BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2012070797
v.	
NATOMAS UNIFIED SCHOOL DISTRICT.	

DECISION

Charles Marson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on October 1, 2, 3, and 4, 2012, in Sacramento, California.

Colleen A. Snyder, Attorney at Law, represented Student. Christian M. Knox, Attorney at Law, assisted Ms. Snyder on the first day of the hearing, and Connie Ajay, a paralegal, assisted Ms. Snyder during the rest of the hearing. Student's Mother and Father were present throughout the hearing, and Student's Grandfather was present for much of it.

Marcella L. Gutierrez and Colleen R. Villarreal, Attorneys at Law, represented the Natomas Unified School District (District). Julie Kehoe, the District's Director of Special Education, was present throughout the hearing on behalf of the District.

Student filed his request for a due process hearing (complaint) on July 25, 2012. The matter was continued on September 12, 2012. At hearing, oral and documentary evidence were received. At the close of the hearing, the matter was continued to October 25, 2012, for the submission of closing briefs.[1] On October 24, 2012, at the request of the parties, the matter was further continued to October 29, 2012. On that day, the record was closed and the matter was submitted for decision.[2]

[1] Student's Closing Brief has been filed as Student's Exhibit 36, and the District's Closing Brief has been filed as District's Exhibit 74.

[2] This matter was previously consolidated with *Natomas Unified School Dist. v. Student*, OAH Case No. 2012090361, in which the District sought an order that its IEP offer of August 20, 2012, as modified on August 28 and September 18, 2012, provided Student a

ISSUES[3]

I. Did the District procedurally deny Student a free appropriate public education (FAPE) from March 14, 2012 to the date of hearing by:

A. Failing to make clear written individualized education program (IEP) offers in correctly dated IEP documents;

B. Failing to provide progress updates on annual goals to the IEP team;

C. Failing to convene a timely IEP team meeting that included all required personnel to review his Functional Analysis Assessment (FAA); and

D. Failing to convene a timely annual IEP team meeting?

II. Did the District substantively deny Student a FAPE from March 14, 2012, to the date of hearing by:

A. Failing to provide an appropriate behavior support plan (BSP) or adequate behavioral services**,** and failing to implement Student's behavioral goals;

B. Failing to offer adequate behavioral services in the August 20, 2012 IEP, as modified on August 28 and September 18, 2012;

C. Failing to implement his February 21, 2012 IEP, as required by the parties' March 13, 2012 Settlement Agreement, by:

1) Failing to deliver adequate occupational therapy (OT) and a sensory diet, including in the extended school year (ESY); and

2) Failing to implement Student's visual motor goal.

D. Without regard to the Settlement Agreement, failing to provide adequate OT, including a sensory diet, thereby impeding Student's access to his education?

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free appropriate public education. On September 28, 2012, the District voluntarily dismissed that matter.

[3] The issues set forth in the Order Following Prehearing Conference have been reworded and reordered for clarity and to reflect evidence received, stipulations and concessions made at the hearing, and arguments made in the parties' closing briefs. (See *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

CONTENTIONS

Student contends that the District denied him a FAPE procedurally from March 14, 2012, to the beginning of the hearing by failing to make clear written IEP offers; failing to furnish progress reports on annual goals; failing to convene a timely IEP team meeting with all required personnel to review an FAA conducted in spring 2012; and failing to convene a timely annual IEP team meeting as scheduled.

Student further contends that the District substantively denied him a FAPE during the same period by failing to provide an appropriate BIP or appropriate behavioral services, and failing to implement his behavioral goals. He also contends that in an IEP offer of August 20, 2012, as amended, the District failed to offer an appropriate behavioral plan and services. In addition, he contends that the District denied him a FAPE during spring and summer 2012 by failing to provide adequate OT services, both because it was required to do so under a March 2012 Settlement Agreement, and, separately, because the services actually provided were so inadequate that they impeded his access to his education.

The District contends that it committed none of the procedural violations alleged by Student, or if it did, no harm resulted from the violations. It contends that throughout the time in question, its BSP's and behavioral services were adequate to meet Student's needs and provided him a FAPE, and as a result Student enjoyed significant behavioral and academic progress. Finally, it contends that it had no obligation to deliver OT services to Student during spring 2012 because Parents refused to sign a February 21, 2012 IEP that contained those services, as they were required to do by the Settlement Agreement before that IEP could be implemented.

FACTUAL FINDINGS

Background and Jurisdiction

1. Student is a 10-year-old boy who resides with Parents within the geographical boundaries of the District. He is eligible for, and has been receiving, special education and related services in the primary category of autistic-like behaviors and the secondary category of emotional disturbance. He has also been diagnosed as having attention deficit hyperactivity disorder (ADHD). By all accounts Student is smart, funny, popular, socially engaged with his peers and adults, and academically competent, particularly in math. However, since early childhood he has had difficulty controlling his behavior.

2. At present, Student is in fourth grade at the District's Two Rivers Elementary School (Two Rivers), and is primarily taught in a general education classroom. He first came to Two Rivers as a third grader in fall 2011. On December 14, 2011, Student filed a request for due process hearing (OAH Case No. 2011120454), alleging that the District had

denied him a FAPE.[4] On March 13, 2012, the parties entered into a "Final Settlement Agreement" and that matter was dismissed. However, disagreements relating to the Settlement Agreement soon arose and led to the filing of the instant complaint.

3. The period of time addressed in this Decision is March 14, 2012, the day after the Settlement Agreement was signed, to September 28, 2012, the last school day before the hearing began.

Alleged Procedural Denials of FAPE

Failure to Make Clear Written IEP Offers in Correctly Dated IEP Documents

4. An IEP offer must be clear enough that parents can understand it and make informed decisions about whether to accept or reject it, or challenge it in due process. The offer must make clear the nature and extent of the district's commitment to providing special education and related services to the student. Student claims that none of the IEP offers made to him during the relevant time was clear enough to comply with these requirements. The evidence supports his claim.

5. Student's history during SY 2011-2012 gives context to the dispute. When Student arrived at Two Rivers as a third grader in fall 2011, he was eligible for special education in the categories of autistic-like behaviors and speech and language impairment. He had difficulty adjusting to his new environment, and engaged in physically disruptive and aggressive behaviors. He punched, pushed, shoved, kicked, spit on and fought with his peers, verbally accosted and threatened them, slammed chairs, kicked walls, yelled and used profanity. He was suspended for between 13 and 20 days during the fall.[5] These behaviors occurred almost exclusively outside the classroom during unstructured times such as lunch, recess, playground activities, and waiting in lines.

The IEP of November 3, 2011

6. On November 3, 2011, Student's IEP team met to discuss Student's behavior. The District made an IEP offer that contained 30 minutes a day of resource support; new annual goals in the areas of behavior, social skills, communication and writing; a new BSP to be implemented by Roy Tenenbaum, a District inclusion specialist with behavioral training, for 200 minutes a month outside of the classroom; and OT and behavioral assessments. It did not include the ESY. Parents agreed to the offer, which was implemented.

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[4] Official notice is taken of the pleadings and papers on file in *Student v. Natomas Unified School Dist.*, OAH Case No. 2011120454.

[5] Statements in the assessments and IEP documents variously have the number of suspensions as 13, 17, or 20. A minority were in-school suspensions.

The IEP Amendments of December 19, 2011

7. In December 2011 Student was suspended after an altercation with another Student. Student then filed a due process complaint, OAH Case No. 2011120454, alleging denials of FAPE. On December 19, 2011, the IEP team met, determined that Student's conduct was a manifestation of his autism, and made some adjustments to his BSP. The parties agreed to amend the November 2011 IEP by the addition of a social skills group and the implementation of the newly revised BSP.

8. In January 2012 school psychologist Clarissa Tuttle conducted a psychoeducational assessment and an FAA of Student.[6] She found that Student met three of the five criteria for eligibility for special education as emotionally disturbed, and recommended that the IEP team consider adding that category to his IEP.

9. Occupational therapist Michael Pullman also evaluated Student in January, 2012, administering several standard test instruments.[7] He reported that Student's visual motor integration and visual perception were in the below average range, and his motor coordination was in the low range. Mr. Pullman also determined that Student lacked the fine motor coordination needed for pencil control, has significant difficulties with sensory integration, social participation and planning, and was unduly sensitive to touch. He recommended 30 sessions of therapy for 30 minutes each over the next year.

10. In mid-February 2012, speech and language pathologist Michele Coulon assessed Student for speech and language needs.[8] She reported that Student continued to have a serious deficit in pragmatic language (the use of appropriate speech in communicating with others and understanding their social needs and nonverbal behavior). For example, on the Social Language Development Test – Elementary (SLDT-E), student scored in the first percentile for interpersonal negotiation and for supporting peers. Ms. Coulon recommended increased speech and language therapy.[9]

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[6] Ms. Tuttle has a master's degree in school psychology and a pupil personnel services credential. She has been a school psychologist for the District since 2004.

[7] Mr. Pullman is an independent contractor who owns his own business and has been delivering OT in schools since 1996.

[8] Ms. Coulon has a master's degree in speech and language pathology, is licensed by the State as a speech and language pathologist, and has worked in that capacity in schools since 2009. This is her first year with the District.

[9] Student makes no claim here relating to his speech and language services.

11. Also in mid-February 2012, Holly Anthony, Student's resource teacher, conducted an academic assessment of him.[10] She reported that Student's skills in math were superior, that he was average in reading, and was low average in the areas of oral communication and writing. Taken together, her results showed that his total achievement was average. She recommended that the IEP team consider several specific accommodations and modifications.

The IEP of February 21, 2012

12. Student's IEP team met on February 21, 2012, to review the assessments and consider a new IEP proposed by the District. The District's new offer proposed to continue Student's placement in the general education classroom, and retain speech and language impairment as Student's secondary category of eligibility. It proposed goals in the areas of behavior, social skills, visual motor skills and writing. It offered 30 minutes a day of resource support, during which Student would work on written language and reading fluency, and increased speech and language therapy. It attached a BSP that contained only minor modifications to the BSP of November-December 2011. Parents did not agree to the offer, primarily because they thought the BSP was inadequate for Student's needs.

The Final Settlement Agreement

13. On March 13, 2012, the parties reached an agreement at mediation to settle OAH Case No. 2011120454, which Student had filed in December. The Settlement Agreement provided for some attorneys' fees and compensatory education. It provided for a new FAA, to be done by Dr. Greg Buch, an independent contractor, and set an IEP team meeting for April 17, 2012, to consider the assessment results and possible alterations to Student's program.[11] The parties agreed to give "appropriate deference" to Dr. Buch's recommendations. The Agreement also provided that Student would attend the 2012 ESY. The heart of the Agreement was this section:

2. Educational Program

> The parties agree to the following educational program, placement and services from the date of execution of this Agreement until such time as the IEP team agrees to any changes in Student's IEP, as set forth herein.

[10] Ms. Anthony has a master's degree in special education and a mild/moderate teaching credential, and has been a resource specialist for the District since 2004.

[11] Dr. Buch has a doctor's degree in psychology from the University of California at Los Angeles (UCLA) and is a Board-Certified Behavioral Analyst (BCBA). From 1985 to 1999 he held various positions at the UCLA Clinic for the Behavioral Treatment of Children, including as assistant director to Dr. Ivar Lovaas. Since 2005 he has been the owner and Director of Pacific Autism Learning Services.

2.1 Placement. The District shall implement the IEP dated February 21, 2012, with the additional supports set forth herein. Parents shall sign said IEP to allow for implementation of the IEP.

2.1.1 Additional S/L [speech and language] Supports. The District shall update the IEP dated February 21, 2012 to include an additional 30 minutes of individual pull-out speech and language support.

2.1.2 Clarification of OT Supports. The District shall update the IEP dated February 21, 2012 to clarify that the OT support offered to Student is individual at 30 minutes per week and includes a 60 minute per month consultation with Student's classroom teacher.

2.1.3. Sensory Diet. The District shall update the IEP dated February 21, 2012 to include sensory diet recommendations developed by the Occupational Therapist.

2.1.4. ED Classification. The parties agree that Student's secondary category of eligibility will be updated on the February 21, 2012 IEP as Emotional Disturbance ("ED").

14. The Settlement Agreement was ambiguous or silent on several matters, and this led to confusion and disagreement between the parties. Most importantly, it was not clear whether the parties contemplated immediate implementation of the February 21 IEP, with Parents' required signatures on the February 21 IEP merely a ministerial act intended as an aid to implementation, or whether Parents' signatures on the IEP was a condition precedent to implementation, without which the new program would not be implemented. [12] The language "The parties agree to the following educational program . . . from the date of execution of this Agreement" suggests immediate implementation was intended. But the language "Parents shall sign said IEP to allow for implementation of the IEP" could mean that Parents' signatures were required before the IEP took effect.

15. The Agreement also required the addition to the February 21 IEP of at least one document, and possibly two, that did not yet exist. The sensory diet proposed by the February 21 IEP had not yet been written, and it was not clear from the Agreement whether Parents' signing of the IEP would await its addition, whether it would be added after their signatures, or whether it would be agreed to separately. The Agreement also contemplated revision of Student's behavioral support at the April 17 IEP meeting in light of the findings of the new FAA. It was not clear how that expected revision related to Parents' approval of the February 21 IEP, which contained a BSP.

[12] Any reference to a date without a year is a reference to 2012.

The March 30, 2012 Version of the February 21, 2012 IEP

16. The District chose to interpret the Agreement as prohibiting the implementation of the February 21, 2012 IEP until Parents signed an updated version of it. The District did not immediately inform Parents of this interpretation, but it did not begin implementing the new levels of service.

17. A few days after the Agreement was signed, the District sent an updated version of the February 21 IEP to Parents for signature. Neither that IEP nor the communication accompanying it is part of the record, but the record does show that Student rejected the document and threatened to file a compliance complaint with the California Department of Education (CDE) if the District could not, by March 30, furnish a version of the February 21 IEP that had been properly updated to reflect the provisions of the Settlement Agreement.

18. On March 30, 2012, the District's attorneys sent another updated version of the February 21 IEP to Parents' attorney for Parents' signature with an emailed explanation that began: "Please see the attached IEP with the necessary revisions as required by the . . . settlement agreement . . . ." The email noted that the sensory diet was not attached because the occupational therapist was currently drafting it, and promised that it would be forwarded as soon as received.

19. As required by the Settlement Agreement, the updated March 30 version of the February 21 IEP added 30 minutes of speech and language support, clarified the nature of OT support, and changed Student's secondary eligibility category to ED. But the document was different from the original February 21 IEP in ways that made the District's intentions and Student's offered program impossible to determine with any certainty. The document inexplicably omitted the BSP that had been attached to the original February 21 IEP. Julie Kehoe, the District's Director of Special Education, testified at hearing that it was the District's practice to attach BSP's to IEP's, but on this occasion the BSP was omitted because Parents already had a copy of it.[13] That testimony was not persuasive. The March 30 email explained the absence of the missing sensory diet but did not mention the missing BSP. Mother had a copy of all of the February 21 IEP, yet the District reproduced the rest of it in its March 30 version.

20. The March 30 version of the February 21 IEP repeated a serious flaw in the earlier document. On the Services pages of the February 21 IEP, all five of the services intended for Student's future program had starting dates but not ending dates, in violation of

[13] Ms. Kehoe has a master's degree in educational administration and has administrative, special education and multiple subject credentials. She has been a resource teacher and has taught both general and special education classes, and has worked as an assistant principal. From 2007 through 2011 she was the Director of Special Education and Student Services for the Auburn Union School District. She has been the District's Director of Special Education since January 2012.

the IDEA's requirement that an IEP state the duration of the services offered. It was thus not possible for Parents to determine, from the February 21 offer, the length of the District's commitment to the services proposed. The March 30 version reproduced the February 21 Service pages exactly, and perpetuated that uncertainty.

21. The February 21 IEP had 14 annual goals; the March 30 version had only 11. Two behavior goals and one writing goal in the February 21 IEP have no counterparts in the March 30 version.

22. The March 30 version also altered the description of the provider of OT. In the February 21 version, the provider was described as: "Non-public agency (NPA) under contract with SELPA or district." In the March 30 version, the provider of OT was described as "District of service."

23. The actual content of the March 30 version of the February 21 IEP therefore diverged substantially from the February 21 original, and was not merely the updated IEP the District informed Parents it was. Parents did not sign the document. Ms. Kehoe testified that on April 26 she told Mother the District would not implement the new services in the Settlement Agreement until Parents signed the March 30 document, but Mother testified that this conversation did not occur. It is unnecessary to resolve this conflict in evidence. Since the March 30 document significantly diverged from the February 21 document Parents were contractually obligated to sign, any demand for Parents' signatures on it had no legal effect.

The April 26, 2012 IEP Team Meeting

24. The promised IEP team meeting of April 17, 2012, could not be held because Dr. Buch's FAA had not been completed. The meeting was rescheduled for April 26, 2012.

25. On April 26, 2012, the parties held an IEP team meeting, but the FAA was still incomplete. The notes from the meeting show that the parties discussed Student's behavior and his progress on his goals. In addition, Mr. Pullman presented the sensory diet. Mother orally consented to the immediate implementation of the sensory diet. No other alteration in Student's program was made. The one-page document memorializing the meeting was entitled "IEP Meeting Notes," but it did not purport to be an amendment or attachment to any previous IEP, had no signature line or signature, and did not have the sensory diet attached to it (as required by the Settlement Agreement).

The Misdated "February 20" IEP

26. At some time in late April or early May 2012, Parents obtained another version of the February 21 IEP. The format and fonts of the document are identical to those of the February 21 IEP, but every page of the document was misdated "02/20/2012." It contained only five of the 14 goals in the February 21 IEP and omitted the BSP attached to the original February 21 document. However, it contained the meeting notes from the April 26, 2012 IEP team meeting, so it could not have been created any earlier than April 26. It

did not have the sensory diet attached, as the Settlement Agreement required. The "February 20" version of the February 21 IEP therefore did not constitute a properly updated version of the original and was not the document Parents were required by the Agreement to sign.

27. At hearing no one could explain the origin or purpose of the misdated February 20 IEP. Because of the appearance of the document, Ms. Kehoe conceded that it must have originated with the District, but she could not further identify it. Mother testified she received it sometime in April but did not remember how it was sent. Parents did not sign the document.

The May 24, 2012 IEP Team Meeting and Proposed Amendment

28. Mother attended an IEP team meeting on May 24, 2012, the last day of the regular school year (SY), to discuss the recently-completed FAA. There, Dr. Buch presented the FAA and his recommendations, and the District proposed changes to Student's behavioral support based on those recommendations. The document memorializing this meeting was entitled "IEP Team Amendments Page." It began with the phrase "[[c]hanges to the IEP dated 2/20/12:" and ended with a signature line for a parent followed by: "I agree to the contents of the amendment to the IEP dated 2/20/2012."

29. The May 24 amendments page was ambiguous and unclear because it did not propose any specific amendment. Nearly all of its contents simply recount the conversations that occurred at the meeting.

30. The May 24 amendments page was also ambiguous because it failed to clearly describe the proposed changes to Student's program or the District's commitment to them. The key paragraph was:

> Social Skills Trainings – 90 minutes/day aide support, 60 minutes social and 30 minutes of monitoring the self management. Greg [Dr. Buch] recommends an ABA trained aide and that it would need to be flexible on the time to address the schedule of the school day. The social goals will be addressed during this time. This would also be monitored by a BCBA during the 60 minutes social skill time and time for training.

The first sentence of this paragraph did not make clear whether the aide was to provide the 60 minutes of "social" and 30 minutes of "monitoring the self management," or whether the BCBA or someone else would. The proposal contained no statement of anticipated location, frequency, or duration of service. The portion that began "Greg recommends ..." may have referred only to recommendations of the assessor, not to any proposed obligation of the District. In the Settlement Agreement the District had promised only to give Dr. Buch's recommendations "appropriate deference," not to adopt them.

31. The May 24 amendments page was also confusing and unclear because it purported to be an amendment to the misdated February 20 IEP, which itself was confusing and unclear. Mother did not sign the amendment.

The June 14, 2012 Version

32. The District sent another IEP offer to Parents on June 14, 2012. The email accompanying the document, from one of the District's attorneys, stated in its entirety: "Attached is the sensory diet and the updated IEP for Parent's signature. Please return as soon as possible." Parents did not sign the document.

33. The June 14 version contained the February 21 BSP, which the District states it included because a new one had not yet been developed. Why that should not have been done in the two previous updated IEP offers is not explained.

34. The February 21 IEP contained 14 annual goals, but the June 14 document contained only 13. One of the behavioral goals in the February 21 original had no counterpart in the June 14 version. In addition, the June 14 version rejected two provisions of the Settlement Agreement. It reverted to the amount of speech and language support offered on February 21 and did not contain the additional 30 minutes a week called for by the Settlement Agreement, nor did it contain the clarification of OT services called for by the Agreement. The June 14 version therefore did not constitute a properly updated version of the February 21 document and was not the document Parents were required by the Agreement to sign.

35. At hearing Ms. Kehoe testified that the June 14 document was actually the District's new offer for SY 2012-2013. If so, all 13 goals in the June 14 version contained dates or baselines that made them either meaningless or obsolete. By June 14, 8 of the proposed goals had already expired by their own terms. Four behavioral goals, taken from the February 21 IEP, had May 5, 2012, as the target dates for completion, a date that had already passed. (One of those contained a short-term objective to be realized by February 2012.) Two goals for social awareness, one for communications, and one for capitalization and punctuation were also reproduced from the February 21 IEP with May 5, 2012 target dates for completion.

36. Ms. Kehoe's explanation of the presence of the expired goals in the June 14 offer was confusing and unpersuasive. She testified that the expired goals were in the IEP because Parents did not agree to them on February 21, "so we were not taking these goals out because we didn't have consent for the new goals." The old goals were included, she testified, because "we had not reached agreement on these goals yet." This testimony did not explain why the District did not change the dates on the old goals if they were being proposed again for the next school year. Ms. Kehoe also testified that by June 14, 2012 the IEP team had not yet finished discussing Student's goals and would only do so in August. That testimony, which implied that the June 14 document was a draft to be discussed later, cannot be reconciled with her earlier testimony that the June 14 document was intended as

the District's completed offer for SY 2012-2013, nor with the accompanying email requesting a prompt signature on the document.

37. The remaining five of the proposed goals in the June 14 offer had target dates in May 2013, but showed no alterations in the baselines from their February 21 versions even though District witnesses testified that Student had made significant academic and behavioral progress in the meantime. Three of these five goals had short-term objectives to be realized by May 2012, a time that had already passed.

38. On the Services pages of the June 14, 2012 offer, the District proposed six services. Five of them had start dates (ranging from November 2011 to May 2012) that had already passed. All five of those had blank ending dates. The sixth, for speech and language, had an ending date of February 21, 2012, almost four months in the past.

39. The June 14 document contained the comments and signature pages from the IEP team meetings of February 21, April 26, and May 24, 2012. No one at hearing explained why an offer for the subsequent school year would contain those documents or what a parental signature would have meant for Student's program.

40. If the June 14 document was the District's offer for SY 2012-2013, its development, without an IEP team meeting and without any participation by Parents, likely violated several other procedural protections of the IDEA. But Student does not complain of any of those potential violations, so they are not further addressed here.

