

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011100998

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2011100472

v.

PARENT ON BEHALF OF STUDENT.

DECISION

Elsa H. Jones, Administrative Law Judge, Office of Administrative Hearings (OAH), heard these consolidated matters on January 24 through 26, 2012, and January 30 through February 1, 2012, in Baldwin Park, California.

Student was represented by Pablo R. Escobar, Attorney at Law, of Woodsmall Law Group. Student's Mother (Mother or Parent) was present on all hearing days. Additionally, Student's grandmother was present on January 24 through 26.

Baldwin Park Unified School District (District) was represented by Meredith B. Reynolds, Attorney at Law, of the Law Offices of Jeff C. Marderosian. Mary Beltran, Special Education Coordinator for the District, was present on all hearing days.

District filed a request for due process hearing (District's Complaint) on October 13, 2011. Student filed a request for due process hearing (Student's Complaint) on October 25, 2011. On October 31, 2011, on motion of Student, OAH ordered the matters consolidated and the hearing dates continued, and ordered the timeline for decision to be based on the date of filing of Student's Complaint. Sworn testimony and documentary evidence was received at the hearing. The parties requested the opportunity to file written closing briefs. The parties were ordered to file written closing briefs by no later than 5:00 p.m. on February 24,

2012. The parties filed their written closing briefs on February 24, 2012, at which time the record was closed and the matter was submitted.¹

ISSUES²

Student's Issues are:

A. Whether District denied Student a free appropriate public education (FAPE) from the 2010-2011 school year, through October 25, 2011, by failing to adequately and appropriately assess Student in the following areas:

- (1) Psychoeducational; and
- (2) Behavior.

B. Whether District denied Student a FAPE from the 2010-2011 school year, through October 25, 2011, by not assessing Student in assistive technology (AT), which was an area of suspected disability.

C. Whether District denied Student a FAPE from October 25, 2009, through October 25, 2011, by:

- (1) Failing to offer Student appropriate placements; and
- (2) Failing to offer appropriate related services in:
 - (a) Speech and Language (LAS);
 - (b) Occupational Therapy (OT);
 - (c) AT; and
 - (d) Behavior.

D. Whether District denied Student a FAPE from October 25, 2009, through October 25, 2011 by impeding Parent's right to participate in the Individualized Educational Program (IEP) process by the following:

- (1) Failing to consider the findings of Parent's private expert, Applied Behavioral Consultants (ABC); and

¹ Student's brief was filed on February 24, 2011, at approximately 5:30 p.m. instead of 5:00 p.m. The mild tardiness of the Student's brief did not prejudice District and did not prevent the brief from being deemed timely filed.

² The issues are stated as they appear in the Prehearing Conference (PHC) Order. At no time did any party object to the issues as stated in the PHC Order.

(2) Impeding Parent's ability to consent to the offer of placement and services by failing to make a clear and unconditional offer of placement and services in the April 19, 2011, IEP.

2. *District's Issue is:*

Whether the District's offer of placement and services included in the April 19, 2011, IEP provided Student a FAPE in the least restrictive environment (LRE).

Student requested remedies to include (1) Placement at a non-public school (NPS); (2) Compensatory education; (3) One-to-one behavioral intervention services, by a non-public agency (NPA) provider trained in applied behavior analysis (ABA); (4) LAS and OT services to be provided by an NPA with expertise in treating children with autism; (5) An independent psychoeducational evaluation (IEE); and (6) An independent functional analysis assessment (FAA).

District seeks an order that the IEP of April 19, 2011, constituted an offer of a FAPE, and that District may implement the April 19, 2011, IEP, over Parent's objections, if Parent wishes the District to continue to provide Student special education and related services.

FINDINGS OF FACT

General Background and Jurisdictional Matters

1. Student is a 6-year-old boy who, at all relevant times, has resided with Mother in the District. The San Gabriel/Pomona Regional Center found Student eligible for Regional Center services due to autistic-like behaviors when he was approximately two years old, and placed him at the ABC Infant/Toddler Developmental Center in Duarte, California. The District assessed Student in early 2008, and an IEP team found Student eligible for special education and related services as a child with autistic-like behaviors on March 3, 2008. The IEP team also noted that Student met eligibility criteria as a Student with a speech and language impairment (SLI), based upon expressive and receptive language deficiencies in the areas of morphology, syntax, semantics, and pragmatics. The District then placed Student in a succession of preschool SDC's. He has been eligible for special education and related services at all relevant times. He was diagnosed with a seizure disorder at some point after the initial IEP, which was treated with medication. Student continued to take the anti-seizure medication at all relevant times. Student discontinued the medication on medical advice approximately a month prior to the hearing.

2. Since August 2008, and at all relevant times thereafter through the time of the hearing, Student has received ABA in-home services from Applied Behavioral Consultants, Inc. (ABC), a non-public agency, paid for by the Regional Center. These services involved Discrete Trial Training (DTT) methodology to target communication, peer play, conversation skills, aggressive behaviors, and skills during community outings. DTT is

an intensive one-to-one systematic process, by which skills are broken down into smaller components, which are then taught in a structured and repetitive format.

Student's Attendance at Bursch Elementary School

3. Mother had longstanding concerns about Student's behavior. At the March 3, 2008, IEP meeting, at which the IEP team first found Student eligible for special education, Mother expressed her concerns about Student's behavior as well as communication. He had tantrums due to frustration and overstimulation. He had difficulty relating to his peers and understanding boundaries. Mother requested that Student be placed at ABC School, because his behavior improved when he was attending the ABC Infant/Toddler Development Center, and she had been pleased with his progress there. Student used visuals and the Picture Exchange Communication System (PECS) to communicate, and she knew that ABC School used visuals and PECS. She also knew that ABC School used ABA techniques, and she believed those were beneficial to Student. District did not offer ABC School at this IEP. District offered placement in a preschool program at Pleasant View Elementary School, and Mother consented to this IEP.

4. Student began to demonstrate aggressive behaviors in the classroom, and resisted going to school. At District's request, in approximately April 2009, East San Gabriel School/Los Angeles County Office of Education (LACOE) provided Student with a one-to-one aide at his preschool placement. Mother continued to be concerned about Student's behavior. Because she believed that Student was not receiving appropriate behavioral support during extended school year (ESY), on July 6, 2009, she removed Student from ESY. By letter dated July 13, 2009, to Mary Beltran, the District's Special Education Coordinator, Mother advised that she had removed Student from ESY, and expressed that Student had not been receiving the appropriate behavior support during the school year. She advised that his behaviors had increased in the classroom and at home. These behaviors also made it difficult to transport Student to school. Mother requested an IEP meeting to discuss behavioral support for Student, a one-to-one aide, and a school placement. In the letter, Mother mentioned that she would be requesting at the IEP that Student be placed at the ABC School during the 2009-2010 school year, because the ABA/DTT methods used there were effective for Student.

IEP of September 9, 2009

5. District convened an IEP meeting on September 9, 2009, towards the beginning of the school year. At that time, Student had been placed at the SDC at Bursch Elementary School (Bursch). The members of the IEP team included Mother, a District administrator, a general education teacher, a speech-language specialist, and a program specialist. Mother had concerns about placement, Student's behavior, and speech services. The team decided to provide home hospital program services to Student until September 23, 2009, because he had recently undergone surgery to replace bilateral ear tubes, a tonsillectomy, and an adenoidectomy. The team decided that, when Student returned to school, he would receive group LAS services two times per week for 30 minutes per session,

and individual LAS services one time per week, for 15 minutes, when he returned to school. The District agreed to consider ABC providing training for Student's one-to-one classroom aide. The team agreed that the one-to-one aide should be trained in appropriate behavior techniques and be aware of seizure concerns, whether the training was provided by a District consultant or by ABC. Mother was also concerned that Student's one-to-one aide "kept changing." Mother wished to consider another placement for Student, and the team agreed that Mom would visit Vincent Children's Center (Vincent) to consider moving Student there. Mother consented to the IEP.

IEP of November 10, 2009

6. Mother visited Vincent after the September 9, 2009, IEP, but decided not to place Student there. Rather, after his home hospital services terminated, Student attended the pre-kindergarten SDC at Bursch. There were approximately 12 children in the SDC, at least five or six of whom had special needs. The SDC had one teacher and two aides, in addition to Student's one-to-one aide. The program was a one-half day program. The children followed a daily routine of breakfast, playtime in the classroom, carpet time with the entire class, small group activities, more carpet time, recess time, snack time, and additional carpet time. The students did not use PECS or visual schedules. On November 10, 2009, the District convened an addendum IEP meeting to discuss Student's progress. The IEP team included Mother, a District Administrator, a special education teacher, a speech-language pathologist (SLP), a program specialist, and the school psychologist. The team discussed Student's present levels of performance in pre-math, pre-written language, math, literacy, and communication, and set goals in each area. The team noted that Student enjoyed coming to school, and played with toys and manipulatives. In pre-math, Student identified and recognized several specified shapes, but he did not identify and recognize the triangle and the rectangle. Therefore, the team set a pre-math goal for student to identify a triangle and a rectangle. In pre-written language, the team noted that Student participated in most table top and group activities, but he held the writing utensil too firmly and needed practice tracing his name. The team set a goal by which Student would trace his name without assistance and follow the correct writing conventions. In math, the team noted that Student needed more practice tracing letters and numbers, and set a goal for Student to write the numbers one through five. In pre-literacy, the team noted that Student enjoyed story time and could sit for approximately 11 minutes while teacher read a story and sang a song. Student had difficulty responding to questions related to the story. Therefore, the pre-literacy goal addressed Student relating a sequence of events of a story. In communication, the speech and language therapist (SLP) reported that Student was excelling in therapy. The team set a goal that Student would ask for items and make requests in the classroom setting among his peers with maximum prompting and modeling.

7. The team noted that Student had a difficult first week at school because of "a couple of biting incidents." Student had difficulty with communication, turn taking, and being able to share. Student responded to much re-direction, and the team determined that a picture schedule would no longer be needed. Student understood directions when gestures were used. A bell was used to signal transitions, and Student was one of the first children to

line up when he heard the bell. Mother expressed concerns about OT issues, and the team discussed the process for obtaining OT services. Mother also wondered if the classroom was too large and overwhelming for Student. Mother testified at hearing that she requested placement at ABC School at this IEP, because she felt that Student's behaviors were getting worse, and Student was not using PECS or obtaining other communication assistance in the classroom. Mother's request and these concerns were not reflected in the IEP.³ The District offered the SDC preschool five times per week, and LAS services three times per week, for 20 minutes each session. Mother consented to the IEP.

Behavior Plan

8. Subsequent to the November 10, 2009, IEP meeting, the District requested Sandra Cossio, a behavioral consultant to the District, to develop a "Behavioral Intervention Plan" for Student. Ms. Cossio received her B.A. from the University of California, Los Angeles (UCLA) in psychology, with a minor in gerontology. She received her M.A. in counseling, with an emphasis in ABA, from California State University, Los Angeles. She is a Board Certified Behavior Analyst (BCBA), which required 225 hours of ABA-related courses, including supervised field work in ABA. She has been certified to conduct trainings in non-violent crisis intervention, and she has been a behavioral consultant to the District since 2005. The District did not request Ms. Cossio to perform either a functional behavioral assessment (FBA) or an FAA, and District did not provide any behavior assessment plan to Mother for her signature.⁴ Ms. Cossio based the Behavior Plan upon her observations of Student for approximately one hour per day, for five days, over a period of two weeks. She observed him at different times throughout the day. Approximately 40 percent of her observations were during unstructured time; approximately 60 percent of her observations were during structured time. Ms. Cossio also based the Behavior Plan upon a discussion she had with Student's teacher for about 15 minutes regarding Student's classroom behaviors. Ms. Cossio did not interview Mother. Ms. Cossio did not interview anyone at ABC, because ABC was only providing home services and the plan Ms. Cossio prepared related to Student's behaviors in the school environment. Ms. Cossio produced a document entitled "Behavior Intervention Plan" (Behavior Plan) on January 8, 2010.⁵

³ It is not necessary to resolve this particular discrepancy, as there is no dispute that Mother requested that the District place Student at ABC School on several occasions.

⁴In California, an FBA is a behavior assessment for less severe behaviors. It is distinct from the functional analysis assessment (FAA), further described below, which is a statutorily-defined assessment performed under prescribed conditions and governed by a panoply of requirements pursuant to title 5, California Code of Regulations, section 3052, subdivision (b).

⁵Since the document was not developed pursuant to an FAA under title 5, California Code of Regulations, section 3052, subdivision (b), it is not a behavior intervention plan (BIP). (Cal. Code Regs., tit. 5, § 3052, subd. (a)(3).) Therefore, to avoid confusion, the document created by Ms. Cossio will be referred to in this Decision as a Behavior Plan.

9. The Behavior Plan noted that Student had autism and a seizure disorder, for which Student took Topomax. The Behavior Plan listed the possible side effects of Topomax, which included depression and mood changes, and contained instructions to staff on identifying a seizure and procedures to follow if Student had a seizure. The Behavior Plan identified three of Student's challenging behaviors: (1) physical aggression; (2) non-compliance; and (3) sensory avoidance.

10. The Behavior Plan defined Student's physically aggressive behaviors as biting, pulling hair, kicking, pushing, pinching, scratching, spitting, running into others, spitting into other's faces, throwing objects, defacing school property, and head butting. The behaviors occurred on average six times per day, with each episode lasting five to ten minutes. Ms. Cossio hypothesized that the function of the behaviors was access to an activity or tangible or to escape from demands. Ms. Cossio suggested possible replacement behaviors to include keeping body to self, respecting other's personal space, teaching Student alternative skills, such as requesting assistance, teaching Student to share, to wait his turn, to select a different activity or time when Student was denied access to an item of interest, teaching Student to use words to communicate his needs and frustration, and teaching Student techniques to avoid escalating behaviors, such as asking for a break. The Behavior Plan listed antecedents for the behaviors, noting they could occur at any time of day and in all school settings, and included changes in routine, biting his own hand or clothing, pulling his hair, noise, non-compliance when asked to engage in a difficult or non-preferred activity, when asked to terminate a preferred activity, or when denied access to an activity/tangible, including when a peer had the toy or was engaged in the task. The Behavior Plan suggested that consequences of the behaviors were intermittent access to a preferred activity, escape from difficult or non-preferred activities, or inconsistent presentation of punishing consequences. The Behavior Plan suggested a variety of preventative strategies, including prompting Student to communicate his needs or self-manage, priming Student, having Student use words, with prompting if necessary; and arranging situations involving cooperative play and teamwork. Ms. Cossio suggested that, when the Behavior Plan was first implemented, Student should obtain what he wanted as soon as possible, but, as Student progressed, Student's waiting time should increase. The Behavior Plan also contained reactive strategies, such as redirecting Student, and prompting him to request a break.

11. The Behavior Plan also addressed non-compliant behavior, which the plan defined as refusing to work by ignoring the instruction, saying, "No," throwing himself onto the floor, and/or walking/running away. The plan noted that staff must learn to distinguish between non-compliance and sensory avoidance. The plan noted that Student's baseline on non-compliant behavior was five times per day, on average, and hypothesized that the behavior served the functions of escape and/or access. The plan offered positive replacement behaviors, such as compliance, teaching alternative skills, waiting to gain access to an item of interest, and making a different choice upon being told, "No." The plan identified the antecedents as being asked to engage in a difficult or non-preferred activity, or when asked to terminate a preferred activity. The consequences were escape from difficult or non-preferred activities, intermittent access to a preferred activity, and inconsistent discipline. The plan suggested preventative strategies, including getting

Student's attention by calling his name and establishing eye contact before making a request, using simple commands, providing extra support for difficult activities, following through on instructions, providing options regarding order of task completion or activity, allowing Student to select a more preferred activity if he completed a less-preferred activity, using a reinforcement system, behavior momentum (requesting several tasks that Student was likely to perform, praising compliance, and then presenting the less-preferred tasks, again praising compliance), placing easy directions on a chalk board and including start-up ideas, or providing a visual schedule. The plan suggested reactive strategies to include redirecting Student and reinforcing him immediately, prompting, providing choices that did not offer Student the opportunity to escape from performing the task if the behavior were escape-motivated, and modeling by another student.

12. The Behavior Plan also addressed sensory avoidance behaviors, which the plan defined as Student repeatedly and loudly saying "No" and covering his ears with his hands or placing his fingers in his ears. The plan identified Student's baseline on this behavior as three times per day, on average, and hypothesized its function as sensory avoidance. The suggested positive replacement behaviors were to teach Student to ask for time away, or take a break, or cover his ears without repeatedly yelling "No." The plan identified the antecedents for the behavior as loud noises, loud talking, crying, yelling, and entering the cafeteria. The plan listed the consequences as avoiding/preventing auditory/sensory input, and self regulation. The plan suggested preventative strategies of priming Student, desensitization, implementing OT strategies, and teaching Student how to self-manage. The plan listed reactive strategies of prompting Student to ask for a break, to go to the break time area, and to self-manage.

13. The Behavior Plan specified how data was to be collected, and included a variety of universal reinforcement strategies including verbal praise, a token system, contingent access to desired activities, immediacy and consistency, and physical demonstrations of approval, such as "high-fives." The plan noted Student's interest in stars as reinforcers, but that this interest could change and staff should consider and note other reinforcers. The plan also noted that behaviors may increase when the plan was first implemented. The plan also contained recommendations for classroom organization and management, such as reducing unstructured situations in the classroom, modifying seating arrangements so Student could sit with peers who would be good role-models, positively recognizing and rewarding students for following classroom rules, eliminating distractions, and presenting material in a multi-modal manner. The plan also contained recommendations for implementing the strategies in the plan. The plan included behavioral goals, by which Student would decrease all of the behaviors addressed by the plan to 75 percent of baseline within three months. The report concluded that the plan could be implemented in Student's current classroom environment, with continued behavior support given to Student's teacher and classroom aides.

14. Student's expert witness, Sean Surfes, Ph.D., criticized certain aspects of the Behavior Plan and the manner in which data was collected with respect to the Behavior Plan. Dr. Surfes is a California-licensed Educational Psychologist and a BCBA in private practice.

He holds a B.S. in psychology from the University of San Francisco, an M.S. in counseling and school psychology from California State University, Los Angeles, and a Pupil Personnel Services credential from the same institution. He received a Ph.D. in education with a specialization in school psychology in 2005 from the University of California at Riverside. He has been a school psychologist since 1994. His practice includes evaluating children with learning disabilities, autism, and developmental disabilities, and consulting with parents, educators, and support staff to develop classroom programs for such children. In particular, Dr. Surfus faulted the Behavior Plan for failing to include data regarding replacement behaviors, and details on how staff should teach Student the replacement behaviors contained in the plan. Dr. Surfus believed that this was important so that staff could help Student learn to manage his behaviors.

15. Marideth Gutierrez, another of Student's experts, also criticized the Behavior Plan. Ms. Gutierrez received her B.A. in psychology from UCLA, and was working towards completing her M.S. in ABA from St. Cloud State University. She has been the Regional Director of the ABC School and the ABC Infant/Toddler Program in the Duarte/Ontario, California, area, since 2004. She has worked for ABC, Inc., in various capacities since 2001, including as Regional Director, ABC School in the Southeast Los Angeles/Inland Empire area from 2003 to 2004. Ms. Gutierrez believed that the Behavior Plan did not give specific detail regarding the antecedents to the behaviors. She believed that the Behavior Plan should have listed specific procedures for staff to follow for each antecedent to the behavior, and exactly what staff should do if the behavior occurs. She also acknowledged that the Behavior Plan had much information that ABC would have included in a behavior plan.

16. Mother was never given a copy of the Behavior Plan. Ms. Cossio discussed the Behavior Plan with Student's SDC teacher, and with his one-to-one aide, Maricela Ochoa. Ms. Ochoa served as Student's one-to-one aide at Bursch from approximately October 2009 through May 25, 2010. Ms. Ochoa holds a B.A. in liberal studies from California State Polytechnic University. She has been employed by the District as a behavioral aide since January 2008, and Ms. Cossio is her supervisor. In 2008, she received training for three days in how to recognize and manage autistic behaviors, and data collection, and subsequently had follow-up training. She had training in non-violent crisis prevention in 2007 or 2008 for two days, and annual follow-up trainings. She had training in positive behaviors intervention in 2008 for two to three days, and a follow-up training in that subject.

17. Ms. Cossio instructed Student's teacher and Ms. Ochoa how to implement the Behavior Plan and explained to Ms. Ochoa how to collect data, including the definition of the behaviors she was to record. Ms. Cossio explained to the teacher and to Ms. Ochoa that the goal was to reduce Student's behaviors from the baselines. Ms. Cossio explained to Ms. Ochoa that Student's behaviors would not be eliminated right away. Ms. Ochoa collected data daily, and recorded it either during the incident or at Student's snack time.

February 23, 2010, IEP

18. District convened Student's annual IEP team meeting on February 23, 2010. The IEP team included a District administrator, a special education teacher, a school psychologist, an SLP, an occupational therapist, and Mother. The team noted Student's eligibility of autistic-like behaviors, and that his needs were best met in an SDC program, which was the LRE. The team recorded Mother's comments that Student was adapting a little bit better, but the current placement was still new and Student still had behavioral difficulties. Academically, he was progressing. Mother was mainly concerned about Student's behavior and communication. The team noted that Student was taking Topomax two times per day.

19. The team identified the areas of concern as pre-academic, communication, social development, behavior development, and pre-vocational/vocational. The team reviewed Student's present levels of performance and progress on goals. In pre-math, Student still failed to name the triangle and rectangle pursuant to his previous goal. Therefore, Student had not met that goal and it was continued. (Goal A.) The team also developed a new pre-math goal, involving counting. (Goal E.) In pre-written language, the team noted that Student was still exploring his hand dominance. He could trace his name, and he therefore had partially met his pre-writing goal, but he was challenged by writing his name. The team therefore continued the pre-writing goal from the November 10, 2009 IEP. (Goal B.) The team also modified Student's previous math goal of tracing numbers, because he had met the goal, to a pre-writing goal of writing numbers. (Goal C.) The team modified Student's pre-reading comprehension goal regarding sequencing a story, since he had partially met the goal. (Goal D.) The team modified Student's communication goal regarding producing meaningful speech using sentences and vocabulary he knew, since he had partially met the goal. (Goal F.) All of the goals had short-term objectives or benchmarks. The team added a behavior/OT goal regarding organization of behavior. The goal was based on Student's present level of performance regarding his use of avoidance behaviors due to his difficulty in transitioning between activities. The goal required Student to transition between three activities, without engaging in avoidance behaviors, with no more than one to two prompts per transition. The team developed three benchmarks for the goal, which varied the number of activities in the transitions and the number of prompts per transition. The team also adopted a new OT goal in proprioceptive processing skills. The team noted in the present levels of performance that Student demonstrated difficulty in grading the amount of pressure he used on classroom tools such as a crayon and scissors. The team developed three benchmarks for this goal, which consisted of varying the number of prompts.

20. The IEP notes discussed Student's progress on goals. The team discontinued several of the annual goals from the preschool program Student attended before Bursch, because they were no longer appropriate. One of the discontinued goals involved playing catch, since Student's favorite activity was riding a tricycle. The team also discontinued the previous goal of having Student walk quietly, since he had been doing well lately despite sporadic outbursts. The team also discontinued a previous shoe-tying goal and a goal

concerning Student's ability to follow through with undesirable activities. The team noted that Student was doing well on the pre-math goal pertaining to shapes, but he was confusing the triangle and rectangle and square. He had done well on the writing goal regarding tracing, but that he would now work on writing his name independently. He was struggling with writing numbers, and Mother was concerned about pencil grasp. The team noted that if Student wanted to engage in a desired activity that other students were doing, he would not misbehave. He was still struggling with the pre-reading comprehension goal regarding answering questions about stories. The goals were revised, but the team commented that the essential elements and fundamentals of the goals were still present. The OT reported that Student had met his previous goals. The school psychologist probed about some of Student's behavior, and Mother asking about his sitting habits. Mother mentioned that she communicated well with the one-to-one aide but also wanted to consult with the behavioral consultant. The team agreed that the behavior consultant would provide a written report to Mother and the IEP team.

21. The team determined that AT was not needed, and that accommodations and modifications were needed in all academic areas. The team also noted that Student needed behavior support, as his behavior impeded his learning or that of others. The team noted that Student's learning was best facilitated through the use of manipulatives, realia, and simple picture graphs. The team recommended that the OT sensory diet be followed to help with some of Student's impulsivities. The team also commented that Student needed visuals and gestures to better understand what was said to him. The team recommended linguistically appropriate instructional strategies consisting of active hands-on instruction, such as props, real materials, manipulatives, multi-sensory instruction, and gestures, facial expressions, and pantomime.

22. The IEP listed the special education services to consist of a preschool SDC, with LAS services to occur three times per week, at 20 minutes per session, in both an individual and group setting, and OT for 30 minutes per week. Student would receive behavior intervention services in the form of a one-to-one aide daily. The team also offered specially designed physical education, and curb to curb transportation. The team noted that Student would not participate in the general education environment for any academic areas, because the SDC preschool program was the LRE. The team noted that promotion criteria would be progress on goals. Mother consented to the IEP.

Student's Progress at Bursch

23. Student participated in class activities in the Bursch pre-school SDC. He began to play with the other children, he participated in the group pre-academic and play activities, and he liked riding his tricycle at recess.

24. On a typical day, Ms. Ochoa, Student's one-to-one aide, would observe Student have approximately two aggressive behaviors, during which he would try to hit or try to bite somebody. He had approximately two to three tantrums in a typical day. His behaviors also included pushing and spitting at other children, and scratching and biting Ms.

Ochoa. There was no evidence that Student engaged in self-injurious behaviors. Ms. Ochoa would consult with Ms. Cossio approximately seven to eight times per month to discuss Student's behaviors and strategies to use. These meetings could last from a few minutes to 40 minutes. Ms. Ochoa conversed with Mother about Student every day regarding how Student's day went, focusing on his behavior.

25. Student was capable of asking for breaks. He could communicate verbally, using words such as "tricycle," "play," and "No." He could wait his turn on the tricycle, and say, "Wait my turn." He did not use a communication system, such as the Picture Exchange Communication System (PECS) at school. School staff used a reward system to manage his behaviors.

26. Student's aggressive behaviors improved from January 2010, when Ms. Ochoa and Student's teacher began implementing the Behavior Plan, through May 28, 2010, Student's last day at school. Student's sensory avoidance and non-compliant behaviors fluctuated, but stayed within the same zone during this time.

27. Ms. Ochoa ceased working with Student after she was injured on May 25, 2010. On that date, Student had been removed from the classroom due to misbehavior, and Ms. Ochoa was trying to prevent him from returning to class because he was not permitted back into class until he had calmed down. She injured her back during this process.

28. While Student was at Bursch during the 2009-2010 school year, Mother observed three occasions during which Student ran out of the playground area or the cafeteria. Mother had also learned about Student's aggressive behaviors from discussions with Ms. Ochoa and the teacher, and she believed his aggressive behaviors were escalating. Student's last day at Bursch was May 27, 2010. On that day, Mother saw an aide pulling Student by the arm and taking him to the principal's office. The aide told the principal that Student had dashed out of the classroom and onto the playground. Mother spoke to the principal and learned this was not the first time that Student had been brought to the principal's office due to his behaviors. As a consequence of what she observed and learned on May 27, 2010, Mother unilaterally decided to remove Student from school. By letter dated June 2, 2010, to Ms. Beltran, Mother notified the District that she was keeping Student home from school due to concerns about his safety, about the appropriateness of his class, and about his behavioral support. The letter referred to the incident in which the classroom aide took Student to the principal on May 27, 2010. The letter also stated that Mother had observed another incident involving that classroom aide on May 27, 2010. Mother's letter stated that the classroom aide told Student, who was attempting to bite the aide, "You are not going to do that to me," and then she turned her back on him. Mother's letter stated that the aide's action was inappropriate. Mother's letter advised that she would continue to keep Student out of school until the District placed him in an appropriate classroom and provided appropriate behavioral support.

June 11, 2010, Addendum IEP

29. On June 11, 2010, the District convened an addendum IEP meeting to discuss transitioning Student to kindergarten. The IEP team included Mother, a District administrator, Student's special education teacher, an SLP, a program specialist, the school psychologist, and two representatives from the Regional Center. The team reviewed Student's present levels of performance and his progress on his goals. Student completed his first objective and some progress on his second objective of his pre-reading comprehension goal of responding to questions relating to a story; he had met his first and second objectives on his pre-math goal of naming triangles and rectangles; he had made some progress on short term objectives one and two on his pre-written language goal of writing his name, and he had also made some progress on objectives one and two of his pre-writing goal of writing numbers. He had met objectives one and two of his pre-math goal regarding counting.

30. The IEP notes reflect that Mother shared that Student's strength has been his improvement in speech. Mother's main concern was Student's behavior. He was having trouble transitioning to different tasks and she had noticed that his behaviors were becoming worse and more intensive during the past three months. She expressed that Student's behaviors have not been dealt with appropriately. She described the incident when Student had eloped out of the classroom, and she had concerns about his not being able to stay in the classroom. Mother explained that she took Student out of school because she was not comfortable with the behavior supports at school, and she believed that the behaviors were keeping him from progressing. She noticed he would come home stressed from school. Mother reported that Student's behaviors had diminished when she took him out of school and kept him at home. She felt that many of his behaviors were related to sensory issues. Student's special education teacher advised that Student was progressing pretty well academically, and that he was completing Kindergarten level work, but his behaviors had escalated without an antecedent. He socialized well and had two friends. He preferred to play by himself. He had demonstrated tremendous growth in communication. He was very responsive and able to make requests. He showed progress in his academic goals, but Mother stated at home Student had some trouble with shapes and colors. The team noted that goals to focus on were writing his name and his numbers, and the ability to answer questions in complete sentences.

31. At hearing, Mother testified that she requested placement at ABC School. This request did not appear in the IEP.⁶ District's offer of placement and services was a referral to Canyon View School (CVS), an NPS, starting with ESY 2010, with the same level of services as he already had. Mother had previously observed CVS and had discussed it with the school psychologist. Mother accepted the offer of referral to CVS, and consented to the IEP.

⁶As was mentioned above, since there is no dispute that Mother had requested placement at ABC School on several occasions, this discrepancy is not material to this Decision.

32. Student commenced attending CVS on June 21, 2010, for ESY. At that time, CVS provided a one-to-one aide. He had two behavioral incidents during the ESY session. In one incident, he attacked a child on a swing. His aide physically removed him from the area. Another incident was documented in an Incident Report dated June 29, 2010. Student was agitated on the bus ride home. He kicked, hit with an open hand, and continuously spit at peers. The driver had to stop the van and place Student in the front seat for the safety of peers. While in the front seat, Student kicked staff, the dashboard, and the radio. This incident was reported to Melissa Schulz, the BCBA at CVS. There was no specific evidence that Mother was informed of this incident.

33. On July 23, 2010, Lisa Stragmalia, Student's special education teacher, prepared a progress report regarding Student's progress on his goals. He had completed short term objective one with respect to goals A through D (pre-math goal of naming triangle and rectangle; pre-written language goal of writing his name; pre-writing goal of writing numbers; and pre-reading comprehension goal of telling sequencing events of a story.) He had made good progress on Goal E (the pre-math counting goal). Short term objectives two and three of the goals had not been introduced.

34. Student had several behavioral incidents during August 2010, which staff documented on the Daily Student Progress Report that was sent home every day, and/or on an Incident Report if the event warranted an Incident Report. The evidence reflected that not all events on an Incident Report were reported on the Daily Student Progress Report. On August 24, 2010, Student had several tantrums, which were documented on the Daily Student Progress Report. On or about August 25, 2010, Student was working on flash cards with staff when he picked up a pen and threw it, and then attempted to hit and kick staff. He was redirected and offered a break, but continued to refuse to work and began hitting, grabbing, kicking, pinching, and spitting at staff. He eventually calmed down, and continued to work. This event was documented on an Incident Report.

August 26, 2010, Addendum IEP

35. On August 26, 2010, the District convened an addendum IEP to review Student's placement at CVS. The IEP team included Mother, Student's grandmother, Ms. Stramaglia (Student's special education teacher), an occupational therapist, two representatives from the Regional Center, the Director of Behavioral Services, the NPS IEP coordinator, Mary Beltran (the District's administrator), and Catherine Ols (Executive Director of CVS).⁷ The team reiterated Student's related services. He was receiving LAS three times per week, at 20 minutes per session; OT one time per week, at 30 minutes per session, and behavior intervention services one time per week at 60 minutes per session.⁸

⁷Ms. Ols testified at hearing. During her testimony, she was represented by Philip Treacy, Attorney at Law.

⁸It is not clear what behavioral services for 60 minutes per week Student received while at CVS, as listed in this IEP. Further, at all time while he attended CVS, Student

36. Mother reported that Student was on a gluten-free and casein-free diet, and that she sent snacks to school. She noted Student became agitated when he was hungry. She advised that she was pleased with the current school placement and program. She wanted Student to transition to a higher-functioning classroom with more typical peers. The team agreed that a transition to such a classroom should be a long-term goal. Student needed to work on more appropriate socialization skills before such a transition could take place. Mother reported that she was interested in the ABC School program. The District's director stated that she and the District's behavior consultant would investigate the ABC School. CVS staff reported that Student would benefit from having a one-to-one aide in the classroom to assist Student in accessing the curriculum and working on appropriate socialization and on aggressive behaviors. District agreed to provide such an aide, thereby assuming the burden from CVS. Student's teacher reported that Student was bright and energetic, and demonstrated aggressive behaviors approximately zero to four times per day toward both staff and peers when he became frustrated with school work or other tasks. The director of behavioral services reported that Student could stay on task for approximately five to seven minutes. Student was reinforced with preferred activities and responded positively to that process. The team discussed whether Student should have a sensory diet, and the occupational therapist agreed to consider creating and implementing a sensory diet. The team noted that Student had not received OT during ESY, and agreed that Student would receive four compensatory OT sessions at 30 minutes per session. Additionally, the team agreed that Student would receive 11 compensatory speech sessions at 20 minutes per session. Mother consented to the IEP.

37. Student continued to attend CVS when the fall semester started. He was in a transition classroom, called Classroom 15, with other children on the autism spectrum who had behavioral difficulties. The classroom focused on behaviors, to allow the students to acquire more school-readiness before entering a classroom with more age-appropriate peers. In Student's case, this would mean Classroom 18, an SDC for children ranging from kindergarten to third grade, which CVS staff considered a more typical elementary school class. There were approximately 10 children in Student's transition class at CVS, approximately six of whom were in kindergarten and elementary grades, one or two were in middle school, and two were in ninth grade. Staff was trained in, and used, ABA-based strategies, including positive behavior reinforcement, TEACCH (Treatment and Education of Autistic and Communication Handicapped Children), and visual schedules. TEACCH is a research-based program, designed to teach children on the autism spectrum how to understand a sequence of events and to perform tasks independently. Student used PECS. CVS offered a California standards-based curriculum. The campus had swings and a trampoline to provide sensory activities, and it had a "BRAIN Lab" based on Fast For Word to train the brain in literacy and language. Student's case manager, Breanna Tupper, had an office in the classroom, and worked closely with Student's teacher. At the time of the hearing, Ms. Tupper was working towards her B.A. in Early Childhood Education on-line at National University. Previously, she had attended the University of Northern Colorado for

received the services of a one-to-one aide on an all day, daily basis. Yet the aide's services are not listed in this IEP.

one year, and had attended a few classes at Citrus Community College. Ms. Tupper was supervised by Melissa Schulz, CVS's BCBA, with whom she consulted daily. She spoke to Mother frequently, and had a policy that parents of children on her caseload could call her at any time.

38. Student engaged in aggressive behaviors on numerous days during September 2010. These behaviors included hitting, spitting, kicking, scratching, screaming, biting, and throwing materials. He punched a peer in the eye. He pinched a peer. He hit a staff member on top of her head with his lunch pail. He opened the door on the bus several times when the bus was moving, and spat upon staff and peers on the bus. In addition to these events, Student was scratched by a peer. During another incident, Student scratched a peer who had tried to pinch Student.

39. Mother kept a log regarding her observations of Student's behavior regarding school and on the bus, and her communications with staff regarding same, commencing on September 20, 2010, and continuing through November 30, 2010. Typically, Mother transported Student to school, and he took the bus to go home from school. The log documented a variety of events, including Student's occasional anxiety upon being driven to school, and his behavior on the bus rides home, as reported to her by the bus driver or based upon her own observation. She observed Student hitting a much older student on the bus and the student cursing at Student in reply. She observed that Student did not always eat his lunch, and that sometimes he came home with food in his lunch pail that he could not eat due to his casein-free and gluten-free diet. On one occasion he came home with his clothing wet, because he had jumped in a puddle directly before getting on the bus.

Behavioral Progress Report

40. Melissa Schulz, the Director of Behavioral Services and a BCBA at CVS, drafted a Behavioral Progress Report on October 4, 2010. Ms. Schulz did not testify at hearing. The report shows she analyzed the data collected by Student's one-to-one aides, and she concluded that Student had made good progress with following directions since he began attending CVS. The aides were collecting data based upon Ms. Cossio's Behavior Plan. In general, the data collected by the aides showed that Student was engaging in aggressive tantrums nearly every day, and usually multiple times per day. Ms. Schulz's report, based upon an analysis of the data, stated that Student's aggressive behaviors had decreased over time. She noted that Student's aggressive behaviors consisted of hitting, kicking, biting, pulling hair, scratching, spitting, and head butting. This list of behaviors was a shorter list than the one Ms. Cossio had compiled when she observed Student while he was attending Bursch. Ms. Schulz's report noted that these behaviors occurred on average 15 percent of the intervals of the school day, and the school day was divided into 24 fifteen-minute intervals. The report commented that aggressive behaviors were more likely to occur when Student was presented with a non-preferred task or activity. The report also noted that Student has been following directions more frequently, with no more than three staff prompts. He followed directions on average 80 percent of the intervals of the school day.

October 13, 2010, Addendum IEP

41. District convened an addendum IEP on October 13, 2010, to discuss Student's placement. The IEP team included Mother, Grandmother, the attorney for Student and Parent, Ms. Cossio, Ms. Ols, Ms. Tupper, Ms. Beltran, and Ms. Stramalgia. The team noted that Student's one-to-one aide was changed to a male on September 27, 2010, and since that time, school staff had noticed that Student's aggressive behaviors had decreased. Student struggled with transitions. Classroom staff had implemented interventions to assist with transitions, such as engaging in preferred activities and allowing Student to take a break. The team discussed ABC School, which Ms. Beltran, the special education coordinator for the District, and Ms. Cossio, had observed. They had also observed Student's classroom at CVS. Ms. Beltran and Ms. Cossio had observed that CVS used ABA principles, including PRT (Pivotal Response Training), TEACCH, and DTT. At ABC they observed group instruction in a single classroom separated by stations. The stations used solely DTT and PECS. Socialization opportunities occurred only at recess and lunch. Mother reported that when she visited ABC School, she had seen opportunities for students to pair with other students to facilitate socialization, and she observed a time designated for circle time. District encouraged Mother to visit Student's current CVS classroom, as well as an SDC elementary classroom. Mother stated she would like Student to be in a classroom with more age-appropriate peers as well as with peers at a greater functional level. CVS staff wanted to transition Student to a classroom with more age-appropriate peers when he reduced his aggressive behaviors. They anticipated that such a transition might begin during the second semester of the 2010-2011 school year.

42. District recommended that an FBA be conducted by a behavioral consultant hired by the District. Parent requested an independent psychoeducational assessment, an FBA, and an independent OT assessment at District's expense. Parent requested that a staff member trained in ABA ride with Student on the van and document Student's behaviors. The team agreed to add this to the IEP service page, which otherwise contained the same services as were listed in the August 26, 2010, IEP. The team attached Ms. Schulz's Behavioral Progress Report to the IEP. Mother consented to the IEP.

Student's Subsequent Progress at CVS

43. Student did not engage in any behaviors in October 2010 that generated an Incident Report. On October 21, 2010, Ms. Stramalgia completed a progress report of Student's goals. The report showed that Student had completed all of his first-tier objectives on all of his goals. He had completed all of his second tier objectives on all goals, except for Goal C (the pre-reading comprehension goal of telling the sequence of the events in a story), but he had made good progress on that goal. Student also had made progress on Goal F.

44. In November 2010, Student engaged in two instances of aggressive behavior that generated Incident Reports. On November 12, 2010, Student's one-to-one aide wrote an Incident Report documenting that a peer attempted to pinch Student and Student responded by scratching the peer's face.

45. A more complicated series of events occurred on November 29, 2010, and several Incident Reports were generated. It was not only the first day of school after Thanksgiving break, but it was also the first day for Keith Grimm, Student's new one-to-one aide, and it was a difficult day for Student. The first Incident Report documented that at approximately 12:45 p.m., Student pulled down his pants and urinated on the grass outside of the BRAIN Lab. The second incident, which generated two Incident Reports and an investigative report by Ms. Ols, occurred at about 1:35 p.m. Student became upset during BRAIN Lab, because he wanted to go home. When told he could not go home then, he yelled, spat at Mr. Grimm, and knocked down a computer screen. He cried and attempted to bite staff while going back to his classroom with Mr. Grimm, and he ran ahead of Mr. Grimm to the classroom. During the transition to the classroom, Mr. Grimm was diverted by a question from Student's teacher. Student ran into the classroom and became upset that J, a ninth grade Student, was using the computer. Student attempted to pinch J., and J grabbed Student, who screamed. J. let go of Student, and Student over to Kristianna, another staff member. Student pointed to his neck, and Kristianna, saw a small red mark that looked like a scratch on Student's neck. When she tried to see if there was any additional injury, Student hit Kristianna in the face. Several staff helped to calm Student, and he went into a quiet place to do some activities before going home. Student transitioned to the van without incident, waved good-bye to Mr. Grimm, and was happy and cooperative in the van on the way home. At no time did he indicate that his shoulder or arm hurt.

46. When Student arrived home, Mother noticed that Student had a large bite mark on his left shoulder. She called the school that afternoon, and met with Ms. Ols the next day, November 30, 2010. Mother showed Ms. Ols pictures of the bite marks, and Ms. Ols apologized and promised to investigate the matter. She advised Mother that she would increase supervision to avoid any such events in the future. During the meeting, Mother expressed her concern that this event had happened despite Student's one-to-one aide, and that nobody had seemed to know that Student had sustained such an injury, or how he sustained it. Mother advised Ms. Ols that Student was in the car, but did not want to come to school, and he would not be attending school that day. On December 1, 2010, the CVS secretary received a call that Student would not be returning to school until further notice. Mother kept Student out of school from November 30, 2010, through the time of the hearing.

December 6, 2010, IEP

47. On December 6, 2010, the District convened an addendum IEP meeting, to discuss the events of November 29, 2010. The team included Mother, Ms. Ols, Ms. Stramaglia, Ms. Cossio, Ms. Beltran, Ms. Tupper (Student's Case Manager), a school psychologist, and attorneys for the District and the Student.

48. Ms. Ols distributed her report of her investigation of the biting incident, and summarized it. Ms. Ols's report concluded that biting and being bitten occurred at times at CVS, especially with younger children and those on the spectrum. Ms Ols's report stated that a prevention plan and a reintegration plan were developed for Student to help him transition back to school. Ms. Ols' report was attached to the IEP.

49. The IEP notes described the incident. The IEP notes further stated that Student was asleep on the ride home after the incident and was still asleep when he returned home.

50. Ms. Schulz distributed and discussed her Behavioral Progress Report. Ms. Schulz's report, which was attached to and summarized in the IEP, was dated December 6, 2010. The report stated its purpose was to update and inform upon the current Behavior Plan and behavioral goals in the IEP, as well as behaviors of concern to the teacher and support staff. Data had been collected by support staff. The report listed Student's current services as the one-to-one aide throughout the academic day. The report summarized Student's behavioral progress. Student had made good progress with following directions and his aggressive behavior had decreased. The report described Student's aggressive behaviors as including hitting, kicking, biting, pulling hair, scratching, spitting, and head butting. The report noted that from July 1, 2010, through November 3, 2010, aggressive behavior was measured using partial interval recording, whereby the school day was divided into 24 fifteen-minute intervals, and aggressive behaviors were recorded as occurring or not during each interval. The report stated that, during that period, aggressive behavior occurred, on average, 15 percent of the intervals of the school day. The report also stated that the trendline of the graph contained in the report demonstrated that Student's aggressive behaviors had decreased since July.

51. The report stated that beginning on November 4, 2010, the method of data collection changed, and Student's aggressive behaviors were recorded using frequency recording, to provide additional detail and information in the frequency of each type of aggressive behavior. Based on the graph included in the report, the report stated that pinching and scratching behaviors occurred two to six times per day. Hitting and kicking behaviors occurred one to three times per day. Spitting behavior occurred one to five times per day. Biting behavior occurred up to two times per day.

52. The report commented on Student's compliance behaviors. The report stated that Student had been making much progress in following directions with no more than three staff prompts. Student followed directions an average of 80 percent to 100 percent of the intervals of the school day, based on the interval recording method described above. The compliance behavior was recorded as occurring in a 15-minute interval if Student followed directions with no more than three staff prompts during the entire interval. The report stated that the trendline on the graph included in the report showed that Student's compliance behavior had increased, and Student was making good progress.

53. The report also commented on Student's compliance and aggressive behaviors in the van while he was being transported from school to home. The report interpreted the graphs included in the report to mean that compliance occurred 100 percent of the time. Biting behavior only occurred on one ride, three times during that ride. Pinching and scratching behaviors occurred up to six times during each van ride. Spitting, hitting, and kicking behaviors only occurred once on one to two days. The report concluded that Student

had made good progress towards decreasing aggressive behaviors and increasing compliant behaviors, and a new behavior support plan had been created.

54. At hearing, Dr. Surfes, Student's expert, criticized certain aspects of Ms. Schulz's report and the manner in which data was collected with respect to the report. In particular, he felt that the data was unclear and therefore did not necessarily support Ms. Schulz's conclusions that Student's aggressive behaviors had decreased. Additionally, he did not consider compliance behaviors to have increased when Student still required prompts for compliance.

55. As part of the IEP team's discussion of Student's behaviors, Ms. Ols stated that there were two occasions on which Student was on the receiving end of aggression. The team discussed a plan that staff had developed for Student's return to CVS. The plan was attached to the IEP. The plan provided that on his first day back, Student's former one-to-one aide, Patrick, would meet Student and transition him into the classroom and give Student a good-bye present. Then, Patrick and Mr. Grimm would facilitate another apology session between Student and J., who had already exchanged apologies. Student's one-to-one aide would remain within arm's-length of Student at all times, and would block aggressive behaviors by placing his body between Student and the other person. A case manager would provide additional support to Student for the last hour of day, and at other times as needed, during Student's first five days back at school. The BCBA would provide an additional two-to four hours of training for Student's one-to-one aide. Student would have a new BSP, and would be mainstreamed in a typical elementary class for approximately one hour per day with same-age peers. Staff would emphasize appropriate socialization skills. ABC and CVS staff would consult with each other to provide more consistency between the strategies used in school and at home. Parent was encouraged to attend monthly parent training at CVS and to schedule monthly 30 minutes observations of Student at school. The plan included strategies to address student's anxiety in the car on the way to school. Staff would develop a visual schedule to be used at home for Student that included his car ride to school and the first activities at school. Student would be given a preferred item or a sensory item in the car on the way to school. Student would be provided a preferred activity as soon as he entered the classroom.

56. The team also reviewed a proposed Behavior Teaching Intervention Plan (BSP) that Ms. Schulz had prepared. The BSP was not the same as the Behavior Plan developed by Ms. Cossio. The special education teacher was to implement the BSP. The BSP only addressed Student's physically aggressive behaviors. The BSP characterized these behaviors as "severe," and described these behaviors as pinching, scratching, hitting, kicking, spitting, and biting peers and staff with enough force to leave a mark. This description of Student's aggressive behaviors did not include all of the behaviors that Ms. Cossio had observed when she was preparing her January 2010 Behavior Plan, because Student was no longer demonstrating those behaviors. The omitted behaviors included pulling hair, pushing, running into others, throwing objects, head butting, or defacing school property. The BSP described Student as an affectionate and bright student who could request help independently. He liked to play computer games, watch videos, and sing. He had a high

energy level and liked to play tag, swim, play on scooters, and throw or kick a ball with staff. He had difficulty verbally requesting a break when he did not want to complete a task. He did not appropriately gain attention of peers and staff. The plan noted that pinching and scratching behaviors occurred two to six times per day. Hitting and kicking behaviors occurred one to three times per day. Spitting behavior occurred one to five times per day. Biting behavior occurred zero to two times per day. These behaviors occurred throughout the school day, in all school settings, when he was working with an adult on a one-to-one basis, or in a small group with peers. He was more likely to display aggressive behaviors when presented with a non-preferred task or when he wanted attention from staff or peers. The BSP included as a replacement behavior goal that Student would appropriately request a break, verbally and/or with support of a visual cue, and would appropriately request adult or peer attention, also verbally and/or with the support of a visual cue, with no more than one staff prompt, in four out of five opportunities over a two-week period as measured by daily behavioral data. The plan set three benchmarks pertaining to the goal, focusing on reducing the number of prompts and increasing the rate of success. The plan suggested environmental modifications to decrease the Student's need to engage in aggressive behaviors. He would have a visual schedule that divided his day into brief "work times" immediately followed by a longer period of free choice activity. Student would take each icon off of the visual schedule and bring it to the appropriate room for the activity. The plan anticipated that the visual schedule would help Student know what to expect during the day, as well as to remind him of the next preferred activity.

57. Additionally, Student would be given as much choice as possible throughout the day, by giving him several options and allowing him to choose from those options such items as the color marker he would use, and the book he would read. The BSP also stated that Student was to receive much praise for positive behavior. The plan noted that Student was aware when he was doing well, and would even praise himself. Student liked high fives, praise, and small signs of affection.

58. The plan contained strategies for teaching the replacement behaviors, such as teaching Student to request a break and appropriate attention through practice, priming, role play, and modeling in the classroom. He would have access to visual support. The plan also included a reinforcement schedule, based upon a token reward system. The plan recommended reactive strategies. With respect to the "break function," the reactive strategy included remaining calm, redirecting Student to a good behavior visual and redirection to the task. With respect to the "attention function," the adult was to walk away from Student at the first sign of aggressive behavior, advise Student that the adult only played with boys who had nice qualities, and that Student should tell the adult when he was ready to be nice, and then the adult should walk away and pretend to ignore Student. However, the adult was still to monitor Student, and as soon as he appropriately initiated play, to ask whether he was ready to be nice and play again.

59. The plan required that Mother would receive a data sheet daily, outlining Student's academic and behavioral progress, and that Mother could contact the teacher, case

manager, or director by e-mail or phone as needed. Staff would communicate with each other regarding Student's behavior on a daily basis.

60. The IEP team noted that there were two causes for Student's behavior, attention-seeking and task-avoidance, which required different strategies. Staff would be trained on how to teach Student strategies, based on the reason for his behavior. Ms. Cossio shared that the visual schedule was a new intervention that had not previously been used. Student's teacher mentioned that she had discussed Student's behavior with Mother in the past regarding behavioral interventions for Student, and that the BSP incorporated strategies that had been successful. CVS staff expressed their willingness to collaborate with ABC staff, suggesting that ABC staff observe Student in class at CVS for 30 minutes per month and then meet with CVS staff to discuss ideas and strategies. Mother stated that Student had difficulty transitioning from home to school in the morning. Staff agreed to create a visual schedule to help the transition, and, upon arriving at school, Student could be offered a preferred activity. The team discussed Student's eating habits, and the teacher stated that Student knew he could request food when he was hungry. Staff shared that Mother could visit the classroom monthly for 30 minutes and could attend monthly parent trainings.

61. Student's attorney asked about the transition to Classroom 18. Student's attorney and Mother wanted Mother to be consulted and to give permission prior to such a transition. Student had been visiting Classroom 18, but only during play time. CVS staff advised the team that Student's behavior had improved, so it was an appropriate step. District presented an updated assessment plan for psychoeducational, LAS, health, OT, and AT assessments, as well as an FAA. District agreed to forward to Student's attorney a list of names of BCBA's to perform the FAA. District expressed that it would like Student to return to school as soon as possible, including the following day. Student's attorney requested that the daily schedule and transition schedule be given to Mother, and that the CVS BCBA meet with the BCBA from ABC's in-home program to review the BSP prior to Student returning to CVS. Mother signed a Release of Information permitting CVS to initiate a meeting between CVS and ABC.

62. The team suggested ways to reduce Student's anxiety about returning to school. Staff could send a card and pictures, and Ms. Ols requested that the Regional Center assist, noting that the longer Student was out of school, the more difficult it would be to transition him back to school. Student's attorney reported that Student was exhibiting increased anxiety, such as wetting his pants. He was refusing to come to school, although in the past he had been very enthusiastic about coming to school. Parent wanted Student to visit his physician to determine if Student was ready to return to school. Parent submitted a letter dated December 1, 2010, from Julie Valencia, M.D., of Kaiser Permanente, regarding Student's health status. The letter, which was attached to the IEP, was addressed "Dear school," [sic] and stated that Student was having physical and emotional repercussions from the incident of November 29, 2010. Dr. Valencia wrote that Mother was trying to locate a more appropriate school for Student, "and until then he will remain at home with his mother due to safety concerns." The letter concluded by noting that Student would continue his in-home therapy from the Regional Center.

63. At the conclusion of the meeting, Student's attorney requested that the BSP not be implemented at the time, because Mother believed that the BSP was not based on complete information. Mother and her attorney requested that CVS and ABC collaborate on the behavior functions and interventions in the BSP. The Student's attorney noted that Student was not exhibiting at home the behaviors addressed in the BSP. The team agreed to meet again after CVS and ABC staff had met. CVS's Behavioral Director stated she had spoken to Mom and had offered to collaborate with ABC in June 2010. Student's teacher recalled speaking to Mother in approximately November 2010 to discuss spending recess time with same-age peers. Mother stated that she had been told that Student would visit the previous one-to-one aide prior to transitioning to the new one-to-one aide.

64. The IEP team did not change the offer of FAPE except for the BSP, which was attached to the IEP. Mother did not consent to the IEP, and the IEP notes stated that District was awaiting Mother's signature on the assessment plan.

65. After the IEP meeting, the District and CVS immediately commenced work on the tasks they had agreed to undertake to ease Student's transition back to school. On December 7, 2010, Ms. Schulz contacted ABC to discuss the consultation between the ABC in-home program and CVS that Mother had requested at the IEP meeting. Rick Gutierrez of ABC advised Ms. Schulz that ABC would not collaborate with CVS. Additionally, Ms. Tupper and Mother discussed the icons that would be appropriate for the visual schedule the team had discussed at the IEP meeting.

66. On December 8, 2010, the District sent Mother an invitation to an IEP meeting, to be held on December 13, 2010. The meeting was not held because, on or about December 9, 2010, Student served District with a due process complaint, which Student withdrew prior to the time the District filed its Complaint in this matter. On January 6, 2011, Ms. Beltran sent Mother another copy of the assessment plan, as Mother had not signed the plan presented to her at the December 6, 2010, IEP meeting. In her cover letter to Mother, Ms. Beltran noted that Student's triennial IEP was due on March 3, 2011, and that District needed to assess Student in preparation for the triennial IEP. Mother signed the assessment plan on February 1, 2011, and the District conducted triennial assessments.

Triennial Assessments

Psychoeducational Assessment

67. District's school psychologist, Catherine Whitehouse, performed a psychoeducational assessment of Student on February 25, March 1, March 17, April 6, and April 7, 2011. She wrote a report of the assessment dated April 19, 2011. She noted that Student was five years old and had not attended school since November 30, 2010, but that he

had been previously enrolled in an SDC, and had received LAS and OT services.⁹ She reviewed his previous testing and educational history. She noted he had been assessed on two previous occasions. Testing results were consistent over time in the area of intellectual ability. On previous testing of April 15, 2007, Student scored within the below average range on the Bayley Scales of Infant & Toddler Development. On previous testing dated February 4, 2008, Student's scores on the Ordinal Scales suggested strongly developed cognitive skills within the 18-24 month age range and emerging skills within the two-four year age range. Student's nonverbal cognitive skills were significantly better developed than his verbal reasoning skills. Student's native language was English, and he had previously qualified as a student with speech or language impairment and autism.

68. Ms. Whitehouse reported Student's updated health information. The report summarized the nurse's findings from her screening on April 13, 2011. Articulation, fluency, voice, and receptive language were within normal limits while expressive language was not. Student was overweight. He was cooperative, friendly, and easily distracted. She reported his history of seizures, and that he took Topomax three times per day. His fine and gross motor skills were good. Student was relatively cooperative but refused the hearing test. Mother reported increased sensitivity to sounds, and he received an autism diagnosis from the Regional Center at age two. The report noted Student's in-home therapy with self-help skills and behavior interventions. Mother reported Student had aggressive behaviors, and did not receive psychological intervention. Student was able to be redirected to tasks but was quite active.

69. The report summarized Student's educational placements, based on a records review, and noted Student's altercation with another pupil on November 29, 2010. The report commented that behavior continued to be a concern, but that on the last addendum IEP, the team had noted that Student's aggressive behavior had declined since his start at CVS. The report also noted that the IEP team had proposed a BSP, and that Student's behaviors had two communicative intents: attention and task-avoidance. The report noted that Student resided with Mother. Mother reported to the assessor that once Student's behavior escalated, he needed a stable, safe place in which to regain his composure.

70. The report noted that it was based on information provided by the school psychologist, speech and language therapist, school nurse, special education teacher, occupational therapist, and Mother.

71. The report described Ms. Whitehouse's observations during each assessment session. He became easily frustrated when he could not perform a task. He also became unmotivated with negative feedback, which the Children's Category Test (CCT) required Ms. Whitehouse to give. For example, when he failed test items on the CCT, Student started ripping materials and attempted to hit and push Ms. Whitehouse, saying "I'm

⁹Ms. Whitehouse's report listed Student's correct birth date, which reflected that he was 6 years old, not 5 years old, at the time of this assessment. This error was noticed at the triennial IEP meeting, discussed below, and was corrected at that time.

stupid.” His frustration at his inability to perform assessment tasks led to a variety of escalated behaviors, including biting Ms. Whitehouse, grabbing test materials, yelling, leaving the room, and complaining that he was tired and that his stomach hurt. Ms. Whitehouse considered the latter complaints to be a common “escape” behavior for Student. Ms. Whitehouse allowed Mother to intervene, with limited success. His continued “escape” behaviors resulted in Ms. Whitehouse abandoning several of the subtests on the Cognitive Assessment System (CAS) test and the CCT. His scores on the Beery VMI Drawing Test (VMI), Visual Perception Test, and Motor Coordination test were also considered an underestimation of his ability level, as Student tended to rush through the test items as opposed to thoughtfully completing the task requests. As a result of Student’s behaviors, the examiner decided to abandon the tests that Student did not complete instead of rescheduling additional testing sessions.

72. The report noted that overall, Student had difficulty comprehending orally presented materials. He was aware that his responses were incorrect, but he became frustrated when he was unable to correct them. Student used a trial and error approach to problem solving, and he was unable to identify and spontaneously correct items, even with feedback. Student commonly displayed anxious behaviors such as fidgeting around the room. As a result of Student’s tendency to quickly and inaccurately complete the VMI and CAS, the report stated Ms. Whitehouse’s opinion that Student’s test results were an underestimation of his cognitive and processing abilities.

73. The report noted that the assessment materials and procedures used were selected with consideration for age, ethnicity, culture, language and experiential background. Both validated tests and alternatives, including observations, interviews, and previous scales were used, which Ms. Whitehouse considered to be the most appropriate available. Ms. Whitehouse conducted the assessment in English, Student’s native language. These procedures were used to insure that the information obtained from the validated tests and alternatives were nondiscriminatory and an adequately valid sampling of Student’s functioning appropriate for IEP use. The report reiterated that Student’s ability was likely higher than the results reflect, given that many subtests had to be abandoned due to noncooperation.

74. The report listed the testing instruments used by Ms. Whitehouse and Student’s scores. On the CAS, Ms. Whitehouse was unable to obtain a Planning Processing Score, a Simultaneous Processing Score, an Attention Processing Score, a Successive Processing Score, and a Full Scale Score, because Student was not sufficiently cooperative to permit completion of more than three subtests. Further, the Test of Auditory Processing-3rd Edition (TAPS-3) was not attempted due to Student’s noncooperation completing other tests regarding auditory processing. The report noted that Student had difficulty comprehending orally presented materials and had to have many test directions repeated and elaborated, however Ms. Whitehouse attributed this more to Student’s deficits in attention and executive functioning as opposed to auditory processing deficits. Furthermore, Student’s listening comprehension score on the Woodcock-Johnson III Tests of

Achievement (WJ-III) was within his ability level, which would corroborate Ms. Whitehouse's hypothesis that Student did not have an auditory processing disorder.

75. On the Adaptive Behavior Assessment System (ABAS II) Parent Form, the report listed composite scores of 48 on the Global Assessment Composite, 53 on the Conceptual Composite; 62 on the Social Composite; and 46 on the Practical Composite. On the ABAS II Teacher Form, completed by Ms. Stramaglia, Student's teacher at CVS, the report listed composite scores of 61 on the Global Assessment Composite, 72 on the Conceptual Composite, 66 on the Social Composite, and 51 on the Practical Composite. The report considered these results to indicate overall significantly delayed skills.

76. On the WJ-III, the report listed standard scores of 71 in Listening Comprehension, 75 in Understanding Directions, 72 in Oral Comprehension, 88 in Story Expression, 83 in story recall, and 92 in Picture Vocabulary. The grade equivalent of each of these standard scores was less than K.0.

77. On the Test of Early Reading Ability-Third Edition (TERA-3), Student obtained a Standard Score of 8 in Alphabet, 4 in Conventions, and 5 in Meaning. His Reading Quotient was 72. On the Test of Early Mathematics Ability (TEMA-3), Math Ability Standard Score was 66 (1st percentile). On the Test of Early Written Language (TEWL-2), Student obtained a standard score of 80 in Basic, < 80 in Contextual, and < 76 in Global.

78. On the Wide Range Assessment of Visual Motor Abilities (WRAVMA), Student obtained standard scores of 73 in Visual-Motor (4th percentile), 70 in Visual-Spatial (2nd percentile), and 69 in Fine Motor (2nd percentile), for a VMA Composite standard score of 60 (.8 percentile). On the Developmental Test of Visual Motor Integration-3rd revision (DTVMI-3R), Student obtained standard scores of 90 (age equivalent 5:2; 25th percentile) in Visual Motor Integration; 49 (age equivalent of < 2:11); .06 percentile), in Visual Perception; and 72 (age equivalent of 3:7; 3rd percentile) in Motor Coordination.

79. The report commented that Student's score on the WRAVMA indicated borderline visual-motor skills. His score on the Visual Spatial area of the WRAVMA was also in the borderline range, which indicated a possible visual processing disorder. Student scored within the average range on the VMI Drawing test, indicating that he did not have a visual motor disorder. He scored within the delayed range on the Visual Perception test, however, those test results were not considered a valid representation of his visual processing skills as he rushed through the tasks. Therefore, Ms. Whitehouse's report did not include a diagnosis of a visual processing disorder.

80. The report noted that Student's score on the WRAVMA Fine Motor test fell within the delayed range, which indicated a possible processing disorder in sensory-motor skills. However, the OT evaluation revealed good motor planning skills and adequate foundation fine motor skills. Ms. Whitehouse's report combined this information with

Student's borderline score on the VMI Motor Coordination test, which indicated that Student fell at least one standard deviation below his ability level. Given that the OT evaluation indicated decreased hand strength and visual motor skills, Ms. Whitehouse considered Student to have a processing disorder in sensory-motor skills.

81. The report noted that Mother and teacher completed a variety of autism rating forms. Mother had completed an Autism Screener Questionnaire and an informal rating form, "Characteristics of People with Autism." Student's teacher had completed the Autism Behavior Checklist Record Form.

82. Both Mother and teacher completed the Gilliam Autism Rating Scale (GARS). Mother's ratings reflected standard scores of 13 (84th percentile) in Stereotyped Behaviors; 15 (95th percentile) in Communication; and 13 (84th percentile) in Social Interaction. These scores yielded an Autism Quotient standard score of 124 (95th percentile), which placed Student in the Very Likely range of Probability of Autism.

83. The report summarized the assessment results. The report stated that the estimate of cognitive functioning in the below average range obtained on previous testing was adequate for the current IEP. On updated testing, Ms. Whitehouse reported an estimate within the superior range on the CAS Planned Connections subtest, an estimate within the borderline range on the CAS Nonverbal Matrices subtest, and an estimate within the deficient range on the CAS Verbal-Spatial Relations and Figure Memory subtests. The report reiterated that these results appeared to be an underestimate of Student's cognitive ability level. Ms. Whitehouse opined that Student fell at least within the average range of cognitive ability.

84. The report concluded that Student had a processing deficit in attention, visual processing, sensory-motor skills, and cognitive abilities in the areas of expression, conceptualization, and association. The report described the various ways in which these processing deficits impacted Student's educational performance. Ms. Whitehouse based her conclusion of an attention deficit on parent and teacher report and Student's educational history. The report noted that attention deficits were common in children falling on the autism spectrum, and a separate diagnosis of attention-deficit disorder (ADD)/attention-deficit hyperactivity disorder (ADHD) was not typically given with a diagnosis of autism. The report stated that attention deficits would impact Student's ability to attend in class, engage in and finish schoolwork and homework, would cause Student to make careless mistakes in schoolwork and homework, would cause low achievement in all academic areas, and would tend to disrupt Student's learning and the learning of others.

85. The report noted that a sensory-motor skills deficit may impact Student's general body control, sense of balance and spatial relationships, and spatial orientation. Delayed sensory motor-psychomotor skills may impact Student's education performance because he may have difficulty writing or saying what he saw or heard, poor handwriting, difficulty drawing, difficulty copying from text or the board, mechanical

problems in test taking, and disorganization including incomplete assignments and unorganized notebooks and notes.

86. The report commented on Student's cognitive deficits in association, conceptualization, and expression. In this regard, Ms. Whitehouse's report described the impact on the assessment process of Student's inability to complete any portion of the CCT to a sufficient degree so as to yield any scores. The report explained that the CCT was designed to assess non-verbal learning and memory, concept formation, and problem-solving abilities in children between the ages of five years, zero months and 16 years, 11 months. The CCT measured mental processes highly related to "fluid" intelligence, or those abilities that involved problem solving with novel materials. Because it was a non-verbal instrument, the CCT could assess a child's reasoning ability independent of the child's expressive language skill level, and it was thus less educationally dependent than verbal reasoning measures.

87. Student's scores on the Planned Connections subtest on the CAS did not reveal any deficits in association. However, his score on the Figure Memory and Verbal Spatial Relations subtests on the CAS, and CCT subtests, as well as his LAS assessments would corroborate a deficit in association. This could impair Student's long-term memory, understanding of cause and effects, understanding of part-whole relationships, ability to sequence and/or ability to make comparisons. An association deficit could impact Student's educational performance in a variety of areas, such as by causing difficulty following directions, difficulty in transferring and generalizing information, difficulty comprehending information heard and read, inability to remember facts and concepts, and difficulty in making comparisons.

88. The report commented that Student's scores on the Verbal Spatial Relations subtest on the CAS and his high error rate on subtests II and III on the CCT indicated deficits in conceptualization. These deficits impaired Student's ability to follow directions, transfer and generalize information, understand presented information, and/or understand logical consequences. These difficulties would negatively impact Student's educational performance, leading to difficulty in a variety of tasks, such understanding information heard and read, inability to demonstrate logical thought, difficulty making inferences and conclusions, and inability to demonstrate reversibility of thought.

89. The report incorporated the results of Student's LAS assessment to conclude that Student's deficits in expression would negatively impact Student's classroom performance. He would have difficulty maintaining logical conversation, and difficulty organizing thoughts, which would impact his math calculation and math reasoning skills. He also would have difficulty understanding information heard and read, difficulty comprehending rules and routines, difficulty comprehending social cues, difficulty expressing himself, and difficulty completing school work,

90. In the area of academics, the report referred to the academic testing performed by Camille Waage (which is further described below), and the previous Bayley score of 85 in cognitive ability contained in a report dated on April 15, 2007. Ms. Whitehouse determined that there were ability achievement discrepancies of 19 points in both mathematics calculation and mathematics reasoning.

91. The report contained a lengthy discussion of Student's social/emotional and behavioral growth, based upon the autism questionnaires completed by Mother and teacher. The report stated that "Student's functioning is a concern," and noted all of the autistic-like behaviors that Student had demonstrated for several years. The report noted several items reported on the questionnaires with regard to instruction: Student always comprehended best with hands-on activities and concrete examples, always learned best when information was presented visually, always needed instruction across settings, activities, or people to generalize learned skills, always learned best when instruction was presented in a natural setting, and always learned best when instruction was individualized.

92. The report concluded that Student's behavioral concerns included physical aggression, non-compliance, and sensory avoidance. Student continued to meet eligibility criteria for language or speech disorder, and autistic-like behaviors, and he now met the criteria for specific learning disability. The report recommended that the results be discussed at the IEP meeting, and that the District maintain updated information regarding Student's health/medical status.

Academic Assessment

93. Ms. Waage, an education specialist for the District, performed Student's triennial academic assessment on March 17, 2011, and she wrote an assessment report on April 19, 2011. She administered the Test of Early Reading Ability, Third Edition (TERA-3), the Test of Early Written Language, Second Edition (TEWL-2), the Test of Early Mathematics Ability, Third Edition (TEMA-3), and the oral language subtests from the WJ-III. The report noted that all tests were administered in English. Student's scores on these instruments were included in Ms. Whitehouse's triennial assessment report.

94. Ms. Waage's report included her test session observations, interpretations of Student's scores, and her conclusions. She observed that Student's conversational proficiency seemed limited for his age level. He was uncooperative during the examination. He often seemed distracted, although he also appeared comfortable and at ease during the examination. He sometimes responded too quickly to test questions, and he gave up easily after attempting difficult tasks. Ms. Waage modified the specified testing procedures by giving frequent breaks, and allowing positive reinforcement by Mother. Additionally, Ms. Waage orally administered tests that were usually administered by tape player, to accommodate Student's sensitive hearing.

95. The report stated that Student's oral language skills were low when compared to the range of scores obtained by others at his age level. His oral expression skills were low average and his listening comprehension skills were low.

96. Student had age-appropriate decoding skills in reading. He struggled to understand basic concepts about print, in that he could not identify the correct direction of print and pictures, nor could he show how the pages moved through a book, but he could point to the first word of a paragraph. He could identify common food items, animals, and children's stories, but he struggled to name higher level community and societal vocabulary.

97. In the area of written language, Student could identify common writing instruments. He could write his first name, and his writing reflected a sense of left-to-right directionality. He could draw very simple pictures, but he had difficulty verbalizing what he drew. Many of his utterances were off-topic. He could differentiate a group of numbers from a group of letters or other symbols. He could copy letters, but he could not write letters without a prompt or model. He struggled to answer questions about writing conventions.

98. In the area of mathematics, Ms. Waage's report commented that Student could count up to 10 pictures or objects. He could read and write numbers to 10. He did not understand "more," he could not identify the next number in a sequence, and he could not produce finger displays to five.

99. In the area of oral language, Student could recall very simple facts from a story and could follow simple one-step direction, but both of these skills were low compared to others at his age level. He also struggled to orally complete a sentence with the correct word. Picture vocabulary was an area of strength. He had average ability to name common objects.

OT Assessment

100. The OT assessment was conducted by Allison Carson, an occupational therapist with Gallagher Pediatric Therapy, which was Student's OT provider. The assessment was conducted on April 4, 2011, and Ms. Carson wrote a report of the assessment on an unspecified date.

101. The report noted Student's medical history of seizures, that he was on a special diet, and that he took Topomax. The report mentioned that the District had referred Student due to concerns with his fine motor, visual motor and sensory processing abilities. Ms. Carson used the following assessment instruments: (1) Peabody Developmental Motor Skills, Second Edition (PDMS-2); (2) Therapist observations during the standardized testing; (3) Interview with Mother; (4) Sensory history checklist completed by Mother; and (5) Review of current IEP. The assessment occurred at the District, and Mother was present.

102. The report stated that Student transitioned to Ms. Carson without difficulty. He demonstrated varying levels of attention and compliance with the examiner. He required

additional trials, demonstrations, and verbal cueing. Despite these behaviors, the report stated that the results of the assessment were an accurate description of Student's skills in the areas assessed.

103. Ms. Carson administered the Grasping and Visual-Motor Integration subtests of the six subtests that comprise the PDMS-2. The Grasping subtest measured Student's ability to use his hands and included grasping, isolated finger movements, and manipulative skills. Student obtained a standard score of 3 on this subtest, which was in the 1st percentile, and fell into the "Very Poor" range. The Visual-Motor Integration subtest measured Student's ability to integrate and use his visual perceptual skills to perform complex eye-hand coordination tasks, such as tracking, lacing, and scissor skills. Student obtained a standard score of 7 on this subtest, which was in the 16th percentile, and fell into the "Below Average" range.

104. The report contained Ms. Carson's clinical observations in a variety of areas. In the area of Organization of Behavior and Play skills, Ms. Carson observed that Student's performance was Inconsistent in the Tasks and Activities subcategories of Attends, Initiates, Completes, Activity Transitions, and Communicates Needs/Asks for Help. His performance in the Engages Purposefully subcategory was Adequate. Student's performance was also Inconsistent in the Self-Regulation subcategories of Ability to Remain Still/Seated During Activity and Adjusts to Changes. The report noted that Student demonstrated varying levels of attention during the testing. He was able to remain seated for most of the testing, however he required multiple cues to remain seated and engage in the activities. He occasionally asked for help with tasks, but at other times he became frustrated when he was unable to perform a task without asking for help. Student was able to transition between activities; however he demonstrated difficulty when transitioning from preferred activities to non-preferred activities.

105. In the area of Neuromuscular Status, Student performed within functional limits with respect to Joint Range, Muscle Tone, Trunk Control, and Endurance. He had a mild decrease in the upper extremities in Strength.

106. In the area of Sensory Processing, Ms. Carson observed Student's skills in the areas of Vestibular Processing, and Somatosensory Processing (which is comprised of Proprioceptive Processing and Tactile Processing). With respect to Vestibular Processing, Student performed in the Inconsistent range in the Swinging subcategory of the Response to Input component. Student performed in the Adequate/Appropriate range in all subcategories of the Gravity and Posture component: Gravitational Insecurity, Postural Insecurity, Muscle Tone, and Prone Extension. He performed in the Adequate/Appropriate range in all subcategories of the Postural Control component: Static, Dynamic, and Protective Reactions. He also performed in the Adequate/Appropriate range in all subcategories of the Bilateral Coordination component: Gross Motor and Fine Motor.

107. The report noted Mother's comment that Student was uneasy about swings, but was beginning to like them. He was able to climb on a play structure at the park, but when in covered spaces, he tended to duck his head low for fear he would hurt his head. During the evaluation, the report stated student was able to sit up well on a chair and during the mini-obstacle course. Student demonstrated good protective reactions when thrown off balance.

108. Ms. Carson included Student's proprioceptive processing skills and tactile processing skills in reporting on Student's somatosensory processing skills. Student's performance in the component area of proprioceptive processing was Adequate in the following skills: seeking/avoiding behaviors; and force exerted on gross and fine motor activities. His performance was Inconsistent on the skills of body awareness for school/clinic environment, during gross motor activities, for fine motor tool use, for object/grasp manipulation, and for pressure exerted on tool use and writing tasks. Ms. Carson noted that Student was able to attend to the testing without demonstrating behaviors such as throwing himself onto the ground or crashing into objects. Mother reported to Ms. Carson that Student often tripped over surface changes and bumped into things at home. Ms. Carson observed that Student used adequate pressure during testing and during fine motor activities, but that Student had a history of increased pressure on writing utensils.

109. Student's performance in the component area of tactile processing skills was Adequate in all skills tested: orientation, seeking/avoiding behaviors; identifying where touched; unexpected touch; touch to body parts, and textures. Ms. Carson commented that Student was able to interact with glue as well as tolerate unexpected touch. He was able to identify where he was touched. Mother reported to Ms. Carson that Student was able to tolerate tooth brushing and different textures of food.

110. Ms. Carson reported on Student's motor planning skills. She described praxis as the ability to spontaneously sequence, time, and organize movements in a coordinated way to complete unfamiliar tasks. Praxis involved ideation, motor planning, and execution of the action. Good praxis depended upon accurate sensory feedback from the body. She concluded that Student's motor planning skills were Adequate/Appropriate in all areas tested: ideation, planning, executing, praxis on verbal command; imitation of body positions; timing and sequence; and projected action sequences. She commented that Student was able to complete a mini-obstacle course, as well as follow multistep commands. Student was able to throw a small ball into a target, but it was easier for him to complete tasks when he was given visual cues rather than solely verbal cues.

111. Ms. Carson evaluated Student's gross motor skills, which she described as the use of the large body muscles for positioning, locomotion, balance, and coordination activities. Student's gross motor skills were in the Functional range in the following areas: walking, jumping with two feet; throwing, catching, and kicking a ball; and using the slide and the balance beam. He "marked time" while on the stairs. His skills were in the Emerging or Assisted range in running, hopping on one foot, and using the swings and the tricycle. He was only able to balance momentarily on one foot. In her comments, Ms.

Carson noted that Student was not able to hop on one foot, but he was able to demonstrate reciprocal steps on a given line during the obstacle course. Mother reported to Ms. Carson that Student had an awkward run and could not ride a bicycle due to difficulty pedaling.

112. Ms. Carson assessed Student's fine motor skills, which the report defined as the use of the small muscles of the hand. The report noted that motoric separation of the hand was an important component of fine motor skill development and allowed the thumb, index, and middle finger to perform small, coordinated movements while the ring and little fingers provided additional muscle power and stability for those movements. Student's fine motor skills were in the Functional range in the areas of crossing midline, bilateral coordination, pointing, and opposing fingers to thumb. He was right-handed. His hand strength fell in the Emerging/Inconsistent range. His grasp was a three-jaw chuck, and he used a fine pincer grasp. He had a skilled scissors grasp. He could shift on a pencil. During graphic or writing tasks, he used a tripod grasp with appropriate pressure. He stabilized the paper with cues. Ms. Carson reported that Student demonstrated some good foundational skills, but he had difficulty maintaining a neutral writing position and an absence of distal finger movement.

113. The report defined visual motor skills as the coordination of visual, perceptual, and motor abilities for task performance, including eye-hand coordination skills. Student's skills were in the Functional range in the areas of regard and focus, visual tracking, and the scissor skills of snipping and cutting. He was also functional at scribbling. He demonstrated Emerging/Inconsistent skills in rotating paper when using scissors, and in graphomotor skills such as tracing, imitating, copying, and writing. His skills were also emerging/inconsistent in the areas of letter formation, letter size, letter directionality, spacing, placing, and near-point copying. The report commented that Student was able to copy simple shapes and trace his name. He attempted to copy the letters of the alphabet, but he became frustrated and asked Mother for help. Mother reported to Ms. Carson that Student could trace and was beginning to form letters, with just additional assistance on his hand. Student was able to cut out simple shapes, but he required verbal prompts to rotate the paper while cutting.

114. In the area of self-care skills, Student was Independent/Functional in dressing, in that he was able to doff and don socks and outer clothing, and he could unfasten/fasten zippers and Velcro. He could doff shoes, but his skill at donning them was Emerging/Assisted. His ability to fasten and unfasten buttons and tie and untie laces was also Emerging/Assisted. He was Independent/Functional at hand washing and toileting. He was Independent/Functional in finger feeding, and his use of a fork was Emerging/Assisted. He was Independent and Functional in drinking from a cup and with a straw. His skills with wrappers and pouring liquids were Emerging/Assisted. Ms. Carson's report commented that Student had difficulty with a fork due to his decreased hand strength. Further, it was typical for children Student's age to have difficulty with food wrappers. In the area of Student's oral motor/feeding skills, Mother reported to Ms. Carson that Student avoided soft lumpy foods.

115. The report summarized Student's areas of strength as including: good family support; adequate tactile processing skills and improving vestibular processing skills; good motor planning skills, and adequate foundational fine motor skills. Student's areas of concern as related to school performance were: inconsistent behavioral organization skills, inconsistent proprioceptive processing skills, decreased hand strength and visual motor skills, and inconsistent self-care skills.

116. Ms. Carson's report prefaced its recommendations with the comment that the development of a child's sensory and motor functioning was impacted by the child's neurological, physiological, and structural make up, which must be considered when making appropriate recommendations regarding the delivery of occupational therapy services. The report also commented that the recommendations represented Ms. Carson's professional opinion, and were offered with the understanding that the IEP team as a whole would formulate final recommendations that reflected the most appropriate plan for Student. Based upon student's areas of strength and concern as related to Student's ability to participate in his current educational program, the report recommended OT services of one 30-minute individual session and one 30-minute group session per week.

LAS Assessment

117. Mary Carpenter, the District's SLP, performed a triennial SLP assessment on Student and wrote a report of the assessment on March 9, 2011. Ms. Carpenter received her B.A. in speech pathology from the College of St. Teresa in Minnesota. She received her M.S. in speech pathology from the University of Wisconsin, Madison. She is a licensed SLP in California, and has a Certificate of Clinical Competency from the American Speech and Hearing Association (ASHA). She holds a certificate in AT from California State University, Northridge. She has performed thousands of LAS assessments on children from preschool through high school, many of whom were on the autism spectrum. She has been employed by the District as an SLP since 1978, and is also the District's AT specialist. In collaboration with others, she has developed a training program in AT for professors, medical professionals, and others working in the field. She has been involved in research in AT, and has participated in developing a variety of AT devices.

118. Ms. Carpenter's report stated that Student was assessed at the District's office with Mother present and assisting. The report noted that Student had attended CVS, but was not in school at the time of the assessment, and that the assessment was performed in English. The report reflected that Student was a six-year-old boy with autism. The report referred to the nurse's report for relevant information regarding Student's health and medications. During the testing, Ms. Carpenter observed that Student was compliant, attentive, distractible, and required frequent redirection. If questions became difficult, Student looked away, walked away, or tried to distract Ms. Carpenter. The report noted that the validity of the results may be slightly reduced due to bilingual and/or bicultural influences. Mother stated that Student's performance on the assessment tasks was representative of his typical communication skills. In the area of articulation and phonology, the report noted that oral structures and functions appeared adequate for speech purposes.

Ms. Carpenter administered the Goldman-Fristoe Test of Articulation, on which Student received a score in the 4 year, 7 months range. He had problems articulating several sounds. Student's conversational speech was easily intelligible. In the area of Fluency and Voice, informal observation indicated fluent speech with appropriate rate, rhythm, and flow. Informal voice screening indicated appropriate pitch, quality, and loudness. Mother concurred with the results of the Fluency and Voice part of the assessment.

119. In the area of Receptive and Expressive Language, Student's test scores were based on his chronological age. An informal English language sample reflected limited vocabulary, poor questions comprehension, limited use of descriptives, difficulty telling events/stories, and referent omissions. The listener needed to ask questions to understand the intent of utterances, and Student had difficulty answering questions in a semantically precise and concise manner. In the area of syntax/morphology, Student incorrectly used a variety of parts of speech, plurals, and verbs. He had difficulty with complete sentences and comparatives.

120. Ms. Carpenter administered the Clinical Evaluation of Language Fundamentals-IV (CELF-4), using the form for ages five through eight. Student's Pragmatics score was 83. The criterion score for his age was 125. Ms. Carpenter also administered the Preschool Language Scale-4, English Edition. Student obtained a standard score of 51 (percentile rank of 1; age-equivalent of 3.7) in Auditory Comprehension, and a standard score of 60 (percentile rank of 1; age-equivalent of 3.5) in Expressive Communication, for a Total Language standard score of 51 (percentile rank of 1; age-equivalent of 3.5).

121. On the Expressive One-Word Picture Test (EOWPVT), Student obtained a standard score of 91 (percentile rank of 27; age equivalent of 5.2). On the Receptive One-Word Vocabulary Test (ROWPVT), Student obtained a standard score of 89 (percentile rank of 23; age equivalent of 5.0). Ms. Carpenter also administered the Comprehensive Assessment of Spoken Language (CASL) but the scores in the report were handwritten and generally illegible.

122. The report noted that Student spoke in one-to-six word utterances. He often responded to greeting and leave-taking, and he was verbally responsive. His ability to understand and label single words was within age-level expectations. Ms. Carpenter noted that his pragmatic skills were impaired. Ms. Carpenter observed, and Mother reported, that Student was beginning to imitate conversations. His ability to make appropriate eye contact was increasing. He asked for help and offered help often.

123. The report concluded that Student qualified for LAS therapy in the areas of articulation, semantics, morphology, syntax, and pragmatics, and he was currently receiving therapy for those deficits. Ms. Carpenter reported that these deficits were not primarily the result of environmental factors, cultural differences, unfamiliarity with the English language, economic disadvantage, temporary physical disability, social maladjustment, limited school experience, or poor school attendance. These disabilities could not be corrected through the

general education program alone, and may adversely affect the Student's academic performance in oral participation, and comprehension and language arts. Additionally, these deficits may adversely affect student's self-esteem and confidence potentially reducing classroom participation. The report recommended that visual and auditory material should be paired in the classroom during academic instruction, and the Student and his family should be encouraged to explore community-based programs. The report also recommended that the SLP, parent, and classroom teacher consult on an as-needed basis.

124. At hearing, Ms. Carpenter elaborated upon her assessment and report. She asserted that she performed the LAS assessment as stated on the assessment plan, but she did not perform the AT assessment because Student was not in school. The purpose of an AT assessment would be to determine what devices or services student would need to assist him in accessing his core curriculum. In her opinion, she could not perform a valid AT assessment unless Student was in school and she could evaluate what equipment and tools he needed in his current school environment. Further, she would need to speak to his teachers and service providers at school as part of the assessment, to obtain their input as to his AT needs.

125. Ms. Carpenter conducted the LAS assessment over two sessions, one on March 4, 2011, and one on March 9, 2011. Each session was one hour to one-and-one-half hour long. During those sessions, Ms. Carpenter also interviewed Mother. Mother assisted and observed the testing, and shared her concerns to help develop the goal. Mother's concerns involved Student's abilities to listen and to tell stories, and Student's need to improve his communication skills. Ms. Carpenter stated that the assessment instruments used in the assessments were standard measures used by SLP's for children with autism such as Student. She spoke with Student's previous SLP, who had worked with Student at Bursch, as part of the assessment process, because Mother had referred to him and she wanted to be sure of the positive reinforcers that were effective with Student. She did not speak with any of his teachers or providers at CVS, as Student was not in school at the item of the assessment. Ms. Carpenter reviewed Student's prior assessment and records as part of her assessment, and determined that he had made huge gains. His skills had improved from the 1 year to 1 and one-half year range to the 3 and one-half to 5 year, two month range.

126. Ms. Carpenter did not believe that any of Student's behaviors affected the testing. He showed frustration through his body language with some tasks, but she did not need to stop testing. He completed all tests she for children his age that she administered.

127. At hearing, Mother testified to her opinion that the LAS assessment may not be valid because she believed that Student's behaviors impacted some of the testing. Mother stated that Student was reluctant to participate in the testing, and he did not cooperate with the testing. Student tore the test materials at both sessions of the assessment. Student had to take breaks on several occasions before the assessment could proceed. Mother denied that she had advised Ms. Carpenter that the LAS assessments were consistent with Student's skills. Mother has no training or expertise in LAS assessments.

IEP of April 19, 2011

128. On April 19, 2011, District convened Student's annual and triennial IEP. The members of the team included Ms. Beltran (the District administrator) an educational specialist, Ms. Whitehouse (the school psychologist), Mother, Mother's attorney, the school nurse, Ms. Carpenter (the SLP), Ms. Carson (the occupational therapist), and District's attorney.

129. The team noted that Student was six years old. Parent summarized Student's strengths as baseball, anything to do with visual, memory, working puzzles, and that Student loved to be social and be with other children. Parent was concerned about Student's verbal communication, writing, comprehending more than two directions, and educational placement. The team checked that Student was eligible for special education under the primary eligibility of autistic-like behaviors, with a secondary eligibility in SLI. The team recorded that Student's autistic-like behaviors may adversely affect his ability to progress in the general curriculum. His needs were currently best met in an SDC. He demonstrated a communication disorder in the area of articulation, syntax, morphology, semantics, and pragmatics which may adversely impact his ability to understand and discuss curriculum-related concepts and vocabulary, speak in sentences, and discuss social and academic topics. The team noted that Student did not need AT. He needed behavior support, because his behavior impeded the learning of himself or others. The team also agreed that Student needed accommodations/modifications, and noted that Student received services from the Regional Center. The team checked areas of concern related to present levels of performance as academic, communication, and fine motor development.

130. The team considered Student's present levels of performance in listening comprehension. Student's strengths were age-appropriate decoding skills, Student knew most letter names and some sounds and sight words. Student had good vocabulary skills. Student had weak comprehension and fact recall. Therefore, the team set a goal regarding Student retelling familiar stories after listening to grade-level text, in four out of five consecutive trials. Three short-term objectives were set for this goal. At least two objectives were set for all of the goals in the IEP. The goal also contained a method of measurement, as did all of the other goals in the IEP.

131. The team also considered Student's present levels of performance in written language. The team noted Student could copy letters and attempted to independently write letters. He could not independently write letters with proper form and spacing. The team set a goal by which Student would write upper and lower case letters of the alphabet, demonstrating appropriate grasp, and attending to the form and proper spacing of the letters, in four out of five trials.

132. The team considered Student's present levels of performance in mathematics. The team noted Student could count, and he could read and write numbers to 10. He could not compare sets of objects and identify more/less. Therefore, the team set a goal in the area

of number sense, by which given two sets of objects, Student would compare and identify which set had more objects than the other in four out of five consecutive trials.

133. In the area of oral language, the team noted that Student had met his oral language goal from his previous IEP. Based on the SLP's triennial assessment, his fluency and voice quality were within age-level expectations. He was steadily progressing in his communication skills. The team set a goal that Student would retell a 10 page/picture familiar story with 80 percent accuracy in four out of five trials. The team also considered Student's present level of performance in the area of oral language/semantics, based upon the SLP's triennial assessment. Student had difficulty following directions with embedded information or multiple parts, or in a series. The team set a goal by which, given pictures or objects, Student will point to an item with two details, such as size and color. The team also considered Student's present levels of performance in the area of oral language/syntax, semantics, and pragmatics. Parent was concerned that Student did not answer "wh" questions, but he desired to converse with peers. The team set a goal that Student would have a three-minute conversation with peers and adults, during which Student would answer a "what" type of question. The team also considered Student's present level of performance in oral language/pragmatics. Parent was concerned that Student did not give eye-contact when his name was called. The team set a goal that, when Student's name was called in the classroom in a small group, Student would give appropriate eye contact to the speaker.

134. The team considered Student's present levels of performance in the area of OT, based on the OT assessment report, and adopted three OT goals, involving fine motor, bilateral coordination, and visual motor skills, and sensory processing. The sensory processing goal addressed student's behavior during transitions.

135. The team agreed upon accommodations and modifications to include visual reinforcement, opportunities for hands-on learning of new skills, simplifying and clarifying directions and instructions, repeating directions and instructions, use of positive reinforcement, setting clear boundaries, predictable schedule, and consistent classroom structure. The team also agreed that a sensory diet should be incorporated into Student's school day.

136. The team offered referral to the Los Angeles County Office of Education (LACOE) program at Willowood. The team offered LAS services two times per week for 30 minutes each in group, and one time per week for 30 minutes individually. The team offered OT two times per week of direct services, one time per week for 30 minutes individually, and one times per week for 30 minutes in a group, in addition to consultation services of 15 minutes one time per month. Physical education would be specially designed with the SDC, and transportation would be provided curb to curb. The team also offered ESY. The IEP noted that the referral to the LACOE program would be submitted by the District and an IEP meeting would be held to discuss the outcome of the referral. At hearing, the evidence reflected that it was not the District's custom to place students directly in LACOE programs. The referral process allowed the program administrator to review the Student's records and consider whether the proposed placement was appropriate. The referral process afforded

parents the opportunity to visit the proposed placement, and also provides staff the opportunity to observe the child. If the Willowood program declined the referral, District would have placed Student in Classroom 18 at CVS.

137. The team determined that established goals and objectives could not be met on a general education campus, and that Student would not participate in the general education environment for any academic subjects.

138. The IEP notes reflect that the nurse's assessment was shared with the team. The nurse asked Mother whether she had noticed any symptoms of Tourette's, as the nurse had noted some blurting-out behaviors. The nurse noted that Student was cooperative for all but the hearing test. Muscle balance was difficult to assess due to Student's difficulty staying on task. The occupational therapist also shared her assessment. The assessment took about one hour to complete. She had assessed Student three years ago and noticed much improvement. Due to the testing environment, the occupational therapist was unable to observe Student swinging, but Mother said he was able to swing for about five minutes. The occupational therapist had not noticed him using too much pressure with markers, although it had been observed before. Mother shared that she did not see that anymore. The occupational therapist stated that Student's inability to hop was not a concern, as she was focusing on educational issues, but she offered to incorporate hopping activities. Stairs could also be incorporated into therapy. The SLP and the educational specialist shared their reports. Corrections to page nine of Ms. Whitehouse's report would be made to Basic Reading Skills and Reading Comprehension due to the use of standard scores versus scaled scores.

139. The school psychologist shared her report. She discussed using CAS to obtain cognitive skills, and Student's difficulties completing portions of the test. Mother shared that Student did not smile when greeted and did not nod his head. Clarifications were discussed in the last few paragraphs on page nine of the school psychologist's report as to teachers and parents varying opinions. Student's attorney also pointed out the report did not reflect Student's correct birth date.

140. The notes commented that the CVS staff had not worked with Student since November 30, 2010, and therefore they had difficulty discussing his progress towards his goals. All of the progress on goals was established by the assessments. With respect to Goal A, the nurse and mother agreed that Student could identify shapes independently. The team agreed that 90 percent accuracy on Goal A was not established. With respect to Goal B, Student wrote his name for the nurse and the educational specialist independently, with a mixture of capitals and lower case letters. The educational specialist noted that Student also had reversed the letter "N." Mother said he could write his name but did not write within boundaries and had an incorrect grasp. With respect to Goal C, the Educational Specialist had Student write some, but all, of the numbers from one to ten. Goal D was not met. With respect to Goal E, Student counted to nine for the occupational therapist, and to five with pictures for the educational specialist. With respect to Goal F, the SLP observed that Student asked for various objects, but this goal was not able to be measured as Student was not in a

classroom setting with peers. The team stated that the notes of Student's previous occupational therapist had indicated the goal was not met. With respect to goal H, the occupational therapist had observed during her assessment that Student used proper pressure with scissors, markers, and beads.

141. Mother accepted the goals presented to the team at this meeting. Mother was concerned about lack of goals relating to Student's aggression, self-injurious behaviors, and socialization with peers. The District representative noted that the assessment plan included an FAA and AT assessment, but they had not been conducted as Student was not attending school. These assessments would be addressed when Student returned to school. Student's attorney disagreed that the FAA and the AT assessment required a school setting. Mother asked about compensatory services since Student's attendance at Bursch, and Student's attorney asked about placement at ABC School. The notes also reflected a discussion regarding Student's attorney's concern that the placement offer was only a referral and not an immediate placement. The District representative reported on her visit to ABC School and why she felt it was not appropriate. Mother did not consent to the IEP. On the IEP document she acknowledged receiving a copy of all of the assessment reports.

LACOE Program at Willowood Elementary School

142. The LACOE program to which the IEP team referred Student involved placement in a classroom at Willowood Elementary School (Willowood). Willowood is a comprehensive elementary school, which is attended by typical students as well as those in the LACOE program. At all relevant times, Teresa Griego was the classroom teacher for the program to which District referred Student. Ms. Griego received her B.S. from Utah State University in family and human development, with an emphasis in early childhood education. She went to graduate school at California Polytechnic University, Pomona, where she received her teaching credential. She holds a clear moderate/severe education specialist credential. She has had training in DTT, PECS, non-crisis prevention, and TEACCH. She is a member of the L.A. County Autism and Severely Handicapped Committee, which, among other things, develops curriculum and adapts standards for teaching children with autism and other disabilities.

143. Ms. Griego has taught at Willowood for 10 years. In addition to Ms. Griego, there would have been two classroom aides in Student's proposed classroom. The curriculum would have been the SEACO alternative curriculum, a core curriculum adapted from California state standards. Students ranging from pre-kindergarten through fifth grade populated the fenced campus, and Student's classroom would have children in it ranging from pre-kindergarten to third grade. There would be no more than 12 children in the class. All of the children in the class had characteristics of autism, but autism was not necessarily their primary eligibility. Many of the students in the class needed to develop school readiness skills. The class was very structured, and followed a daily schedule. The classroom was very colorful, with many visuals. Ms. Griego and her aides used TEACCH principles. The class had TEACCH work stations, which were used once per day. At the TEACCH work stations, each child worked at four individualized tasks, some of which were

easy for that child, and some of which were more challenging for that child. The child worked at each of three TEACCH station for approximately 15 minutes or more. When the child had completed the tasks, the child would take a card and take it to the play area. The play area had reinforcers, and Ms. Griego wanted the children to play with each other. She encouraged the children to work on communication skills during snack time. The classroom had a microwave and a refrigerator, and two children in the class were on gluten-free diets. The students in the class used PECS, signing, words, and sentences to communicate. At lunch, the students worked mainly on learning to feed themselves. At both snack and lunch, the students were to clean the tables, take their tray and empty it into the trash, then take the tray to the sink and sit down. One child per week was assigned to sweep the floor. If a student finished lunch quickly, the child could get a book or puzzle and come back to their seat to work on it. Ms. Griego encouraged the children to play with each other on the playground.

144. Besides TEACCH and PECS, the classroom used other research-based practices and ABA strategies. These included computer-aided instruction, augmentative communication devices, prompting, positive reinforcement, sensory techniques, social narratives, structured work systems, functional communication training, and visual supports.

145. Ms. Griego provided standards-based report cards and four times per year provided a progress report on the student's IEP goals. The IEP goals were kept in the data book, with the data behind it. If goals were for the bathroom, or for a work table or for another location, the data sheet would be kept there, and there would be a note in the data book directing staff to the data sheet at the bathroom, worktable, or whatever the setting for the goal might be.

146. The classroom aides collected data. Ms. Griego had trained them in data collection. All of the aides knew all of the IEP goals for each student, including the behavior goals or behavior plan. The aides were trained regarding the children's behaviors.

147. Ms. Griego also offered parents training regarding to how best work with their child. Parents frequently visited the classroom, and were not required to call beforehand to make an appointment to do so.

148. When a student joined the class, Ms. Griego affirmatively attempted to get to know the child, and then she trained her aides as to how she wanted to work with the child. As a result, the child would have consistency. She has implemented behavior plans. She used various techniques for managing a student's behavior, depending on what was effective for the child. She also used time-outs. She has removed or given privileges. If the student did not have a behavior plan, she would confer with the parent as to how to manage the student's behaviors.

149. Mother and Ms. Beltran visited the classroom on the morning of May 2, 2011. They stayed approximately one to one-and-one-half hours. Ms. Griego explained the program to them. Mother and Ms. Griego discussed that Student had previously had a one-

to-one aide. Ms. Griego advised Mother that she would prefer that a one-to-one aide not be there all day, out of concern that Student would become too dependent on the aide. Ms. Griego preferred the students to work with all of the adults in the classroom. She also was concerned that the student could manipulate a one-to-one aide.

150. Ms. Griego also learned about Student during her meeting with Mother and Ms. Beltran, including his behaviors. Ms. Griego felt that Student's behaviors were consistent with autism. She and Mother discussed his levels in math and reading. Ms. Griego considered how she would manage Student's behaviors. She never met Student, and had never observed in him any educational setting. She had not reviewed his triennial IEP of April 19, 2011, and had not attended that IEP meeting. She was familiar with his triennial assessment results. She believed that the structure of her classroom would be beneficial for any child with special needs, because of its character as both structured and individualized. Based on Student's assessment results, she believed that Student could benefit from her classroom at Willowood, and she considered the placement an offer of FAPE in the LRE.

151. Sharon Floyd, the Coordinator of Autism Programs for the East San Gabriel Valley SELPA, testified at hearing regarding LACOE's program at Willowood. Ms. Floyd has been the Coordinator of Autism Programs for the East San Gabriel Valley SELPA since 2004. Her duties include coordinating autism programs, strategies, and staff for the SELPA. Previously, she has been a resource specialist, a teacher in an autism spectrum and related disorders (ASRD) classroom, and a program supervisor in several school districts in California. She has a B.A. in psychology and an M.Ed. She holds a California clear educational specialist credential, and a California multiple subject credential. She has been a presenter and trainer on issues including autism, social language, TEACCH, behavior techniques for children with autism and ADHD, non-violent crisis intervention and peer-mediation instruction and staff management. She participated in organizing a parent group that provides training to families with children with autism. She has had training in a variety of topics related to autism, including DTT, TEACCH, PECS, Floortime, and blended methodologies in autism.

152. Ms. Floyd had observed Student when Student attended ABC School when he was approximately three years old, and she briefly observed him one time in one of his preschool programs in the District prior to the time he attended Bursch. She had reviewed Ms. Whitehouse's triennial assessment report, and the BSP prepared by Ms. Schulz. She was familiar with the LACOE program at Willowood as taught by Ms. Griego. Based upon her background and training, her knowledge of TEACCH, her knowledge of Ms. Griego's Willowood class, and Student's BSP and triennial assessment, Ms. Floyd believed that Willowood provided Student a FAPE in the LRE. Ms. Floyd believed that Student could receive an educational benefit in the Willowood TEACCH program.

153. After Mother's visit to Willowood, the District made several attempts to contact her and her attorney to learn whether Mother would consent to the IEP, including the referral to Willowood. At hearing, Mother stated that she told Ms. Beltran at the time of the visit that she was rejecting Willowood. This testimony is unpersuasive, based upon the

District's several attempts from May through September 2011 to learn whether Mother would consent to the IEP. Student's counsel formally notified District in early October 2011 that Mother would not consent to the IEP.

154. From November 30, 2010, through the date of the hearing, Student has not attended any school or received any academic services, except for the attempts of Mother to teach him at home, using ABA methods she has learned from staff in Student's ABC in-home program. Mother has no teaching credential, and there was no evidence that Student was in any formal home-schooling program. CVS sent homework packets home for approximately two months after Mother withdrew Student from school, and Mother and Student worked on those. For a brief period of time after November 30, 2010, the Regional Center increased Student's in-home hours from ABC, to provide Student additional behavioral support during his additional time at home, but that support did not include formal educational services and teaching of a curriculum. Mother has purchased worksheets from a teacher book store or from Office Max which she has worked on at home with Student since she withdrew him from school, at a cost of approximately \$15.00-\$25.00 every two months. The worksheets were not offered into evidence at the hearing, and there was no evidence as to their contents.

ABC School

155. Ms. Gutierrez, Student's expert, testified at hearing regarding ABC School. ABC School is a certified California NPS, and the District has placed at least one child there. The school serves children from three years old to 18 years old. It has four classrooms, divided by age groups. There is one adult for every two students, and no more than 12 children in a class. The school used ABA methodology, including DTT and incidental teaching. ABC School also used the SEACO curriculum and standard educational programs such as Handwriting Without Tears, and Language for Learning. ABC School focused on a wide variety of skills. ABC School was intended as an interim placement, targeting the skills the students needed to access a more general education environment, and helping them to generalize those skills. Aggressive and tantruming behaviors were addressed on an individualized basis. Student would be in the youngest age range, where he would learn skills in a structured, systematic way. Most of his instruction would occur in a small group. She believed that ABC School was appropriate for Student now, as Student's behaviors needed to be brought under control, and ABC School would be able to accomplish that. In her opinion, one of Student's key needs was consistent monitoring, development, and implementation of a behavioral plan. She was concerned as to whether a TEACHH program would be as effective as the ABA program at ABC school, because ordinarily students in TEACCH programs do not have many severe behaviors. She was also concerned as to whether there would be sufficient staff in such a program to handle Student's behaviors.

156. Ms. Beltran and Ms. Cossio visited ABC School prior to the October 13, 2010, addendum IEP. Ms. Beltran has a B.S. in business administration from California State University, Dominguez Hills (CSU, Dominguez Hills), and an M.Ed. from California State University, Los Angeles, specializing in bilingual and cross-cultural elementary education.

She obtained her multiple subject teaching credential through CSU, Dominguez Hills. She holds a clear administrative services credential. She was a classroom teacher for 11 year before being employed by the District. She taught in the District for 10 years, then became a vice-principal and then a principal. She became a District administrator and has been the District's Coordinator of Special Education for almost six years. She has received training in special education through the Association of California School Administrators.

157. Ms. Beltran and Ms. Cossio observed at ABC School for about 40 minutes, and specified that they wished to see the classroom in which ABC School would place Student. There were 10 children in the classroom she observed. She observed children having DTT with one adult per two children for 20 minutes, and then 20 minutes of a group activity. Ms. Beltran noticed that the children were not communicating with each other or with the adults. A school representative advised Ms. Beltran that the children interacted with each other at recess and at lunch, but class was a time for the children to listen. Ms. Beltran was concerned about the lack of communication in the classroom, because Mother had expressed a desire for Student to communicate.

158. Ms. Beltran visited ABC School again after November 2011. Ms. Gutierrez led the visit. Again, the visit lasted about 40 minutes and, again, Ms. Beltran requested to observe the classroom in which ABC School would have placed Student. The classroom had more adults than students, and the classroom was noisy. The level of work that the students were doing was very basic. The children were working on non-academic tasks. Ms. Beltran was concerned about the curriculum, and Ms. Gutierrez advised that they worked on functional skills in that classroom. Based on her discussion with Ms. Gutierrez, Ms. Beltran did not believe that Student, who knew letters and numbers, and was believed to be of average cognitive level, would have a set curriculum. Based on Ms. Beltran's knowledge of Student's needs, obtained from attending several of Student's IEP meetings, including his triennial IEP meeting on April 19, 2011, and based on Ms. Beltran's knowledge of ABC School, she did not believe that ABC would provide a FAPE to Student.

159. Ms. Floyd, the SELPA Coordinator for Autism Programs, had visited ABC School twice to observe another student, in December 2011 and in January 2012. One of the observations was approximately one and one-half hours, and one was approximately two hours. She saw six students, with a staff person leading the instruction, as opposed to a teacher. There were three other adults in the classroom. The children were working on a work sheet with the adult. The majority of the children were not interacting with peers or teachers.

Testimony of Dr. Surfás

160 Student called Dr. Surfás as a witness to render opinions regarding Student's behavioral needs and school placement. Dr. Surfás met with Student and Mother for a just over one hour at his office in January 2011. He had no further contact with Student after that meeting. He reviewed no documents prior to the meeting, but he subsequently reviewed Ms. Cossio's Behavior Plan, various data collection sheets regarding Student, and

Ms. Schulz's Behavioral Progress Report of December 6, 2010. Dr. Surfás prepared no written report of his visit with Student and Mother. Dr. Surfás observed that Student was nervous when he first entered Dr. Surfás' office, and Student displayed tense behavior during the entire meeting.

161. Student displayed some behavior excesses, but no behaviors that could not be managed at the time. Based on his meeting, he recommended that Mother have in-home and community training. He also believed that Student was a very anxious little boy, who engaged in aggressive behaviors to ease his anxiety. He thought it important that school staff understand that Student's behaviors were due to specific reasons.

162. He believed that Student needed visual tools and a structured placement throughout the day, so that Student knew what he was supposed to do and when he was supposed to do it. He needed to be with other children, and somebody who could help him initiate play. He needed the ability to communicate his needs. In this regard, the behavior professionals assigned to him should recognize that his behaviors served to communicate his needs. Dr. Surfás also believed that Student needed multiple individuals to work with him to build fundamental skills and help him to generalize skills and so that more than one person would be able to provide support for him. Professionals assigned to him should have a plan for how he would obtain adaptive skills and know how to manage his behaviors. They should attempt to know him cognitively and behaviorally. If data were collected properly, his behaviors could be understood. Even more important than aide support was a highly trained teacher, someone who understood behavior plans and could implement them. Dr. Surfás also believed that Student needed to acquire a readiness to learn. Based upon his meeting with Student, Dr. Surfás felt that Student was too disorganized, and needed more academic competence. Dr. Surfás noted that TEACCH might be able to assist Student with learning readiness.

163. Dr. Surfás observed CVS about a month after Mother and Student came to his office. For budgetary reasons, Student's transition class at CVS was discontinued in March 2011, and Dr. Surfás saw it on its last day. Had Student remained at CVS, Student would have been in classroom 18, as was discussed at the December 6, 2010, IEP meeting. There was only one student remaining in the class at the time of Dr. Surfás's visit. Dr. Surfás believed that the classroom was arranged well, with rooms for different activities, such as a music listening room, a play room, a computer room, and a social activity area. He believed the technology used at CVS was good for Student. He noted that the instructors were trained in TEACCH, and the teacher was aware Student needed ongoing behavioral support each day. Dr. Surfás was not in favor of the widespread age ranges in the classroom, and he noted that the classroom next door had young adults with tough behavior challenges. Dr. Surfás preferred to try to keep programs to a three-year range in elementary school, because it could be difficult to teach the different skills that each age range required. He was also concerned about possible aggressive behaviors among the children when there were widespread age ranges in the classroom. Dr. Surfás said the teacher told Dr. Surfás that Student's program was individualized, so the different ages in the classroom did not matter. Dr. Surfás testified to his opinion that, when Student was engaged in an activity he liked, he did not want to

leave. Dr. Surfás believed that Student did not want to leave the activity not only because he liked it, but because the next activity would be aversive. He felt that there were only minimal reinforcers during Student's day.

164. Dr. Surfás had not observed the proposed Willowood placement since about 2000, and although he was well acquainted with the teacher of the class at that time, he was not acquainted with Ms. Griego. He attempted to observe the Willowood program after meeting Student and Mother, but for a variety of reasons, he and the District were unable to arrange an observation. He knew that the program incorporated TEACCH, and he acknowledged that the TEACCH program had aspects that Student required. He also noted that TEACCH was a teaching method, not an all-encompassing program, and that it did not have a large communication component. He also noted that one could combine it with such tools as PECS and visual prompts. He was concerned about using only one methodology for Student. In his opinion, Student needed a variety of methodologies, including a new behavior assessment to understand Student's behaviors and a behavior plan, since appropriate replacement behaviors to teach Student had yet to be determined. He believed Student may need DTT, alongside methods to build functional communication, and the use of visual schedules and visual menus (which defined the activities that were the subject of the visual schedules).

165. Dr. Surfás was familiar with ABC School, and was aware that it had a transition class. He felt that it was well staffed, with a large number of adults compared to students, and that there was consistency of personnel, in that staff members were assigned to particular students. He praised the staff's methods of working with behavioral challenges, and believed that its staff was the best trained in autism and behavioral issues of other NPS's in the area. He stated that the disadvantages of ABC School were that it did not provide opportunities for the children to be included and integrated with typical peers, it was not located on a regular campus or integrated into the community, and thus it could be difficult for its students to generalize their behaviors to the outside world. Dr. Surfás testified that he preferred ABC over CVS and Willowood, while acknowledging that he had not visited Willowood since approximately 2000, and that the CVS classroom he had visited did not exist anymore.

CONCLUSIONS OF LAW

Burden of Proof

1. The petitioner in a special education due process hearing has the burden of proving his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-57 [126 S. Ct. 528].) Student has the burden of proof on the issues alleged in Student's Complaint, and District has the burden of proof on the issues alleged in District's Complaint.

Contentions of the Parties

2. Student contends that District failed to offer Student a FAPE from the 2009-2010 school year through October 25, 2011, because he was not placed in a highly structured, research-based program providing a low student-to-teacher ratio and built-in ABA interventions, with appropriate LAS, OT, AT, and behavioral services. Further, Student contends that District violated the procedural requirements of the IDEA, by (1) failing to properly consider the findings of Mother's experts from ABC;¹⁰ (2) failing to make a definite, written offer of placement at the IEP of April 19, 2011; (3) failing to properly perform appropriate psychoeducational, and behavioral assessments of Student, and (4) failing to perform an AT assessment of Student during the 2010-2011 school year, through October 25, 2011.

3. District contends that the April 19, 2011, IEP offered Student a FAPE in the LRE, that it provided appropriate placements and services at all relevant times, and that it appropriately assessed Student. District further contends that it could not perform a functional analysis assessment (FAA) or an AT assessment, as those assessments must be performed in Student's educational environment, and Student was not in school during the relevant times.

FAPE

4. 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 IEP. (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

¹⁰ In his closing brief, Student also contends that the District failed to consider the recommendations of Dr. Surfas, which Student alleges were orally presented by Mother at the April 19, 2011, IEP meeting. This contention does not appear in Student's Complaint, and was not included as an issue in the PHC Order. Therefore, pursuant to Education Code section 56502, subdivision (i), this contention will not be addressed in this Decision.

be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

5. In *Board of Education . of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982), 458 U.S. 106, 121 [102 S. Ct. 3034] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the substantive requirements of the IDEA. The Court determined that a student’s IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student’s abilities. (*Id.* at pp. 198-200; *J.G., et al. v. Douglas County School District* (9th Cir. 2008) 552 F3d 786 at p. 793.) The Court stated that school districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Rowley, supra*, at p. 201.)

6. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) Furthermore, *Rowley, supra*, established that as long as a school district provides an appropriate education, methodology is left to the school district’s discretion. (458 U.S. at p. 209). The *Rowley* standard recognizes that courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional programs.

7. For a school district’s offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district’s offer of educational services and/or placement must be designed to meet the student’s unique needs, comport with the student’s IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) To meet the level of educational benefit contemplated by *Rowley* and the IDEA, the school district’s program must result in more than minimal academic advancement. (*Amanda J. v. Clark County School Dist., et al.* (9th Cir. 1996) 267 F.3d 877, 890.) Furthermore, educational benefit in a particular program is measured by the degree to which Student is making progress on the goals set forth in the IEP. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.) (*County of San Diego.*)

8. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) “An IEP is a snapshot, not a retrospective.” (*Id.* at p.1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 93 F.2d 1031, 1041.) Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Ibid.*)

9. The issue of whether a school district has offered a FAPE has both procedural and substantive components. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School District, etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) Citing *Rowley*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but stated that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at p. 1484.) Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*) These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

LRE

10. In determining the educational placement of a child with a disability, a school district must ensure the following: (1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and consider the requirement that children be educated in the LRE; (2) placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home; (3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; (4) in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (5) the child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116 (2006).)¹¹

11. In order to provide the LRE, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a).) The Ninth Circuit applies a four-part test to measure whether a placement is in the LRE: (1) the academic benefits available to the disabled student in a general education classroom, supplemented with appropriate aids and services, as compared with the academic benefits of a special education classroom; (2) the non-academic benefits of interaction with children who are not disabled; (3) the effect of the

¹¹ All citations to the Code of Federal Regulations are to the 2006 edition.

disabled student's presence on the teacher and other children in the classroom; and (4) the cost of mainstreaming the disabled student in a general education classroom. (*Sacramento Unified School District v. Holland (Holland.)* (9th Cir. 1994) 14 F.3d 1398, 1403.) If the IEP team determines that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.)

12. The continuum of the program options includes, but is not limited to, regular education, resource specialist programs, designated instruction and services, special classes, nonpublic, nonsectarian schools, state special schools, specially designed instruction in settings other than classrooms, itinerant instruction in settings other than classrooms, and instruction using telecommunication instruction in the home or instruction in hospitals or institutions. (Ed. Code, § 56361.)

IEP

13. The IEP team is required to include one or both of the student's parents or their representative, a regular education teacher if a student is, or may be, participating in the regular education environment, a special education teacher, and a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a).)

14. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the IEP process when he or she has an opportunity to discuss a proposed IEP and when parental concerns are considered by the IEP team. (*Fuhrmann v. East Hanover Bd. Of Educ., supra*, 993 F.2d at p. 1036.)

15. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (or, for preschool children, how the disability affects the child's participation in appropriate activities), and a statement of measurable annual goals. The goals shall include academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) When

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

16. The IDEA requires a District to make a formal, written offer of placement. (*Union School Dist. v. Smith* (9th Cir. 1994), 15 F.3d 1519, 1526 (*Union*).) In *Union*, the District failed to formally offer a placement that the District deemed appropriate, because the parents in that case had expressed unwillingness to accept that placement. Therefore, the District did not offer any placement. In determining that the District had thereby committed a procedural violation of the IDEA, the *Union* court noted that a formal written offer of placement provides a clear record of what was offered, and greatly assists parents in presenting due process hearing complaints. (*Id.*)

17. If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the IEP after having consented to those services in the past, the local educational agency shall file a request for due process hearing. (Ed. Code, § 56346, subd. (d).) When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements of the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

Assessments

18. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).)

19. To provide information to the IEP team, a school district is required to conduct a reevaluation of each child at least once every three years, unless the parent and the local educational agency agree that a reevaluation is unnecessary. (34 C.F.R. 300.303(b)(1); Ed. Code, § 56381, subd. (a)(2). A school district is required to assess a child in all areas of suspected disability. As part of any reassessment, the IEP team is required to review existing

assessment data and, on the basis of that data, identify what additional data, if any, is necessary to determine whether the pupil continues to have a disability, the pupil's present levels of performance and educational needs, whether the pupil continues to need special education and related services, and whether any additions or modifications to the educational program are needed to enable the pupil to meet his annual IEP goals. (Ed. Code, § 56381, subd. (b).)

20. Education Code section 56320, subdivisions (a) through (e), provides that assessments must be conducted in accordance with the following pertinent requirements: that testing and assessment materials and procedures be selected and administered so as not to be racially, culturally, or sexually discriminatory; that the materials and procedures be provided and administered in the student's primary language or other mode of communication, unless unfeasible to do so; that the assessment materials be validated for the purpose for which they are used; that the tests be administered by trained personnel in conformance with test instructions; that the tests and other assessment materials be tailored to assess specific areas of educational need, and not merely those that are designed to provide a single general intelligence quotient; that the tests be selected and administered to best ensure that, when administered to a student with impaired sensory, manual, or speaking skills, the test produces results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure; and that no single measure be used as the sole criterion for determining eligibility or an appropriate educational program for the student.

21. 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), and 56322.) Assessments of intellectual or emotional functioning shall be administered by a credentialed school psychologist. (Ed. Code, § 56320, subd. (b)(3).) 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 and 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.)

22. Prior to transitioning a special needs child from a preschool program to kindergarten, or first grade as the case may be, an appropriate reassessment of the individual shall be conducted to determine whether the individual is still in need of special education and services. (Ed. Code, § 56445, subd. (a).) The purpose of this assessment is to ensure that gains made by children between the ages of three and five years old who had received

special education and services are not lost by too rapid a removal from special education programs. (Ed. Code, § 56445, subd. (b).)

FAA

23. California law and the IDEA require that an IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address behavior when a student's behaviors impede his learning or that of others. (Ed. Code, § 56341.1, subd. (b)(1); 34 C.F.R § 300.324(a)(2)(i).) In California, a behavior intervention is "the systematic implementation of procedures that result in lasting positive changes in the individual's behavior." (Cal. Code Regs, tit. 5, § 3001(d).) It includes the design, evaluation, implementation, and modification of the student's individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student's behavior through skill acquisition and the reduction of problematic behavior. (*Ibid.*)

24. Behavioral interventions should be designed to provide the student with access to a variety of settings and to ensure the student's right to placement in the least restrictive educational environment. (Cal. Code Regs, tit. 5, § 3001(d).) If a student's behavior impedes learning, but does not constitute a serious behavior problem, the IEP team must consider behavior interventions as defined by California law. An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028.)

25. When behaviors rise to the level of "serious behavior problems," California law imposes more formal requirements for addressing them, even when they have not resulted in formal discipline. "Serious behavior problems" means the individual's behaviors which are self-injurious, assaultive, or cause serious property damage and other severe behavior problems that are pervasive and maladaptive for which instructional/ behavioral approaches specified in the student's IEP are found to be ineffective. (Cal. Code Regs., tit. 5, § 3001, subd. (ab).)

26. An FAA shall occur after the IEP team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective. (Cal. Code Regs., tit. 5, § 3052, subd. (b).) An FAA must be conducted by, or be under the supervision of a person who has documented training in behavior analysis. FAA personnel shall gather information from direct observation, interviews with significant others, and review of available data such as assessment reports prepared by other professionals and other individual records. Prior to conducting the assessment, parent notice and consent shall be given and obtained. An FAA procedure shall include: systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity; systematic observation of the immediate antecedent events associated with each instance of the display of the targeted inappropriate behavior; systematic observation and analysis of the consequences following the display of the behavior to determine the function and communicative intent the behavior serves for the individual; ecological analysis of the

settings in which the behavior occurs most frequently; review of records for health and medical factors which may influence behaviors; and review of the history of the behavior to include the effectiveness of previously used behavioral interventions. (Cal. Code Regs., tit. 5, § 3052, subd. (b)(1).)

27. Following the assessment, a written report of the assessment results shall be prepared and a copy shall be provided to the parent. The report shall include a variety of prescribed information. (Cal. Code Regs., tit. 5, § 3052, subd. (b)(2).) Upon completion of the FAA, an IEP team meeting shall be held to review the results and, if necessary, to develop the behavioral intervention plan (BIP). (Cal. Code Regs., tit. 5, § 3052, subd. (c).)

28. The BIP is a written document, based upon the FAA, which is developed when the student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP. (Cal. Code Regs., tit. 5, § 3001, subd. (f); Cal. Code Regs., tit. 5, § 3052, subd. (a)(3).) The interventions contained in the BIP are designed to eliminate maladaptive behaviors that inhibit the student's ability to access the student's education, and to encourage positive behavior so that the student may be educated in the LRE. (Ed. Code, §56520, subd. (a).)

IEE

29. The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an IEE of a child at public expense. (20 U.S.C. §1415(b)(1).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent may request an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense, unless the school district demonstrates at a due process hearing that the evaluation obtained by the parent does not meet its criteria. (34 C.F.R. §300.502(b)(2); Ed. Code, § 56329, subd. (c).)

30. An independent educational evaluation (IEE) at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. *Los Angeles Unified School District v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-823.)

31. If a parent obtains an independent educational evaluation (IEE) at public expense or shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the school district, if it meets the school district's criteria, in any decision made with respect to the provision of a FAPE. (34 C.F.R. § 300.502(c)(1); Ed. Code §§ 56329, subd. (c).) The duty to consider the evaluation does not obligate the school district to accept the evaluation or its recommendations, or discuss the report at the IEP meeting. (*G.D. v. Westmoreland School District* (1st Cir. 1991) 930 F.2d 942, 947.) In *Evans v. District No. 17* (8th Cir. 1988) 841 F.2d 824, 830, the court

determined that the school district had “considered” the report when the school district’s Director of Special Education had read the report and wrote the parents about it.

Analysis

Student’s Issues A (1) and (2) and B: Psychoeducational, Behavioral, and AT Assessments during the 2010-2011 school year and through October 2011.

Psychoeducational Assessment

32. Student contends that the District should have performed a psychoeducational assessment prior to transitioning Student from his preschool SDC at Bursch to his class at CVS for kindergarten during the 2010-2011 school year. (Student’s Issue A (1).) Student further contends that the triennial psychoeducational assessment District performed in April 2011 was inadequate, because, due to his behaviors, Student was unable to complete several areas of the assessment, and the assessor therefore was required to estimate Student’s abilities.

33. As was stated in Legal Conclusion 22, a school district shall conduct an appropriate assessment of a special education student who is transitioning from a preschool program to kindergarten program or to first grade, to determine if the child is in need of special education and services. As was stated in Legal Conclusions 19-21, assessments must meet a variety of criteria, must be administered in such a way that the tests produce results that accurately reflect what the tests are supposed to measure, and no single measure may be used as the sole criterion for determining an appropriate educational program for the student. Psychoeducational assessments must be conducted by a school psychologist. A failure to assess or to properly assess a Student is a procedural violation, which is actionable only if the violation impeded the child’s right to a FAPE; significantly impeded the parent’s opportunity to participate in the decision making process; or caused a deprivation of educational benefits. (Legal Conclusion 9.)

34. Student did not demonstrate that the District deprived Student of a FAPE by failing to comply with Education Code section 56445. First, Student did not demonstrate that Education Code section 56445 applied in these circumstances. The classroom in which Student was placed at CVS was not a kindergarten classroom, as is mentioned in the statute. Rather, it was a transition classroom, which included children as old as ninth-graders. Second, the statute specifically states that the purpose of the assessment was to determine if the child required special education and services. Student’s eligibility for special education and services has not been at issue at any relevant time. Third, Student did not demonstrate that any failure of the District to comply with Education Code section 56445 impeded Student’s right to a FAPE, significantly impeded Mother’s opportunity to participate in the decision making process, or caused a deprivation of educational benefits.

35. Student also failed to demonstrate that the District deprived Student of a FAPE because the psychoeducational assessment District performed in early 2011 was

inappropriate or inadequate. Ms. Whitehouse, the school psychologist, and Ms. Waage used numerous assessment tools, both formal and informal, and the assessment met all statutory requirements. Ms. Whitehouse's analysis of the assessment results was particularly thorough, in that she combined information from the OT, LAS, and academic assessments to reach her conclusions, including noting and explaining inconsistent or paradoxical test results. She explained the tests that Student had not been able to complete, and her assessment report accounted for her inability to obtain results on those tests. Indeed, she explained and analyzed the significance of the subtests that Student was unable to complete and was able to draw conclusions about Student's abilities from his failure to complete those subtests. Student produced no evidence that the psychoeducational assessment was invalid in any manner. Student produced no evidence that any other assessor could have managed Student's behaviors better than Ms. Whitehouse was able to. Student produced no evidence that any other assessor would have obtained results that differed in any material respect from those Ms. Whitehouse obtained. Student produced no evidence that Ms. Whitehouse used incorrect or inappropriate assessment instruments. Student produced no evidence that Ms. Whitehouse's analysis of the assessment results, or her conclusions as to Student's abilities, were incorrect. Additionally, Student did not demonstrate that any defect in the psychoeducational assessment impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process, or caused a deprivation of educational benefits. Under these circumstances, the psychoeducational assessment was not defective, and District did not deny Student a FAPE on this ground. (Findings of Fact 1-2, 67-126; Legal Conclusions 1-9, 18-22.)

Behavioral Assessment

36. Student contends that the District failed to conduct an adequate or appropriate behavioral assessment of Student. (Student's Issue A (2).) In particular, Student contends that District should have conducted an FAA during the 2010-2011 school year, through October 2011, as District had agreed to at the December 6, 2010, IEP meeting.

37. As is stated in Legal Conclusion 23, the IEP team shall consider the use of positive behavioral strategies and supports when a pupil's behavior impedes the child's learning and that of others. As is stated in Legal Conclusions 23-26, an FAA shall be conducted when the student demonstrates behaviors which are self-injurious, assaultive, or cause serious property damage and other severe behavior problems that are pervasive and maladaptive for which instructional/ behavioral approaches specified in the student's IEP are found to be ineffective. A failure to assess or to properly assess a student is a procedural violation, which is actionable only if the violation impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process; or caused a deprivation of educational benefits. (Legal Conclusion 9.)

38. The District performed no formal behavioral assessment during any time relevant to these consolidated actions. During the 2010-2011 school year, through November 29, 2010, Student attended CVS, and had a one-to-one aide. At the October 13, 2010, addendum IEP meeting, Student requested an FBA, and District agreed to perform

one. No FBA was performed. At the December 6, 2010, addendum IEP, District agreed to perform an FAA, when Student returned to school. District was unable to perform the FAA, because Student did not return to school. The statutory prescriptions for an FAA require that it be conducted in the environment where the behavior in question occurred, thereby necessitating, for Student, that it be performed in the school environment.

39. Student engaged in aggressive and non-compliant behaviors during the 2010-2011 school year through November 29, 2010. The evidence revealed that he had seven Incident Reports during the months of August and September, and additional behavioral incidents were reported by his one-to-one aides in the Daily Student Progress Reports. The data sheets compiled by Student's one-to-one aides reveal that he had "aggressive tantrums" and aggressive behaviors toward others nearly every day, and often several times per day. Ms. Schulz described Student's aggressive behaviors as "severe" in the BSP she drafted and presented at the December 6, 2010, addendum IEP. Thus, although Ms. Schulz's Progress Report indicated that Student's aggressive behaviors had diminished while he was at CVS, and although there were no Incident Reports in October 2010, Student's aggressive behaviors were still an area of concern to CVS and the District, as evidenced by Ms. Schulz's BSP. The evidence reflected that Student's behaviors resulted in disruption of his schoolwork, his removal from the classroom, and his seat being changed on the bus. Furthermore, Student's continuing aggressive behaviors demonstrated that the behavioral approaches of the one-to-one aides were ineffective. Therefore, Student's behaviors were severe, pervasive, assaultive, and maladaptive and the behavioral approaches applied by CVS staff were ineffective. Under these circumstances, District had an obligation to perform an FAA at some point before the biting incident of November 29, 2010. At the very least, and especially since Mother had requested an FBA, District should have performed an FBA well prior to the biting incident of November 29, 2010. Mother's subsequent withdrawal of Student from school could not absolve the District of its obligations to perform an FBA or an FAA while Student was attending school.

40. The District's failure to perform any type of behavioral assessment while Student was attending CVS in the 2010-2011 school year was a procedural violation that constituted a substantive denial of a FAPE. To the extent that Student's severe behaviors caused his removal from his classroom, or otherwise disrupted his ability to perform his schoolwork, the District's failure to conduct a behavioral assessment which would lead to the development of a plan to manage his behaviors, and provide specific behavioral goals, deprived Student of educational benefits. Further, the District's failure to conduct any behavioral assessment contributed to the failure of Student's IEP's of August 26, 2010, and October 13, 2010, to contain any behavioral goals to address Student's aggressive and non-compliant behaviors, and the teaching of replacement behaviors, thereby also depriving Student of an educational benefit. (Findings of Fact 1-165; Legal Conclusions 1, 4-15,18-28.)

AT Assessment

41. Student contends that District should have performed an AT assessment of Student during the 2010-2011 year, through October 25, 2011. (Student's Issue B.)

42. As was stated in Legal Conclusion 19, a school district must assess a child in all areas of suspected disability. A failure to assess or to properly assess a child is a procedural violation, which is actionable only if the violation impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process; or caused a deprivation of educational benefits (Legal Conclusion 9.)

43. Student failed to demonstrate that District deprived Student of a FAPE by failing to perform an AT assessment during the 2010-2011 school year and thereafter. Student provided no evidence that Student required AT to obtain some educational benefit. The evidence was uncontradicted that Student made progress on his goals, including his communication goal, during the relatively brief period of time he was in school during the 2010-2011 school year, despite having little to no AT.

44. District offered to perform an AT assessment at the IEP meeting of December 6, 2010, in anticipation that Student would be returning to school. District presented the uncontradicted expert testimony of Ms. Carpenter that District could not perform an AT assessment until Student returned to school, because the assessment required that Student be evaluated in his school environment, with input from his teacher and service providers. Therefore, District was unable to perform an AT assessment as part of Student's triennial evaluation.

45. Finally, Student failed to demonstrate that the failure of the District to perform an AT assessment during the relatively brief period of time that Student was at CVS impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision making process, or caused a deprivation of educational benefits. Rather, Student made progress on his goals at Bursch, where he did not use PECS or other communications assistance, and at CVS, where he used PECS and technology. Furthermore, the uncontradicted evidence demonstrated that the District was willing to perform an AT assessment as part of the triennial assessment, but Mother's own conduct in keeping Student out of school made it impossible for the District to perform the assessment. As is further discussed below, Mother's conduct in keeping Student out of school after November 29, 2010, was unjustified. Under these circumstances, Student did not demonstrate that District deprived Student of a FAPE by failing to perform an AT assessment. (Findings of Fact 1-66; 117-124; 128-141; Legal Conclusions 1, 4-9, 18-28,75.)

Student's Issue C (1): Failing to Offer Appropriate Placements from October 25, 2009, through October 25, 2011

46. Student contends in Student's Issue C (1) that District denied Student a FAPE from October 25, 2009, through October 25, 2011, because Student required a placement with an embedded ABA behavior intervention program, which was not provided at the SDC placements at Bursch, CVS, or the LACOE program at Willowood. Student contends that his behaviors required placement at an NPS utilizing an embedded ABA behavior intervention program, such as the ABC School.

47. As was stated in Legal Conclusions 5-8, in resolving the question of whether a district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. A school district is entitled to select the educational methodology. A school district's offer of specials education and services constitutes a FAPE if it was designed to meet the student's unique needs, comported with the student's IEP, and was reasonably calculated to provide the pupil with some educational benefit in the LRE. Educational benefit in a particular program is measured by the degree to which Student is making progress on the goals set forth in the IEP. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed.

48. As an initial matter, neither party contended that District should have placed Student in a general education class rather than an SDC. Therefore, there is no need to apply the factors described in *Holland, supra*. Rather, the question to be addressed is the appropriate placement on the continuum of placement options, focusing on the District's offers of placement. (*Daniel R.R., v. State Board of Ed., supra*, 874 F. 2d at p. 1050.) Student did not demonstrate that the SDC placements at Bursch, CVS, and Willowood were inappropriate and deprived him of a FAPE. First, Student did not demonstrate that he required a placement at ABC School to receive a FAPE. Student's experts, Dr. Surfes and Ms. Gutierrez (the Regional Director of ABC School), did not couch their opinions and analysis in terms of which programs would provide a FAPE, as opposed to which program would constitute a better placement for Student. To the extent that Dr. Surfes and Ms. Gutierrez were evaluating possible placements from the standpoint of which would provide the maximum benefit to Student, their opinions must be discounted. Dr. Surfes testified that all three programs he considered, CVS, Willowood, and the ABC program, had positive and negative aspects, and, although he preferred the ABC program, the CVS and Willowood programs also had strengths, and Student could obtain benefit from them

49. Student presented no evidence that the SDC placement at Bursch did not provide Student a FAPE. None of Student's experts referred to the Bursch SDC. Indeed, Student provided minimal evidence as to the classroom environment provided at the SDC at Bursch, other than that it was not as structured an environment as at CVS or at Willowood, and that it was not the same as that of Mother's preferred placement, ABC School. However, District need not offer Mother's preferred placement. Additionally, the evidence was uncontradicted that the Bursch SDC comported with the IEP. Under the "snapshot rule," Student's placement in the Bursch SDC must be evaluated in terms of what the IEP knew, or should have known, at the time Student was placed there. There was no evidence that, at the time Student was placed in the Bursch SDC, or while he was attending Bursch, the SDC placement was not designed to meet Student's unique needs, or was not reasonably calculated to provide Student with some educational benefit in the LRE. Student had behavioral issues while at Bursch, but there was no evidence as to the impact of the SDC environment on those behaviors. Student made progress on his goals while at Bursch, which

demonstrates that Student received some educational benefit from his placement in the SDC. (Findings of Fact 1-30; Legal Conclusions 1, 4-17.)

50. The evidence reflected that the SDC at CVS also provided Student a FAPE. Dr. Surfes, who visited the classroom, approved of the classroom arrangement. The classroom incorporated ABA principles, such as TEACCH, PECS, a token economy, prompting, positive behavior reinforcement, a large number of staff per student, and many visuals. Dr. Surfes testified approvingly of the teacher's abilities, of the classroom's use of TEACCH and technology, and that the classroom had different rooms for different activities. Dr. Surfes's primary criticism was that the class included too wide an age-range of students, and he was concerned that the class did not provide a sufficient amount of reinforcement for Student. These criticisms do not necessarily mean that the CVS SDC placement deprived Student of a FAPE. Rather, the evidence demonstrated that the SDC comported with the IEP, it was designed to meet Student's unique needs, and it was reasonably calculated to provide Student with educational benefit. Student made progress on his goals for the short time during which he attended CVS. Under these circumstances, Student received some educational benefit from his placement in the SDC at CVS. (Findings of Fact 1-141, 160-165; Legal Conclusions 1, 4-15.)

51. Student did not demonstrate that the SDC at Willowood would not have provided Student a FAPE. The class was highly structured, and employed numerous ABA techniques and methodologies, including TEACCH, visual schedules and other visual supports, positive reinforcement, sensory techniques, structured work systems, functional communication systems, and prompting. Dr. Surfes was unable to visit the Willowood SDC, and he did not have any current information regarding it. His criticism was primarily based on his opinion of the abilities of a teacher who used to teach there, rather than current, specific information about Ms. Griego's class. He also was concerned that the class relied too heavily on TEACCH principles to the exclusion of other methodologies. However, the District is entitled to select the teaching methodology, so long as it also provides a FAPE. Ms. Gutierrez also expressed concern that the TEACCH program was more effective for students with fewer severe behaviors, and whether such a program would have sufficient staff for Student, but she did not address the issue in terms of whether the Willowood placement would have provided a FAPE. The evidence demonstrated that the Willowood SDC classroom was designed to meet the Student's unique needs, comported with the Student's IEP, and was reasonably calculated to provide the pupil with some educational benefit in the LRE. (Findings of Fact 1-165; Legal Conclusions 1, 4-15.)

52. Under these circumstances, District did not deprive Student a FAPE by placing Student in the SDC's at Bursch and CVS, and by offering to place Student in the SDC at Willowood, instead of placing Student at the ABC School.

Student's Issue C (2)(a)-(d): Appropriate LAS, OT, AT and Behavior Services from October 25, 2009, through October 25, 2011.

53. Student contends that he was deprived of a FAPE because the District's

LAS services were inadequate. (Student's Issue C (2)(a).) He contends that he required LAS services through an NPA with expertise in treating children with autism. Similarly, Student contends that he was deprived of a FAPE because the District's OT services were inadequate (Issue C (2)(b).) He contended that he required OT services through an NPA with expertise in treating children with autism. Student also contends that the failure of the District to provide him an AT assessment deprived him of AT services. (Student's Issue C (2)(c).) Additionally, Student contends that the District failed to provide him appropriate behavioral services. (Student's Issue C (2)(d).)

54. Legal Conclusions 4-9 are incorporated by reference.

55. With respect to LAS services, Student presented no evidence that he required LAS services by an NPA with expertise in treating children with autism. Nor did Student present any evidence that the LAS services provided by District were inadequate in either quantity or quality. Ms. Carpenter, the SLP who performed Student's triennial LAS assessment, and the only expert witness who testified at hearing regarding Student's speech services and her LAS assessment, confirmed that Student had made great progress in LAS throughout his education in the District. Under these circumstances, Student did not meet his burden of proving that the District deprived Student of a FAPE with respect to LAS services. (Findings of Fact 1-64, 67-99, 117-141; Legal Conclusions 1, 4-15.)

56. Similarly, with respect to OT services, Student presented no evidence that he required OT services from an NPA with expertise in treating children with autism, or that the OT services Student received were inadequate in either quantity or quality. The evidence demonstrated that Student made some progress on his OT goals. For example, he no longer used inordinate pressure on scissors, markers, and beads. Under these circumstances, Student did not meet his burden of proving that District deprived Student of a FAPE with respect to OT services. (Findings of Fact 1-64, 67-116, 128-14, Legal Conclusions 1, 4-15.)

57. With respect to AT services, Student agreed at hearing that this issue was an offshoot of his contention, as stated above, that he was entitled to an AT assessment, and, therefore, entitled to AT services. As was set forth above, Student did not establish that he was deprived of a FAPE because he did not receive an AT assessment. Moreover, Student presented no evidence that he required AT at any relevant time to receive a FAPE. The evidence reflected that Student made some progress on his goals while he was at Bursch and at CVS, including his LAS and communications goal. District did not deprive Student of a FAPE with respect to AT services. (Findings of Fact 1-141; Legal Conclusions 1, 4-15.)

58. With respect to behavior services, during the 2009-2010 school year, while Student was at Bursch, District provided Student with a one-to-one aide, and, as of January 2010, the Behavior Plan developed by Ms. Cossio and consulting services by Ms. Cossio. The Behavior Plan was not based upon any formal assessment. There was no direct evidence as to why the District retained Ms. Cossio to informally observe Student, talk to his teacher, and develop a Behavior Plan, but it is likely that District did so because Bursch staff had expressed concern about Student's behaviors. Yet, Student had no formal behavioral goal

included in any IEP during the 2009-2010 school year until his February 23, 2010, IEP. At that IEP, the team included a goal which was directed at improving Student's behaviors when he transitioned between activities. The occupational therapist was the only person responsible for this goal. Further, as Dr. Surfes testified, behavioral strategies for children such as Student should emphasize teaching replacement behaviors. Neither the Behavior Plan nor the IEP contained any goals pertaining to how to teach Student replacement behaviors.

59. District's efforts to manage Student's behaviors, however well-intended, were not legally sufficient. District had notice of Student's behaviors, as Mother had consistently expressed her concerns to the District about Student's behaviors from the time of Student's initial IEP in spring 2008, as well as in writing in June 2009 prior to his attendance at Bursch, and during all of Student's IEP's in evidence that were held in fall 2009 at Bursch. If District was concerned enough about Student's behaviors to retain an individual with Ms. Cossio's specialized, BCBA background to perform informal observations and develop a Behavior Plan, its concerns, and Mother's, at least warranted an FBA. Such an assessment would have included more in-depth input from teacher, and an interview with people such as Mother, and perhaps other Bursch staff, to determine Student's behavioral needs and how they could be addressed. Under these circumstances, District failed to provide sufficient behavioral services to Student during the 2009-2010 school year, and deprived him of a FAPE. Furthermore, as was discussed above at Legal Conclusions 36-40, District should have conducted an FAA of Student during the 2010-2011 school year, prior to his departure from CVS, thereby depriving Student of a FAPE.

60. As is further described below in discussing the District's offer of FAPE in the April 19, 2011, IEP, the District's offer of behavior services during the 2011-2012 school year through October 25, 2011, was also insufficient. Based upon Findings of Fact 1 through 165, and Legal Conclusions 1 and 4-28, and 68-72, District failed to provide sufficient behavior services to Student from October 25, 2009, through October 25, 2011.

Student's Issue D (1): IEP team failure to consider the findings of ABC from October 25, 2009, through October 25, 2011.

61. Student contends in Student's Issue D (1) that the District deprived Student of a FAPE by violating its obligation to consider the findings and recommendations of ABC, Student's in-home service provider, whose services were paid for by the Regional Center. Student contends that the District's failure to do so impeded Mother's ability to participate in the decision making process concerning the provision of a FAPE to Student.

62. As was stated in Legal Conclusion 31, an IEP team is required to consider expert reports of evaluations that are provided to the team by parent. (34 C.F.R. § 300.502(c)(1); Ed. Code § 56329, subd. (c).) As was stated in Legal Conclusion 9, procedural violations are actionable only if the violation impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process, or caused a deprivation of educational benefits.

63. Student did not demonstrate that the requirements of title 34 Code of Federal Regulations part 300.302(c)(1) and Education Code section 56329, subdivision (c) apply to the facts of this case. At hearing, Student acknowledged that Mother never provided the IEP team a report from ABC. Further, there was no evidence that any ABC representative attended any of Student's IEP meetings and orally reported the results of an evaluation of Student. Student contended that Mother presented ABC's recommendations orally at the IEP meetings, but there was no evidence presented regarding what Mother said with respect to ABC's recommendations, and the District is not obligated to accept any such recommendations. Therefore, Student has not demonstrated that the District violated its statutory obligations in this regard.

64. In any event, the evidence demonstrated that the IEP team was responsive to Mother's other comments and suggestions regarding ABC and its related entity, ABC School. Mother's requests that Student be placed at the ABC School were documented in various IEP's and the District responded to at least one of those requests by sending staff to observe the school. At the April 19, 2011, IEP meeting, the District representative reported on the observation. Additionally, immediately after the December 6, 2010, IEP meeting, District attempted to collaborate with ABC regarding Student's behavioral issues, as Mother had wished. ABC refused to collaborate. In short, the evidence demonstrated that District did not curtail Mother's ability to participate at the IEP, as contended by Student. Under these circumstances, Student has not demonstrated that District committed any procedural violations of the IDEA or the Education Code, and the District did not deprive Student of a FAPE on this ground. (Findings of Fact 1-7,18-23, 29-39, 41-42; 47-65, 128-141; Legal Conclusions 1, 9, 13-17, and 31.)

Student's Issue D (2): Whether District impeded Mother's ability to participate in the IEP by failing to make a definite offer of placement and services in the April 19, 2011, IEP.

65. Student contends that Mother was deprived of the ability to participate in the IEP process because the placement offer in the IEP of April 19, 2011, was a referral to the LACOE program at Willowood, instead of a definite placement.

66. As was stated in Legal Conclusion 16, under *Union, supra*, the IEP must include a formal written offer of placement, to provide a clear record of what was offered. If the IEP does not contain such an offer, the school district has committed a procedural violation of the IDEA. As was stated in Legal Conclusion 9, procedural violations are actionable only if the violation impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process, or caused a deprivation of educational benefits.

67. Student cites no legal authority that a referral to a specific placement is not a sufficiently definite placement offer. It is common for districts to make referrals for placement when the proposed placement is a NPS or a program that is under the auspices of a different public entity, and the district is unable to guarantee that the student will be admitted. This situation, in and of itself, does not make the IEP defective. In fact, in the

June 11, 2010, IEP, the placement offer in the IEP was a referral to CVS, a nonpublic school. Mother did not complain of the form of this offer, rather, she accepted it. In this case, there was a clear record that the District was offering a referral to Willowood. Unlike the district in *Union, supra*, District made a clear, written, formal offer of a placement. Mother visited the proposed placement, and asked questions about it during her visit. She had sufficient knowledge of the placement to accept or reject the placement offer, and she ultimately rejected it as not suitable for Student. It is significant that she did not reject the placement offer due to any ignorance or lack of clarity as to what the placement offer was. Under these circumstances, District did not commit a procedural violation, and did not deprive Student of a FAPE on this ground. (Findings of Fact 1-2, 128-142, 149-150, 153, and 160-164; Legal Conclusions 1, 4-16.)

District's Issue: Whether the IEP of April 19, 2011, offered a FAPE in the LRE

68. District contends that its offer of services and referral to Willowood in the IEP of April 19, 2011, constituted an offer of a FAPE in the LRE.

69. As was stated in Legal Conclusion 17, if the parent refuses all services in the IEP after having consented to those services in the past, the district shall file a request for a due process hearing to prove that it provided a FAPE. In such a situation, the school district must also show that it complied with the procedural requirements of the IDEA. In determining whether a school district has offered a FAPE, the focus is on the adequacy of the District's proposed program. A school district offer of a FAPE must be designed to meet the student's unique needs, and be reasonably calculated to provide the pupil with some educational benefit in the LRE. The District may choose the teaching methodology, as long as the program offers a FAPE. An IEP must contain an assortment of specified information. The content of the IEP is evaluated in light of the information available to the IEP team at the time it was developed. In order to provide the LRE, school districts must ensure, to the maximum extent appropriate, that children with disabilities, are educated with children who are not disabled, and special classes or other removal of the child from the regular educational environment occurs only when the nature and the severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Legal Conclusions 1-28.)

70. The IEP of April 19, 2011, did not offer Student a FAPE. In many respects, the IEP was developed according to law. It included present levels of performance in Student's academic areas of need, as well as in LAS and OT. It set measurable annual goals, with short term objectives, in these areas of need. It offered appropriate services in the areas of LAS and OT. The LAS services offered in the IEP were at the same level as Student had had in the past, and at which he had made progress. The OT services offered in the IEP were at the same level as Student had in the past, the same level at which he had made progress, and the same level as was recommended by Ms. Carson in her OT assessment. The IEP offered placement in an SDC, where Student would have access to typical peers, thereby meeting the requirement that the placement be in the LRE on the continuum of placements.

71. However, despite these many appropriate aspects of the IEP, the IEP deprived Student of a FAPE because it contained inadequate behavior support as a related service. The IEP team knew, or should have known, that Student had a history of behavioral problems, specifically aggressive behaviors and non-compliant behaviors. Ms. Whitehouse's psychoeducational assessment report was replete with descriptions of Student's maladaptive behaviors. The IEP specifically stated that Student needed behavior support, because his behavior impeded the learning of himself or others. Yet, the IEP did not contain any behavioral goals to address Student's aggressive or non-compliant behaviors. The IEP did not contain a behavior support plan, even though Ms. Schulz had prepared such a plan only four months previously that at least addressed Student's aggressive behaviors. The IEP did not reflect that Ms. Schulz's behavior plan, or any behavior plan, was even discussed at the IEP meeting. The IEP did not offer Student a one-to-one behavioral aide at Willowood to assist him in managing his behaviors, although he had such an aide both at Bursch and at CVS. Whatever the virtues of Ms. Griego's classroom at Willowood, the District did not offer sufficient evidence that Student's behaviors could be managed in that classroom when no behavior supports were included in Student's IEP. This is especially so when Student would be entering the classroom after being out of school for months.

72. District could not have performed an FAA in preparation for the April 19, 2011, IEP, since Student had not been in school since the end of November 2010. However, the District did not need the results of an FAA to formulate a behavior support plan, or to develop behavioral goals, or to provide a one-to-one aide for Student. Student has had documented unique needs for behavior support for years while attending school in the District. District had knowledge of Student's needs for behavioral support. Dr. Surfis testified, without contradiction, that Student required a behavior support plan, and the assistance of knowledgeable individuals who could implement the plan, teach him adaptive skills, and who knew how to manage his behaviors. Under these circumstances, the IEP of April 19, 2011, deprived Student of a FAPE by failing to address Student's needs for behavior support. (Findings of Fact 1-165; Legal Conclusions 1, 4-28.)

Reimbursement and Compensatory Education

73. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [1055 S.Ct. 96] (*Burlington*).)

74. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the

IDEA.” (*Id.* at p. 1497.) An award of compensatory education need not provide a “day-for-day compensation.” (*Ibid.*)

75. Student requested compensatory education as a remedy, but he offered no evidence as to the type and amount of compensatory education to which he would be entitled with respect to those issues on which he has prevailed in this action. Further, Mother would not be equitably entitled to compensatory education while Student was not in school, because Mother was not justified in taking Student out of school and keeping him out of school since November 2010 in response to the biting incident of November 29, 2010. This is especially so when, as here, Mother has not provided Student any formal education while Student has been out of school. Mother’s conduct in keeping Student home from school for such a lengthy period of time is not supported by Dr. Valencia’s vague “Dear school,” letter of December 1, 2010. Dr. Valencia’s letter does not state that Dr. Valencia recommended that Mother keep Student home from school, or any other course of action. The letter does not state that Dr. Valencia had examined Student at any time. The letter contains no diagnosis. The only information in the letter regarding Student’s health is that that Student was having unspecified “physical and emotional repercussions” from the incident of November 29, 2010. The letter does not describe any symptoms of Student. The letter does not state what, if any treatment Dr. Valencia or any other health care provider was providing to Student for these “repercussions.” The letter does not request any home-hospital services. The letter states the actions Mother was taking, “for safety reasons,” but the letter does not state that Mother’s actions in seeking another school and in keeping Student home from school were a result of Dr. Valencia’s recommendations, as opposed to Mother’s own intentions, preferences and ideas. The letter does not state whether the “safety reasons” were Dr. Valencia’s reasons or Mother’s. The letter contains no information to alter the conclusion that Mother’s conduct in removing Student from school and keeping him out of school for more than a year was a disproportionate response to the biting incident of November 29, 2010.

76. Nor is Mother is entitled to reimbursement for the nominal amount of money Mother spent buying worksheets for Student to use while she worked with him at home in the morning. None of the worksheets were offered into evidence, and there was insufficient evidence as to the nature of these worksheets or that they provided Student with any educational benefit. Therefore, there is no equitable basis for reimbursing Mother any costs.

77. However, certain remedies can be fashioned to address District’s denial of FAPE as described in this Decision. First, as was stated in Legal Conclusions 36-40, and 58-60, District denied Student a FAPE by failing to perform an FBA during the 2009-2010 school year, and by failing to perform an FAA during the 2010-2011 school year, prior to the time Mother withdrew Student from school. District is unable to perform an FAA until Student returns to school in the District, but should Student enroll at Willowood, or at any other District placement, Student is entitled to an FAA as soon as is practicable. In view of the District’s failure to conduct any formal behavior evaluation of Student at any relevant time in this matter, and in view of ABC School’s status as a contractor school for the District, ABC School should perform the FAA, at District expense. If ABC School is unable

or unwilling to perform a timely FAA of Student, then any certified NPA or NPS with whom the District has a contract may perform the FAA, at District expense.

78. Second, the April 19, 2011, IEP deprived Student of a FAPE because it failed to provide adequate behavior support for Student. (Legal Conclusions 68-72.) For example, the IEP, with no explanation, failed to provide for a one-to-one aide, although Student had been assisted by a one-to-one aide both at Bursch and at CVS. The IEP also did not include behavior goals or a BSP to address Student's aggressive and non-compliant behaviors. The BSP and behavior goals drafted by Ms. Schulz in December 2010 are likely not sufficiently current to be helpful at this time. However, in view of Student's lengthy absence from school, it is likely that Student will require some behavior support should he return to school, at least until the FAA has been completed and the IEP team has met to consider the results of the FAA. Mother has expressed her confidence in ABC School's ability to provide behavior services to Student may need. Therefore, to provide behavior support for Student should he enroll at Willowood, or at any other District placement pending the FAA and the development of an IEP following the FAA, District should provide Student a one-to-one behavior aide who has been trained by ABC School in ABA techniques and strategies. If no such person is available, then the behavior aide shall be an individual who has been trained in ABA techniques and strategies by any certified NPA or NPS with whom the District has a contract.

ORDER

1. Should Student enroll at Willowood, or at any other District placement, ABC School shall conduct an FAA of Student, at District expense, as soon as practicable. Should ABC School be unable or unwilling to perform a timely FAA of Student, then any certified NPA or NPS with whom the District has a contract may perform the FAA, at District expense. After the FAA has been completed, District shall convene an IEP meeting within the statutory time or such other time as the parties may agree to discuss the results of the FAA.

2. Should Student enroll at Willowood, or at any other District placement, District is to provide Student a one-to-one behavior aide, trained by ABC School in ABA techniques and strategies, to assist Student throughout the school day, pending the completion of the FAA, and the development of an IEP as ordered herein. If no such person is available, then the behavior aide shall be an individual who has been trained in ABA techniques and strategies by any certified NPA or NPS with whom the District has a contract.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on Student's Issues A (2) (but only for the period through November 29, 2010, when Student was still attending school in the District), and C (2)(d), and District's Issue, heard and decided in these consolidated matters. District prevailed on Student's Issues A (1), A (2) (but only for the period from November 30, 2010, through October 25, 2011), B, C (1), C (2)(a), C (2)(b), C (2)(c), D (1) and D(2) heard and decided in these consolidated matters.

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

Dated: April 3, 2012

_____/s/_____
ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings