade of approximately 60 percent in history, just above the 59 percent that would be considered failing. Student's performance was inconsistent.

However, the SAP team strategy appeared to work. By the next SAP meeting, Student was performing better, doing homework, was more consistent, and his grades had improved.

43. On March 5, 2010, Mother thanked Ms. Mateos-Bendinelli for following up on Student's case and sharing his SRI score. Mother said that Student was making an effort to improve his grades, mostly because he did not want to lose his friends by having a different schedule at school.

44. Ms. Mateos-Bendinelli testified that she was very proud of Student when she found out about Student's improved grades. She called Father while Student was in her office to share the good news. Ms. Mateos-Bendinelli said that Father was not enthusiastic because the improved grades were a D. SAP helped Student realize that he could be successful if he did his work and studied.

45. On March 16, 2010, Student took and passed both sections of the California High School Exit Examination (CAHSEE) in English-Language Arts and Mathematics.

46. By the next reporting period, however, Student's grades dropped. Student maintained the higher grade in Mr. Cromie's history class for the remainder of the semester until the last project of the year, when Student did not perform. As a result, Student received a grade of F for the spring semester.

47. Mr. Cromie believed that Student was capable of performing in his history class. However, to do so required effort and Student often lacked effort. Though he would usually do the work in class, he did not make the effort to do the required work outside of class.

48. Mr. Cromie testified that progress and grade reports were sent home so parents were aware of their child's performance. Parents could also track their child's progress and grades at any time via the internet on the school's program, called ZANGLE. Mr. Cromie stated that concerned parents often made the effort to contact or meet with him. Student's Parents never contacted Mr. Cromie, by email, a note, telephone or a parent-teacher meeting. Other than possibly seeing Father on school night, early in the school year in September, Mr. Cromie had no recollection of meeting with or talking to Parents.

49. Parents testified that Student's conduct, at this time, was becoming increasingly unmanageable at home. Student refused to follow simple rules, would disappear from home, would verbally abuse his sister and Mother, scream at Father, isolate himself in his room, and steal money. They testified that Student was depressed and would not get out of bed to go to school. Parents did not share these details with Ms. Mateos-Bendinelli or the school.

50. By spring 2010, Parents were aware that Student was smoking marijuana. Parents did not share this information with Ms. Mateos-Bendinelli. The SAP team, and the teachers who attempted to assist Student, did not know that Student used marijuana.

51. Ms. Mateos-Bendinelli met with Student in April 2010, calling him into her office for academic counseling. Student did not seem sad or depressed. He did not appear to neglect his hygiene. There was nothing about Student's presentation that caused Ms. Mateos-Bendinelli concern. She spoke with Student about how to improve his grades, possible strategies, doing homework, and studying for tests. She concluded that Student knew what he needed to do to improve his grades but decided not to make the effort.

52. On May 10, 2010, Mother emailed Ms. Mateos-Bendinelli, noting that Student's improvement was brief and that he was again not doing the course work necessary to pass his classes. Mother wanted to know how his grades would affect summer school course selection; she also wanted to know what forms needed signing. Ms. Mateos-Bendinelli responded she would turn in the summer school form and meet with Student.

53. She met with Student in May 2010. Ms. Mateos-Bendinelli was concerned that Student could not get motivated. Again, she saw no evidence that he was depressed. If she had seen any signs of depression, or if any of his teachers indicated that Student was depressed or sad, Ms. Mateos-Bendinelli would have referred Student to a SST.

54. Mother and Ms. Mateos-Bendinelli had a personal meeting later in May 2010. At that time, Mother said Parents would probably be sending Student to ACE Charter High School (ACE) for the 11th grade. She told Ms. Mateos-Bendinelli that Student was experimenting with drugs. Mother said that they needed to change Student's environment. Parents were concerned that Student's friends at Buena were a negative influence and they wanted to move Student away from his buddies. Mother said Parents had caught Student smoking marijuana at home.

55. Ms. Mateos-Bendinelli testified that Mother shared details about Parents' struggles with Student at a May 2010 meeting. In contrast, Mother testified she shared details at the February 2010 meeting. In this regard, Ms. Mateos-Bendinelli's testimony was more persuasive. If Mother had shared such information in February 2010, Ms. Mateos-Bendinelli would have told the SAP team. The SAP team notes contained no hint of such behavioral struggles. Also, if Mother had informed Ms. Mateos-Bendinelli in February 2010, that Student was in counseling, there would have been no reason for Ms. Mateos-Bendinelli to recommend counseling for Student in May 2010. Finally, the evidence showed Parents were very selective in the information they shared with District. For example, they did not share Student's marijuana abuse until the end of the school year, though they had known of the abuse for quite some time. Mother admitted that the Parents felt the information to be private family matters, causing them to sometimes be less than transparent regarding their struggles with Student.

56. Mother testified that the reasons Parents chose to move to ACE were: (1) there was nothing more Buena could do for Student; (2) Student was too smart for the Buena Vista High School program; (3) ACE offered substantial one-on-one attention; (4) ACE did not have homework; and (5) Student would stop associating with the "bad friends" at Buena, with whom Student smoked marijuana.

57. Mother also discussed some of the severe difficulty Parents were having with Student at home. Student did not have a good relationship with Father. Student yelled at Father. Student said he was unhappy because everything was taken away and he was not allowed to hang out with his buddies. Ms. Mateos-Bendinelli suggested that Parents should see about therapy, which Mother acknowledged in her testimony.

58. Student's 10th grade final marks for the 2009-2010 school year were a B (PE), two D's (English and Art), a D- (Spanish 2), and two F's (History and Algebra). Student's attendance was consistent. For the second semester, Student was never tardy and missed nine classes, meaning he was absent about two days.

High School – Summer 2010

59. Barbara Harvey was Student's 10th grade summer school teacher for World History (college preparatory), which Student had failed during the regular academic year. Ms. Harvey obtained a master of arts in special education from California Lutheran University in 1995, having previously obtained a bachelor of arts in history. She is California credentialed in history and has a resource specialist certificate. She taught special education of students with various disabilities for almost 19 years from 1985 to 2004. She has since taught general education, but will take assignments for special education students who are placed on home hospital instruction.

60. She reviewed Student's summer school report card of July 30, 2010. Ms. Harvey had a vague recollection of Student. Summer school was four hours a day, over three weeks, for each semester of World History. Ms. Harvey taught Student semester one for three weeks; another teacher taught World History's semester two. The grade report shows Student earning a grade of D for each semester, recapturing the 10 credits on the one-year course. The grade was based upon class participation, homework, and test performance. Ms. Harvey said Student received a poor passing grade because he did not do all of his homework and did poorly on tests.

61. Ms. Harvey emphasized that the summer school schedule was intense, covering a 19-week semester in three weeks. Consequently, a student must attend all classes. Since Student passed the course, Ms. Harvey testified that Student attended regularly; otherwise, he would not have received a grade. She recalled that Student was timely, remaining for class throughout the day.

62. Having taught special education students with emotional disabilities for 19 years, Ms. Harvey identified distractibility, anger, and extreme frustration as traits common amongst ED students. Ms. Harvey would identify and properly address these inappropriate behaviors by a student in any of her classes. She had no recollection of Student exhibiting such behavior in the 2010 summer school class. Ms. Harvey would have recalled if Student was disinterested, shut down, or disengaged in the class. Such behaviors would have meant that Student would not have finished the class.

63. In June 2010, Parents retained James Keener, Ph.D., MFT. Dr. Keener saw Student and Parents every two weeks through October 2010. Dr. Keener did not testify at the hearing. Father testified that Parents sought treatment for Student's marijuana abuse. He referred Parents to Michael Vivian, M.D., a psychiatrist, for psychological evaluation and medication evaluation. Parents did not inform District.

64. Father testified that Dr. Keener was the first to suggest placing Student in a residential treatment center (RTC). Dr. Keener had once been an administrator or manager of an RTC. Father was surprised and hoped that an RTC would not be necessary.

High School – 11th Grade

65. On August 25, 2011, Parents enrolled Student for 11th grade at ACE in Camarillo, California.³ Student's courses were English 3, United States History, Geometry, Environmental Science, Computer Drafting, and Construction Techniques. Parents testified that Student strongly resisted the change in schools from the beginning.

66. While at ACE, Student was caught once with drug paraphernalia. He was not suspended. Student also had problems with attendance. Father testified he was surprised when he was contacted by ACE regarding Student's absences on days Parents had transported Student to school. When dropped off at ACE, Student would go to the barren fields around the campus instead of going into the school. This happened five or six times from August to mid-October, 2010.

67. Father testified that Student would try to jump out of the moving car on the drive to ACE. Father's testimony and other documentary references were unclear as to whether Student's attempt to jump from the moving car occurred more than once and whether Student actually opened the door. Father said Student made no such threats or attempts when going to Buena.

68. ACE did not refer Student for an assessment of any kind.

69. Dr. Vivian started to treat Student in October 2010. He prescribed medication for Student, which included lamictal and klonopin, sometime before December 23, 2010.

70. By email of October 7, 2010, Mother informed Ms. Mateos-Bendinelli that the transfer of Student to ACE was not helping, that Student had fought the transfer "all the way," and that Parents had not seen any positive results from the school change. She inquired about reenrolling him at Buena. Ms. Mateos-Bendinelli responded that he would have to be reregistered, but Ms. Zaragoza would have to register Student. Ms. Mateos-Bendinelli let Ms. Zaragoza know that Student would be registering.

³ ACE (Architecture, Construction & Engineering) provided an alternative high school educational opportunity to explore construction related careers, preparing students for college and professional apprenticeship programs.

71. Ms. Zaragoza was Student's 11th grade high school counselor at Buena. She testified at the hearing. In 2004, she earned a bachelor of arts in liberal studies from California State University, Channel Island. In 2006, she received a master of science in counseling and guidance from California Lutheran University. She is presently enrolled at California State University, Northridge, in a master of arts program to receive her administrator credential. She obtained a certificate in high school and college counseling from University of California, Los Angeles. She is a member of the Ventura County School Counselors Association and the American County School Counselors Association. She has worked as a counselor for the District since 2006. She was Student's counselor in ninth grade and when he returned to Buena in the 11th grade

72. Mother registered Student with Ms. Zaragoza on October 14, 2010. The District registration form asked if Student passed the CAHSEE; Mother incorrectly answered "no." The form also inquired if Student had an IEP, to which Mother answered "no."

73. David D. Ingersoll was Student's Geometry teacher after Student returned to Buena in October 2011. Mr. Ingersoll has been a math teacher for the District since 1998, except for a period in 2002-2004, when he taught at Oxnard Unified School District. He received a bachelor of arts in mathematics from University of California, Santa Barbara, and then obtained his teaching credential through California Lutheran University, in 1998.

74. Mr. Ingersoll had little recollection of Student, who came to his 11th grade geometry class late in the fall semester. Student was often absent and did not return to take the final exam. When present, Student was on task and not distracted. Mr. Ingersoll would provide one-on-one assistance if Student asked. He talked to Student's high school counselor about Student's absences. Though Student was not doing well in geometry, Mr. Ingersoll has no recollection of being contacted by or receiving correspondence from Parents.

75. Heather G. Arrambide was Student's 11th grade English teacher after Student returned to Buena in October 2011. She taught English since the District first hired her in 2004. Ms. Arrambide has a bachelor of arts in speech communication from California Polytechnic University, San Luis Obispo, and earned her California Clear Single-Subject Credential (CLAD) for English from Azusa Pacific University in 2004. She possesses a valid teaching credential.

76. Ms. Arrambide only knew Student for the short time. He was in her English class during his 10th grade fall semester. She said that he was well-behaved young man. He did not appear sad, but would be off task and not engaged. He enjoyed talking to friends, but was not disruptive. She felt nicely engaged with Student. Student did not violate rules. She never sent him to the office for discipline. He was not a behavioral problem. If so, she would have put him on a behavior contract.

77. Student's attendance was sporadic during the few weeks he was in her class. He started late in the fall of 2010 and was not present to finish the semester. When attending

school, Student was capable of doing the work but he did not want to perform. He did not show that he was confused or stumped, like other students who struggled with the subject matter. Ms. Arrambide had taught students with IEP's and was careful to identify students who demonstrated being incapable. She would also identify a pupil who was chronically sad, by affect and demeanor or by the pupil's writing. In these situations, she would talk to the pupil's counselor or the school psychologist regarding her concerns. However, she did not have such concerns regarding Student.

78. Ms. Arrambide testified that Student's lack of attendance and motivation were the cause of his poor grades. She had no opinion as to whether depression could cause absences and off-task behavior. Ms. Arrambide said that Student's Parents never contacted her.

Vista del Mar Hospital, ACTION & Center for Discovery – November and December 2010

79. Father testified that Student's behavior continued to worsen, even though Student returned to Buena. The situation at home was very rough. Student would run away, got very depressed, would not get up in morning, ate in his room, and could not be enticed out of his room. When Student was in such a mood, there was very little Parents could do. The family had become accustomed to seeing this conduct.

80. On occasion, Student would have what Father called a "meltdown." Some little thing would set Student off. Then Student would "push buttons" -- name-calling, swearing, throwing things -- in an attempt to get reactions from family members. When Student would run away, he would not let the family know his location. Student would say he was not coming back and that he would "just find someone to take him in." Father did not believe that Student had the social maturity or ability to handle himself on the street.

81. On November 7, 2010, Student had a meltdown that went beyond prior episodes. He started the typical pattern of being agitated, "pushing people's buttons," using profanity, throwing things, and verbally attacking his sister and Father. Father said Student then became emotionally erratic, and was screaming and crying. Student did not respond to Father's pleas to calm down. Student went into the backyard, where he paced back and forth and threw himself on ground, sobbing, beating the ground with his hands. Student's sister became frightened and Father sent her to her room. Student threatened to run away, saying he was leaving because "you won't let me go out with friends." Student left.

82. Parents called police, which they had done before. Student returned. When the police arrived, they talked to Student alone in the bedroom. Student said that he wanted to commit suicide by shooting himself. He also said that he was angry with Father, tired of talking, and tired of fights. He said he did not know if he could stop himself from going in at night and killing Father.

83. Police said each time they came to Student's house, the situation with Student was worse. They explained the 5150 process that enabled police officers to involuntarily

confine a person for evaluation up to 72 hours.⁴ Parents decided they could not risk the safety of the family and Student. Parents agreed to the 5150 hold. Police talked to Student, who was very depressed. He voluntarily walked out and the police took Student to Vista del Mar Hospital. Parents could not see Student until the next day.

84. Upon arriving at Vista del Mar, Student completed a patient statement, saying he was in a fight with his parents because they refuse to give him space. He said he was angry because he wanted to “smoke some weed” and they would not let him leave the house. He wrote that he did not think he needed to be there but wanted to work on his anger.

85. The Vista del Mar admission file contains a Chemical Dependency Assessment, completed by personnel with Student’s assistance. Student reported that he smoked three to four bowls of marijuana a day, since he was 15 years old. He had last smoked marijuana earlier on November 7, 2010. His urine test came back positive for cannabinoid. He took Xanax about four times, the last time being approximately two weeks before. In August 2010, he tried ecstasy. He said he tried abstaining from marijuana, but it lasted for only one week.

86. He said there were family arguments. He admitted stealing money from Mother to buy marijuana. He said he was getting poor grades.

87. A Vista del Mar clinician held a family session with Parents and Student on November 10, 2010. Parents were “focused on the fact that patient’s behavior warranted his placement in an RTC.” The recommendation was RTC placement with medication management, substance abuse treatment, and therapy.

88. The November 10, 2010, log notes documented a conversation between Parents and Dr. Keener, who said that Student needed to be in an RTC and agreed to advocate RTC placement with the insurance company. Another entry documented a conversation with Dr. Vivian, who said direct transfer to an RTC would be a fine idea.

89. Vista del Mar discharged Student on November 12, 2010. Dr. Ronald Sager’s discharge summary stated that Student was on two antidepressant medications, Cymbalta and Abilify. The summary said the main issue was RTC placement. Parents indicated that they were determined to get him in an RTC and were willing to pay the difference if the insurance company would not pay for residential treatment.

90. Parents stated that the insurance required that Student try intensive outpatient program (IOP) before it would consider paying for an RTC. Dr. Keener told them this was

⁴ California Welfare and Institutions Code, Section 5150, allows a qualified officer or clinician to involuntarily confine a person deemed to have a mental disorder that makes them a danger to him or her self, and/or others and/or is gravely disabled, for up to 72 hours for evaluation.

not unusual. Therefore, Parent took Student to the Ventura branch of ACTION Family Counseling, which is a drug and alcohol treatment and rehabilitation program, for IOP. Student was involved with ACTION from November 15 to 27, 2010. After four sessions, Student refused to continue.⁵

91. Father testified that Parents had been working with the insurance company to support a residential placement. Dr. Keener told Parents about Center for Discovery, a residential treatment facility for adolescents, in Whittier, California. Parents made arrangement for Student to enter Center for Discovery in case the IOP was unsuccessful.

92. On December 10, 2010, Parents took Student to Center for Discovery, where he was admitted. Student was initially very upset, because Parents had misled Student by telling him they were taking him to a doctor's appointment. However, with some persuasion from staff, Student pulled himself together and went with them into the facility.

93. Late the same evening, Father received a call from Center for Discovery saying he had to come immediately because Student was in the hospital emergency room. Father drove back to Whittier. By the time he arrived at 1:00 a.m., Student's blood pressure had stabilized and he took Student back to Center for Discovery. Father explained that Student took the blood pressure medication because of his kidneys and convinced Center for Discovery to allow Student to remain at the facility.

94. On December 13, 2010, Mother emailed Ms. Zaragoza and said that Student would be absent the following week, until winter break, because of health issues related to very high blood pressure. Mother asked if Ms. Zaragoza could have Student's teachers put together assignment packages for the following week. Mother did not tell Ms. Zaragoza that Student had already been admitted to Center for Discovery.

95. Other than this email, Parents provided no information to District regarding Student's health or mental state. Parents did not report any hospitalizations. Parents did not

⁵ On the third day of hearing, Student's counsel called witness Rebecca Porter. After Ms. Porter took the stand, District's counsel objected that Student had never listed Ms. Porter as a witness. Student's counsel represented that Ms. Porter was a replacement for a listed witness who could not come. The ALJ allowed Ms. Porter to start her testimony but she would have to be willing to return if District could not complete cross-examination. However, Student's counsel soon asked Ms. Porter her opinions as an expert from ACTION, which was not the role of the listed witness Ms. Porter was replacing. Ms. Porter also stated that she reviewed medical records in preparation for her expert testimony; she did not have the records nor were the records exchanged by Student. District objected to the witness because of lack of statutory notice per California Code of Education, section 56505, subsection (e)(7) and moved to have Ms. Porter excluded pursuant to title 34 Code of Federal Regulations, part 300.512(a)(3) (2006) and Education Code, section 56505, subsection(e)(8). The ALJ granted the motion and the witness was excused.

tell Ms. Zarogosa that Student used marijuana or was angry, depressed, suicidal, and homicidal. If they had, Ms. Zarogosa said she would have asked Parents to come to office so she could discuss possible resources and involve teachers in supporting Student. Mother testified that she had difficulty sharing such personal family information with Ms. Zarogosa.

96. Student was at Center for Discovery for six days until Parents' insurance company declined coverage. Center for Discovery discharged Student on December 16, 2011. The discharge summary said Student went to Center for Discovery with major depressive disorder, cannabis dependence, and family discord. Parents' insurance recommended IOP and further recommended that Student reenroll at ACTION. The summary strongly recommended that Student participate in a 12-step program and find a sponsor. Center for Discovery also recommended a 90/90, which was 90 meetings in 90 days, as well as group and family therapy. The discharge summary noted that Parents had been encouraged to seek long-term placement if Student's behaviors continued. The summary listed long-term referrals, which included Logan River Academy (LRA) in Utah.

97. Parents testified that they did not reenroll Student at ACTION because he refused to participate. Parents also did not enroll Student in a 12-step program, obtain a sponsor, or try the 90/90 regimen.

98. Father said that he first heard of an IEP from counselors at Center for Discovery. He was unaware of a possible IEP for RTC placement. Parents thereafter retained parent advocate Elissa Henkin.

Demand for Emotional Disturbance Assessment and Unilateral RTC Placement

99. On December 18, 2010, Parents contracted with educational consultant Lynn Hamilton to locate and recommend an appropriate residential treatment school for Student. She also assisted in obtaining and completing all necessary applications for admission by January 2011. Ms. Hamilton testified at the hearing. She has a bachelor of science in education from the University of Virginia and a master of arts in education, with a certification in learning disabilities, from Manhattanville College. She holds a general education teaching credential in Virginia and New York, though she has not taught for many years. She is a credentialed California Community Colleges Special Education Instructor, teaching a course in learning disabilities. She is a Certified as an Educational Planner by the American Institute of Certified Educational Planners, which is a professional group. California does not provide credentials or certification for educational planners. She has been in private practice as an educational consultant for 25 years.

100. From the outset, Parents told Ms. Hamilton that they wanted Student in a RTC because Student was not willing to stay and attend school on his own. Parents told her about Student's abuse of marijuana and that they wanted him in a substance abuse program where Student would not have access to marijuana. Generally, Ms. Hamilton recalled that Parents stated Student was failing classes and truant. Student was having difficulty in school and in completing homework. She knew that Student had been in the Center for Discovery, but he

did not like it and refused to attend. She noted Student had ADD. Parents told her of Student's oppositional and insolent behavior toward Parents. Ms. Hamilton also said she learned from Parents that Student was insolent and not respectful in school. She never spoke to any of Student's teachers nor saw any records that confirmed Parents' representation. Parents were the only source of Ms. Hamilton's understanding that Student's behavior was a problem in the school setting.

101. Ms. Hamilton looked at various programs. All options were outside California because California did not have secure RTCs. Ms. Hamilton looked for the appropriate therapeutic milieu, with staff trained in emotional disabilities and behaviors. She recommended Logan River Academy (LRA), in Logan, Utah. She believed LRA staff had the training to address Student's emotional disabilities and provide a successful educational setting. LRA had a strong counseling component and a successful record in modifying adolescent behaviors. The LRA administration told Ms. Hamilton that the District contracted with LRA.

102. With the guidance of Ms. Henkin, Parents drafted a December 22, 2010 letter to Linda Dubois, Director of District's Specialized Academic Instruction Services. The letter demanded an assessment of Student to determine that he qualified for special education under emotional disturbance (ED) eligibility and that he should be appropriately placed in an RTC. The letter stated District was expected to respond within 15 calendar days by forwarding an assessment plan for Parents' approval. Parents also demanded a concurrent Chapter 26.5 evaluation referral to Ventura County Behavioral Health (VCBH).⁶

103. With the guidance of Ms. Henkin, Parents also drafted a December 23, 2010 letter to Ms. Dubois. This letter identified itself as a prior written notice of intent to enroll Student in a RTC on January 3, 2012. The letter stated that Parents strongly felt Student

⁶ In 1984, the California Legislature passed Assembly Bill 3632, adding Chapter 26.5 to the Government Code, which provided that mental health services required by the IEP's for special education students would be delivered by community health agencies. These were commonly referred to as AB 3632 or Chapter 26.5 evaluations and services. On October 8, 2010, the former Governor vetoed funding for mental health services provided by county mental health agencies. In *California School Boards Association v. Brown* (2011) 192 Cal.App.4th 1507, 1519, the court found, that the veto suspended the mandate of county mental health agencies to provide mental health services that were required to provide individual students with a FAPE. Subsequently, on June 30, 2011, the Governor signed into law a budget bill (SB 87) and a trailer bill affecting educational funding (AB 114). Together they made substantial amendments to Chapter 26.5 of the Government Code which is no longer called AB 3632. In particular, the sections requiring community mental health agencies to provide the services were suspended effective July 1, 2011, and were repealed by operation of law on January 1, 2012. Thus, since October 8, 2010, LEA's have been exclusively responsible for providing mental health services to special education students.

required RTC educational placement. Parents further stated their intent to seek reimbursement from the District by way of IEP or, if necessary, a due process hearing.

104. Dr. Vivian wrote a letter dated December 23, 2010, addressed “To whom it may concern,” stating he had been treating Student since October 2010 and had diagnosed him with Bipolar Disorder NOS, ADD, and Marijuana Abuse/Addiction. He further stated: “Due to his violent, uncontrollable outburst in the home, I am recommending Residential Treatment, out of State.” Dr. Vivian identified Lamictal and Klonopin as Student’s medications.

105. By letter dated January 4, 2011, Robin Faigin responded to Parents. Ms. Faigin had been the District’s Director of Student Support Services since 2008. She told Parents that their letters, faxed on December 23, 2010, were forwarded to her for response. She stated the District had been closed for winter break from December 20, 2010 through January 3, 2011, and that the 15-day timeline had therefore just commenced. District would respond to their evaluation request by January 19, 2011.

106. Ms. Faigin testified at the hearing. In 1978, Ms. Faigin earned a bachelor of arts in psychology from Brandeis University and, in 1979, a master of education in special education from Lesley University, Cambridge, Massachusetts. In 1981, she obtained her teaching credential for severe handicaps through California State University, San Bernardino. She received an Administrative Services Credential – Professional, through California State University, Northridge, in 2007. Ms. Faigin also possesses a multiple subjects teaching credential - life, a learning handicaps credential authorization - life, and a language development specialist (LDS) certificate - clear. She is certified in non-violent crisis intervention (NCI).

107. Previously, she was a District special education program specialist from 1989, having filled a similar position with the Ventura County Special Education Local Plan Area (SELPA) from 1987. She was a special education teacher and resource specialist from 1979 to 1987. Ms. Faigin serves on the Ventura County SELPA Response to Intervention (RtI) committee, as well as a host of other SELPA and District committees related to special education, school leadership, IEP development, and social skills. Ms. Faigin has been a presenter at the Ventura County RtI Symposium and at various graduate courses related to special education at California State Universities in Northridge, Santa Barbara, and the Channel Islands.

108. Her duties included coordinating special education services for students from infancy through 22 years of age, for all eligibilities, including emotional disturbance (ED).⁷

⁷ California Code of Regulations, Title 5, section 3030, subsection (i), identifies the eligibility as “severe emotional disturbance” which, for purposes of this decision, is used interchangeably with the equivalent federal eligibility term of “emotional disturbance” or ED (34 C.F.R. §300.8 (c)(4) (2006)).

She trains, supervises and evaluates psychologists, special education itinerant specialists, Health Services staff, and Transition Partnership Program staff. Ms. Faigin assesses District programmatic needs and facilitates service delivery system to address those needs. She ensures District compliance with state and federal laws as well as regulations relative to special education and pupil services.

109. Ms. Faigin testified that District advised parents of its child find policy on its website and in the Annual Notice of Parents' Rights and Responsibilities, which was sent to students' families at the beginning of each academic year and which families acknowledged receipt in writing. She reviewed the annual notices sent for 2009-2010, 2010-2011, and 2011-2012, and identified the sections which discussed students with disabilities, special education, procedural safeguards, and the District's child find system.

110. In her January 4, 2011 letter, Ms. Faigin also told Parents that District was entitled to 10 working days notice of placement so that it would have an opportunity to respond before placement had been implemented. She generally asserted that sufficient notice had not been given, since the offices and schools were closed and Student was to be placed in the RTC by January 3, 2011. Ms. Faigin advised she would talk to the school psychologist, who returned to work that day, regarding an assessment plan. She reminded Parents that the District needed to have access to Student for assessment. She concluded by referring to the copy of Parent Rights and Procedural Safeguards for Special Education, which she enclosed with her letter.

111. District provided Parents with an assessment plan, which Father signed on January 9, 2011, and returned on January 11, 2011. District confirmed that it also referred Student to VCBH for a Chapter 26.5 evaluation. Parents also completed the District's special education, confidential Health, Developmental, and Social History Questionnaire on January 9, 2011. Parents did not inform District that Student was still home.

112. Student started at LRA on January 12, 2011. Parents arranged for professional transport from home to the RTC. Father testified that he visited two RTCs recommended by Ms. Hamilton and chose LRA because of its integrated classroom education component, as well as methods to involve the family in therapy.

113. Student's LRA teachers posted regular updates regarding his academic performance in their respective classes. LRA therapist Shannon Kegerries also provided monthly reports to Parents and to Ms. Hamilton. Ms. Hamilton visited LRA in March 2011. While there, she talked with Student and observed him in a classroom. She believed that Student was compliant at LRA. In her opinion, calling the Student emotionally disturbed was too severe a description; she described Student as behaviorally disturbed.

March 2011 Psychoeducational Assessments and Report

114. School Psychologist Deborah D. Erickson prepared a March 28, 2011, Psychoeducational Case Study report and testified at the hearing. Ms. Erickson earned her

bachelor of arts in psychology from University of California, Irvine, in 1980, and a masters of science from California State University, Fullerton, in 1983. She possesses California credentials as a school psychologist and in pupil personnel services. Ms. Erickson has been a school psychologist since 1985 and has worked for the District since 1987. Her duties include conducting psychoeducational evaluations as a member of District multidisciplinary assessment teams and developing individual education and behavior plans. She serves as a member of the SST, provides guidance and counseling to students, and screens students for behavioral and educational issues. She consults with parents and teachers regarding needs of students, facilitates IEP meetings, and serves as a member of the District's crisis intervention team. She has conducted substantially more than 500 psychoeducational evaluations.

115. Since August 2008, Ms. Erickson has also been a District program specialist. In this capacity, she oversees programs throughout the District that provide services to students with mild to moderate disabilities. She facilitates placement of students who transfer to the District with active IEPs, often attending IEP meetings as the District representative. She provides trainings and networking opportunities for the special education teaching staff, as well as consulting with staff in developing and revising IEPs.

116. Ms. Erickson testified that a special education assessment determines eligibility at the time of the testing and evaluation. To prepare for the assessment, she reviewed Student's cumulative education file, spoke with Student's Mother, consulted with Jason Lee of VCBH, spoke with the Student's RTC therapist Shannon Kegerries, consulted with District program specialist Sheri Schoenwald, conferred with Buena's school psychologist Cheri Patino, and spoke to private psychiatrist Dr. Vivian's nurse.

117. On January 9, 2011, Parents completed the District's Health, Development, and Social History Questionnaire. Parents reported that Student took Lisinopril for the high blood pressure and was monitored by his nephrologist. Mother reported that medication trials for Student's ADD proved ineffective in treating the symptoms. Parents further reported that stimulant medications had an adverse effect on Student's blood pressure. Student was also taking Lamictal for depression. Other than his high blood pressure, Student was in good health and had no restrictions on his activities or diet. His vision tested normal. Student had a history of passing school vision and hearing screenings.

118. Dr. Vivian's nurse provided Ms. Erickson with Student's DSM-IV diagnosis: Axis I, Major Depressive Disorder (rule out Bipolar Disorder); Axis II: Marijuana Dependency; and Axis III, attention deficit and hyperactivity disorder (ADHD).⁸ RTC

⁸ The Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition (DSM-IV) is a diagnostic manual published by the American Psychiatric Association. A DSM-IV diagnosis utilizes a multi-axial system which refers to different domains of information. Axis I pertains to clinical disorders. Axis II pertains to personality disorders. Axis IV pertains to psychosocial and environmental problems. Axis V is a Global Assessment of Functioning (GAF).

therapist Ms. Kegerries reported the LRA intake diagnosis as major depressive disorder, axis 1, with marijuana dependency and ADD. Ms. Erickson was unaware if LRA's intake diagnosis was made by the RTC staff or from history and records. At the time of assessment, Student was also taking Vistaril, used as a sedative to treat anxiety and tension.

119. In reviewing Student's school records, Ms. Erickson noted that Student had been achieving a satisfactory level at Buena and was passing most of his classes and had passed the CAHSEE. Student took the California Standards Test (CST) in May 2010. He scored in the "basic" range in English–Language Arts (LRA), "below basic" in Algebra 1, "far below basic" in Science, and "basic" in World History. Ms. Erickson noted that Student had a history of scoring in the "proficient" or "advanced" range in ELA, and "basic" or "below basic" in Math. His grades declined during the first semester of the 2010-2011 school year, his junior year, when he had spent a few weeks at Buena. At the time he left Buena for LRA, Student was failing his classes, primarily because he was not present for tests and final exams. Student's most recent transcript from Buena indicated that he had a 2.08 grade point average, on a 4.0 scale.

120. Dr. Erickson carefully reviewed Student's school records for any signs of inappropriate behavior. She found no record of discipline challenges. Student had never been referred for misbehavior, given a detention, or expelled. Such conduct would have been clearly indicated in the cumulative file. Students had a history of regular school attendance until the then current school year of 2010-2011. He was found truant on several occasions while attending ACE, as well as after he returned to Buena in October 2010.

121. By letter of February 25, 2011, Ms. Kegerries stated that Student was a flight risk if he returned home from LRA for evaluation. Therefore, District provided Parents with and IEP extension request wherein Mother acknowledged that Student was not accessible to District staff for assessment. Mother agreed to an extension of the 60-day timeline from receipt of the executed assessment plan for purposes of holding the IEP, which was anticipated to take place by April 1, 2011. Once Student was settled in his residential placement, Ms. Erickson traveled to Utah for purposes of assessing and evaluating Student on March 9, 10, and 11, 2011.

122. Ms. Erickson utilized standardized assessment tools, which included Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), Woodcock-Johnson Psychoeducational Battery – Third Edition/Normative Update (WJ-III/NU), Developmental Test of Visual-Motor Integration (VMI), Reynolds Adolescent Depression Scale (RADS), Behavior Assessment System for Children – 2nd Edition (BASC-2) (parent, teacher, and self-report versions); and the Roberts Apperception Test, Second Edition (Reberts-2) (administered by Jason Lee, M.F.T., VCBH.) Ms. Erickson included the test scores and scale index summaries in her report.

123. Ms. Erickson interviewed, assessed, and evaluated Student at LRA over a period of two consecutive days. Ms. Erickson emphasized that clinical observation was a meaningful and vital tool. She stated that Student was easily engaged in conversation throughout the evaluation. He expressed himself clearly, using age-appropriate vocabulary. He was alert, focused, and appeared willing to give effort to all the presented tasks. He was able to respond to questions and talk about current time and place. He did not appear agitated, nervous, or depressed. At times, Ms. Erickson had to encourage Student to persevere when assessment tasks became difficult. He would become somewhat fidgety as the test sessions progressed, although this did not affect his ability to focus on the task at hand. Based on the observed behaviors, Ms. Erickson believed that the test results are valid and a reliable measure of Student's then current functioning.

124. She did not observe Student in the classroom because she believed it would not be an authentic observation. LRA did not have a typical classroom environment; it was very small in size and number. Her presence would be obvious. Student was aware of the purpose of Ms. Erickson's presence. Overall, Ms. Erickson concluded that observation in the classroom would be tainted. Further, she did not receive any information from any source which would have caused her to observe Student in the classroom at the RTC.

Cognitive Functioning

125. Ms. Erickson administered the WISC–IV to evaluate Student's cognitive functioning. The standardized assessment of intellectual ability enabled her to compare the Student's performance against that of his same-age peers across the country. The WISC–IV provides a composite score that represents a child's general intellectual ability. It also provided composite scores that represent intellectual functioning in specified cognitive domains, including verbal comprehension, perceptual reasoning, working memory, and processing speed. Composite scores between 90 to 109 represent the average range. An individual subtest score may range from one to 19, with eight to 12 representing the average range. Also, percentile rankings ranged from one to 99, with those between 25 and 75 considered average.

126. Student had composite scores in Verbal Comprehension (VCI) of 112, which is in the 79th percentile and is considered high average. He obtained a composite standard score of 94 in Perceptual Reasoning (PRI), with a percentile of 34 that is classified as average. His composite scores in Working Memory (WMI) and Processing Speed (PSI) were 83 and 88, respectively, both classified in the low average range. Student's General Ability Index (GAI) was 104, the 61st percentile, well within the average range.

127. Due to the wide degree of variation among his indexes, Ms. Erickson believed that Student's overall functioning could not be summarized by a single score. She noted that his Verbal Comprehension and Perceptual Reasoning indexes were properly combined to obtain a GAI in the average range. Student's VCI suggested he has high average ability in verbal concept formation, verbal reasoning, and knowledge acquired from one's environment. His PRI indicated he was of average ability in the areas of perceptual and fluid

reasoning, spatial processing, and visual–motor integration. However, student demonstrated a wide variation in the scores that make up this index from above average to well below average. Ms. Erickson’s opined that Student’s ADD could have contributed to his having difficulty focusing on visual detail, which could have negatively affected Student’s score in this area.

128. Tests that require working memory entail the ability to temporarily retain information in memory, perform some operation or manipulation with it, and then produce a result. Student’s WMI was in the low average ability range. Since working memory involves attention, concentration, mental control, and reasoning, pupils with ADD often score low on measures of working memory, because it was difficult for them to focus on and retain auditory input. PSI measured the Student’s ability to quickly and correctly scan, sequence, or discriminate simple visual information, areas in which ADD can suppress performance. PSI also measured short–term visual memory, attention, and visual–motor coordination. Student’s low average PSI score similarly reflected the difficulty students with ADD have in this area.

129. Summarizing Student’s cognitive ability, Dr. Erickson concluded that Student’s individual profile indicated he would generally be expected to learn new material at a rate similar to that of his peers. He would perform best at tasks that required abstract verbal reasoning skills, such as in higher-level comprehension skills including inferencing, drawing conclusions, predicting outcomes, and considering alternative scenarios. In a classroom setting, she noted that Student might have difficulty following longer or more complex directions, as well as focusing on details when completing tasks.

Academic Skills

130. Ms. Erickson administered the WJ–III/NU for purposes of the obtaining further information regarding Student’s academic skills. The WJ–III/NU is a comprehensive battery of tests that include subtests in basic reading and comprehension skills, written language, and math computation, as well as concepts. Individualized achievement testing was conducted in order to determine Student’s skill levels in the areas of reading, written expression, and math, enabling Ms. Erickson to compare his performance with that of others in his age group across the nation. The scores could also be used to compare Student’s achievement with his cognitive ability in order to determine whether he is learning at the expected rate.

131. According to the results of the individual achievement testing, Student was functioning within the average range in all academic areas. In reading, his basic sight word recognition skills are at a ninth grade equivalent, while his comprehension skills are above the 12th grade level. In written language, Student was able to express his ideas clearly using descriptive vocabulary. In math, computation skills are within the average range, although Student sometimes makes careless errors when making calculations. It appears he may not have known all of his math facts, and sometimes relied on his fingers or guessing when solving math problems. Math reasoning and problem–solving skills were average as well.

Student was hesitant, however, to work out the problems on paper, although this strategy helped him arrive at the correct answer when he was encouraged to do so.

132. Ms. Erickson found, in summary, that Student had average academic skills across all basic subject areas, with reading comprehension being an area of particular strength. When given encouragement to take his time and use problem-solving strategies, Student was able to demonstrate adequate skills in math as well. In addition, Ms. Erickson used the GAI to calculate discrepancy between Student's achievement testing and cognitive ability. Student was achieving within the range expected.

Visual-Motor Abilities

133. Student took the VMI, where he was asked to copy a series of designs which progress from simple to complex. Student was able to reproduce most of the designs accurately, although he did not adequately focus on detail when doing some of the simpler items. As a result, his scores were artificially low. When testing the limits beyond the ceiling, Student scored in the low average range. He demonstrated adequate visual-motor skills but was not always focused on detail during pencil and paper tasks.

Social, Emotional, Behavioral Functioning

134. Ms. Erickson assembled a picture of Student's social, emotional, and behavioral functioning. She gathered input from a variety of sources in order to obtain information regarding Student's social-emotional development. Teachers and Parents provided input, as did Student's own self-report, in the BASC-2. Student's therapist Ms. Keggeries was consulted. In addition, Mr. Li from VCBH performed projective testing, which Ms. Erickson utilized in her assessment.

135. The BASC-2 is an integrated system designed to facilitate the differential diagnosis and classification of a variety of emotional and behavioral disorders of children and adolescents. Student, his teachers, and Parents completed the BASC-2 questionnaires, which were comprised of items that were scored and analyzed for severity of clinical symptoms as well as levels of adaptive functioning. The clinical scales included the following: hyperactivity, aggression, conduct problems, anxiety, somatization, atypicality, withdrawal, and attention problems. The adaptive skills scales included: adaptability, social skills, leadership, activities of daily living, functional communication, and adaptive skills.

136. The BASC-2 contains a variety of validity scales to deal with possible informant "bias." The BASC-2 Parent Rating Scale (PRS), Teacher Rating Scale (TRS), and Self-Report of Personality (SRP) each include an *F Index*, a *Consistency Index* (CI), and a *Response Pattern Index* (RPI); the SRP also includes a *Lie Index* and a *V-Index*. Ms. Erickson reviewed the scale results and, during testimony, explained the significance of various BASC-2 graphs related to the responders' scores.

137. Parents reported a high level of concern in all areas. According to their ratings, Student scored in the 99th percentile on all of the clinical indexes, and in the first percentile in the adaptive scales. In terms of externalizing problems, the Parents reported that Student displayed an unusually high number of disruptive, impulsive, and uncontrolled behaviors. In addition, Student evidenced of very high number of aggressive behaviors and was reported as being argumentative, defiant, and/or threatening to others. Parents reported that Student often engaged in rule-breaking behavior, such as cheating, deception, and/or stealing. Student also demonstrated a significant number of internalizing problems. Parents reported that Student frequently displayed behaviors stemming from worry, nervousness, and/or fear. He was often withdrawn, pessimistic, and/or sad. Parents also reported that Student frequently engaged in behaviors that were strange or odd, and generally seemed disconnected from his surroundings. While Student demonstrated many behaviors of concern, Parents indicated that at the same time he lacked the adaptive skills to manage the stress of daily life. Parents reported that Student had difficulty making decisions, had poor communication skills, and lacked the ability to perform daily tasks.

138. The BASC-2 software processed Parents' responses, finding that both Mother's and Father's responses should be interpreted with "extreme caution" due to the severity of their negative ratings. Ms. Erickson exhibited a sound knowledge of the BASC-2 index rating process. She explained that the *F* ("fake bad") index is designed to flag informants who may be excessively negative in rating. Scores in about 5% of the normed population would be evaluated with "caution." Scores occurring in about 1% of the normed population are evaluated with "extreme caution." Ms. Erickson referred to the PRS T-Score Profiles for Mother and Father, the graphs of which were incorporated and attached to her report, and explained how the BASC-2 determined Parents' responses warranted the "extreme caution" admonition. Ms. Erickson had no influence on the T-Score profiles. The profiles are a product of the analysis of the actual scales completed by a respondent. Accordingly, the BASC-2 protocols required that the Parents' PRS T-Scores be interpreted with "extreme caution."

139. In looking at Mother's T-Score profile graph, Ms. Erickson explained that the y-axis was the actual score while the x-axis listed the various scales. Any T scores that fell within the shaded area of the graph indicated a significant concern with the response. The graph's left side contained scores for clinical scales (negative behaviors) and the right side included adaptive scales (positive behaviors). For the 12 negative behavior scales, Mother's scores were all very high in the shaded area of significant concern, except for somatization, which is the unconscious process by which psychological distress is expressed as physical symptoms. For the six positive behavior scales, all of mother's scores were very low and in the shaded area of significant concern. Father's T-Score profile showed that he scored Student in the area of significant concern on every positive and negative scale.

140. Jill Goforth, Student's previous United States history teacher at Buena, completed a teacher response. Ms. Patino had provided Ms. Goforth a TRS when the District first started its assessment process. Ms. Erickson referred to the BASC-2 instruction manual

in stating that Ms. Goforth was well suited to provide a teacher response, even though Student attended Buena for only a portion of the prior semester. Buena teachers from the prior school year would have, in her opinion, been too remote in time to give valuable scale responses.

141. Ms. Goforth's ratings indicated a lower degree of concern than that reported by Parents. On the externalizing scale, Student scored at the same level as typical peers in the areas of hyperactivity, aggression, and conduct problems. On the internalizing scale, he also scored within the average range in the areas of anxiety and somatization. He scored in the at-risk range in the area of depression. On the school problems composite, Student scored in the clinically significant range. This was mainly due to a high score on the attention problems index. Student also scored in the at-risk range on the learning problems index. Ms. Goforth further reported that Student seemed withdrawn, was generally alone, and was unwilling to join group activities. She noted that Student's adaptive skills overall were in the at-risk range. He was adaptable to a variety of situations but lacked some social and leadership skills. He also demonstrated weak study skills, was poorly organized and had difficulty turning in assignments on time. Overall, his adaptive skills were within normal limits. The behavioral symptoms index was within normal limits.

142. Noting the higher scores for withdrawal and attention indexes, Ms. Erickson followed up by talking to Ms. Goforth personally. Ms. Goforth stated that student did not seem very interested or motivated. He was often tardy and, at times, came in smelling of marijuana. Ms. Erickson concluded that this conduct contributed to Ms. Goforth's higher scores for these indexes.

143. Ms. Erickson also gave the TRS to four of Student's teachers at LRA, which included Marianne Irvine, Ryan Williams, Lanee Adamson, and Carly Palacios. Ms. Erickson plotted the LRA teachers' scales on a Multi-Rater T-Score profile chart. The chart graphically demonstrated that the four LRA teachers were remarkably similar in their scale scoring, with a high level of inter-rater agreement. All of the teachers' clinical scale scores were within normal limits, except that one teacher said Student had attention problems in his class. All the adaptive skill scales were average, except for one teacher who scored Student above average in functional communication.

144. Student completed an SRP, indicating a high number of school problems. He disliked school and often wished to be elsewhere. He at times considered his teachers to be unfair, uncaring or overly demanding. His composite score on the internalizing problems fell within the at-risk range. He reported depression symptoms within the clinically significant range. Student reported feeling sad, being misunderstood, and feeling that his life was getting worse. He was dissatisfied with his ability to perform a variety of tasks, even when putting forth substantial effort. His score on the anxiety scale was within the average range, indicating that Student had anxiety-based feelings no more than others his age. On the inattention/hyperactivity composite, Student's score fell within the at-risk range. He reported having significant difficulties maintaining necessary levels of attention, and that this

interfered with his academic performance. In terms of personal adjustment, Student reported having a poor relationship with his parents. He reported having little trust in his parents and that he felt incidental to family life and decision-making. He scored in the average range on interpersonal relations scale. Student scored himself as being outgoing and as well liked as the average person his age. His score on the self-esteem scale was also within the average range. Generally regarding adaptive skills, Student rated himself within normal range except as to his relationship with Parents.

145. Ms. Erickson concluded from the BASC-2 that Parents rated Student differently than teachers and others. She believed that Parents saw very significant behaviors at home, which were simply not replicated in school. None of Student's LRA teachers reported concerns, except for one regarding Student's inattention.

146. Ms. Erickson also had Student complete the RADS. She chose the RADS because it is a brief self-report inventory designed to assess depressive symptomatology in adolescents aged 13 to 18, like Student. It is used as a screening measure for the identification of depression in school-based and clinical populations. Raw scores of 77 or above are considered at-risk for depressive symptomatology. Ms. Erickson administered the RADS in accordance with its instructions. Student obtained a score of 70 on the RADS, below the cutoff for depressive symptomatology. When compared with other adolescents his age, Students scored at the 82nd percentile.

147. Significantly, there are several items on the RADS that are critical for discriminating between clinically depressed and non-depressed adolescents. Student failed to endorse any of the critical-item symptoms that would indicate clinical depression. This contrasted with Student's endorsement of some depression on the BASC-2. Ms. Erickson explained that the RADS examined Student's conduct by seeking responses regarding frequency and degree; the BASC did not, because it typically called for true or false responses only. The RADS provided a standardized assessment that was able to differentiate clinically depressed symptomatology. Student's scores did not indicate clinical depression.

Ms. Erickson's Interview with Student

148. Ms. Erickson interviewed student, who presented himself as an alert, friendly and well-groomed adolescent with a normal affect. He expressed his frustration with his current placement, as well as a strong desire to return home. When asked if he knew why he was placed at LRA, he acknowledged that it was due to Parents' concern regarding his out-of-control behavior. Student talked candidly about his habitual use of marijuana. He reported that he had been using daily, often leaving during the school day with his friends in order to smoke marijuana. He confessed that he stole money from others in order to purchase drugs. When asked about remorse for stealing, Student stated he knew he should feel badly but did not. He admitted that marijuana had taken over his life, with his entire day consumed in getting money, buying drugs, and using drugs. He desired to continue taking marijuana when he returned home. Student appeared to have little insight regarding what

internal changes he needed to make in order to successfully complete the program at the LRA.

149. Student said he currently felt sad when he woke up in the morning because he realized where he was. This feeling lessened as the day progressed. He denied feelings of depression when he was living in Ventura and stated that he felt the previous interventions of counseling and medication were a waste of time. When asked about his hospitalization, Student stated that he wasn't really going to hurt himself or his father. He was just very angry at the restrictions that were being placed upon him.

150. Student said he didn't like school and that he never liked it, because he "doesn't like doing the work." He felt English was his best subject but he also liked history. He particularly disliked science and math. Student recognized that he had difficulties paying attention in class. However, when asked if he preferred the current smaller classroom setting over those at the comprehensive high school, he stated he preferred the larger class setting. Student stated he looked forward to returning to school in Ventura, and would consider possibly attending a continuation program so that he did not have to attend school for as many hours a day at the typical high school. He also reported that he would like to graduate from high school.

Interview with LRA Therapist, Shannon Kegerries.

151. Ms. Erickson interviewed Student's LRA therapist, Shannon Kegerries. The therapist reported she was working with Student on several issues, counseling him to develop a stronger sense of self, improve decision-making skills, and to recognize how his actions affected outcomes. She was also working on improving his relationship with the family. Parents participated in family counseling by telephone on a regular basis. Student's progress at LRA was initially slower than typical. She reported that Student was resistant to being there and did not put forth the effort required to progress through the program. Later, just before the initial IEP, Ms. Kegerries reported that Student was making some progress. Ms. Kegerries did not discuss therapy for substance abuse.

Reference to VCBH's Chapter 26.5 Eligibility Report

152. In her March 28, 2011 report, Ms. Erickson cited VCBH's Chapter 26.5 Eligibility Report, which was being concurrently prepared. VCBH stated that Student's ability to profit from his educational plan was impacted by his lack of motivation for school, his willful and deliberate defiance in attending school, and a long history of drug use. VCBH concluded there was not an emotional reason for leaving school other than Student not liking school. Student was unusually polite to the teachers and staff at school and his behaviors, based upon VCBH's assessment, appeared to be solely Student's choosing and were not the result of a qualifying mental disorder. VCBH found that Student did not qualify for mental health services pursuant to Chapter 26.5.

Summary of Assessment and Factors Affecting Educational Performance

153. In her report, Ms. Erickson summarized her assessment findings, indicating that Student possessed a range of cognitive abilities, ranging from above average to below average. He demonstrated a particular strength in verbal abstract reasoning skills. Student demonstrated average academic achievement skills which indicated he was learning at the rate expected when compared with his cognitive ability. Student was previously diagnosed with an attention deficit disorder that could affect his ability to focus in class as well as complete assignments.

154. In the social–emotional and behavioral domain, Student was a young man who was still learning to develop insight regarding his actions and motivations. He demonstrated significant problems with conduct, including drug use, truancy and defiance. Although he had been diagnosed with depression, treatment was conducted while Student was actively using marijuana. Student himself denied clinical depression but admitted to an apathetic attitude toward school and a strong desire for independence, and an interest in continuing his use of marijuana.

Recommendation Regarding ED Eligibility

155. In her March 28, 2011 report, Ms. Erickson applied the state and federal ED criteria to Student. She quoted title 34 Code of Federal Regulations, part 300.8 (c)(4), line by line, indicating her concomitant findings.⁹ Ms. Erickson persuasively explained at hearing that a DSM-IV diagnosis of an emotional condition did not automatically qualify a student for special education under ED eligibility. Though such diagnosis was informative, it was not determinative.

156. Ms. Erickson stated that ED meant a condition exhibiting one or more of five listed characteristics over a long period of time and to a marked degree that adversely affected Student’s educational performance.¹⁰ She then discussed each of the five characteristics and her associated findings.

(1) An inability to learn which cannot be explained by intellectual, sensory, or health factors.

Ms. Erickson found that Student was able to learn, which was evidenced by the current assessment results. He obtained average standard scores in all

⁹ Title 34 Code of Federal Regulations, part 300.8 (c)(4) (2006), consists of subsection (i) and (ii). Subsection (ii) states that emotional disturbance includes schizophrenia, which Student did not have. California Code of Regulations, Title 5, section 3030, subsection (i), does not contain this additional definition. The federal and state regulations are otherwise virtually identical.

¹⁰ Both the state and federal regulations require any applicable characteristic to meet all three limiting criteria—“over a long period of time,” “to a marked degree,” and “which adversely affects educational performance.” Ms. Erickson did not discuss these criteria in her March 28 report but does in her subsequent expanded May 6, 2011 report.

academic areas assessed. In addition, he had passed the CAHSEE. Ms. Erickson attributed Student's recent decline in grades to truancy, lack of motivation, and ongoing drug use. Student did not meet this criterion.

(2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

Student reported that he had a preferred peer group in Ventura, and his mother indicated this is well. Student developed friendships at his new school. Both his Buena and LRA teachers reported satisfactory relationships with Student. Student did not meet this criterion.

(3) Inappropriate types of behavior or feelings under normal circumstances.

Student had appropriate affect. There were no known reports of unusual behavior or responses under normal conditions. In testimony, Ms. Erickson acknowledged that Parents reported bizarre and aggressive behaviors in response to normal conditions. However, Ms. Erickson stated that these were within the context of Student's parental relationship and/or in the home environment. No similar reports exist for other venues, especially school. Ms. Erickson concluded that Student did not meet this criterion.

(4) A general pervasive mood of unhappiness or depression

Ms. Erickson acknowledged Student's history of depression diagnosis. Parents sought interventions for him, including therapy and medication. However, Ms. Erickson noted that Student was actively using marijuana at the time. At the time of the assessment, Student denied strong feelings of depression. Rather, he reported anger, apathy toward school, and frustration at having to conform to Parents' standards. Student further reported that, when receiving counseling, he thought it was "a waste of time" and he "didn't listen to any of them." Ms. Erickson noticed that his mood had stabilized, since Student stopped actively using drugs. She determined that Student did not meet this criterion.

(5) A tendency to develop physical symptoms or fears associated with personal or school problems.

Student did not develop any physical symptoms associated with personal or school problems. Student did not meet this criterion.

157. Ms. Ericsson stated that Student exhibited many behaviors of a student who was socially maladjusted rather than one with an emotional disturbance. She listed four categories of social behaviors of a maladjusted student, according to state regulations, and indicated the behaviors Student demonstrated.

158. The first social behavior category was when a student had the social competency and ability to follow social mores but acted contrary to community mores, which Student evidenced by self-reliance, self-confidence to leave home and manage for self for periods of time, and the ability to function in school and community as opposed to being helpless, confused, or disoriented. The second social behavior category was when a student had defective social relationships as evidenced by Student's rejection of authority and discipline, conflict with parents, and being out of parental control.

159. The third social behavior category was conduct demonstrating hedonism combined with unrealistic goals, as evidenced by Student's egocentric, impulsive, and irresponsible behavior, his low frustration tolerance, his poor judgment, and his living on the pleasure principle. The fourth social behavior category was a student's inadequate conscience development as evidenced in Student's lack of anxiety or guilt and his inability to profit from mistakes or correction.

Ms. Erickson's March 28, 2011 Recommendations

160. Ms. Erickson concluded that Student demonstrated behaviors of the socially maladjusted student rather than one with an emotional disturbance. Even though Parents requested an assessment for ED eligibility only, and the due process complaint does not allege any other eligibilities, Ms. Erickson testified that she considered other possible eligibility criteria, especially since Student had an ADD diagnosis. She said that her assessment data were the same she otherwise would have gathered for purposes of evaluating the eligibility category of other health impairment (OHI) and specific learning disability (SLD). She convincingly testified, in reviewing the OHI and SLD requirements and Student's assessment results, that he was not eligible for either. She suggested that Student would benefit from the implementation of classroom strategies that would accommodate his attention issues, such as preferential seating, use of visual cues whenever possible, and shortening of assignments. She suggested a peer note taker. She emphasized that it was important for Student to learn self advocacy so that he would ask for help when the concept or task proved difficult.

161. In connection with his lack of motivation, Ms. Erickson suggested that Student be encouraged to explore other educational opportunities and electives that would prepare him for life after high school, such as community programs, work experience and/or shop classes.

162. Notably, Ms. Erickson encouraged Parents to explore community programs that would support Student in his sobriety after his return to Ventura. She cautioned that Student would otherwise have difficulty following through with what progress he may have made in his RTC placement at LRA.

VCBH's Chapter 26.5 Eligibility Assessment and Report

163. Following District's referral for Chapter 26.5 evaluation, VCBH commenced its assessment for mental health services for Student, producing a final report dated March 22, 2011. VCBH received the referral from District on January 7, 2011, and prepared an assessment plan for Parents, which was signed and returned on January 12, 2011. VCBH supervising clinic administrator, Cheryl Fox, assembled an assessment team consisting of Kimberle DeAnda, Jason Lee, and Heather Guilin.

164. Ms. Fox is a California licensed clinical social worker with VCBH who testified at the hearing. She earned a bachelor of arts in therapeutic recreation from Virginia Wesleyan College in May 1989 and a master of social work from Norfolk State University, Virginia, in May 1993. She has worked for VCBH since 1999, starting as a Psychiatric Social Worker III (Buena High School Liaison) and achieving her present position as a Clinic Administrator in 2001. Her duties included: supervising the provision of mental health services to children and adolescents in outpatient clinic and multiple school sites; overseeing a staff of 20 social workers, marriage and family therapist, psychologists, and student interns; collaborating with contracted psychiatrists who provides medical oversight and pharmacological treatment of clients; and extensive review and monitoring of IEP-related mental health referrals, assessments and treatment within multiple school districts to ensure protocols are appropriately followed. Before working at VCBH, Ms. Fox was a psychiatric social worker at Colston Youth Center and a medical social worker in California. In Virginia, Ms. Fox was a substance abuse counselor, case management coordinator, recreation coordinator, and social work intern.

165. Ms. Fox consulted and met with the team members, both individually and as a group, throughout the assessment process. She affirmed the Chapter 26.5 report's accuracy and was in agreement with the final determination that Student did not qualify for IDEA mental health services on the basis of ED eligibility.

166. Ms. DeAnda opened a VCBH Client Assessment file for Student. VCBH used the form to record confidential information, such as family history and relations, client's strengths and resources, symptoms, anxiety, sleep and appetite, conduct, medical and mental health history, current medications, mental status from examination, functional impairments, and diagnostic impressions. At the time, Student was at LRA and unavailable; therefore, the opening client assessment file primarily reflected information provided by Parents.

167. Ms. DeAnda is a licensed marriage and family therapist (MFT) and testified at the hearing. She earned a bachelor of arts, *cum laude*, in psychology and communication for the University of Southern California and a master of arts, *magna cum laude*, in clinical psychology from Pepperdine University's Graduate School of Education and Psychology. She had been a behavioral health clinician with VCBH since 2008. She worked a year as a family facilitator with Casa Pacifica Wraparound Program in 2007. She was a marriage family child counselor – assessment triage clinician and a mental health associate with VCBH in 2006 to 2007. She previously was a masters level supervisor and a behavioral

therapist with Autism Center for Treatment in Thousand Oaks, a registered MFT intern at New Beginnings Counseling Center in Camarillo, and a consulting clinician at Aegis Medical System in Simi Valley.

168. Her duties as a VCBH behavioral health clinician included: individual and group therapy to youth clients in school, community, and clinic settings; case management services to youth clients, their families, and community service providers, assuring continuity of care; completion of assessments, treatment plans, and requisite documentation; and a provider of aggression replacement training.

169. Ms. DeAnda initially contacted Parents to obtain consent and information for the mental health assessment. She gave them the parent version of the Achenbach Child Behavior Check List (CBCL), which provides standardized scores that identify if a child manifests clinically significant problems. Ms. DeAnda gave the completed parent checklists to Ms. Guilin, who entered the data into the CBCL program for analysis.

170. Ms. DeAnda interviewed Mother for about an hour and, at another time, interviewed both Mother and Father together. Parents told her about Student's escalating behaviors in the home, hospitalization, truancy, fallen grades, and the RTC placement. Parents provided details consistent with their testimony at the hearing. She did not recall Parents telling her that Student was too depressed to go to school. They did tell her that Student had been using marijuana since he was 15 years old. Parents supplied a copy of Dr. Vivian's December 23, 2010 letter. Ms. DeAnda was not given any documentation or information that showed a diagnosis of Student before October 2010.

171. Ms. DeAnda testified that she believed the Parents gave their perspective and had no reason to believe they were intentionally inaccurate. Mother testified that she appreciated Ms. DeAnda's sensitive demeanor and thoroughness. Father initially testified that the VCBH Client Assessment entries did not fully or accurately reflect the information he provided in his interview. However, on cross-examination and more through review of the document, Father acknowledged the material was included.

172. Ms. DeAnda did not form any opinions regarding Student's Chapter 26.5 mental health services but, instead, awaited discussions with the other contributing clinicians. She consulted with her supervisor Ms. Fox throughout the process. Similarly, she consulted with Mr. Lee, both before and after his interview of Student at LRA.

173. Mr. Lee traveled to LRA, where he stayed two days. Before leaving for the RTC, he reviewed the Client Assessment information and consulted with both Ms. Fox and Ms. DeAnda regarding appropriate tools and strategies in Student's evaluation.

174. Mr. Lee had worked as a behavioral health clinician for VCBH since 2006 and testified at the hearing. He earned a bachelor of arts in philosophy from Whitworth College, Spokane, Washington, in 1995. In 2003, he received a master of science in marriage and family therapy from Fuller School of Psychology, Pasadena, California. He is a licensed

MFT and a member of the California Association of MFTs. Before VCBH, Mr. Lee worked at the Ventura Counseling Center, the Koinonia Foster Homes, and the Glen Roberts Child Study Center. His duties included: assessment, evaluation, and provision of mental health services, including individual, group and family therapy; crisis intervention and case management for youth with serious emotional disturbance; school based mental health services for children in special education for the emotional disturbed program; development of treatment plan and coordination of treatment in collaboration with other professionals and families. Mr. Lee's education and experience qualified him to interview and assess Student regarding his eligibility to receive mental health services from VCBH.

175. Mr. Lee traveled with Ms. Erickson. They consulted but not in great depth. They each separately interviewed Student. Mr. Lee interviewed LRA therapist Ms. Kegerries and provided her with the CBCL Teacher Report Form (TRF). Mr. Lee had Student complete a Youth Self Report (YSR) and administered the Roberts-2.

176. Mr. Lee used the YSR to obtain Student's perceptions of his competencies and problems. Student's responses were entered into the associated computer analysis program. Student reported that he participated in three sports and had interests in two hobbies. He belonged to no social organizations, teams, or clubs. Student reported that he had one job or chore. Student's responses indicated that he had four or more close friends and that he saw them three or more times a week outside of regular school hours. His scores on the anxious/depressed, somatic complaints, social problems, and thought problems syndromes were in the normal range. His scores on the withdrawn/depressed, attention problems, rule-breaking behavior, and aggressive behavior syndromes were in the clinical range above the 97th percentile. On the DSM-oriented scales, Student's scores on the affective problems, anxiety problems, and somatic problems scales were in the normal range. His scores on the attention deficit/hyperactivity problems, oppositional defiant problems, and conduct problems scales were in the clinical range.

177. Mr. Lee's professional opinion was that Student's scores would have been rated higher if he actually had a mood disorder. Yet, Student's scores for thought and social problems, somatic complaints, and anxious/depressed were in the normal range, as were the DSM-oriented scales. The elevated scores did not indicate that Student was in need of mental health services for educational reasons, because the scores represent symptoms.

178. The Roberts-2 measured Student's ability to identify problems, create solutions, and identify emotions (positive or negative such as anxiety, depression, and rejection). This is a projective test, for which Mr. Lee had been properly trained and therefore qualified to administer. Mr. Lee was familiar with the protocols, which have been standardized and age normed. Student fit the norm. The Roberts-2 consisted of 16 cards, each with a different picture, reflecting different situations (e.g., interactions with a peer, a parent, etc). Mr. Lee showed Student a card and instructed him to describe what he saw on the card, what was happening, what happened before, and to project how the situation would end. For the first two cards, Mr. Lee gave Student prompts. For the remainder of the cards,

Student narrated without interruption. Mr. Lee carefully wrote down Student's statements, which he thereafter analyzed. The Roberts-2 manual prescribes developmentally appropriate and inappropriate responses.

179. In the area of problem identification and resolution skills, Student's scored within normal range except for his problem identifications, which were simplistic. On emotional scales, Students scored clinically significant in the areas of aggression and within the norm for anxiety, depression, and rejection. The scores also measured whether Student felt supported, would self advocate, and rely on others. Student's scores were all clinically significant, which suggested he did not feel supported by others and did not adequately advocate for himself.

180. The two most significant categories were the antisocial and maladaptive responses. Mr. Lee defined maladaptive as responses that made the problem worse rather than appropriately solving or addressing the problem. The outcomes of Student's stories were generally unresolved or maladaptive. The other significant atypical score was for Student's unusual antisocial responses, many of which were in relation to stories about drug use. Student's recurrent themes were family conflict and drugs.

181. During the interview, Student told Mr. Lee that he was in residential treatment because of social, academic, and family problems. Student identified symptoms of impulsivity, attention problems, conduct issues, and a few depressive/anxious symptoms. He acknowledged his substance use and stated that, upon his return to Ventura, he would continue his habitual use of marijuana. Student further reported he did not have disruptive or behavioral problems at school. He identified lack of motivation at school, but was willing to work when singled out by a teacher. In Mr. Lee's professional opinion, Student did not present as depressed, just mildly withdrawn. Student appeared to open up as the interview progressed. Students said he got depressed in the morning but was able to recover into a normal mood when playing basketball with others. He identified feeling depressed because he was at LRA. Mr. Lee did not observe Student to express any pervasive mood. Student denied having panic attacks, dramatic events, or generalized anxiety. Student's school related anxiety dealt with concerns regarding having to complete projects, test taking, doing a bad job, or not completing work at all. Such responses were within normal range of development.

182. Mr. Lee knew that Student was taking medication at the time of the interview and assessment, but he could not recall the type or frequency at hearing. Mr. Lee testified that he saw nothing about Student's demeanor or presentation, which would cause him to question Student's assessment performance or demeanor.

183. The VCBH assessment team gathered the information and prepared its March 22, 2011 eligibility report. Ms. Guilin typed the final report because Ms. DeAnda was unavailable. Ms. Guilin had been a Behavioral Health Clinician II with VCBH since 2007; she testified at the hearing. She earned a bachelor of arts in sociology (social worker option) in 2001 and a master of social work in 2004, from California State University, Northridge

and Long Beach, respectively. Her VCBH duties included: assessment, evaluation, and provision of mental health and substance abuse services in individual, group and family therapy; crisis intervention and case management for seriously mentally ill youth; “Chapter 26.5” assessments, in accordance with California state policies and procedures; development of treatment plans, case management, and discharge planning; development of behavioral systems and plans with school personnel; and presentations to local agencies, community groups, and colleagues. Previously, she was a service coordinator for Tri-Counties Regional Center from June 2004 and a community support companion for the Institute for Applied Behavior Analysis from 2001.

184. Mr. Lee authored the section involving the Student interview and assessments. Administrator Ms. Fox, Ms. Guilin and Ms. Lee participated in finalizing the report’s determination and recommendations. The report reviewed Parents’ interview and CBCL results.

185. The report also discussed the TRF responses of Buena teacher Ms. Goforth and LRA therapist Ms. Kegerries. The TRF has an extensive behavioral checklist of problematic behaviors that teachers often encounter. Ms. Kegerries had known Student for about two months when she completed the TRF. On the problems scales, Student’s scores were in the borderline clinical range for boys aged 12 to 18. Student’s internalizing score was in the clinical range while scores on the withdrawn/depressed, somatic complaints, attention problems, and aggressive behavior syndromes were in the normal range. Student’s scores on the anxious/depressed, social problems, and rule-breaking behavior syndromes were in the borderline clinical range. Attention problems subscales were in the normal range. On the DSM-oriented scales, Student’s scores on the affective problems, somatic problems, attention deficit/hyperactivity problems, oppositional defiant problems, and conduct problems scales were in the normal range. His anxiety problems scale was in the borderline clinical range while the attention deficit/hyperactivity subscales, for both inattention and hyperactivity-impulsivity, were in the normal range.

186. The VCBH team received and reviewed additional school documents, which indicated that Student’s teachers at Buena uniformly indicated that Student was not a behavioral concern. Teachers commented that he was “always quiet and polite,” “quiet and respectful at all times,” and “disconnected with adults but courteous and responsive when spoken to.” The VCBH team stated that Student’s school failures were due to truancy, missing school, and incomplete work.

187. VCBH identified the symptoms that impacted Student’s ability to profit from his educational plan as lack of motivation for school, willful and deliberate defiance in attending school, and a long history of drug abuse. VCBH concluded that there did not appear to be an emotional reason for Student leaving school other than his not liking school. Student was usually polite to his teachers and staff. His behaviors, based upon their assessment, were due to his choosing and not as a result of a qualifying mental health

disorder. VCBH found that Student did not qualify for mental health services pursuant to Chapter 26.5; he did not require mental health services in order to benefit from his education.

188. In situations where a clinician was unsure, Ms. Fox would review the materials and symptoms. If there remained any doubt about meeting the Chapter 26.5 criteria, Ms. Fox would error on the side of caution and offer services. However, Ms. Fox convincingly testified that, in her professional opinion, Student's situation was not a close call; he simply did not qualify. Mr. Lee similarly testified that, in his professional opinion, Student clearly did not qualify.

189. The Chapter 26.5 report concluded that Student engaged in drug use, which affected his motivation for school. Student exhibited a repetitive and persistent pattern of behaviors that were willful and deliberate and not the result of a qualifying mental health disorder. The VCBH team recommended that Parents pursue drug treatment programs to assist in maintaining Student's sobriety, as well as participating in Al-Anon meetings for support.

*Shannon Kegerries, Therapist, Logan River Academy*¹¹

190. Ms. Kegerries was Student's therapist at LRA and testified telephonically at the hearing. She received a master of arts in counseling from Pittsburg State University, Pittsburg, Kansas, in 2005. She possesses a counseling license from Utah, qualifying her to work with families and individuals with DSM diagnosis, as well as to make DSM diagnosis herself. In 2005, she was certified by the National Board of Certified Counselors, which provides necessary continuing education courses that are required to maintain a state license. She had worked for LRA for four years and was a primary therapist at LRA for individual, family, and group therapy. Ms. Kegerries had a caseload of eight to 10 students and their families. Previously, for two years, she did home therapy with families.

191. She met Student upon his admission to LRA. At the time of her testimony, Ms. Kegerries had no independent recollection of Student. In responding to questions, she often relied on Student's LRA Application (which included intake documents primarily completed by Parents), Student's LRA Master Treatment Plan (MTP), and a March 31, 2011 email from Ms. Kegerries to Parents' advocate Ms. Henkins (summarizing her observations of Student).

192. Ms. Kegerries said that Student was at LRA for about six months. She would provide Student with individual therapy, once a week. She conducted family therapy once a week, with Parents appearing telephonically. Student would also participate in two to three group therapies per week. Each session lasted about one hour.

¹¹ Kirk L Farmer, LRA Academic Director, also testified. However, he had no independent recollection of Student's education and provided no relevant information that was not already available through documentation or direct testimony.

193. Ms. Kegerries has worked as a therapist with adolescents for about seven years. Her patients have had DSM diagnoses of depression, bipolar and mood disorders, and abuse of mind-altering drugs. She stated that it is very difficult to determine which came first, the abuse of drugs or the DSM diagnoses. In her experience, substance abuse is often coupled with mood disorders, depression and trauma. This is especially so with adolescents who have maladaptive coping skills to deal with internal pain.

194. Ms. Kegerries opined that Student used marijuana to cope with internal anxiety and conflict and to escape. She formed this opinion within two to three months of treatment. She came to this conclusion because she believed Student still exhibited depression and lack of motivation even though he was cut off from marijuana. For example, though he may have gained a reward to go off-campus, he would not leave. He would lie about as if he had no energy. However, in the school setting, he completed assignments. She believed that he started to focus on his LRA treatment primarily out of the desire to go home, not because he was able to see the larger picture connecting his motivations with his actions.

195. Ms. Kegerries stated that Student was never disrespectful to teachers. She did not know whether Student's lack of motivation manifested itself in the classroom. She received monthly updates from Student's teachers and, on occasion, would connect the teachers' notation of lack of motivation with Student's corresponding conduct in therapy, wherein he was "giving up."

196. She said that Student's therapy was guided by the MTP, which had four goals for four described problems. The first goal was to address Student's history of depressive symptomatology, which included sadness, irritability, difficulty concentrating, and feelings of hopelessness. She did not know if Student showed depression while at school. The second goal addressed Student's oppositional behavior, defiance, and failure to follow family and school rules, however, only Parents reported that Student violated school rules.

197. The third goal was for the purpose of addressing Student's history of substance abuse, which caused significant disruptions in his ability to carry on activities of daily life. The goal was for Student to commit to sobriety and develop a plan to help avoid returning to his substance abuse. Ms. Kegerries admitted that Student's substance abuse was the only problem the MTP described as disrupting Student's ability to carry on the activities of daily life. Ms. Kegerries said that she minimally worked with Student's marijuana addiction. She primarily focused on his lack of motivation and family group dynamics. The fourth goal concerned Student's difficulty in completing school assignments and his ADHD.

198. Ms. Kegerries reviewed her March 31, 2011 email that contained her clinical impressions of Student. The email noted that Student displayed anxiety and depressive symptoms, even though he was medicated. The email was silent about Student's progress regarding his marijuana abuse.

Initial IEP Meeting – April 1, 2011

199. On April 1, 2011, District convened Student's initial IEP team meeting. Attending were: Mother, Father, Ms. Faigin, Ms. Erickson, Buena special education teacher Carolyn Phillips, Buena school psychologist Katy Borowicz, Ms. Guillen, and parent advocate Ms. Henkin. Parents and District recorded the meeting.

200. Ms. Erickson discussed her assessment report and results. Parents were still concerned that Student was failing school. Ms. Erickson reviewed results from the VMI, the BASC-2, the RADS, and the Student interview. Ms. Henkin discussed the March 31, 2011 email from LRA therapist Ms. Kegerries. Parents expressed concern about whether the District report included review of diagnoses and information from Student's prior doctors and specialists. The team discussed Student's drug use.

201. Ms. Guillen presented the VCBH Chapter 26.5 Eligibility Report, which concluded Student did not qualify for mental health services. Ms. Erickson presented the District report's finding that Student did not meet the criterion for ED eligibility.

202. Parents and Ms. Henkin did not agree with the eligibility determination and requested that Ms. Erickson and the IEP team look further at information that was not made available at the time of the assessment. The IEP team adjourned, agreeing to reconvene after further information was reviewed. Parents were provided with a written notice of their special education rights and procedural safeguards.

May 6, 2011 Psychoeducational Case Study - Revised

203. District agreed to accept, gather, and consider the additional information to which the Parents referred at the April 1, 2011 IEP team meeting. Ms. Erickson obtained, either through Parents or VCBH, the following additional documents: November 7, 2011 Vista del Mar Hospital records regarding 5150 hold; November 12, 2011 Vista del Mar Hospital discharge summary; December 16, 2011 discharge plan; Student's VCBH client assessment and client assessment update; December 23, 2010 letter from Dr. Vivian; April 21, 2011 letter from Dr. Keener, and some additional teacher reports from LRA. At Parents request, Ms. Erickson also personally interviewed Drs. Vivian and Keener, Ms. Goforth, and Ms. Mateos-Bendinelli.

204. Ms. Erickson incorporated the additional information into her May 6, 2011 revised case study report. She also expanded the ED analysis and included additional details from her interview of Student. She did not conduct any additional standardized tests.

205. Dr. Vivian saw Student on four occasions between October and December, 2010. Dr. Vivian's December 23, 2010 letter provided a DSM-IV diagnosis of Bipolar Disorder NOS, Marijuana abuse/addiction, and ADD. Dr. Vivian told Ms. Erickson that Student was very marijuana dependent, which made it difficult to differentiate a diagnosis.

206. Parents provided Dr. Keener's April 21, 2011 letter. Father testified that he had a difficult time getting a letter from Dr. Keener regarding Student's RTC placement. Dr. Keener has had extensive experience in working with adolescents who had substance abuse issues. Dr. Keener saw Student and Parents every two weeks from June through October 2010. His letter said Student initially presented with symptoms of Depression Cyclothymic disorder, ADHD, and Oppositional Defiant Disorder, with an underlying additional Axis I diagnosis of Cannabis Abuse.

207. Dr. Keener further wrote that Parents notified him that Student was placed at LRA in January 2011. Dr. Keener recommended that Student continue at the RTC because he believed "... placing [Student] back in his home environment would lead to a drug relapse, at which time, the symptomology of Depression, Oppositional Defiant Behavior, and ADHD will reoccur." Dr. Keener told Ms. Erickson that he could not determine if Student had a mental health condition because Student was never drug-free long enough to finalize a diagnosis.

208. Ms. Erickson reviewed the Center for Discovery discharge plan, after Student's six-day stay, which included recommendations of an IOP and a 12-step program. She reviewed the reasons for Student's various medications. She also summarized Ms. Mateos-Bendinelli's spring 2010 referral of Student to a SAP core team, the intervention, and the results. She noted Student's SRI 1384 lexile score was equivalent to first year college. She reviewed Student's teachers' input to Ms. Mateos-Bendinelli which characterized Student as capable, personable, respectful, and cooperative, with a good sense of humor. The teachers reported that he was often missing work, talkative with peers, inconsistent in homework, and appeared disinterested in class.

209. Ms. Erickson expanded the section on Student's Buena attendance history from October 19, 2010 to January 4, 2011, noting Student was absent eight of 34 school days, which were accounted for by Student's stays at Vista del Mar and Center for Discovery. He was tardy on 12 occasions, and absent from nine periods without excuse. Before returning to Buena from his unsuccessful enrollment at ACE in October 2010, absenteeism was never a problem.

210. Ms. Erickson reviewed the most recent LRA teacher reports, which showed Student was passing all classes. The teacher's comments were similar to those of his Buena teachers, noting only his lack of motivation, inconsistent quality, and need for redirection if off-task.

211. Ms. Erickson expanded the section on social/emotional/behavioral functioning, including her interviews with Ms. Kegerries and Ms. Goforth. The report more thoroughly discussed the BASC-2 results for the Parents' scales, which were to be viewed with "extreme caution." She included additional information regarding Student's responses for internalizing problems, and inattention/hyperactivity composite. She noted that Student scored in the "at-risk" range for personal adjustment composite, which was mainly due to the

“relations with parents index” which was in the second percentile. His responses suggested he had little trust in his parents and that he felt incidental to family life and decision making.

212. In further expounding on Student’s RADS scores, Ms. Erickson stated that the scales identified critical items on the basis of their ability to discriminate between clinically depressed and non-depressed adolescents. They included: I feel like hiding from people; I feel like hurting myself; I feel I am no good; I feel worried; I almost never like eating meals; I feel like nothing I do helps any more. Student failed to endorse any of these critical item symptoms. Further, in the personal interview, Student reported that freedom was important to him and that was something he had little of in his current setting.

213. Ms. Erickson substantially expanded the report’s ED analysis. In her testimony, Ms. Erickson explained that California school psychologists have long utilized a California Department of Education (CDE) manual, entitled “Identification and Assessment of the Seriously Emotionally Disturbed Child,” which detailed ED eligibility standards and the means of determining if a child meets the requirements. Using the definitions and guidelines of the manual, Ms. Erickson explained the meaning of the three criteria, as well as each of the five ED characteristics, in her expanded report.

214. She stated that “over a long period of time” was generally considered to be at least six months in length. “To a marked degree” meant the characteristic of the ED child must meet two components. First, pervasiveness, which meant the Student should exhibit the behavior in question in virtually all settings, including home, school, and community. Second, intensity, which meant the behavior should be overt and observable. The third criteria was “adversely affects educational performance,” which meant the behaviors in question must be demonstrated in the school setting and result in a disruption of the Student’s ability to benefit from academic instruction.

215. Ms. Erickson then provided the CDE ED manual explanation for each of the five ED eligibility characteristics, at least one of which the student must exhibit. She then expanded her analysis of each characteristic for Student, based upon the assessment data and evaluation information. Her explanations as to why she concluded Student did not exhibit any of the characteristics were reasonable and clear, making appropriate reference to the basis for each conclusion.

216. Ms. Erickson further indicated that a student who demonstrated social maladjustment typically exhibited a voluntary pattern of actions and an ability to control his behavior, was in conflict with established value systems, and did not value educational achievement. The socially maladjusted student demonstrated the ability to function in the school and community, although not according to generally accepted standards. She then analyzed Student’s behaviors which supported a finding that he was socially maladjusted, as discussed in the original March 28, 2011 report. She concluded that Student exhibited a voluntary pattern of actions that were in conflict with those of his family. He also demonstrated a lack of interest in educational achievement and reported an active dislike for school.

Continued IEP Meeting –May 6, 2011

217. The IEP team reconvened for the continued initial IEP on May 6, 2011. Attending were: Mother, Father, Ms. Faigin, Ms. Erickson, Ms. Zaragoza, Ms. Mateos-Bendinelli, Ms. Schoenwald, Mr. Lee, Ms. Fox, nurse Sue Delaney, Ms. Phillips, parent advocate Ms. Henkin, and Ms. Kegerries (via telephone).

218. Ms. Kegerries gave an update on Student, which was very similar to her March 31, 2011 email. Ms. Erickson reviewed her revised report. Ms. Fox stated that the IEP team needed to evaluate Student as he presented himself then. She said that CBH assessed him and had found him not eligible for mental health services. The assessment team did not recommend eligibility for special education. Parents and advocate disagreed. Father said the Student was depressed and had been for year, as indicated by professionals who have worked with him in the past. Father believed that Student was entitled to an IEP.

Student After LRA – June 2011.

219. In June 2011, Student came home for a visit from LRA and refused to return.

220. Dr. Wood provided Student and Parents with individual and family therapy from June 27, 2011 to December 7, 2011. Parents wanted to set up some type of home setting structure and assistance in developing a plan for Student's success. Student also needed individual therapy for marijuana abuse, labile mood, depressive symptoms, and anger. As of June 2011, Student was on medication for anxiety. Thereafter, Student refused any medication. Dr. Wood met three times with Parents and 11 times with Student and at least one Parent, with half the session with Student alone.

221. Dr. Wood testified at the hearing. He obtained a bachelor of arts in psychology in 1974 from Texas A&I University and a doctorate in psychology from Nova University, Fort Lauderdale, Florida. He is a state licensed psychologist. He has been in private practice for 30 years and has substantial experience with adolescent males and their families. He has been a clinical director at Aurora Vista del Mar Hospital since 1998 and on the adjunct faculty of Antioch University, Santa Barbara, California, since 2008. From 1985 through 2009, Dr. Wood was the director of Living and Learning Center Group Home, Ventura, California.

222. Though Dr. Wood believed that Parents were reliable historians from their point of view, he thought Parents had some naïve expectations. It was wishful thinking for Parents to expect that Student, because he was intelligent, would get a good education and succeed. Parents' expectations were overly high. Student was not going to be able to achieve the goals Parents thought were reasonable.

223. Parents reported, and Student admitted, explosive situations at home. Student would blame his sister or Parents, justifying his actions. Neither Student nor Parents reported explosiveness at school. Dr. Wood said that Student was socially conscious and

would not embarrass himself in front of peers. Also, Student could get away with his behaviors at home while he would suffer a consequence in school.

224. Dr. Wood thought Student was self-medicating for his depressive disorder and ADD. Student told him he would smoke marijuana to relieve anxiety. He thought the marijuana abuse and depression were co-morbid. Since marijuana typically makes people mellow, he did not believe the drug abuse was the cause of Student's anger and explosive displays at home.

225. Student often spoke of graduating from high school. He started continuance school at Pacific in August 2011, where he had an opportunity to catch up on lost credits by doing credit recovery packets. Student thought this would be a good idea, but he did not pursue obtaining and completing the packets. He attended Pacific but would only do the work when necessary. Student felt he was capable of doing the work and Dr. Wood was initially hopeful this would be a good treatment goal.

226. However, Dr. Wood testified that his work with Student was not successful. Student was inconsistent in school attendance, did not come to the last two sessions, was still having blow-ups with family members, and was heavily relying on cannabis. To Student's credit, he did not get arrested or involved in physical altercations. In summary, Dr. Wood testified that Student participated in sessions, but they "lasted to the parking lot."

227. Dr. Wood would have preferred that Student return and stay at LRA. Since Student did not, home was pretty miserable for both Student and Parents. Dr. Wood also said that Student would not attend an RTC even if provided.

Neurological Evaluation -- Jordan Witt, Ph.D., Student Expert

228. Dr. Jordan Witt prepared a neuropsychological evaluation of Student, with examination dates of June 29 and 30, 2011. He also conducted a classroom observation of Student at Pacific on August 2, 2011. He was retained by Student's counsel and testified at the hearing.

229. Dr. Witt earned his bachelor of arts in psychology from University of California, Santa Cruz, in 1984. In 1988, he obtained a master of arts in psychology from New School for Social Research, New York, from which he subsequently received a doctorate in psychology through a clinical psychology program accredited by the American Psychological Association. Dr. Witt has been in private practice since 1997, emphasizing pediatric psychology, including evaluations, developmental and learning assessments, and therapy focused on individuals with developmental, learning, or medical disorders. He was a clinical instructor at the Department of Child Psychiatry, UCLA Neuropsychiatric Institute from 1998 to 2000. He worked at the Miami Children's Hospital, Pediatric Behavioral Medicine, from 1993 to 1997, as a psychological resident and then as a clinical psychologist/neuropsychologist. At that time, he concurrently worked as a clinical psychologist in a group private practice. From 1985 to 2000, Dr. Witt has collaborated or

assisted in research at Miami Children's Hospital, St. Vincent's Hospital in New York, University College in London, and at the New School for Social Research. Since 1998, he has been a supervisor of advanced clinical psychology graduate students at University of California, Santa Barbara.

230. Dr. Witt reviewed school records and other documentation provided by Parents. He reviewed the District psychoeducational case studies and VCBH Chapter 26.5 eligibility report. He had three sessions with Student. He interviewed Parents twice for about an hour each session. Both his report and testimony recounted Student's history, consistent with what Parents had previously related to other providers. Dr. Witt also administered the following tests: Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV), WJ-II, fluency subtests; Wide Range Assessment of Memory and Learning (WRML-2), selected subtests; Stroop Color and Word Test; NEPSY-II Developmental Neuropsychological Assessment, selected subtests (16 year norms); Rey Figure, Copy and Recall; Trail Making Test, Parts A and B; Wisconsin Card Sorting Test (WCST), Boston Naming Test; Conners-3 Scales; Continuous Performance Test (CPT-II); Writing Sample; Beck Youth Inventories (BYI-II); Minnesota Multiphasic Personality Inventory, adolescent Version; Thematic Apperception Test (TAT); and Rorschach Test.

231. Dr. Witt reported that Student's overall intellectual functioning fell in the lower end of the average range, with scores falling within a similar level for most subtests and indexes. Student's verbal intellectual skills fell near average, with relative strength in verbal abstraction. He showed somewhat variable skills in nonverbal functioning tasks related to visual-motor and nonverbal functioning. Student showed average range working memory skill, for numeric and verbal information.

232. Student showed some behavioral patterns associated with inattention during testing, including restlessness and apparent mental fatigue during some tasks. However, his scores on formal measures generally indicated adequate to good attention and executive functioning. Dr. Witt noted that Parents, on the Conner-2 scales, endorsed items consistent with past assessment and Parents' prior reports, including inattention and hyperactivity, as well as significant patterns of defiance and aggression. Parents also endorsed significant elevations in all clinical scales for Student, particularly in behavioral aspects of executive dysfunction.

233. For academic functioning, WJ-III (Form B) testing showed Student with adequate reading and writing fluency, reaching the upper end of the average range. In contrast, Student had greater difficulty in math fluency, where he scored in the low average range. His writing sample showed basic subject and expression, with good spelling, sentence construction, punctuation, and handwriting.

234. On the BYI-II, Student reported average range scores related to self-concept, anxiety, and depression. He endorsed items indicating significant problems with both anger and disruptive behavior. On the MMPI-A, used to measure personality and psychiatric function, Student neither under-rated nor over-rated his level of functioning. Overall,

Student showed a somewhat complex picture of responding, with primary clinical scales indicating most significant patterns associated with teens with behavioral difficulties. These included anger and difficulties with family and authority figures. Content scales indicated high levels of irritability, lack of initiative, and school difficulty. Student endorsed some critical items related to depressed mood, including that he felt blue, the future seems hopeless, and that no one cares what will happen to him. Student admitted to substance abuse, including marijuana and alcohol. The projective measures and Rorschach indicated that Student had some indications of perceiving the world as damaged, but did not show patterns of severe impulsivity or depression. Student might have difficulty integrating emotions into his perception of the world.

235. Student's cognitive and academic functioning was consistent with past assessments. Dr. Witt stated that Student had a history of attention-related concerns, shown particularly at home as well as in reports by several school sources. However, he displayed relatively good performance in several aspects of attention and executive skills, including sustained and divided attention and inductive reasoning. Dr. Witt said that both Student and Parents reported continued patterns of restlessness and attention difficulty in daily life.

236. Student showed difficulty in his emotional and behavioral functioning, with persistent and predominant patterns of deregulation of mood, including anger and irritability, subjective depression, helplessness, lethargy, emotional alienation, and difficulty integrating emotions and thinking into his decision making process. However, Dr. Witt found that Student did not show the full range of symptoms associated with major depression. He commented that such mood regulation difficulties were consistent with Student's history, although his depressive symptoms may have been more or less prominent at points.

237. Despite Parents' history, Dr. Witt did not see anxiety and repetitive/tic-like behaviors by Student. Dr. Witt said Student continued to have difficulty with authority, behavioral difficulties (lying, not following rules, stealing from his family), and limited insight into the impact of his behaviors upon himself and others. However, Student did not demonstrate markedly anti-social or violent fantasies. Dr. Witt did not find any suicidal or homicidal ideations. Student readily admitted to marijuana dependence as well as past use of some medications without prescription and other drugs.

238. Dr. Witt concluded that Student showed patterns of unspecified mood disorder, which included difficulty regulating his anger, as well as symptoms associated with clinical depression. Such patterns predated his behavioral and substance difficulties, and likely caused their emergence with substance abuse serving a self-medicating function. Dr. Witt stated that Student's mood pattern cannot be adequately described by current diagnostic criteria for bipolar or mood disorders. That is, Dr. Witt could not diagnose Student pursuant to DSM-IV guidelines. Instead, he suggested the Student was best described by the proposed label of "temper dysregulation disorder with dysphoria" or "disruptive mood dysregulation disorder." However, these labels and associated criteria are derived from the DSM-5, which has yet to be finally approved and is not scheduled to be published until 2013.

239. Dr. Witt found that Student no longer showed several signs for ADD, which is common with adolescents. Instead of ADD, emotional and behavioral factors could impact task completion and overall attention. Dr. Witt concluded that such functional impairment “related to his emotional disturbance” and was “likely to adversely impact on [Student’s] educational attendance and progress, as well as his timely completion of tasks in and out of school.” Dr. Witt did not review and apply the criteria and characteristics required by state and federal law in determining if a student is entitled to special education services due to ED eligibility.

240. Dr. Witt said that his conclusion of a long-standing mood disorder was primarily based on Parents and their review of the information from doctors Student had seen since childhood. He did not review any medical records or reports regarding Student that predated Dr. Vivian and Dr. Keener in 2010.

241. Unlike LRA, Dr. Witt did not diagnose Student with major depressive disorder. Unlike LRA, Dr. Keener, Dr. Vivian, Center for Discovery, and Vista del Mar, he did not diagnose Student with marijuana dependence. Dr. Witt said he did not see the Vista del Mar Chemical Dependency assessment, which indicated Student had been smoking three to four bowls of marijuana a day. Dr. Witt agreed that such marijuana use could affect mood and depressive symptoms. Dr. Witt acknowledged that Student’s marijuana abuse coincided with Student’s increased difficult behaviors at home. He also acknowledged that none of Student’s oppositional and angry behaviors occurred at school or LRA.

242. Dr. Witt said that if an assessor was unqualified to consider the impact of medications, the conclusions would be less valid. He noted that marijuana could impact an ED evaluation but that Student did not have access to marijuana while at LRA. Student did have access when Dr. Witt assessed Student. Dr. Witt acknowledged that his standardized testing of Student was generally consistent with the testing conducted at LRA.

243. Parents provided Dr. Witt’s report to District, but would not attend an IEP meeting to review the report. Dr. Witt’s report did not alter Ms. Faigin’s conclusion that Student was not ED eligible.

Request for Reimbursement

244. In her testimony, Mother identified invoices and payment records of expenses related to Student’s placement at LRA.¹² Parents request reimbursement of the LRA related expenses.

¹² Mother was the final witness, on the hearing’s last and eighth day. During her testimony, Parents and Student’s counsel realized that most LRA invoices and proofs of payment were not in Student’s exhibits and had not been provided to District prior to hearing under the IDEA’s procedural rules. In response to District’s objection to the later submission of the missing exhibits, the ALJ provided a timetable for Student to file a written motion to

LEGAL CONCLUSIONS

1. In Issue One, Student contends that District failed to meet its “child find” obligation, beginning in October 2009, because it had reason to suspect Student had a disability due to his falling grades, previously diagnosed ADD, lack of motivation, behavior, absences and tardies, and general depressive mood. In Issue Two, Student also contends that the District’s psychoeducational assessment, dated March 28, 2011 and revised May 6, 2011, was not appropriate because the school psychologist failed to consider all available documentation and testimony, was not qualified to administer standardized assessments and to interview Student, and failed to properly apply the ED eligibility standards. In Issue Three, Student contends District should have found him ED eligible for special education at the initial IEP because Student’s DSM-IV diagnosis of depressive disorder, oppositional defiance disorder, and ADD adversely affected his education, in a manner that met the state and federal ED eligibility standards. Student contends he was denied a FAPE on all three grounds. Student’s Issue Four, in which Student seeks reimbursement for expenses related to his RTC placement at LRA, although articulated as an issue, is actually a remedy request should a denial of a FAPE be found. As other remedies, Student seeks an order finding him ED eligible for special education, with placement at an appropriate RTC, or other remedies, which will benefit Student in his education.

2. District contends that it met its general and specific “child find” obligations because: District provided regular notice to Parents of their special education assessment rights; Student’s grades did not begin to suffer until ninth grade, when he started to smoke marijuana; District provided general education intervention and counseling; Student never exhibited any inappropriate behaviors or depression at school; Student was not chronically absent or tardy, until Parents removed him from Buena; and Parents did not provide any information which would have caused District to evaluate Student for assessment. District contends that its psychoeducational assessment, dated March 28, 2011 and revised May 6, 2011, was appropriate in all respects because Ms. Erickson was a licensed and experienced school psychologist, she chose variety of assessment tools and strategies to gather information relevant to Student’s suspected disability; she administered assessments in accordance with the standardized tests’ protocols and instructions; she gathered and reviewed all relevant functional, developmental and academic information available to District or provided by Parents; and she produced a written report which complied with all statutory guidelines. District also contends that the IEP team correctly determined that Student was not eligible for special education ED because Student did not meet the state and federal standards of a pupil with ED. Accordingly, District contends Student is not entitled to the requested remedies.

admit the documents and for the District to file its opposition. The ALJ denied Student’s motion to admit the documents in a written order of March 2, 2012.

Applicable Law

3. The Petitioner in a special education due process hearing has the burden to prove his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528].) As the petitioning party, Student has the burden of proof on all issues by a preponderance of the evidence.

4. A request for a due process hearing “shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.” (Ed. Code, § 56505, subd. (1).) Here, Student did not produce evidence at hearing to show that any exception to the statute of limitations applied, such that the claims are limited to two years prior to the date the complaint was filed.

5. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student’s individual education program. (20 U.S.C. § 1401(9).) “Special education” is defined as “specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability....” (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

6. A school district is required to actively and systematically seek out, identify, locate, and evaluate all children with disabilities, including homeless children, wards of the state, and children attending private schools, who are in need of special education and related services, regardless of the severity of the disability, including those individuals advancing from grade to grade. (20 U.S.C. §1412(a)(3)(A); Ed. Code, §§ 56171, 56301, subds. (a) and (b).) This duty to seek and serve children with disabilities is known as “child find.” “The purpose of the child-find evaluation is to provide access to special education.” (*Fitzgerald v. Camdenton R-III School District* (8th Cir. 2006) 439 F.3d 773, 776.) A district’s child find obligation toward a specific child is triggered when there is reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Rae* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A district’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

7. The child-find obligations apply to children who are suspected of having a disability and being in need of special education, even if they are advancing from grade to grade. (34 C.F.R. § 300.125(a)(2)(ii) (2006).) Concomitantly, failing grades alone do not necessarily establish that a district has failed in its child find obligation or that it failed to provide an educational benefit to a student. (See *Sherman v. Mamaroneck Union Free Sch. Dist.* (2nd Cir. 2003) 340 F.3d 87, 93; *Mather v. Hartford Sch. Dist.* (D. Vt. 1996) 928 F.Supp. 437, 446; *Las Virgenes Unified School District v. Student* (2004) SEHO Case No. SN-01160.)

8. A request for an initial evaluation to determine whether a student is a child with a disability in need of special education and services can be made by either the parent or a public agency. (34 C.F.R. § 300.301(b) (2006).) Further, the IDEA requires that parents be provided with a copy of the procedural safeguards upon the initial referral for evaluation. (34 C.F.R. § 300.504(a)(1) (2006); Ed. Code, § 56301 subd. (d)(2)(A).)

9. Assessments must be conducted by qualified persons who are knowledgeable of the student's disability, who are competent to perform the assessments, as determined by the local educational agency, and who give special attention to the student's unique educational needs, including, but not limited to, the need for specialized services, materials, and equipment. (Ed. Code, §§ 56320, subd. (g), & 56322.) "The assessment shall be conducted by persons competent to perform the assessment, as determined by the local educational agency." (Ed. Code, § 56322.)

10. Individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).) Tests and other assessment materials must be used for purposes for which the assessments or measures are valid and reliable. (Ed. Code, § 56320, subs. (b)(2) & (b)(3).)

11. The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 & 56329.) The report shall include, but not be limited to, the following: (1) whether the student may need special education and related services, (2) the basis for making the determination, (3) the relevant behavior noted during the observation of the student in an appropriate setting, (4) the relationship of that behavior to the student's academic and social functioning, (5) the educationally relevant health and development, and medical findings, if any, (6) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate, and (6) the need for specialized services, materials, and equipment for students with low incidence disabilities. (Ed. Code, § 56327.)

12. A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.) A pupil shall not be determined to be an individual with exceptional needs if the prevailing factor for the determination is one of the following: (A) lack of appropriate instruction in reading; (B) lack of appropriate instruction in mathematics; (C) limited English proficiency; or (D) if the pupil does not otherwise meet

the eligibility criteria under federal and California law. (Ed. Code, § 56329, subd. (a)(2).) The law defines an individual with exceptional needs as one who, because of a disability requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subd. (b).)

13. A district's determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district is not held to a standard based on "hindsight." (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

14. California Code of Regulations, title 5, section 3030, subdivision (i), describes the criteria for determining whether a child qualifies for special education under the category of emotional disturbance:

Because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:

- (1) An inability to learn which cannot be explained by intellectual, sensory or health factors.
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (3) Inappropriate types of behaviors or feelings under normal circumstances exhibited in several situations.
- (4) A general pervasive mood of unhappiness or depression.
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

15. Emotional disturbance does not apply to children who are socially maladjusted, unless they also independently suffer an emotional disturbance. (34 C.F.R. § 300.8(c)(4)(ii) (2006); see also Ed. Code, § 56026, subd. (e).)

16. "Other health impairment" is defined, in relevant part, as "having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that...is due to chronic or acute health problems such as...attention deficit disorder or attention deficit hyperactivity disorder...and [a]dversely affects a child's educational performance." (34 C.F.R. § 300.8(c)(9) (2006); see also Cal. Code Regs., tit. 5, § 3030, subd. (f) [defining OHI as "[a] pupil has limited strength, vitality or alertness, due to chronic or acute health problems...which adversely affects a pupil's educational performance."].)

17. California Code of Regulations, title 5, section 3030, subdivision (j), states that a pupil will qualify as eligible for special education services, as a person with exceptional needs, in the area of specific learning disability if he or she has "a disorder in one

or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, and has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code.”

18. A procedural violation only constitutes a denial of a FAPE if the violation impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).) Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1196. (“*Cari Rae S.*”); *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031.)

19. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) *Rowley* expressly states that as long as a child is offered a FAPE as defined above, questions of educational methodology are left to the discretion of the state and local educational agencies. (*Id.* at p. 208.)

20. An analysis of whether a residential placement is required must focus on whether the placement was necessary to meet the child’s educational needs. (*Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir.1990) 903 F.2d 635, 643.) If “the placement is a response to medical, social, or emotional problems ... quite apart from the learning process,” then it cannot be considered necessary under the IDEA. (*Ibid.*, accord *Ashland School Dist. v. Parents of Student R.J.* (9th Cir.2009) 588 F.3d 1004, 1010.)

Analysis of Issue 1: District Satisfied Its Child Find Obligations

21. Student has failed to demonstrate by a preponderance of the evidence that he was denied a FAPE because District did not meet its child find obligations. The evidence established that District had policies and procedures in place to notify all parents of its child find duties. Further, the evidence indicated that Student’s academic performance and behaviors did not trigger District’s child find duty specifically as to Student.

22. District advised parents of its child find policy on its website and in the Annual Notice of Parents' Rights and Responsibilities, which it sent to students' families at the beginning of each academic year. Ms. Faigin reviewed the annual notices sent for 2009-2010, 2010-2011, and 2011-2012, and identified the sections which discussed students with disabilities, special education, procedural safeguards, and the District's child find system. She convincingly testified that the District assured that families received the annual notice by requiring a written affirmation of receipt. She testified that the District staff and teachers were trained in identifying students who may need special education services. Both Ms. Faigin and Ms. Mateos-Bendinelli testified that the District employed numerous general education interventions, depending on the grade, age, and need of the student, all of which helped to identify children who were potentially eligible for special education

23. Student asserts that District should have identified and assessed him because of his prior diagnoses of ADD and his low motivation, inattention, and "fading out." Student claims that his poor grades and absences during the 2009-2010 and the fall of 2010 evidenced Student's depressed state and triggered the District's specific child find obligation as of October 19, 2009. The evidence does not support Student's assertions.

24. Student was diagnosed with ADD following a District screening when he was in sixth grade. Throughout elementary and middle school, Student's grades were strong. When he started high school in 2009-2010, his grades were good.¹³ By November 2009, Student was passing all but one of his classes, in history. He had a failing grade because Student did not turn in assignments and homework. Student's history teacher Mr. Cromie described Student as social and capable, but not motivated. Student would occasionally go off task, but he always quickly responded to prompting. Within days of Parents' request for assistance in February 2009, Student's high school counselor Ms. Mateos-Bendinelli obtained input from Student's teachers, had Student take the SRI test, met with Student, and brought Student's situation to the SAP team. The SAP was a general education intervention for students who had the ability to do their academics but lacked motivation. The SAP team, consisting of Ms. Mateos-Bendinelli and four teachers, reviewed Student's situation and agreed upon a strategy to encourage Student in his academics. Mr. Cormie, the only SAP team member who was also Student's teacher, regularly mentored Student. The personal attention appeared to have worked. Student's grades improved and Mother commented on Student's more dedicated and determined attitude regarding his schoolwork. The District properly and promptly utilized general education interventions, including a reading test to measure Student's capability. Instead of demonstrating a child find violation, District conduct was a measured and appropriate response to recent performance.

25. When the improvement proved temporary, Ms. Mateos-Bendinelli again met with Student in an attempt to find the key to his lack of motivation. Student was polite and forthright in his demeanor. There was nothing in his conduct indicating he was angry,

¹³ Student did not include a "child find" allegation until his October 25, 2011 amended complaint.

anxious, or depressed. Ms. Mateos-Bendinelli convincingly testified that Student knew what he needed to do to improve his grades and was capable of doing the work; he simply chose not to. Further establishing his capabilities and academic progress, Student passed both the ELA and Math sections of the CAHSEE in March 2010, both of which were the sole state tests required for graduation. The temporary success of the general education interventions indicated that Student was capable of performing without specialized instruction. When offered additional assistance, such as the SAP groups, Student said he was not interested. Parents provided no further information which would have triggered District's child find duties at that time based on Student's admitted lack of motivation.

26. Parents assert that Student was depressed and they could not get him up to attend school. However, the evidence showed that Student had very good attendance throughout the 2009-2010 year. Student presented no evidence that Student's absences should have triggered a child find obligation.

27. Student did not present evidence supporting Parents' assertion that District should have known that Student's behaviors were becoming increasingly out of control during the 2009-2010. The evidence showed that Student's behaviors were exemplary at school. The teachers reported that Student was polite, social, and respectful. Though he had low motivation and would become inattentive, Student did not demonstrate any conduct of concern, such as crying, frustration, anxiety, or aggression. The evidence established that Student never exhibited the oppositional, angry, and defiant behaviors that Parents testified were escalating at home. The evidence further established that Student started smoking marijuana at this time during 10th grade. Parents were aware of Student's marijuana use. Parents were attempting to gain some control over Student's use of marijuana by restricting his movements, establishing rules at home, and keeping him from associating with unsavory friends. Student strongly opposed these attempts at Parental control and Student's family life for Parents and his sister was becoming increasingly difficult. However, Parents did not provide District with this information and District could not have otherwise been reasonably expected to know what was happening in Student's home. During the 2009-2010 school year, Student's conduct and performance did not trigger District's child find obligations. Additionally, Parents did not provide District with additional information that would have otherwise triggered District's child find obligation.

28. At the end of the academic year, Mother informed Ms. Mateos-Bendinelli that Parents were enrolling Student in a charter school for the following year. Mother testified as to the reasons Parents moved Student to ACE Charter, which appeared to predominantly concern removing Student from his undesirable friends. She also said that ACE did not have homework, which had become a struggle for Parents with Student at home. During summer school 2010, Student took and passed his history course, recapturing the credits he did not earn when he failed the course during the academic year. His summer school teacher testified he regularly attended and had no inappropriate behaviors. Father testified they took Student to Dr. Keener in summer 2010 because of Student's marijuana abuse. Dr. Keener later reported that he had difficulty diagnosing Student because Student was always under

the influence of cannabis. Yet, Parents did not tell District. Over the summer 2010, Student's conduct and performance did not trigger District's child find obligation and Parents did not inform District of any additional information which would have caused District to assess Student for special education.

29. During the 2010-2011 school year, Student attended Buena for only a few weeks. He started the year at ACE Charter. Student strongly opposed the move. The evidence showed that he became increasingly belligerent at home and toward his Parents, especially his father. It was not until Student enrolled at ACE that attendance became an issue. It was there that Student would roam the local fields and not enter the school building, threaten to jump out of the moving car on the way to ACE, or stay in bed and refuse to go to school.

30. Student's angry, oppositional behavior at home and with his Parents continued to escalate as Student was forced to go to a school he did not like, participate in therapy he later said was useless, and deal with his Parents' continued attempts to exercise some control over his conduct and marijuana use. Mother wrote Ms. Mateos-Bendinelli on October 7, 2011, and said Parents wanted to have Student return to Buena because Student fought the move to ACE and the results were not what Parents had hoped. But, Parents did not tell the District about Student's truancy, the increased marijuana use, and the volatile home environment. Thus, upon Student's return to Buena in October 2011, District did not possess any additional information which would have triggered its child find obligation.

31. Student started at Buena on October 18, 2010, but was there for only a short time. Less than a month after his return to Buena, he was hospitalized at Vista del Mar, following the home incident that resulted in the 5150 hold. The evidence showed that the home incident was solely related to Student's home situation and relationship with his parents, and was unrelated to school. He then started with ACTION. Parents then admitted Student to Center for Discovery. District was unaware of any of this because Parents did not inform the District of Student's situation but, in fact, misled the school. In her email of December 13, 2011, Mother said that Student would be out the next week because of health issues associated with high blood pressure and would not be attending into the winter break. Parents kept the District in the dark regarding Student's marijuana use, medications, and hospitalizations, such that District's child find obligation was not triggered at any time by these facts. Simply put, District cannot be found to have breached its child find obligation based on behaviors of which District was unaware.

32. Given the above factors, Student failed to meet his burden of establishing the District failed in its child find obligations. Student presented no evidence of inappropriate behaviors, demeanor, or attitude which would have triggered a child find obligation. Additionally, when Student's grades were weak, District properly employed effective general education interventions, which showed that Student was capable of performing without specialized instruction. Though testing and Student's temporary success demonstrated he was capable, Student admitted he was not motivated. Parents' later claim that District should

have known of Student's depression was not supported by the evidence, given Student's generally good conduct at school and Parent's failure to share with District the extent of Student's marijuana abuse, the cause of Student's hospitalization and treatment, and the level of Student's anger and oppositional behavior at home. Student failed to demonstrate by a preponderance of the evidence that District denied him a FAPE by not meeting its child find obligations. (Factual Findings 1-110; Legal Conclusions 3-8.)

Analysis of Issue 2: District's Psychoeducational Evaluation was Appropriate

33. As to Issue Two, Student failed to meet his burden of demonstrating that he was denied a FAPE because District's psychoeducational evaluation case study report of March 28, 2011, and the revised evaluation report of May 6, 2011, were inappropriate. District successfully and convincingly demonstrated that Ms. Erickson's case study reports complied with all statutory and regulatory standards.

34. Ms. Erickson was an experienced, license educational psychologist, with more than 25 years of experience, whose credentials qualified her to conduct Student's psychoeducational assessment and evaluation. When assigned Student's assessment, she reviewed all available documentary data and consulted with fellow psychologists in structuring an appropriate assessment plan. She was trained and practiced in the utilized assessment instruments and the evidence established that she administered and interpreted the standardized tests and scales consistent with the producers' protocols and manuals. The assessment measures were used for the purposes for which they were intended and the results were valid and reliable.

35. Ms. Erickson used a variety of assessment tools and instruments to gather relevant functional, developmental, and behavioral information to evaluate Student's areas of need. She reviewed all of Student's cumulative records, statewide testing results, and the VCBH assessment. She interviewed Mother, Student, Ms. Kegerries, and Dr. Vivian's office. She also analyzed the behavior inventories completed by Student's Buena and LRA teachers, observed Student during testing session, and collaborated with several professionals during the course of her assessment, including Ms. Schoenwald, Mr. Lee and Ms. Guilin.

36. Though Student's complaint does not make the appropriateness of VCBH's assessment an issue, Student similarly attacks the Chapter 26.5 report because Ms. Erickson and the IEP team referred to and considered VCBH's conclusion that Student was not eligible for mental health services. When subjected to the same statutory standards, VCBH's March 22, 2011 Chapter 26.5 Eligibility Report was appropriate. VCBH supervising clinician Ms. Fox assembled an assessment team consisting of Ms. DeAnda, Mr. Lee, and Ms. Guilin. Ms. Fox was a Clinic Administration for VCBH for more than 10 years and had been a licensed clinical social worker for almost 20 years. She possessed the qualifications and experience to assemble an assessment team and supervise its progress and report. The team gathered data from multiple sources and utilized instruments that were designed to gather relevant and reliable information regarding Student's mental health condition and needs. Ms. DeAnda was a licensed MFT who thoroughly and competently interviewed

Parents and accurately recorded the results in the VCBH Client Assessment program. Mr. Lee was a licensed MFT for eight years, trained and qualified to interview Student and his therapist, as well as administer the Roberts-2 and YSR. Ms. Fox consulted and met with the team members, both individually and as a group, throughout the assessment process. Ms. Guilan, who was a licensed social worker for seven years and a VCBH behavior clinician for more than four years, typed the final report only after the information was gathered, assembled, discussed, and reviewed by the team and Ms. Fox. The VCBH assessment team and its Chapter 26.5 eligibility report complied with the statutory standards.

37. Student asserts that Ms. Erickson – as well as VCBH’s Mr. Lee – were not qualified to test or interview Student because they were not trained or educated to understand how Student’s medication affected his performance and presentation. At the time of the assessments at LRA, Student was taking a medication for depression and another for anxiety. Student argues that the test, scale and interview data were tinged and unreliable because Student was taking drugs and Ms. Erickson was not qualified to appraise their affect on Student’s performance. To the extent Student is asserting that credentialed school psychologists are unqualified to conduct such assessments, this position is inconsistent with the Education Code. More importantly, as discussed in more detail below, the assessment was appropriate.

38. First, educational psychologists assess students as they present themselves at the time of assessment. Unless a medication renders a student incapable of performing the tests or participating in an interview, the assessment process can proceed. The evaluation results will reflect the student on the medication. Knowing how the medication works would not necessarily make the assessment process more or less reliable. Tests produce measurable results and interviews provide direct information. An assessor or interviewer would be chasing a rabbit down a black hole of speculation if he or she would have to surmise how the student would have performed on a test or answered a question, if not on medication.

39. Second, and more significantly, is that Student bears the burden of demonstrating that Student’s depression and anxiety medication rendered the tests invalid and the interviews unreliable. Student failed to present any direct evidence that Student’s medications somehow undermined the reliability of the assessment process. For example, Dr. Witt generally said that medication might affect test outcomes. However, he never addressed how Student’s medications affected, if at all, the District’s assessments.

40. Interestingly, Dr. Witt also conducted standardized cognitive and academic tests, after Student left LRA and was again smoking marijuana. Per Dr. Wood, Student was not taking medications after he returned to Ventura. Yet, Dr. Witt’s results were strikingly similar to those obtained by Ms. Erickson. This consistency of result negates Student’s argument that the District’s assessments were somehow flawed. Also, Ms. Kegerries reported in late March 2011 that Student was taking his depression and anxiety medication, but it was not having much effect. Her comments indicated that the medications would therefore have had little effect on the evaluations earlier that month.

41. Though District's March 28, 2011 psychoeducational evaluation report met statutory standards and was appropriate, District agreed to review and consider additional documents and information when requested by Parents at the April 1, 2011 IEP. Ms. Erickson therefore considered all additional information made available to her after the April 1, 2011 IEP. She conducted additional interviews of Ms. Kegerries, Ms. Goforth, and Ms. Mateos-Bendinelli. She interviewed Student's psychologist Dr. Keener and psychiatrist Dr. Vivian. Ms. Erickson documented all the additional information and her concomitant evaluation in her revised report of May 6, 2011. In the revised report, she also provided expanded information from Student's and Ms. Goforths' BASC ratings and additional examples to her analysis of ED criteria, in an effort to assist Parents' understanding. Rather than demonstrate flaws in the District's assessments, the District's willingness to consider additional information from Parents only shows the undeniable thoroughness and accuracies of the assessments.

42. Finally, VCBH's Chapter 26.5 eligibility report strongly corroborated the District's psychoeducational report's findings and conclusions. District and VCBH conducted separate interviews of Parents', Student, and Student's therapist, utilized two sets of teacher reports, administered different Student self report scales, and employed varied assessment instruments. Both District and VCBH reviewed and discussed their respective findings amongst their colleagues before issuing their separate findings and conclusions. VCBH concluded that there did not appear to be an emotional reason for Student's school issues. Similarly, the District's assessment found that Student's inappropriate behavior did not occur in school nor was the cause of Student's school issues. Both reports found that Student disliked school, was capable of performing, and had chosen not to perform.

43. Given the above factors, Student failed to meet his burden of establishing that the District's psychoeducational assessment, evaluation and report did not comply with statutory standards. The reports were appropriate. (Factual Findings 2-189, 203-216; Legal Conclusions 3-5, 8-32.)

Analysis of Issue 3: Student Was Not Eligible As A Pupil With An Emotional Disturbance.

44. Student has failed to meet his burden of establishing by a preponderance of the evidence that District denied Student a FAPE by improperly concluding that Student was not eligible as a pupil with ED. The evidence convincingly established that Student did not satisfy the state and federal definition of ED as demonstrated by District and VCBH's careful assessments of Student for each category and characteristic that was required for eligibility. Although Student's various DSM-IV diagnoses provided significant information to Ms. Erickson and the IEP team, such diagnoses are not the same as special education eligibility under the ED category, which requires an analytical process separate and apart from diagnosing mental conditions under the DSM-IV criteria, and which, like all IDEA eligibility categories, requires a relationship to educational performance.

45. Student generally asserted that he used marijuana to self-medicate, which was co-morbid with his DSM-IV diagnosis of chronic depression. Student has failed to prove

this factual contention and, in fact, has presented contradictory evidence relevant to the assertions. For example, Student asserted that the RTC placement was necessary to treat Student's depression, which was causing him to refuse to go to school and apply himself to his academics. Student argued that without the RTC placement, Student's depression would cause Student to return to his marijuana abuse, which therefore meant that RTC placement was educationally appropriate and needed to continue.

46. However, Student's own psychiatrist thought differently. In his December 23, 2010 letter, Dr. Vivian stated that the reason he recommended an RTC was because of Student's increased anger and defiance at home, a reason unrelated to school. Dr. Vivian said nothing about treating his depression or school problems; he only spoke of removing him from his home environment. In his April 21, 2011 letter, Dr. Keener wrote that Parents notified him that Student was placed at LRA in January 2011. Dr. Keener recommended that Student continue at the RTC not for educational reasons, but because he believed "placing [Student] back in his home environment would lead to a drug relapse, at which time, the symptomology of Depression, Oppositional Defiant Behavior, and ADHD will reoccur." Doctor Keener believed that the marijuana caused the symptoms of depression, not that the depression caused Student to smoke marijuana. Therefore, Dr. Keener advocated keeping Student in the RTC for the purposes of preventing access to marijuana.

47. Student's contention was not supported by the information District received from Parents, which was selective, and tended to emphasize a point of view which supported their beliefs and struggles at home. For example, the BASC-2 Parents' scales were flagged by the test protocols as being evaluated with "extreme caution." This does not mean that Parents responses were false or that they were lying. However, their view of Student's conduct and condition reflect something more than objective evaluation, given that the major focus was on the turmoil from Student's conduct at home, not Student's conduct in other domains. No other person, including Student himself, corroborated Parents' BASC-2 reports to locations other than the home. While perhaps not conscious, or based on assumptions, Parents' reporting of Student's behavior at school was inaccurate. Parents gave histories to some providers that Student's behavior was a concern in school, when in actuality, the evidence was to the contrary and no one saw improper behaviors at school. As discussed below, the lack of severe behaviors across settings demonstrates that Student did not meet the criteria for ED eligibility.

48. The evidence was unclear as to whether Student's marijuana abuse was the cause or consequence of Student's depression. However, the assertion is of little consequence for an ED analysis, which looks to a series of behavioral factors that do not require a determination of causation for drug abuse. Student has failed to meet his burden of proving that the IEP team improperly found that Student's condition did not have any one of the five characteristics listed in the state and federal ED definition, over a long period of time and to a marked degree that adversely affected Student's educational performance.

49. First, there was no evidence that Student had an inability to learn. The comprehensive and accurate standardized tests found Student of average intelligence. His successful attempts to improve his grades, though temporary, indicated Student could learn when he wanted. Student's BASC-2, RADS, the VCBH administered Roberts-2 indicated that Student simply did not like school. Student's teachers – Buena and LRA – all affirm that Student was capable, but not motivated. Student frankly said in his interviews that, though he wanted to graduate, he disliked school and its rigid requirements. He hoped to finish at continuation high school. Student did not meet the inability to learn criterion. Second, according to Student's self-report and the observations of teachers, Student established satisfactory interpersonal relationship with peers and teachers. Teachers characterized Student as polite, courteous, and social. Though some of his friendships included those with whom he smoked marijuana, and may have been unsavory choices, Student built and maintained relationships both at his District enrollment and at LRA. The evidence showed conclusively Student did not meet the second eligibility criterion.

50. Third, Student did not exhibit inappropriate types of behavior or feelings under normal circumstances, except at home and with Parents. Both Ms. Erickson's and Mr. Lee's reports found that Student was continually observed to have an appropriate affect at school. Student reported his own cooperativeness with teachers when they asked him to do something. Not one teacher reported any type of inappropriate behavior or feeling on the part of Student. Parents described such behavior at home but did not testify to any other venue, except perhaps their car when driving Student somewhere he did not wish to go. The statute required that the characteristic be "to a marked degree," which means pervasive (exhibit the behavior in virtually all settings, including home, school, and community) and with intensity (behavior should be overt and observable). Student's inappropriate behaviors were not pervasive and, other than with Parents, overt and observable. Student's report of some unhappiness at LRA cannot be viewed as an inappropriate feeling, given Student's strong desire to return home and his consistent good behavior in LRA classrooms. The evidence conclusively established Student did not meet the third criterion.

51. Fourth, Student did not have a condition with a general pervasive mood of unhappiness or depression, except as reported by Parents at home. Ms. Mateos-Berdinelli met with Student a number of times in 2009-2010. She convincingly testified that Student did not exhibit any signs of depression or sadness. The teachers who reported to Ms. Mateos-Berdinelli, as well as the teachers who completed scales for Ms. Erickson and Mr. Lee, did not identify Student as unhappy, depressed, or sad. Student himself denied strong feelings of depression. Parents reported that Student was too depressed to get out of bed but, if true, no one at school knew. Student did not refuse to get out of bed at LRA, and as noted above, his unhappiness there was understandable given the circumstances. As noted by Mr. Lee, Student did not endorse a pervasive mood of depression or unhappiness in the YSR and Roberts-2. Although some doctors and LRA diagnosed Student with chronic depression, this was not manifested in the school setting. No one in the school setting characterized Student as unhappy or depressed. Additionally, both Dr. Vivian and Dr. Keener stated that they had difficulty determining a diagnosis because Student was always on marijuana. Following his

testing and observation, Dr. Witt could not conclusively diagnose Student with depression. Student did not carry his burden of proving this characteristic applied to Student for purposes of finding ED eligibility.

52. Fifth, Student did not have a tendency to develop physical symptom or fears associated with personal or school problems. Student neither displayed nor reported physical symptoms or fears connected with personal or school problems. Other than the high blood pressure episode when Parents took him to the Center for Discovery in December 2010, no person or assessment report provided evidence of any physical symptoms or fears. Mother indicated in various admission packets and health related questionnaires that, other than the condition associated with his kidneys, Student was in good health with no restrictions. When Dr. Witt assessed and evaluated Student in June 2011, he could not diagnose major depressive disorder. He said little about Student's marijuana use in his report and admitted not seeing the Vista del Mar Chemical Dependency assessment, where Student reported using three to four bowls of marijuana a day. He agreed that such marijuana use could have affected Student's mood and depressive symptoms. Dr. Witt acknowledged that Student's marijuana abuse coincided with the increased difficult behaviors at home. Notably, Dr. Witt did not apply the state and federal legal standards for ED eligibility in his evaluation of Student. The only diagnosis he could muster was one based on the DSM-5, which will not be published for another year. Under these facts, Student did not meet his burden of showing that he met the fifth criterion for ED eligibility.

53. As an additional basis for finding that District properly determined Student was not eligible under the ED category, the evidence established that Student's behaviors were the result of being socially maladjusted. Ms. Erickson credibly concluded that Student exhibited many behaviors of a student who was socially maladjusted. Student demonstrated voluntary patterns of action and an ability to control his behavior, was in conflict with established value systems, and did not value educational achievement. He demonstrated the ability to function in school and community, although at times he willfully disregarded generally accepted standards. Sadly, Student's severe behaviors were targeted toward his family and were not generalized, providing further indication of social maladjustment.

54. In sum, as to Issue Three, Student has failed to demonstrate by a preponderance of the evidence that he was denied a FAPE because he should have been found eligible for special education under the ED category. (Factual Findings 1-243; Legal Conclusions 2-5, 8-43.)

55. Because Student did not meet demonstrate a denial of a FAPE on Issues One through Three, Issue Four and all other remedy requests need not be addressed in this decision. Student is not entitled to a remedy.