The August 20, 2012 IEP Team Meeting and IEP Offer

41. The parties attended an IEP team meeting on August 20, 2012, which produced an offer that, with two exceptions, was clear enough for Parents to understand. The parties reached agreement on most aspects of Student's program. In an "addendum" dated August 21, Mother wrote: "I consent to the IEP with the following exceptions, concerns and requests:" She then listed seven concerns with the proposed IEP. In response, on August 28, the District sent to Parents its own Addendum to the August 20 IEP, which would have amended the August 20 document and attempted to clarify the matters Mother raised on August 21. The District requested that Parents sign the Addendum, but they did not.

42. The August 20 IEP contained one minor contradiction. At the August 20 IEP team meeting, according to the meeting notes, Dr. Buch presented his new behavior plan and Ms. Kehoe "recommended a behavioral aide will be provided full time for the next 40 days by Learning Solutions," a non-public agency [NPA]. Yet in the IEP document given to Parents after the meeting, the provider box next to behavioral intervention services stated: "District behaviorist to overlap services during this time." Unsure of the meaning of this, Mother wrote the next day requesting clarification that the service would be provided by Learning Solutions. On August 28 Ms. Kehoe responded in the District's addendum clarifying that, as stated in the meeting notes, Learning Solutions would be providing

behavior support until September 28.[14] Thus the evidence showed that between August 20 and August 28, the proposed IEP was contradictory in identifying the provider of behavioral support.

43. More importantly, the August 20, 2012 IEP was unclear because three services and several accommodations and modifications offered to Student had no specific duration. The behavior support and behavioral aide were to be provided until September 28, 2012, and the annual goals contained target dates and short-term objectives through August 2013, but the ending dates for specialized academic instruction (resource support), speech and language support, and occupational therapy were left blank. In addition, the ending dates for several accommodations and modifications were left blank. These included consultation among special and general education staff; use of a writing checklist and a graphic organizer; additional time for tests; use of a word processing program; use of context cues for reading; checks for understanding; reduction in quantity of assignments; breaking assignments into smaller pieces; pairing visual with verbal instruction; and the use of visual boundaries in writing. So the August 20 IEP offer, though it clarified many things previously left uncertain, was silent and noncommittal about the duration of the District's commitments.

The September 18, 2012 IEP Team Meeting and Proposed Amendment

44. Since the behavior support promised in the August 20, 2012 IEP offer was set to expire on September 28, the District held an IEP team meeting on September 18 to review Student's behavioral progress. Mother attended the meeting. In the 30 days following Parents' partial approval of the August 20 IEP, Student's behavior support had been provided by staff from Learning Solutions under the supervision of its clinical director Saxony Dominguez. At the September 18 meeting, Ms. Dominguez described the data she and her staff had generated, and presented a detailed written plan for a transition from aide support by her NPA to aide support by District staff. That transition plan had no specific date for completion of the transition, but depended upon variations in Student's future behavior. For example, the plan generally provided for decreasing NPA support in increments of 30 minutes a week, but also provided that if Student's undesirable behaviors increased more than 20 percent beyond current levels, or his encouraged replacement behaviors decreased by that amount, another IEP team meeting would be held at which the plan would be reconsidered. The meeting notes for the September 18 meeting and the transition plan were presented to Mother for her signature as an amendment to the August 20 IEP. Parents did not sign the document.

45. Ms. Kehoe testified that she believed the transition plan attached to the proposed amendment of September 18, 2012, was sufficiently clear to establish that the District had offered to continue Student's aide support throughout the school year "if needed." However, nothing in the transition plan supported that interpretation. The plan merely provided for the transition of Student's aide support from an NPA to district staff; it

[14] Had Mother signed the proposed addendum, it would have operated to amend the August 20 IEP, not create a contradiction in it as Student contends.

did not address the duration of the aide support itself. Ms. Dominguez drafted the transition plan, and it was not her role, as an NPA provider, to commit the District to a specific term of aide support. She apparently alluded to that when, at the September 18 meeting, the notes indicate she spoke of "aide support, if any," when the transition to District staff was completed. Moreover, nothing in the proposed September 18 amendment or the transition plan clarified the duration of the resource support, speech and language support, occupational therapy, or the accommodations and modifications offered in the August 20 IEP without ending dates. The length of the District's commitment to those proposed elements of Student's program remained unknown.

46. Mother responded in writing to the offered amendment on September 25, 2012, by questioning whether the District had committed itself to implementing Learning Solutions' transition plan and raising additional concerns about the August 20 IEP that had not yet been resolved to her satisfaction. In an email exchange on September 28, the last school day before the hearing, Mother stated that she was confused by all of the addendums and did not agree to all of the statements in them. Ms. Kehoe responded that the District's offer consisted of the August 20 IEP; the August 28 District addendum; and the amendment proposed on September 18. The exchange ended with a request by Mother that the District's offer "needs to be written into [Student's] IEP."

47. The evidence set forth above showed that from March 30 to September 28, 2012, the District's numerous IEP offers, addenda and proposed amendments to Student's program were unclear, confusing, noncommittal, and until August 20 simply incoherent. As a result, the evidence established that there was no time between March 30 and September 28, 2012, that Parents could adequately understand the District's offers, or could accept them, reject them, or challenge them in due process based on adequate information. This lack of clarity constituted a procedural violation of the IDEA.

Failure to provide progress reports on annual goals to the IEP team

48. An IEP must state when periodic reports on the progress the child is making toward meeting his annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. In compliance with that requirement, Student's November 2011 IEP provided that Parents would receive reports on Student's progress on his goals every trimester. The parties understood that the District would put those reports in Student's backpack, along with Student's trimester report card, and send them home on May 24, 2012, the last day of the academic year,.

49. The parties dispute whether the District actually sent the required progress reports to Parents in Student's backpack on May 24, 2012, along with his report card.[15]

[15] In Student's complaint and prehearing conference statement, and in the Order Following Prehearing Conference, this violation was characterized as a failure to provide progress reports to the IEP team. It became clear at hearing, however, that Student's contention only concerned failure to provide progress reports to Parents. Student does not

Mother testified that she never received them and a search of her files did not reveal them. District witnesses testified that the progress reports were printed out and sent to Ms. O'Connor, Student's third grade teacher, for inclusion with Student's report card. Ms. O'Connor was not asked, during her testimony, whether she actually sent the progress reports home.

50. It is unnecessary to resolve this conflict in testimony. The District introduced in evidence the progress reports that were allegedly sent home, and their content was so deficient that they did not discharge the District's duty to provide progress reports to Parents. It therefore does not matter whether Parents received them.

51. Since the District was refusing to implement the February 21, 2012 IEP it regarded as lacking parental consent, the goals on which Student was actually working were the six goals contained in the November 2011 IEP. The progress reports produced by the District at hearing contained a report on only one of those six goals. The report on that goal, a writing goal for capitalization and ending punctuation, was adequately detailed. But those reports did not address Student's progress on his November 2011 goals concerning behavior (2 goals); social skills (2 goals), or communication.

52. The progress reports introduced by the District did mention three other goals, but they were behavior goals from the February 21, 2012 IEP, which the District insists was not being implemented. Notwithstanding the District's position, Mr. Tenenbaum testified without contradiction that he was in fact implementing the behavioral goals in the February 21 IEP, and the fact that he wrote progress reports on those goals confirms that testimony.[16] Probably because by April 26 those goals had existed for only six weeks (not counting Spring Recess), there are no periodic reports on Student's progress toward them; there are only conclusory claims that the three goals had been met.

53. Two District witnesses addressed the possible absence of some progress reports by testifying about the programming of the Special Education Information System (SEIS), the database the District uses for IEPs. Ms. Coulon testified that SEIS permits placing progress reports in only three areas, and when one is full, older material must be deleted and moved elsewhere. A progress report remains in the "future" section for 7 days, and then is "affirmed" and moved to the "current" section, displacing earlier material from there to the "history" section. Ms. Anthony explained that the process of "affirming and attesting" portions of an IEP "locks" them in to the system so that they cannot be changed, and described some difficulties in printing out progress reports. However, Ms. Coulon also testified that the older material could be retrieved from the "history" section, and no one explained why Student's reports were not so retrieved. The complexities of SEIS may

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contend that the District failed to provide or make available adequate information about Student's progress on his goals to the other members of the IEP team.

[16] Mr. Tenenbaum has a moderate-to-severe teaching credential and some behavioral training, and has been an inclusion support teacher for the District since 2008.

explain the missing progress reports, but they do not diminish the District's responsibility to provide them to Parents.

54. There was no evidence, and the District does not argue, that any progress reports on annual goals other than those the District introduced at hearing were sent to Parents during the time at issue. Those progress reports affirmatively show that the District failed to report to Parents on Student's progress toward five of the six goals on which he was actually working. This was a procedural violation of the IDEA.

Failure to Convene a Timely IEP Team Meeting to Review Dr. Buch's FAA

55. A District must conduct an assessment and hold an IEP meeting to discuss the results within 60 days of receiving consent to an assessment plan. However, in calculating whether the meeting occurred within 60 days, the days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays are not counted.

56. Here the District received Parents' signed consent for the FAA on March 13, 2012, and held a meeting to discuss the results on May 24, a period in excess of 60 days. But Parents did not provide written permission for Dr. Buch, an outside provider, to interview school staff or visit Student's classes until March 21. And the District was on Spring Recess on Friday, April 6, and during the week of April 9. Student no longer argues that the District violated the IDEA's 60-day timeline for convening an IEP team meeting.

57. Student does argue that the District violated the Settlement Agreement by not conducting the team meeting to review the FAA by April 17, but OAH lacks jurisdiction to adjudicate that claim unless it resulted in denying Student a FAPE, and as explained below, it did not.

Failure to Ensure that All Required Personnel Attended the May 24, 2012 IEP Team Meeting

58. An IEP team must include a regular education teacher of the child if the child is, or may be, participating in the regular education environment. The attendance of required IEP team members is excused if the parent and the school district consent in writing, and the IEP team member provides input in writing to the IEP team prior to the meeting.

59. The District set the May 24, 2012 IEP team meeting on the last day of the school year, a day on which Student's general and special education teachers could not attend. The evidence showed that the District orally asked Mother to excuse the two teachers, and she did so, but the District did not obtain that waiver in writing as the law requires. There was no evidence that the absent teachers provided any written input to the IEP team prior to the meeting. So, as it now admits, the District committed a procedural violation of the IDEA in failing to have Student's general and special education teachers at the May 24, 2012 meeting, failing to obtain a written waiver of their presence, and failing to ensure that they provided written input to the team prior to the meeting.

Failure to Convene a Timely Annual IEP Team Meeting

60. The IDEA and state law require that a district review a student's IEP not less frequently than annually to determine whether his goals are being achieved and to make any appropriate revisions. Student contends that "during the 2011-2012 school year" the District failed to have an annual meeting to review and revise his program. His contention is based on the facts that on the first pages of his November 3, 2011, and February 21, 2012 IEP documents, the District stated that his next annual meeting would occur on May 5, 2012; and that no such meeting was held.

61. Student's argument is unpersuasive in part because it conflates two separate school years. Student's program for SY 2011-2012 was first established at an annual IEP meeting on May 5, 2011. It was reviewed and revised on November 3, 2011. It was again reviewed, and revisions proposed, on February 21, 2012. Student does not explain how the meetings of May 5 or November 3, 2011, could fail to discharge the District's obligation to meet at least annually to review and consider revising his program for the SY 2011-2012. He does argue that the February 21, 2012 meeting failed to discharge that requirement, because the meeting was not labeled or announced as an annual meeting and because, he contends, his progress toward his annual goals was not reviewed at that meeting.

62. To the extent that Student's argument depends upon any failings of the May or November, 2011, or February 21, 2012, IEP team meetings to fulfill the annual meeting requirement, Student waived any such claim in the Settlement Agreement of March 13, 2012. In the Agreement Student waived any and all claims up to that date concerning his previous due process complaint, all "related claims," and "any and all issues to date related to and arising from Student's placement, and services . . . ."

63. To the extent that Student's argument depends upon the District's failure to hold an IEP team meeting on May 5, 2012, simply because it was originally scheduled for that date on previous IEP documents, his argument fails because the failure to hold the meeting did not affect the SY 2011-2012. The annual meeting announced for May 5, 2012, was not intended to be Student's annual meeting for the almost-completed school year. By its timing alone, it was obviously intended to consider Student's program for the following school year, 2012-2013. As the May 5, 2011 meeting illustrates, it was the District's practice to have an annual meeting in May to consider Student's program for the following academic year. And the August 20 IEP meeting, which was labeled an annual meeting and did propose a program for at least the start of the SY 2012-2013, complied in all respects with the annual meeting requirement. Student's contention is unpersuasive because he essentially argues that the District violated the annual meeting requirement for SY 2011-2012 by not holding the annual meeting intended to consider his program for SY 2012-2013.

64. Moreover, there is no legal requirement that a district hold an annual IEP team meeting labeled or announced as such; or that it be held at any particular time during the school year; or that it be held on the date first announced; or that the meeting fulfill all of the functions of an annual meeting in a single meeting. The statutory requirement is not even

attached to any specific school year. As long as the District met at least as often as annually to review Student's progress on his goals and consider any necessary revisions, it complied with the requirement.[17] The evidence showed it did so here.

Prejudice from Procedural Violations

65. Not every procedural error requires a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits.

Failure to Make Clear Offers

66. The evidence showed that the District's failure to make clear offers of special education and related services to Student during the time at issue substantially impeded Parents' opportunity to participate in the decision-making process. At no time during the period in question did the District make an offer to Student that was clear enough for Parents to decide, based on adequate information, whether to accept it, reject it, or challenge it in due process. From March 14 through August 19, 2012, the District's offers were so poorly described, unexplained, conflicting and confusing that its actual intentions towards Student's program were incoherent. From August 20 to September 28, the District's offers were clearer but fatally noncommittal.

67. In its closing brief the District portrays the offers of March 30, "February 20," May 24, and June 14, 2012, as simply repeated attempts to obtain Parents' compliance with the Settlement Agreement by signing a version of the February 21 IEP properly updated as the Settlement Agreement required. It claims that Mother understood all these offers and just "deliberately obstructed" the implementation of the February 21 IEP by not signing the documents. These claims are not supported by the evidence. At no time during the period in question did the District ever present to Parents for their signatures an accurate version of the February 21 IEP, properly updated as the Settlement Agreement required. The documents actually presented were confusing and unclear, and in fact confused Parents.

68. The March 30 version of the February 21 IEP understandably lacked a sensory diet because, as the parties knew, that document had not yet been created. But it also lacked a BSP, which was perhaps the most important part of the IEP to Parents. A box on one page of the February 21 IEP indicated that a BSP was attached, but there was no way to tell what the BSP contained unless it was actually attached. In addition, the comments in the February 21 IEP stated that "The BSP will be revised based on the new assessment within the next 10 days." The March 30 version repeated that claim. Since no meeting on the new FAA was

[17] The District's August 20 meeting was not held until the fourth school day of SY 2012-2013, but Student does not contend that the District failed to have an IEP in place by the beginning of the school year, as the law requires.

scheduled until April 17, what the District meant on February 21 by stating that the BSP would be revised in 10 days, or which assessment was referenced, is obscure. It was not possible for Parents to know what the District intended by omitting the BSP from the March 30 document, or what behavioral support Student would have had if they had signed it.

69. The March 30 document also inexplicably lacked 3 of the 14 goals in the original February 21 version, and altered the description of the proposed provider of OT. If Parents had signed the March 30 version, they would have sacrificed three goals and probably a BSP, and might have consented to a change in the provider of OT, yet none of this was explained to Parents. And as with the February 21 offer, the absence in the March 30 version of ending dates for the offered services left Parents unable to know how long the services would last.

70. Asked why she did not sign the March 30 version, Mother mentioned the missing sensory diet. At another point she mentioned the missing BSP. She then testified that by that point "I was just confused, and I thought that [the district] would be implementing what was written at the mediation [the Settlement Agreement]."

71. The District argues that since Mother at hearing gave specific reasons for not signing the March 30 and other documents, she must have understood them. That conclusion does not follow. Mother's testimony about not signing the March 30 document illustrates that she could at once have specific reasons for not signing, and still be confused. Objectively, the District's March 30 offer, and later versions of it, were both specifically objectionable (because they diverged from the February 21 IEP and the District's promises in the Settlement Agreement) and confusing (as illustrated by the unknown status of the BSP). The District's assertion that Mother actually understood these documents has no basis in the evidence.

72. The "February 20" document was not just misdated; it lacked a BSP and the sensory diet, and had only 5 of the 14 goals in the original February 21 version. Since at hearing Ms. Kehoe could not explain the origin or purpose of the document, it is certain that Parents could not understand it either.

73. The May 24 amendment was noncommittal and in key respects unclear. Parents could not tell from it with certainty what services the District was proposing or whether the District intended to commit itself to implementing the steps described only as Dr. Buch's recommendations.

74. The email accompanying the June 14 offer described it as an "updated" version of the February 21 IEP, and in many respects it was. But it lacked one of the goals in the February 21 IEP and contradicted the provisions of the Settlement Agreement governing speech and language services and OT consultation.

75. The June 14 document fares no better as the District's offer for SY 2012-2013, which Ms. Kehoe testified it was. During her testimony, Holly Anthony, Student's resource

teacher and case manager, was shown the combination of old and new goals in the June 14 document and became noticeably confused in attempting to explain them. Mr. Tenenbaum, Student's behavioral aide, appeared similarly confused by the goals. If the District's attorneys and staff cannot agree on the nature of the June 14 document, it is safe to conclude that Parents could not be expected to understand it.

76. The District's offer of August 20, as amended on August 28 and September 18, at least spelled out in understandable form the special education and services Student could expect if Parents signed it. On August 28 the District clarified the contradictory descriptions of the behavioral services provider, making Parents' confusion on that point brief. However, the August 20 IEP was unclear in the critical respect that there was no way to tell how long the District was committed to providing that program. Except for the behavioral support, which expired on September 28, the ending dates for Student's program were left blank. Mother testified this fact mattered to her when she decided not to sign the document, and that reaction was reasonable. Particularly for the parents of autistic children – who usually have difficulty with transitions and change – it can be critical to know whether a district is committed to delivering a certain program for a school year, or a trimester, or simply a month or a week or two. Because the District declined to commit itself to the duration of the August 20 program, Parents could not have been expected to make an informed decision whether to accept, reject or challenge it.

77. When the parties settled their previous litigation on March 13, they expected the February 21 IEP to determine Student's program for the rest of SY 2011-2012. It was not until the next school year that any of the District's offers even began to approach the degree of clarity required for intelligent decision-making by Parents. Parents thus lost the ability, for the rest of SY 2011-2012, to make an informed decision whether to accept, reject or challenge the program the District proposed for Student. This loss was not cured by the August 20 meeting, which addressed the subsequent school year, and could not be retroactively cured because the school year to which it pertained had passed. And when, on August 20, the District finally offered a coherent program, Parents still could not know how long the District could be expected to provide that program.

78. Thus for more than six months and through four to six offers (depending on how they are counted), the District's ongoing procedural violation deprived Parents of the information they needed to make informed decisions whether to accept, reject or challenge the District's offers. This significantly impeded their right to participate in the decision-making process regarding provision of a FAPE to their son, and denied Student a FAPE.

Failure to Provide Progress Reports on Annual Goals

79. Student did not discharge his burden of demonstrating that the District's procedural violation in failing to provide adequate progress reports at the end of SY 2011-2012 had any significant impact on his education, his program, or his Parents' participatory rights. Student's goals were not discussed at the April 26 or May 24 IEP team meetings, so the absence of adequate information on his progress on his goals had no apparent impact on

his program at those times. Student's progress on his goals was reported orally to Parents on April 26 and again on August 20. On the latter date Parents and the District were able to agree on goals that are now in effect, and there was no evidence that there are any defects in these goals occasioned by an absence of information on his previous progress. The evidence did not show that this procedural violation separately denied Student a FAPE. It did, however, exacerbate the confusion surrounding the IEP process occasioned by the failure of the District to make clear offers.

Failure to Have Teachers at the May 24 IEP Team Meeting

80. Student did not discharge his burden of demonstrating that the absence of his general and special education teachers at the May 24 IEP team meeting had any significant impact on his education, his program, or his Parents' participatory rights. Because Student is placed in general education and his behavioral supports are implemented there, the presence of those teachers at a discussion of Student's behavioral supports was essential to sound decision-making. But his teachers were present on August 20 and did participate in that discussion, so the District's error in failing to ensure their presence on May 24, the last day of school, was cured. There was no evidence that the absence of an adequately discussed behavioral plan had any impact on Student's education during the ESY or the first three days of SY 2012. This procedural violation did not separately deny Student a FAPE. It did, however, exacerbate the confusion surrounding the IEP process occasioned by the failure of the District to make clear offers.

Alleged Substantive Denials of FAPE

Failure to Provide Adequate Behavior Plan and Services

March 14 to August 20, 2012

Behavior Plan

81. In order to provide a FAPE, an IEP must adequately address a student's unique needs and must be reasonably calculated to enable him to receive educational benefit.

82. When a special education student's behavior impedes his learning or that of others, a district must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. In California that consideration frequently results in a BSP, though no statute or regulation uses that term.

83. For more serious behavioral problems, California law requires the creation of a Behavior Intervention Plan (BIP) based on an FAA. Both the BIP and FAA are subject to many detailed regulatory requirements. The behavioral plans attached to Student's IEPs are both denominated BSP's, though the February 21, 2012 BSP resulted from an FAA. Student uses the terms BSP and BIP interchangeably, and does not make any argument based on the difference between BSP's and BIP's, nor does he argue that the District failed to follow the

more stringent technical requirements for BIP's or FAA's. Because the difference between a BSP and a BIP does not matter in this case, the term BSP is used throughout.

84. As noted above, Student's behavioral difficulties in fall 2011 were manifested in aggression toward his classmates during unstructured times outside of class. Student was social and willing to engage his peers, but he was inflexible and unwilling to compromise when they did not agree to do what he wanted. He had difficulty standing in line with them, perceived them as invading his personal space, and reacted accordingly. He was suspended several times. The District's responses during the fall and winter of SY 2011-2012 were directed primarily at those manifestations, and not at in-class behaviors.

85. In fall 2011, with Parents' agreement, the District added a BSP to Student's November 3, 2011 IEP, and modified it slightly in December. Its essence was that Mr. Tenenbaum would accompany Student during his unstructured times outside of class and essentially function as a behavioral aide.

86. The BSP proposed in the February 21, 2012 IEP offer was only a slight variation on the BSP adopted in November and modified in December 2011. Since the District never implemented the February 21 IEP after the Settlement Agreement, the November–December 2011 BSP remained in effect throughout the SY 2011-2012. In the Settlement Agreement of March 13, 2012, Student waived any right to hold the District legally responsible for any defects in the design or content of the BSP's preceding that date.

87. In early February 2012, Student began to take Risperdal, an anti-psychotic medication, and his aggressive behaviors toward his peers gradually ceased. All witnesses agreed that this development was a major improvement in Student's behavior. School psychologist Clarissa Tuttle explained that the Respirdal did not by itself cure Student's behaviors, but it allowed school staff to gain more instructional control over him, and as a result he was able to make progress and benefit from the strategies staff had in place. Those strategies were "working very well" in the spring.

88. Student's cessation of aggressive behavior toward his peers greatly ameliorated his behavioral difficulties, but did not end them. Instead those difficulties were manifested largely in class, in the forms of inappropriate vocalizations (such as "Shut up" and "Quit it" and "Quiet" directed to other students) and off-task behavior such as walking around the classroom. Student now argues that after March 14, 2012, the District should have realized that his behavioral needs had substantially changed, and should have crafted a new BSP to meet those needs at some time before the end of SY 2011-2012. As a result of this failure, Student argues, his new behavioral problems so interfered with his education during spring 2012 that he was denied a FAPE.

89. Student's argument is unpersuasive for several reasons. First, during spring 2012, the District was taking steps toward a new BSP. On March 13 it agreed to obtain an FAA from Dr. Buch, who proceeded to collect the necessary data, write a report and make recommendations. The District held an IEP meeting on those recommendations on May 24

and at least attempted to adopt some of them. That was the last day of school. Dr. Buch's recommendations were eventually adopted on August 20, four school days into the new school year.

90. Second, the evidence does not support Student's claim that Dr. Buch should have completed his FAA earlier so that his new behavior recommendations could have been implemented before the end of the school year. An email from Dr. Buch dated April 13 explained why he would not be able to complete his FAA by April 17 as contemplated by the Settlement Agreement. Among the reasons for the delay were that it was not until March 21 that Dr. Buch received Parents' permission to interview school staff; that Student was absent during two scheduled data collection sessions; and that Parents had not responded to his attempts to reach them to schedule interviews, probably because they and Student had left early for Spring Recess.

91. In his April 13 email Dr. Buch stated: "we would require one more week of school attendance in order to schedule our data collection and complete our report." Student now argues, based on that prediction, that Dr. Buch should have been able to complete his FAA and an IEP meeting should have been held by at least April 23. However, that claim is wholly speculative. Dr. Buch testified at length as a witness for Student, but Student chose not to ask him why his FAA was further delayed until May 24. There was no evidence that Parents made themselves available for interviews on the schedule contemplated by Dr. Buch in his April 13 email. Thus the evidence did not show that Dr. Buch could have completed his FAA any earlier than he did, and did not show that the delay resulted from any lapse or misconduct by the District.

92. Third, Student assumes incorrectly that there was some point during spring 2012 in which the District so clearly knew of his new behavioral needs that it denied him a FAPE by failing to modify his BSP before the end of the school year. The evidence shows otherwise. Student inaccurately describes the chronology of events in his closing brief, stating: "In January 2012 [Student] began taking medication targeted at reducing his behaviors and, by late February, 2012, [Student] no longer displayed aggressive behaviors." On the contrary, Mother testified that Student began taking Risperdal around the first week of February, but for two weeks it had no discernible effect. Then the dosage was increased, and within 72 hours his aggressive behaviors "began to lessen." By the time of the February 21 IEP these developments were quite new. The comments section in that IEP reported only that Student "has begun a trial of Risperdol"; that the dosage had been increased in the previous week; and that Parents reported Student had not been as irritable at home and seemed to be able to carry on a conversation better. As Mr. Tenenbaum and Dr. Buch both reported, the changes in Student's behaviors at school occurred only gradually throughout the spring. There is nothing in Dr. Buch's assessment to suggest that these behaviors were so clear before May 24 that the District should have altered his BSP earlier. Thus there was no evidence that Student's new need for a behavior plan addressing inappropriate vocalizations and attention lapses in class was so clear to the District, before Dr. Buch reported on them on May 24, that the District should have taken action or altered Student's BSP before that date.

93. Fourth, Student did not prove that, in the absence of earlier implementation of Dr. Buch's recommendations, Student's in-class behavioral difficulties significantly interfered with his education. All witnesses appeared to agree that, though Student's behavior in spring 2012 was not optimal, it was far better than it had been in the fall and winter. He no longer attacked his peers, for example, and no longer was suspended. Mr. Tenenbaum and Ms. O'Connor both testified that Student's behaviors improved markedly during this period. Ms. O'Connor added that Student was far from the only third-grader engaged in inappropriate vocalizations in her classroom, that Student was actually one of her more pleasant students, and that his behavior was about average among her third-graders.

94. No professional testified in support of Student's argument that his in-class inappropriate vocalizations and inattention significantly damaged his access to his education during spring 2012. Dr. Buch, who had been gathering data personally and through his staff on Student's in-class behavior during the spring, would have been the most obvious witness to have addressed the issue, but Student chose not to ask him about it. Dr. Buch reported on May 24 that Student's in-class behavioral needs were "significant," and recommended in-class support by a behavioral aide and consultation with a BCBA, but he did not report that these behaviors were depriving Student of access to the curriculum or the ability to achieve meaningful academic or behavioral benefit from his current program. At hearing he said that Student's vocalizations "impeded" his access to education, but when asked whether the vocalizations affected his educational progress, he testified he did not know. The closest Dr. Buch came to offering testimony that supports Student's argument was his comment that the February 21 BSP was inappropriate and inadequate to address the new behaviors. That was to be expected, since by February 21 the new behaviors were not evident.

95. Thus there was no evidence that the District should have proposed to alter Student's BSP any earlier than it did, and no evidence that Student's new in-class behaviors were so serious that they significantly detracted from Student's access to his education.

Behavior Services

96. Student also argues that, entirely aside from any shortcomings in the BSP being implemented, the behavioral supports actually furnished to him during spring 2012 were inadequate to allow him to access his education and obtain meaningful benefit from it. The evidence did not support that claim either.

97. Student received extensive behavioral support in spring 2012 both in and out of class. Notwithstanding the District's official position that the February 21 IEP was unapproved, Mr. Tenenbaum testified that during spring 2012 he implemented his portion of the February 21 BSP.[18] He assisted Student by providing consultation with school staff, monitored use of a visual reward chart, worked one-to-one with Student to encourage appropriate behavior, supported him during unstructured times, helped with

[18] The differences between the November-December 2011 BSP and the February 21, 2012 BSP are minor.

accommodations, and facilitated his social skills. He implemented the six behavior strategies in the BSP. And though the IEP did not call for Mr. Tenenbaum's presence in class, he testified he did in fact assist Student in class when he needed it. Ms. O'Connor testified that Mr. Tenenbaum was in class with Student "a lot."

98. Part of Student's behavioral support involved his daily use of a checklist on which he evaluated his own behavior. If he did well enough he would receive a tangible reward such as a snack. Mr. Tenenbaum, who spot-checked Student's honesty in using this form, testified he was very honest and filled it out accurately. Ms. Tuttle, the school psychologist, testified that he responded well to this incentive system. Dr. Buch testified that in his opinion the checklist was too vague, but the testimony of Ms. Tuttle and Mr. Tanenbaum established that it was effective. There was no evidence that any flaw in the checklist had any negative consequence for Student's behavior. Dr. Buch also testified that neither he nor his staff saw any behavior intervention plan being implemented. However, according to his FAA, their total observation time was 8.5 hours, so that testimony was less persuasive than the testimony of those, like Mr. Tenenbaum, who worked with Student every day.

99. Mr. Tenenbaum testified that he allowed Student, if stressed, to take a break outside of class. Earlier in the year, Mr. Tenenbaum had to initiate the breaks, but by spring Student had made sufficient progress to make those choices on his own. Both Mr. Tenenbaum and Ms. O'Connor testified this system was helpful in relieving Student's stress and tension.

100. Mr. Tenenbaum also testified that he was implementing the behavioral goals in the February 21 IEP. Why he was implementing those goals at a time when the District was refusing to implement the February 21 IEP is not clear from the record, but Mr. Tenenbaum's testimony that he was doing so was uncontradicted, and was confirmed by the fact that he filled out progress reports on the February 21 IEP's behavioral goals, rather than the ones from the November 2011 IEP that were actually in effect. Mr. Tenenbaum's implementation of those goals established that, contrary to Student's contention, the District actually did implement the behavioral goals in the February 21 IEP.

101. During spring 2012 Student received social skills training in a group. Earlier in the year Student received that training during a class period entitled What I Need (WIN) time. Dr. Buch testified that Mr. Tanenbaum told him that at some point during the year Student ceased receiving social skills training during WIN time. But that does not mean he received no social skills training at any time; Mr. Tenenbaum testified that he made sure Student received social skills training every day he was with Student, even if sometimes no other student was present. In addition, Student received 30 minutes a day of push-in speech and language support that was targeted at his social skills. Student did not inquire of Ms. Coulon, who delivered this service, whether there was any shortcoming in her delivery of social skills training, and does not claim that there was.

102. Sometime in April, Mr. Tenenbaum's duties were split between two campuses, and he spent only two or three days a week at Two Rivers with Student instead of the previous five. But the evidence showed that on the days Mr. Tenenbaum was not with Student, his duties were discharged by Ms. Tuttle, Ms. Anthony, or an occasional substitute. Student now argues that, because of Mr. Tenenbaum's occasional work on another campus, it is "questionable" that Student received some behavioral assistance every day. However, it was Student's burden to prove both that Student did not receive it and that this failure had adverse consequences for his education. Student was unable to prove either of those claims.

103. Ms. O'Connor testified that in spring 2012 Student still had some behavioral difficulties in her class, occasionally disrupting others, and that he had some difficulty monitoring his behavior on returning from spring break, which was typical of many students. But in general, she testified, Student made significant progress during that spring. He was more focused, more on task, less easily agitated, and more able to monitor his own behavior and not be bothered by other students. Mr. Tenenbaum and Ms. Tuttle gave similar testimony.

104. Student does not directly dispute the testimony of District staff that he made significant behavioral progress in spring 2012. Instead he stresses that some problematic behaviors still existed, and that the District's supports did not entirely ameliorate them. That is accurate, but it does not establish that the District denied Student a FAPE. The District was obliged to address Student's in-class behaviors with individualized instruction and services so Student could access his curriculum and make meaningful progress. It did so, and he made that progress. The District was not required to eliminate his troublesome behaviors entirely.

105. Moreover, Student's argument simply assumes that any remaining undesirable behaviors by Student in class were somehow the fault of the District. No evidence supported that assumption. The record suggests there were many possible reasons for Student's behavioral difficulties other than District malfeasance. Student's home life, for example, was in turmoil during the period in question. Mother lost her job, Father's working hours were reduced, and the family home was lost to foreclosure. The family now rents, but may be required by economic circumstance to move in with Mother's father. At least two of the adults in Student's home suffered serious illnesses during the period. Student produced no evidence linking his remaining behavioral problems in spring 2012 to any act or omission by the District.

106. For the reasons above, Student did not discharge his burden of proving that the District denied him a FAPE from March 14 to August 20, 2012, either by failing to alter his BSP or by delivering inadequate behavioral support.

August 20 to September 28, 2012

Behavior Plan and August 20 Offer

107. On August 13, Dr. Buch produced a new BSP based on his May 24 FAA. It was adopted at the August 20 IEP team meeting and made part of the August 20 IEP, and Parents agreed to its implementation. Parents' criticisms of the new BSP are limited to the procedural claims discussed above; that it was vague because it lapsed on September 28 and had no further discernible ending date, and that it did not commit the District to the provision of a one-to-one aide for the rest of the school year. Student does not argue that there was any substantive deficiency in the new BSP or in the behavioral goals that accompanied it. Student's contention that the August 20 IEP offered inadequate behavioral support was therefore unproved.

Behavioral Supports

108. By all accounts, including the testimony of Ms. Dominguez, who with her Learning Solutions staff gathered substantial data on Student's behavior during September 2012, Student continued to make substantial behavioral progress in the first several weeks of SY 2012-2013. Student does not directly dispute that fact. Instead, as before, he argues that the presence of some remaining undesirable behaviors shows he was denied a FAPE. For the reasons discussed above that claim is unpersuasive: the evidence did not show either that his remaining behavioral difficulties significantly impeded his education, or that they were the result of any failings in the District's BSP or delivery of behavioral services.

109. Student notes that while Dr. Buch recommended full-time behavioral support, Student did not actually receive that support until August 28. On school days from August 15 to August 28 he received only 30 minutes a day of behavioral support. By itself, a brief failure to follow Dr. Buch's recommendations does not establish a denial of FAPE; Parents agreed in the Settlement Agreement only that Dr. Buch's recommendations would be given "appropriate deference."

110. Student does not identify any adverse educational consequence he may have suffered from the absence of a full-time aide in the first few days of SY 2012-2013. Julie Baggett, one of Student's two general education team teachers in SY 2012-2013, testified that at the beginning of the year he was more disruptive in class, yelling out things, but got much better through the next weeks. That does not establish that Student's behavior earlier in the year significantly impeded his education, and Ms. Baggett's testimony demonstrated that he made significant behavioral progress in the first few weeks of the school year.

111. In addition, although the school year started on August 15, neither Dr. Buch nor the District formally proposed full-time support until the August 20 IEP team meeting. And it was not entirely clear before August 28 that Parents had accepted the behavioral portion of the August 20 IEP. Their "addendum" of August stated that they consented to the IEP "with the following exceptions, concerns and requests," two of which raised questions

about the way the proposed IEP described the full-time behavioral support in the IEP. Student did not show by a preponderance of evidence either that the District was obliged to furnish full-time behavioral support before August 28, or that its absence between August 15 and August 28 had any educational consequence for Student.

112. For the reasons set forth above, Student did not discharge his burden of proving either that the District's BSP's were inadequate in the period in question or that the District's implementation of his behavioral support denied him a FAPE.

Failure to Provide Occupational Therapy

Individual OT, Consultation, and Visual Motor Goal

113. In his OT assessment of January 13, 2012, Mr. Pullman recommended that Student receive 30 sessions of individual OT, of 30 minutes each, over the course of a year to address visual motor and sensory processing skills. The February 21 IEP included those 30 sessions of individual OT and a visual motor goal aimed at making Student's writing legible, which Mr. Pullman was to implement. On March 13, in the Settlement Agreement, Parents accepted the February 21 IEP with certain modifications, including one that added to the offered OT 60 minutes a month of consultation with Student's classroom teacher. Mr. Pullman testified, and the parties agree, that he never delivered any sessions of individual OT to Student during SY 2011-2012 and delivered only one, of approximately 45 minutes in length, during the ESY. In addition, Mr. Pullman did not implement the consultation or the visual motor goal. Mr. Pullman declined to provide those OT services during the regular academic year because he believed Parents had not agreed to the February 21 IEP.

114. The District argues that it was justified in refusing to provide the promised individual OT to Student because Parents refused to sign a properly updated February 21 IEP. Student argues that the Settlement Agreement itself constituted that consent; that the individual OT thus became part of the District's IEP obligation; and that its failure subsequently to deliver the individual OT constituted a material departure from that obligation and therefore denied Student a FAPE. In order to resolve that dispute it is necessary to interpret the Settlement Agreement.

115. The Settlement Agreement provided, in relevant part: "The District shall implement the IEP dated February 21, 2012, with the additional supports set forth herein. Parents shall sign said IEP to allow for implementation of the IEP." That language is followed by provisions requiring that "the District shall update the IEP dated February 21, 2012," in several specified ways. So the obligation of the District, upon signing the Settlement Agreement, was to present to Parents a true copy of the February 21 IEP, accurately updated with the modifications agreed to in the Settlement Agreement, so that they could sign it. The February 21 IEP, including the enhanced OT program, would then have been implemented.

116. Special education law requires that Parents consent to an IEP but there is no requirement that they must do so on the IEP document itself. It is common practice for districts to accept parental consent to an IEP in a separate document, as the District demonstrated in this case when it accepted a separate document from Parents as consent to most of the August 20 IEP. So the issue is whether the Settlement Agreement itself constituted the required consent, or whether it was ineffective as consent until Parents also signed an updated version of the August 20 IEP.

117. As quoted above, section 2.1 of the Agreement provides: "The District shall implement the IEP dated February 21, 2012, with the additional supports set forth herein. Parents shall sign said IEP to allow for implementation of the IEP." The reference to "said IEP" is a reference to the updated IEP the Agreement required the District to furnish to Parents for their signatures. Relying on that provision alone, and not addressing any other provisions of the Agreement, the District argues that Parents' signing of the updated February 21 IEP was a condition precedent to execution of the agreement and that Parents never complied with it.

118. The District overlooks the sentence immediately preceding the two on which it relies, which provides: "The parties agree to the following educational program, placement and services from the date of execution of this Agreement until such time as the IEP team agrees to any changes in Student's IEP . . . ." This commitment to Student's educational program "from the date of execution of this Agreement" strongly suggests that the parties contemplated immediate implementation of the Agreement, which would include immediate implementation of the February 21 IEP (with its provisions for OT). Thus the two provisions of the Agreement that most directly address the timing of implementation appear to be contradictory.

119. Although the question can reasonably be argued either way, the better interpretation of the Agreement favors Student. The language upon which the District relies – "Parents shall sign said IEP to allow for implementation of the IEP" – can be interpreted to mean, as the District argues, that without parental signatures on the IEP itself, the parties did not intend that it be implemented. That interpretation, however, makes the competing language ("The parties agree to the following educational program ... from the date of this Agreement") meaningless. Another way to interpret the language on which the District relies is that Parents' signature on the February 21 IEP was meant merely as an aid to implementation. It would allow the District to present Student's program to its staff in the format they understood, forestall questions about whether it was consented to, and avoid having to distribute the confidential Settlement Agreement itself, which contained provisions about compensatory education, attorneys' fees and other matters inappropriate for wide distribution. That interpretation harmonizes the competing provisions of the Agreement and gives effect to them both.

120. Other provisions of the Settlement Agreement, also overlooked by the District, indirectly support the interpretation that immediate implementation was intended. The Agreement stated that its intent was to finally and fully resolve the dispute between the

parties. It stated that Student's stay put placement shall be the one set forth in the February 21 IEP. It created a bank of 50 hours of compensatory education services to be provided "between the date of execution of this Agreement and August 31, 2013." And most importantly, it provided that "[t]he final execution of this Agreement shall cause the immediate dismissal of Student's case with prejudice." It is extremely unlikely that Parents intended to be bound by the Agreement to immediately dismiss their due process claim with prejudice (which they did), while still allowing the District an indefinite period of time to update the February 21 IEP with the various additions called for in the Agreement, including documents not yet in existence, before the IEP went into effect.

121. For these reasons, the better reading of the Agreement, and the one adopted here, is that Parents' signatures on the February 21 IEP itself were intended as an aid to implementation of the Agreement but not as a condition precedent, and that therefore, after March 13, the District was obliged to implement the February 21 IEP during the period in which it was being updated to add the new services required by the Agreement. So read, the Agreement made delivery of 30 sessions of individual OT, 60 minutes of consultation, and implementation of the visual motor goal by Mr. Pullman, a part of the District's IEP obligations immediately after March 13.

122. Even if the District's interpretation of the Settlement Agreement had been correct, it would not alter the outcome here, because the District violated the Settlement Agreement by violating its predicate duty to present to Parents for signature a true copy of the February 21 IEP, accurately updated with the additions required by the Settlement Agreement. Every one of the District's attempts to provide such a document failed because it did not accurately reproduce the February 21 IEP, did not accurately include the modifications in the Settlement Agreement, or both. As shown in more detail above, the District's March 30 effort to provide the updated IEP omitted three goals and the BSP contained in the original February 21 IEP, and altered the identity of the OT provider. The District's misdated February 20 version lacked nine of the goals and the BSP contained in the original February 21 IEP, and also lacked the sensory diet which the Agreement required to be attached and which by then existed. The June 14 version lacked one annual goal contained in the February 21 IEP, and eliminated the additional speech and language and OT services contained in the Settlement Agreement by reverting to the lesser amounts of those services contained in the February 21 IEP.

123. Thus the evidence showed that Parents never had an opportunity to sign the document the Settlement Agreement required them to sign, because the District never properly updated it and presented it to them. So the District cannot rely now on the absence of their signatures to defend its refusal to implement the February 21 IEP, including its OT services and visual motor goal.

124. Upon signing the Settlement Agreement the District included the delivery of individual OT to Student, and implementation of the consultation and the visual motor goal, in its IEP obligations. It did not meet those obligations. Student argues that the District

therefore denied him a FAPE according to two different legal theories. The first of those theories relies on the rule governing material failure to deliver services in conformity with an IEP.

125. To provide a FAPE a district must deliver special education and related services in conformity with a Student's IEP. A failure to deliver services promised in an IEP is a denial of FAPE if the failure is material, meaning that the services delivered fall significantly short of the services required by the IEP. The materiality standard does not require that the student suffer demonstrable educational harm in order to prevail.

126. Here, during the regular SY 2011-2012, the District failed to provide any of the direct OT to Student that became part of the District's IEP obligation upon the signing of the Settlement Agreement. Student was entitled to 10 weekly sessions of individual OT (or 300 minutes) in the time remaining in the regular school year after March 13, and the District failed to deliver any of it.

127. In addition, in the Settlement Agreement the parties agreed that Student would attend ESY and would receive 4 of his 30 sessions of individual OT during ESY, totaling 120 minutes. In fact Student was provided only one session of OT during ESY, which lasted for 45 minutes. Another session was missed because, during part of the ESY, Student was in a summer camp financed by the District, and the parties had agreed that while he was in summer camp he was not entitled to OT. So of the 120 minutes of individual OT during ESY promised Student in the Settlement Agreement, the District was obliged to provide 90 minutes, and provided only 45 minutes. The evidence showed that the missed 45 minutes resulted from scheduling confusion on the part of the District.

128. The evidence thus showed that, in total, the District failed to deliver to Student 300 minutes of individual OT during the regular school year and 45 minutes during the ESY, for a total of 345 minutes. The District also failed entirely to implement the visual motor goal in the February 21 IEP. These were material failures, and denied Student a FAPE.

129. Student's second theory for establishing a denial of FAPE is that, independent of any contractual or IEP obligation, the District's failure to provide adequate individual OT during spring 2012, including a sensory diet, significantly impeded him from accessing his education. Since Student has established entitlement to relief under the first theory, it is not necessary to decide whether he prevailed under the second.

Sensory Diet

130. In the Settlement Agreement the District promised to have Mr. Pullman develop a sensory diet for Student, and to attach that document to an updated version of the February 21 IEP. In March and April Mr. Pullman developed a written sensory diet for Student that included such things as environmental accommodations, errand breaks, and transition planning so that Student could go first or last to other places without having to

stand in line, where he sometimes clashed with other students. Mr. Pullman presented that diet at the April 26 IEP team meeting, Mother orally authorized it, and within a day or two Mr. Pullman spent two hours with Mr. Tenenbaum and Student, training Mr. Tenenbaum in the application of the sensory diet.

131. Student now argues that for the rest of the SY 2011-2012 the District failed to implement the sensory diet, but the evidence did not support that claim. Mr. Pullman testified that after he trained Mr. Tenenbaum to implement the sensory diet, "that was transferred to the classroom, to the best of my knowledge." Asked whether he met with Student's teacher to review the sensory diet, he responded: "I had met with her ... I'm not sure we actually reviewed it ... to the best of my recollection we talked about it as I put it in place, and how to use it," but "that was turned over more to Mr. Tenenbaum at that time." That testimony falls well short of proving that the sensory diet was not implemented.

132. As mentioned above, starting sometime in April 2012, Mr. Tenenbaum's duties were split between two campuses and he was with Student only two or three days a week, and on the other days other District staff discharged his duties with respect to Student. In his closing brief Student asserts that on the days Mr. Tenenbaum was elsewhere his substitutes did not implement the sensory diet, but that claim was not supported by evidence. At least three of the people who substituted for Mr. Tenenbaum in supporting Student (Ms. Tuttle, Ms. O'Connor and Ms. Anthony) testified, but Student chose not to ask any of them whether they implemented the sensory diet on the days that Mr. Tenenbaum was not present. Student thus did not discharge his burden of proving that the sensory diet was not implemented in spring 2012.

Considerations of Relief

133. On September 28, 2012, in dismissing its consolidated due process complaint, the District informed OAH that the parties had agreed to most of an IEP. Some evidence at hearing appeared to confirm that fact; Mr. Pullman, for example, stated that he is now providing individual OT to Student. Otherwise, the record does not describe Student's current program. The need to coordinate the Order made here with Student's current program complicates the grant of relief.

134. Parents will be allowed to waive any or all of the protections of the Order in writing, so that they can coordinate the relief granted here with Student's current program. Such writing includes, but is not limited to, an IEP or IEP amendment.

135. To bring clarity to the District's offers of program and services, the District will be required to adhere to the technical requirements set forth in section 2 of the Order in future offers and amendments. The District will be ordered to conform Student's current IEP to those requirements either 1) by convening an IEP meeting within 30 days of the date of this Decision to offer modifications of the current IEP so that it conforms with those requirements or, 2) at Parents' option, by proposing a formal amendment to the IEP to

accomplish that purpose. Nothing in the Order precludes the parties from agreeing on other changes to Student's program.

136. As found above, neither the failure of the District to provide timely reports on Student's progress toward his goals, nor its failure to have his general and special education teachers at the May 24 IEP team meeting, separately denied Student a FAPE. However, as also found above, each of those procedural violations exacerbated the confusion surrounding the IEP process occasioned by the failure of the District to make clear offers. It is therefore an appropriate exercise of equitable discretion in fashioning relief to order the District to comply with the requirements in the Order concerning the timeliness, clarity, completeness, and reliable delivery of progress reports, and the requirements concerning ensuring the presence of required personnel at IEP team meetings.

137. To address Student's entitlement to individual OT, the District will be ordered to provide 345 minutes of individual OT over a lengthy period (between the date of the Order and the end of SY 2013-2014) so that the service can be coordinated with the OT Student is now receiving under his current IEP. Student does not seek relief concerning consultation with the classroom teacher or the visual motor goal that was not implemented.

138. Since Student did not establish entitlement to relief concerning behavioral support, his request that the District be ordered to offer a behavioral aide for the rest of the current school year is declined.

139. Student's request that the District be ordered to fund the presence of Student's attorney or advocate at all IEP meetings for one year is also declined. Nothing in this record demonstrates that the presence of Student's attorney at the IEP meetings described above contributed substantially to the clarity of the District's offers, the parties' understanding of the Settlement Agreement, or the District's awareness of its procedural and substantive errors.

LEGAL CONCLUSIONS

Burden of Proof

1. Because Student filed the request for due process hearing, he had the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62 [163 L.Ed.2d 387].)

Necessity of Clear and Coherent IEP Offer

Purpose of Requirement

2. The IEP is the "modus operandi" of the IDEA; it is "a comprehensive statement of the educational needs of a handicapped child and the specially designed

instruction and related services to be employed to meet those needs. [Citation.]" (*School Comm. of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

3. "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v.Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994]. Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

4. In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, cert. denied, 513 U.S. 965 (*Union*), the Ninth Circuit held that a district is required by the IDEA to make a clear written IEP offer that parents can understand. The Court emphasized the need for rigorous compliance with this requirement:

> We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist parents in "present[ing] complaints with respect to any matter relating to the ... educational placement of the child." 20 U.S.C. § 1415(b)(1)(E).

(*Union School Dist. v. Smith, supra,* 15 F.3d at p. 1526; see also *J.W. v. Fresno Unified School Dist. supra,* 626 F.3d at pp. 459-461; *Redding Elementary School Dist. v. Goyne* (E.D.Cal., March 6, 2001 (No. Civ. S001174)) 2001 WL 34098658, pp. 4-5.)

5. *Union* itself involved a District's failure to produce a formal written offer at all. However, numerous judicial decisions invalidate IEPs that, though offered, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 769; *Bend LaPine School Dist. v. K.H*. (D.Ore., June 2, 2005, No. 04-1468) 2005 WL 1587241, p. 10; *Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108**;** *Mill Valley Elem. School Dist. v. Eastin* (N.D.Cal., Oct. 1, 1999, No. 98-03812) 32 IDELR 140, 32 LRP 6047; see also *Marcus I. v. Department of Educ*. (D. Hawai'i, May 9, 2011, No. 10–00381) 2011 WL 1833207, pp. 1, 7-8.)

6. Several OAH decisions also invalidate vague and ambiguous IEP offers under *Union*. (See, e.g., *San Jacinto Unified School Dist. v. Student* (2008) Cal.Off.Admin.Hrngs. Case No. 2008020225; *Yucaipa-Calamesa Unified School Dist. v. Student* (2008) Cal.Off.Admin.Hrngs Case No. N 2007090402; *Student v. St. Helena Unified School Dist.* (2008) Cal.Off.Admin.Hrngs. Case No. N 2007060718; *Student v. San Rafael City Schools* (2007) Cal.Off.Admin.Hrngs. Case No. N 2007050679.)

7. One District Court described the requirement of a clear offer succinctly: *Union* requires "a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal." (*Glendale Unified School Dist. v. Almasi, supra,* 122 F.Supp.2d at p. 1108.)

Requirement of Statement of Duration of Services

8. The IDEA requires that an IEP contain a projected date for the beginning of special education services and modifications, and "the anticipated frequency, location, and duration of those services and modifications." (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34 C.F.R. § 300.320(a)(7)(2006); Ed. Code, § 56345, subd. (a)(7).) The purpose of the requirement is to require the District to make clear its proposed commitment to particular aspects of a student's special education and related services. As explained by the United States Department of Education:

> What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be ... clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.

(Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540, 46667 (Aug. 14, 2006).)

9. The Ninth Circuit has observed that the length of time that an offered service will be delivered must be "stated [in an IEP] in a manner that is clear to all who are involved." (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 953 [citation omitted].) The requirement ensures that "'the level of the agency's commitment of resources'" is clear to all members of the IEP team, including parents. (*Bend LaPine School Dist. v. K.H., supra,* 2005 WL 1587241 at p. 9 [citation omitted].) Accordingly, a district that omits from an IEP a statement of the duration of an offered service or accommodation commits a procedural violation of the IDEA. (See, e.g, *Student v. Roseville Joint Union High School Dist., et al.* (2011) Cal.Offc.Admin.Hrgs. Case No. 2011061341.)

Consequences of Procedural Error

10. The Supreme Court has recognized the importance of adherence to the procedural requirements of the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 205-206 [73 L.Ed.2d 690] (*Rowley*).) However, a procedural error does not automatically require a finding that a FAPE was denied; it results in a denial of a FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd.

(j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Issue No. I.A. *Did the District fail to make clear written IEP offers in correctly dated IEP documents?*

11. Yes. Based on Factual Findings 4-47 and 66-78, and Legal Conclusions 1-10, the District's offers of March 30, "February 20," and June 14, 2012, failed to conform to, or be coordinated with, the Settlement Agreement, thereby causing Parents significant confusion. Those offers set forth inconsistent sets of annual goals, lacked any commitment to the duration of program and services, and were poorly explained by the District, so that Parents could not understand what Student's program would be if they signed the documents. Although the August 20, 2012 offer, as amended, was better, it still did not constitute a clear offer because the ending dates for the services were left blank, and therefore Parents could not tell how long the proposed program would be in effect. These failings significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student and therefore denied Student a FAPE.

Provision of Reports to Parents of Progress on Goals

12. An IEP must state when periodic reports on the progress the child is making toward meeting his annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(a)(3)(ii); Ed. Code, § 56345, subd. (a)(3).)

Issue No. I.B. *Did the District fail to provide progress updates on annual goals to the IEP team?*

13. Yes, though the failure did not deny Student a FAPE. Based on Factual Findings 48-54 and 79, and Legal Conclusions 1 and 12, the District reported on only one of the six goals from the November 2011 IEP that were being implemented. However, since Mother received oral reports on Student's progress on April 26 and August 20, and the goals were not discussed until August 20, this failure was cured on August 20, caused no significant harm to Parents' participatory rights, and, considered separately, did not deny Student a FAPE. It did, however, exacerbate the confusion surrounding the IEP process occasioned by the failure of the District to make clear offers.

Timeliness of Review of Assessment Results

14. A District must conduct an assessment and hold an IEP meeting to discuss the results within 60 days of receiving consent to an assessment plan. (Ed. Code, § 56302.1, subd. (a).) Days "between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays," are not counted in calculating those 60 days. (Ed. Code, § 56043, subd. (f)(1).) Student no longer contends that the District violated these provisions because Dr. Buch's FAA was not reviewed until the May 24 IEP team meeting.

He does argue that the IEP meeting to review Dr. Buch's FAA was untimely pursuant to the Settlement Agreement. However, since the delay did not deny Student a FAPE, OAH does not have jurisdiction to decide whether, as a matter of contract law, it violated the Settlement Agreement.

Required Members of an IEP Team

15. An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the child if the child is, or may be, participating in the regular education environment; a special education teacher or provider of the child; an individual who can interpret the instructional implications of assessment results; and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district or parents; and, when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).)

16. Required IEP team members may be excused from an IEP team meeting if the parent and the school district consent in writing, and the IEP team member provides input in writing to the IEP team prior to the meeting. (20 U.S.C. § 1414(d)(1)(C); 34 C.F.R. § 300.321(e)(2)(2006); Ed. Code, § 56341, subd. (f).)

Issue No. I.C. Did the District fail to convene a timely IEP team meeting that included all required personnel to review his FAA?

17. Yes in part, though the failure did not deny Student a FAPE. Based on Factual Findings 55-59 and 80, and Legal Conclusions 1 and 14, the District failed to meet on April 17 to review Dr. Buch's FAA, as promised in the Settlement Agreement, because the FAA was incomplete. Whether that failure violated the Agreement is not addressed here as Student no longer contends that the District's failure to hold that meeting until May 24 violated special education law, and the evidence did not show that it did. Nor did the evidence show that delaying the meeting until May 24 had any significant impact on Student's access to his education or denied him a FAPE.

18. Based on Factual Findings 55-59 and 80, and Legal Conclusions 1 and 15-16, the District failed to have Student's general and special education teachers at the May 24 meeting held to discuss the FAA, failed to obtain a written waiver of their presence, and failed to obtain written input from them. However, May 24 was the last day of school. This error was cured by the presence of Student's teachers at the August 20 IEP team meeting, shortly after the new school year began. The evidence did not show that the delay had any significant impact on Student's education or Parents' participatory rights, and did not show that the delay denied Student a FAPE. It did, however, exacerbate the confusion surrounding the IEP process occasioned by the failure of the District to make clear offers.

Requirement that IEP Team Meet At Least Annually

19. An IEP team must "review[] the child's IEP periodically, but not less frequently than annually," to determine whether his goals are met and to make appropriate revisions to his IEP. (20 U.S.C. §1414(d)(4)(A); 34 C.F.R. § 300.324(b)(1)(i); Ed. Code, § 56380, subd. (a)(1).) There is no requirement that an annual meeting occur at any particular time of the year. (See, e.g., Notice of Interpretation, Appendix A to 34 C.F.R. Part 300, Answer to Question 20, 64 Fed.Reg. 12476 (1999 Regulations).) Nor is there a requirement that a district hold an "annual meeting" as such.

Issue No. I.D. Did the District fail to convene a timely annual IEP team meeting?

20. No. Based on Factual Findings 60-64 and Legal Conclusions 1 and 19, the District was not required to have an annual meeting at any particular time. It was only required to meet not less than annually to consider Student's progress toward his goals and to make appropriate revisions to his IEP. For the SY 2011-2012, this may have occurred at the IEP team meetings on May 5 and November 3, 2011, and/or February 21, 2012; Student has waived his right to argue it did not. The planned May 5, 2012 annual meeting was for the following academic year, and that meeting was actually held on August 20, 2012.

Elements of a FAPE

21. Under the IDEA and California law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) The term "free appropriate public education" means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (D) are provided in conformity with the IEP required under section 1414(d) of title 20 of the United States Code. (20 U.S.C. § 1401(9).). "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

22. In *Rowley*, the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at p. 198.) School districts are required to provide a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Rowley, supra*, 458 U.S. at p. 201; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947-951.)

23. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was

reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra*, 458 U.S. at pp. 206-207.)

24. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective." (Id. at p. 1149, quoting *Fuhrmann v. East Hanover Bd. of Educ., supra*, 993 F.2d at p. 1041.) An IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid*.; see also *Carlisle Area School v. Scott P.* (3d Cir. 1995) 62 F.3d 520, 534; *Roland M. v. Concord School Comm*. (1st Cir. 1990) 910 F.2d 983, 992, cert. denied, 499 U.S. 912 (1991).)

Obligation to Address Behavioral Needs

25. When a special education student's behavior impedes the child's learning or that of others, a district must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) This consideration frequently results in a BSP, though no statute or regulation uses that term.

26. For more serious behavioral problems, California law requires the creation of a BIP based on a FAA, both of which are subject to many detailed regulatory requirements. (See Cal. Code Regs., tit. 5, §§ 3001, subds. (e)-(g), (ab), 3052.) Compliance with those requirements is not involved in this matter. To avoid confusion, the term BSP is used throughout this Decision.

Issue No. II.A. *Did the District fail to provide Student an appropriate BSP or appropriate and adequate behavioral services, or fail to implement his behavioral goals?*

27. No. Based on Factual Findings 1, 8-11, and 84-112, and Legal Conclusions 1 and 21-26, Student has waived his right to challenge the adequacy of the BSP's of November 3 and December 19, 2011 and February 21, 2012. The evidence did not support Student's contention that the behavioral support actually delivered was inadequate. Student was given considerable behavioral support and made substantial behavioral progress during the time at issue. Mr. Tenenbaum actually implemented the behavioral goals in the February 21 IEP even though the District took the position that it was unsigned and therefore the November 3, 2011 IEP still governed.

Issue No. II.B. *Did the District fail to offer adequate behavioral services in the IEP of August 20, 2012, as modified on August 28 and September 18, 2012?*

28. No. Based on Factual Findings 1, 8-11, and 84-112, and Legal Conclusions 1 and 21-26, Student did not prove that there were substantive shortcomings in the offered behavioral support that would deny him a FAPE. The offer of behavioral support was procedurally invalid because it failed to commit the District to a specific duration of services,

but Student made significant behavioral progress under the substantive elements of the behavior plan.

Requirement of Consent to IEPs

29. Absent an order from an ALJ, a district must obtain parents' written consent in order to implement a proposed IEP. (20 U.S.C. § 1414(a)(1)(D)(i)(II); Ed. Code, § 56346, subd. (a).) There is no requirement that the written consent be on the same document as the proposed program.

OAH Jurisdiction over Settlement Agreements and Denials of FAPE

30. Parents have the right to present a due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6)(A); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under IDEA. (*Wyner v. Manhattan Beach Unified School Dist*. (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) It does not, however, have jurisdiction to enforce settlement agreements related to due process complaints; that is the responsibility of the courts and CDE. (*Id.* at pp. 1028-1030.)

31. In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., March 27, 2007, No. 05-04977) 2007 WL 949603, pp. 6-7, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging the denial of FAPE resulting from a violation of a mediated settlement agreement, as opposed to "a mere breach" of the agreement.

Material Failure to Deliver Services in Conformance with IEP Obligations

32. To provide a FAPE a district must deliver special education and related services "in conformity with" a Student's IEP. (20 U.S.C. § 1401(9).) In *Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 481 F.3d 770, the Ninth Circuit held that failure to deliver related services promised in an IEP is a denial of FAPE if the failure is "material"; meaning that "the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." (*Id.* at p. 780.) The court further held that in such a case "the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) The court found that a District's provision of only five hours of math tutoring out of a promised 10 hours was a material failure to provide services in conformance with the student's IEP. (*Id.* at p. 781; see also *Sumter County School Dist. 17 v. Heffernan* (4th Cir. 2011) 642 F.3d 478, 481, 485-486 [failure to provide more than 7.5 to 10 hours weekly of applied behavior analysis, out of a promised 15 hours a week, was material failure].)

Issue No. II.C. *Did the District fail to implement Student's February 21 IEP as required by the March 13, 2012 Settlement Agreement by (1) failing to deliver OT and a sensory diet, including in the ESY, and (2) fail to implement his visual motor goal?*

33. Yes, except for the sensory diet. Based on Factual Findings 1, 8-11, and 113-132, and Legal Conclusions 1, 21-26, and 29-32, during the relevant time the District failed to provide Student 345 minutes of individual OT, failed to provide 60 minutes a month of OT consultation during spring 2012, and failed to implement the visual motor goal in the February 21 IEP. The Settlement Agreement, properly interpreted, required the District to implement the February 21 IEP without waiting for Parents' signatures on the updated version it was obliged to provide. This meant that on March 13, 2012, the OT offered in the February 21 IEP, as modified by the Settlement Agreement, became part of the District's IEP obligations. The District violated the Settlement Agreement by refusing to implement the February 21 IEP and by failing to provide an accurate updated version of the February 21 IEP for Parents' signatures, as the Agreement required. Parents did not violate the Agreement by refusing to sign the documents presented because those documents did not comply with the Agreement; none of them was the document the Agreement required them to sign. The District's violations of the Settlement Agreement led directly to its failure to deliver 345 minutes of individual OT in spring 2012 and the ESY, its failure to provide the required OT consultation, and its failure to implement Student's visual motor goal. These were material failures and denied Student a FAPE.

34. Based on Factual Findings 130-132, the evidence did not show that the District failed to implement the sensory diet.

Issue No. II.D. Did the District fail to provide adequate OT, including a sensory diet, from March 14 to the date of hearing, thereby impeding Student's access to his education?

35. Because Student prevailed on Issue II.C., it is unnecessary to decide this issue and it is not decided.

Relief from IDEA Violations

36. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].)

37. Compensatory education is an equitable remedy and must rely on a fact-specific and individualized assessment of a student's current needs. (*Puyallup, supra*, 31F.3d at p. 1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524 (*Reid*); *Shaun M. v. Hamamoto* (D. Hawai'i, Oct. 22, 2009 (Civ. No. 09-00075)) 2009 WL3415308, pp. 8-9 [current needs]; *B.T. v. Department of Educ.* (D. Hawai'i 2009) 676 F.Supp.2d 982,

989-990 [same].) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid v. District of Columbia, supra,* 401 F.3d at p. 524.)

ORDER

1. Within 30 days of the date of this Order, the District shall conform Student's current IEP to the requirements of section 2 of this Order either a) by convening an IEP meeting to offer modifications of the current IEP so that it conforms with those requirements, or b) at Parents' option, by proposing an amendment to the IEP to accomplish that purpose.

2. From the date of this Order, and throughout the school years 2012-2013 and 2013-2014, and in its offer for the school year 2014-2015, the District shall comply with the following requirements in making IEP offers to Parents, including offers of modifications or amendments to existing IEPs:

a. The District shall cease its practice of leaving the ending dates for various programs, accommodations, modifications and services blank. It shall state in the offer the proposed duration of each aspect of Student's proposed program, using a specific date, so that the length of its commitment to that aspect of Student's program is clear.

b. The District shall not qualify its offer of program, accommodations, modifications or services with the phrase "as needed" or similar language unless the qualification is unavoidable, and when it is, the District shall also state the proposed duration of the program or service so qualified, using a specific date.

c. Before making a written IEP offer to Parents, the District shall review all the dates in the document, including the date of the IEP itself, and ensure that they coincide with the offer being made. It shall not propose any part of Student's program, including annual goals, using a beginning or ending date that has already passed.

d. The District shall set forth its proposed offer on the service page of the IEP to the extent possible. When part of an offer must be made in the comments portion or elsewhere in the IEP, the District shall clearly state its commitment to that portion of the program, using language like "The District's offer includes the following:" or language of equivalent clarity.

e. The District may attach separate documents to an IEP offer, but if it does, it shall clearly list in the comments section of the IEP all the documents attached, preceded by the phrase "The following documents are attached to and made

part of this IEP offer" or language of equivalent clarity. When it distributes the IEP offer to Parents or their representatives, the attachments shall actually be attached.

f. Whenever the offer being made is affected by a pre-existing settlement agreement, mediation agreement, or other binding legal document, including this Order, the District shall clearly explain the relationship of its offer to that document in the comments section of the proposed IEP.

g. The District may include in its offer the recommendations of assessors, NPAs or other providers or professionals, but if it does, it shall state in the body of the IEP the recommendations that are part of its offer, using the language "The District's offer includes the following:" or language of equivalent clarity, and then it shall repeat verbatim the recommendations adopted as part of the offer, unless the recommendations are unusually lengthy. If the recommendations are unusually lengthy, the District may incorporate them by reference, but only by attaching to the IEP the document in which the recommendations are made, and stating in the comments section of the IEP that the District's offer includes the recommendations on specific pages of the attached and referenced document.

h. The District shall number all the pages of its IEP offers, using the format "page __ of __."

i. The District shall be consistent, in its IEP offers, in its description of the provider of a particular program or service. It need not identify the provider by name or agency, but if it commits itself to the use of an outside provider such as an independent contractor or NPA, the IEP shall clearly reflect that fact.

j. The District shall make its best efforts to present its IEP offers to Parents in a single document (including anything attached in compliance with this Order) at a single time. Whenever the offer includes multiple documents presented over time, the District shall include in the most recent of those documents a complete list of the documents then constituting the offer, preceded by the language "Student's program now consists of" or language of equivalent clarity.

3. In its progress reports on Student's annual goals, the District shall ensure that it reports Student's progress fully on each of the goals then in effect. The District shall use dates in the sections of its annual goals calling for progress reports, so that the provision for a particular progress report is preceded by the language "By [date]," or language of equivalent clarity. The District shall also ensure that its progress reports are timely; that is, if a progress report is made at the end of a trimester, it shall show Student's progress during that trimester and not during some earlier period of time. The District shall transmit its progress reports on Student's annual goals to Parents personally, by U.S. Mail, or by similarly reliable service, rather than placing them in Student's backpack, and shall document that transmission.

4. Throughout the school years 2012-2013 and 2013-2014, in scheduling IEP team meetings with Parents, the District shall make its best efforts to avoid holding meetings on dates (such as the last day of school) on which any team member whose presence is required is unlikely to be able to attend. If the District requests that Parents waive the presence of any required team member, it shall obtain that waiver in writing and attach it to the IEP document in compliance with the requirements of this Order. It shall also attach the required written input of the absent team member to the IEP document in compliance with these requirements.

5. Between the date of this Order and the end of the regular school year 2013-2014, the District shall provide Student 345 minutes of individual OT at times to be agreed upon by the provider and Parents. The provider shall have OT credentials equivalent to those of Mr. Pullman or better.

6. Parents may waive or modify all or any part of the requirements of this Order but may do so only in writing.

7. All of Student's other requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on issue I.A., prevailed in part on issue II.C.(1), and prevailed on issue II.C.(2). The District prevailed on issues I.B., I.C., I.D., II.A, and II.B., and prevailed in part on issue II.C.(1). Issue II.D. was not decided.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: November 20, 2012

_____/s/_____
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings