

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2014070784

**DECISION**

Student, by and through his Mother, filed an amended Due Process Hearing Request on July 22, 2014, with the Office of Administrative Hearings, State of California, naming Pasadena Unified School District.

Administrative Law Judge Clifford H. Woosley heard this matter in Altadena, California, on September 10, 11, 23, and 24, 2014.

Attorney Candis Bowles appeared on Student's behalf. Student's Mother was present throughout the hearing. Parent's partner Jamiene Andreozzi intermittently accompanied Mother during the hearing.

Attorney Karen E. Gilyard represented District. Special education program director, Shermella Roquemore, attended on behalf of District.

On the last day of hearing, a continuance was granted for the parties to file written closing arguments and the record remained open until October 13, 2014. Upon timely receipt of written closing arguments, the record was closed and the matter submitted for decision.

**ISSUES**

1. Did District deny Student a free appropriate public education by failing to identify and assess Student as a child with exceptional needs, who was entitled to special education placement and services ("child find" duty), after Student entered District in October 2013?

2. During the 2013-14 school year, did District fail to conduct a functional behavior assessment of Student and, if so, did such failure deny Student a FAPE?

3. During the 2013-14 school year, did District fail to provide Student with a behavioral intervention plan and, if so, did such failure deny Student a FAPE?

4. During the 2013-14 school year, did District fail to convene an individualized education program team meeting that was required by Education Code section 56521.1 and, if so, did such failure deny Student a FAPE?

5. During the 2013-14 school year, did District deny Student a FAPE by offering a placement that was not in the least restrictive environment?

6. During the 2013-14 school year, did District deny Student a FAPE by failing to provide:

- (a) Direct behavioral interventions, such as behavioral supports, skill building and other rehabilitative interventions, provided by qualified personnel, aides and mentors;
- (b) Coaching and training of teachers and other school staff in the implementation of positive behavioral supports, skill building, and rehabilitative interventions;
- (c) Coaching and training of Parent or guardian to participate and otherwise support the behavioral interventions provided at school;
- (d) Mobilization of community resources, such as the regional center, to determine whether Student may have a developmental disability that contributes to his behaviors; and/or
- (e) Coordination of school activities with those of Student's non-school providers, in the areas of mental health and public systems, such as Student's psychiatrist, therapists, and counselors?

## SUMMARY OF DECISION

Student failed to meet his burden of proof as to all issues. In Issue 1, District met its child find obligations, having permissively utilized general education interventions that proved successful for four weeks, before it provided an assessment plan within a week thereafter. As to Issues 2 and 3, District appropriately and fully assessed Student's behavioral and emotional needs for purposes of determining placement and, therefore, the lack of a functional behavior assessment was not a procedural violation that denied Student a

FAPE. Similarly, District's behavior intervention plan was not so deficient that it was a procedural violation that denied Student a FAPE. Student did not demonstrate that a functional behavior assessment or a better behavior intervention plan would have altered Student's need for a therapeutic educational placement. As to Issue 4, Education Code section 56521.1 is inapplicable, factually and legally.

Student has not demonstrated by a preponderance of the evidence that he was denied a placement in the least restrictive environment (Issue 5). Dr. Ricardo Peinado's psycho-educational assessment recommended placement in a therapeutic educational environment because of Student's history of mental illness and physical aggression. The Department of Children and Family Services (DCFS) and the Department of Mental Health – unbeknownst to Dr. Peinado at the time -- had already determined that Student required a more restrictive residential setting because his physical aggression could not be managed in a less restrictive placement. DCFS therefore placed Student in a Residentially Based Services program at Hillside, to be monitored by the Department of Mental Health. Similarly, Student's need for a therapeutic educational setting could not be met in a less restrictive environment. Lastly, the evidence did not support a finding that the provision of related services, listed in Issue 6, paragraphs (a) through (e), would have altered Student's need for a therapeutic educational placement.

## FACTUAL FINDINGS

1. At the time of hearing, Student was an 11-year-old boy, residing at Hillside, a licensed children's institution and group home,<sup>1</sup> which was located within District's boundaries. DCFS placed Student at Hillside on October 30, 2013, following unsuccessful foster home placements. At the time of the hearing, Mother had limited, supervised visitation. Mother held Student's educational rights.

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<sup>1</sup> "Group home" means any facility of any capacity, which provides 24-hour care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee. (Cal. Code Regs., tit. 22, § 80001, subd. (g).) "Child" means anyone under the age of 18 years. (Cal. Code Regs., tit. 22, § 101152, subd. (c)(4).) A "licensed children's institution" means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. (Ed. Code, § 56155.5, subd. (a).) The definition of a licensed children's institution includes a group home as defined by subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations. (Ed. Code, § 56155.5.)

## *Student's History*

2. Student was smart, energetic, and liked to learn. However, Student had challenging behaviors since he was about two years old. In 2007, DCFS first placed Student in foster care due to allegations of physical abuse and neglect. He was in 14 foster homes before the Hillside placement; each placement was unsuccessful because Student was physically and verbally aggressive. Student was reunified with Mother on four occasions but removed four times. By the time Student was placed at Hillside, he had an extensive history of verbal and physical aggression toward adults and peers, including physically attacking Mother. An October 30, 2013, assessment by the Los Angeles County Department of Mental Health reported that Mother would regularly try to calm Student when he would become aggressive, but such measures rarely worked. She sometimes physically restrained Student so that he would not harm her or his siblings.

3. Student was hospitalized six times since 2011 at various psychiatric facilities, because of aggressive behaviors. At two hospitalizations in 2011, Student was diagnosed with: major depressive disorder, single episode unspecified; mood disorder, not otherwise specified; psychotic disorder; and, between hospitalizations, disruptive behavior disorder. Three hospitalizations in 2012 resulted in similar diagnoses. Student was hospitalized for being a danger to himself and others from July 26 to 31, 2013, just a few months before the Hillside placement. Student was diagnosed as: Bipolar I, most recent episode mixed, severe, with psychotic features. Student was physically aggressive toward his foster mother and had threatened and assaulted the county social worker. He was also diagnosed with attention deficit hyperactivity disorder.

4. Student had taken various medications, including Focalin, Dexedrine, and the anti-psychotic Risperdal. When placed at Hillside, Student was taking Clonidine for ADHD and the anti-psychotic Abilify, which treated symptoms of schizophrenia and bipolar disorder.

5. Before the Hillside placement, Student reportedly attended elementary schools in five different school districts – La Tijera K-8 Charter School, Inglewood School District; Van Buren Elementary, Jurupa Unified School District; Gladstone Elementary, Bonita Unified School District; Jellick Elementary, Rowland Unified School District; and 20th Street Elementary, Los Angeles Unified School District. Student was not assessed or found eligible for special education services before starting at Hillside.

6. DCFS placed Student at Hillside because of Student's numerous failed foster care placements and because his verbal and physical aggression required a therapeutic environment with Residentially Based Services, which Hillside offered.<sup>2</sup> Hillside was a

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<sup>2</sup> The Residentially Based Services Initiative was authorized in 2007 by California Assembly Bill 1453 with the goal of transforming the then current system of group care for foster children and youth, and children with serious emotional disorders, into a system of

more restrictive environment but DCFS concluded that Student's behaviors were unmanageable in a lower level of care.

7. Tasba Ruiz was Student's therapist and part of Student's residential services team at HillSides. Ms. Ruiz earned a bachelor's degree in human development, followed by a master's in social work from the University of Southern California in 2013. She then registered as an associate social worker and was accumulating the requisite supervised hours of work experience required to become a California Licensed Clinical Social Worker. She worked as a therapist at HillSides since September 2013 and was a recreational therapist for three years before becoming an associate social worker. Ms. Ruiz did not hold any teacher credentials and never worked in a public school.

8. Ms. Ruiz first met Student on October 30, 2013, and was Student's only therapist at HillSides. She said that Student was placed at HillSides because of his mental health diagnoses. She opined that Student's emotional disability was trauma based. Settings that included too much stimulation, such as crowds or noise, were difficult for Student, and caused him to re-experience past trauma. She held weekly therapy sessions with Student, conversed with staff members who worked with Student, and reviewed Student's cottage logs that tracked his behaviors, moods, problems, and daily program.

9. Ms. Ruiz was aware that Student had most recently been diagnosed with posttraumatic stress disorder, which she believed was more consistent with Student's traumatic past. She felt that a prior diagnosis of Autism was unwarranted. Working with Student, she utilized cognitive behavioral therapy, which was an evidence based practice therapy plan that encouraged Student to recall and accept past trauma, recognize the behaviors associated with the trauma, and to control anger and impulsivity caused by the trauma.

10. The Los Angeles County Department of Mental Health approved this therapeutic approach and regularly monitored Student's progress within HillSides' residentially based services program. In the last quarterly review for April 30 through July 30, 2014, the Department of Mental Health reported that HillSides utilized physical restraints on six occasions due to Student's physical aggression towards staff, harm to himself, and attempts to leave campus.

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residentially based services. The overarching goals of the Residentially Based Services framework were permanency, well-being, and safety for children and youth who experienced multiple failed placements in foster family homes.

*Enrollment and Attendance at San Rafael Elementary School*

11. On November 1, 2013, Hillsides' school liaisons, Delfino Hernandez and Melvyn Washington, went to District's San Rafael Elementary School to enroll Student.<sup>3</sup> Mr. Hernandez had worked at Hillsides as a school liaison for three years. Before Hillsides, Mr. Hernandez was a substitute teacher for the Los Angeles County Office of Education for about two and one half years. He held a bachelor's degree in liberal studies from California State University, Northridge.

12. Mr. Hernandez and his partner school liaison, Mr. Washington, were responsible for all of Hillsides' students, which totaled 33. They shared the various liaison duties. His duties included enrolling Hillsides' students in District schools, providing the schools with individualized education plan documentation, and attending meetings for students' IEP team (approximately 100 per year), expulsions, student study teams, manifestation determinations, and school attendance review boards. According to Mr. Hernandez, the schools knew that he and Mr. Washington were Hillsides' liaisons, not educational rights holders for students. The schools also knew to call the liaisons if any issues arose regarding a Hillsides student. He would assist schools in contacting a parent.

13. The Hillsides intake coordinator provided Mr. Hernandez and Mr. Washington with a "cheat sheet," for every new child to use for school enrollment purposes. The intake coordinator obtained some of the "cheat sheet" information from the assigned county social worker. The "cheat sheet" was typically about three pages and provided some history, behaviors, likes and dislikes. The intake coordinator also provided a copy of IEP's, if applicable, as well as prior school records, if available. Mr. Hernandez had only a "cheat sheet" for Student. Hillsides did not have any school records; there were no IEP documents or assessments. Student was a general education pupil.

14. Mr. Washington completed District's Student Registration Form. He entered Student's name, grade (fifth), birthdate, gender, and age in the data section. In the family information section, he checked off a box and indicated Student lived with an "LCI" and wrote his own name as Student's father/legal guardian, along with a phone number and email address. He did not enter any information for Student's Mother.

15. Mr. Washington listed Pinewood Elementary, in Los Angeles Unified School District, as Student's prior school of attendance. He did not list any other prior schools. He left blank the section on school and specialized education programs. He provided the name and contact information of Dr. A. Reid as Student's doctor. He listed Mr. Hernandez and the Hillsides' program director as guardians and other emergency contacts, including phone numbers. Mr. Hernandez did not participate in completing Student's enrollment paperwork.

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<sup>3</sup> A pupil placed in a licensed children's institution or foster family home shall attend programs operated by the local educational agency. (Ed. Code, § 48853, subd. (a).)

16. Mr. Hernandez talked to school personnel. He told them Student was a sad kid, who did not like school, but liked art. Mr. Hernandez shared what little information was on the “cheat sheet.” He also claimed to have spoken about Student with the San Rafael principal, Rodolpho Ramirez, Jr., for about 10 minutes.

17. Josephina Gomez was a clerk typist and acting office manager at San Rafael when Student attended, having worked at the school for 20 years. She was responsible for having the enrollment and registration forms properly completed. Hillsides did not provide any information about Student, other than what was on the two-page enrollment form. Mr. Hernandez acknowledged that Hillsides did not provide San Rafael any further information about Student. He and Ms. Ruiz said that privacy laws limited the information Hillsides could share with the school.

18. Mr. Ramirez was beginning his third year of employment with District, all as principal of San Rafael. He had five years of prior elementary school principal experience with other school districts. Mr. Ramirez earned a bachelor of arts in Mexican-American Studies and a master’s degree in educational administration from California State University, Los Angeles, as well as a master’s degree in education from Claremont Colleges. He held a multiple subject teaching credential, a bilingual, cross-cultural, language, and academic certificate, and an administrative services credential. He did not hold any special education credentials.

19. Mr. Ramirez was told during the first week of November 2013 that Student would be attending, probably by Mr. Washington. San Rafael had other students from Hillsides for whom San Rafael would make special arrangements, if necessary and dependent on each child’s unique needs. New pupils were placed in the dual language immersion program or the English program, according to grade level. Although San Rafael reviews and implements IEP’s for special education children, Student did not have an IEP and was registered to attend the general education English program.

20. At the time of enrollment, no one from Hillsides talked to Mr. Ramirez about Student having any special needs. Though Mr. Hernandez stated that he had talked to Mr. Ramirez about Student when the Hillsides’ liaisons enrolled Student on November 1, 2013, Mr. Ramirez’s testimony was more persuasive in this regard. First, if he was aware of any special needs, Mr. Ramirez would have made special arrangements before Student started to attend the following week. This was consistent with San Rafael’s usual business practice for Hillsides children. Second, Mr. Ramirez expressed genuine surprise at Student’s conduct after he started to attend. Third, Student’s conduct quickly and unexpectedly escalated, requiring him to call Hillsides’ staff for assistance. Mr. Hernandez’s testimony was vague as to what he discussed with Mr. Ramirez and, further, provided a time estimate that was inconsistent with the information Hillsides shared. Mr. Ramirez’s testimony was consistent with his and other school staff’s actions. His testimony, that he had not been provided any information regarding Student’s special needs, was believable and credible.

21. Student's first day of attendance was November 4, 2013; he refused to attend class. Class attendance was the fundamental issue with Student throughout his time at San Rafael. Student would daily refuse to attend or remain in class but, instead, would sit in the front office or shadow Mr. Ramirez as he moved about campus. Ms. Gomez confirmed that Student was regularly in the school's front offices where he sat in front of her desk. She talked to Student about how he did not want to attend class. When she asked Student to go ahead to class, he would resist, saying he did not want to go or that he did not like the teacher.

#### THE NOVEMBER 4, 2013 INCIDENT

22. On November 5, 2013, Mr. Ramirez suspended Student for one day, writing a notice of suspension to Mr. Washington, listing two education code violations and describing the conduct. While in the front office, Student refused to go to class and became verbally aggressive with school staff and Mr. Ramirez. When asked to refrain and lower his voice, Student cursed "at the top of his lungs," while other students were present. Student was to return to school on November 7, after his suspension.

23. On November 8, 2013, Mr. Ramirez suspended Student for three days and sent Mr. Washington a notice of suspension, listing four education code violations that included: cause, attempt to cause, or threaten serious physical injury to another person; willfully use force or violence upon another person, and not for self-defense; commit an obscene act or engage in profanity or vulgarity; and disrupted school activities or willfully defied valid authority.

24. The notice described the incident, to which Mr. Ramirez also testified. Student was again in the front office, refusing to attend class. He became agitated and disruptive; as staff attempted to curb his outbursts, he became increasingly defiant and confrontational. Office staff interrupted Mr. Ramirez, who was meeting with parents in his office, and told him that he was needed outside because Student was belligerent. The parents excused themselves and left. Mr. Ramirez walked outside and told Student to go into the principal's office. Student loudly screamed, "Get the fuck away from me."

25. At the time, there was a school assembly; parents and other students were going in and out of the small front office lobby. Student continued to use obscene language and Mr. Ramirez needed him out of the front lobby and into the office. Student would not go and kept stomping his feet. Mr. Ramirez reached for Student's elbow to have Student stand up so he could escort him into the principal's office. Student then jumped up, pulling away, and said "Don't fucking touch me."

26. Since Student was now standing, Mr. Ramirez corralled him into the office. When Mr. Ramirez went to close the door behind them, Student suddenly started to swing and kick at Mr. Ramirez. He kept Student away and closed the door. Student then went into a three-foot nook in the office and started tossing chairs, books, binders, and picture frames, continuing to swear. Student kicked and shattered a glass picture frame on the wall.

Mr. Ramirez was alarmed, shouted “no,” and went to stand between Student and the broken glass. Mr. Ramirez was closer to Student, who started to again swing and try to hit him. Mr. Ramirez reached around, trying to hold Student’s wrists so he would stop trying to hit, and sit Student in a chair, away from the glass. As Mr. Ramirez was sitting Student down, Student pushed off the wall with his feet, causing both of them to fall to the floor on their left sides.

27. Student was screaming, yelling that he had not given Mr. Ramirez permission to touch him. Mr. Ramirez held onto Student’s wrist and kept talking, asking him to calm down and to stop hitting and kicking. Mr. Ramirez was concerned about Student getting up while Mr. Ramirez was still on the floor. Mr. Ramirez rolled over to stand but Student started kicking him. While trying to hold onto Student’s shins, Mr. Ramirez reached up, grabbed the edge of his desk, and stood. Student then stood up, walked to the middle of the office, and continued to throw chairs, books, a stapler, and other objects.

28. With the glass now behind him, Mr. Ramirez moved toward the door to keep Student from leaving because the lobby was full of parents and students. Mr. Ramirez also took out his phone to take a picture of Student. When Student saw this, he again attacked Mr. Ramirez, kicking and trying to punch him. Mr. Ramirez kept Student at arm’s length and waited for the Hillside staff to come.

29. Ms. Ruiz received a call from the Hillside program director informing her Student was upset and physically aggressive at school. She went to the principal’s office. Student’s shoes were off and she saw a broken frame. Mr. Ramirez said he was concerned if Ms. Ruiz would be able to control Student. Student said he was upset, did not want to go to class, and did not want to stay at school. In her Hillside Incident Report, Ms. Ruiz said she found Student standing in the principal’s office, crying, with clenched fists. She reported Student said he was mad because the principal sat on him and that he did not like that. Student left with Ms. Ruiz.

30. Ms. Ruiz reported in her incident report what Student said happened before her arrival. Student said he refused to go to class, so he was waiting in the front office, tapping his foot. Mr. Ramirez asked Student to stop and, when Student refused, the principal wrapped his arms around Student, picked him up, and carried Student into the office. This triggered Student to start throwing objects. He said that Mr. Ramirez then grabbed Student, pulled him to the ground, and then sat on Student’s back; Student said he could not breathe. When Ms. Ruiz saw blood on Student, Student admitted it was Mr. Ramirez’s because Student scratched him because he would not get off Student. Student asserted that Mr. Ramirez eventually got off Student, which was when Ms. Ruiz arrived.

31. In addition to the notice of suspension, Mr. Ramirez completed a District incident report that included a detailed account of what had occurred. He sent the report to his supervisor. He also gave a copy of the incident to Mr. Hernandez for Hillside. Mr. Hernandez said that Mr. Ramirez gave him a report but he did not believe it was sufficient because it did not say that he “sat” on Student. Mr. Ramirez reviewed the Hillside

Incident Report and testified to its inaccuracies. Generally, Student's conduct was substantively more aggressive and dangerous than what Student told Ms. Ruiz.

32. Mr. Ramirez's account of the November 8, 2013, incident was more credible than that of the Hillside Incident Report and the testimony of Ms. Ruiz and Mr. Hernandez. Mr. Ramirez credibly stated he did not, at any time during the incident, sit on Student.

33. No one from Hillside's witnessed any portion of the incident involving San Rafael's front office staff, Mr. Ramirez, and Student. Hillside's staff did not inquire whether Student injured anyone or what damages he may have caused. Hillside's documents did not include a copy of Mr. Ramirez's incident report. Hillside's did not talk to anyone at San Rafael about what occurred. They relied solely upon Student's self-report, which served to diminish his culpability.

34. In contrast, Mr. Ramirez was candid and straight forward regarding the incident. At that time, he was unaware of Student's extensive mental health and physically aggressive behavior history. He admitted being caught off guard by the intensity of Student's conduct, noting how quickly Student's behaviors escalated to physical aggression. He discussed his thought processes as he detailed the events. Mr. Ramirez's testimony regarding the episode was consistent with Student's documented propensity for impulsivity and physical aggression. Overall, Mr. Ramirez was transparent, thoughtful, and composed. He did not sit on Student.

35. San Rafael office staff obtained the name and phone number of Mother from Hillside's staff. Mother said that Mr. Ramirez called many times and would rant about Student and his behaviors. However, Mr. Ramirez said he telephoned Mother twice; the first was within a week of Student's attending and the second was in February 2014. He typically called new parents, to welcome them to the school. Mr. Ramirez similarly welcomed Mother. He also asked about Student's behaviors, at which time Mother told Mr. Ramirez that Student had been diagnosed as bipolar and that he was taking medication. The phone call with Mother was the first information that San Rafael received about Student's mental health.

36. Ms. Ruiz talked to Mr. Ramirez the week following the November 8, 2013 incident. She wanted to introduce herself professionally and let him know there were additional supports that might help avoid another crisis situation. Ms. Ruiz did not share any information regarding Student's history of impulsive verbal and physical aggression. She did not discuss special education or assessments.

#### GENERAL EDUCATION INTERVENTIONS

37. Since Student was a general education pupil, San Rafael implemented increasingly intensive behavioral interventions to address Student's resistance to attend class, as well as his impulsivity and aggression.

38. In November/December 2013, San Rafael held a Student Study Team meeting, which was attended by Mother, Ms. Ruiz, other Hillsides personnel, Mr. Ramirez, special education teacher Pamela Rivera, and District school psychologist, Dr. Peinado. On December 20, 2013, the team discussed Student's behaviors and various means of keeping him in the classroom. The team did not discuss Student's mental health or behavior assessment.

39. Mr. Ramirez asked for additional support from Hillsides, especially for getting Student to attend and remain in the classroom. Ms. Ruiz wanted more information regarding Student's behaviors at school. She provided a behavioral chart and log, which San Rafael sent to Hillsides each week. Hillsides came to assist at school four or five times; otherwise, the only time Hillsides came to the school was when Student was suspended. If Student attended class, he would remain for no more than 20 minutes and would not collaborate with other students.

40. San Rafael implemented its Response to Intervention program.<sup>4</sup> Response to Intervention used three tiers of intervention, the first tier being the general education core curriculum. The second and third tiers were for students requiring increasingly intensive interventions by teachers and additional staff members. Student was in the second and third tiers. Mr. Ramirez and San Rafael teachers had received Response to Intervention training. The program included matching students with teachers or aides with compatible personalities. For example, Silvia Torres was a credentialed teacher who was not assigned a classroom for the 2013-2014 school year. Mr. Ramirez believed that Ms. Torres' personality was a suitable match for Student and requested her assistance in encouraging and accompanying Student to his classroom. He also involved others as partner teachers.

41. Hillsides staff assisted Mother in preparing a letter dated November 22, 2013, addressed to Mr. Ramirez. Mother did not mail the letter; she did not know how the letter was delivered to San Rafael. San Rafael did not receive the letter until December 3, 2013, when Ms. Gomez initialed its receipt in the front office. In the letter, Mother requested that San Rafael schedule a meeting "to develop an IEP" for Student. The letter included Mother's return address.

42. Though San Rafael struggled to get Student into class, Student did not have another assertive discipline incident for four weeks. On December 5, 2013, Student refused to go to class, repeatedly cursed and insulted a teacher and the principal who were urging him to attend, and eventually walked off campus, down an adjoining street. The principal followed Student and two San Rafael staff members tracked them in their vehicles. A

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<sup>4</sup> Response to Intervention is a multi-tier approach to the early identification and support of students with learning and behavior needs. The Response to Intervention process begins in the general education classroom. Educational decisions about the intensity and duration of interventions are based on individual student response to instruction.

Hillsides staff member came and retrieved Student. He was suspended for two days. He did not have another assertive discipline incident for almost eight weeks.

43. On December 12, 2013, Dr. Peinado prepared and mailed a proposed Assessment Plan for Student to Mother.

44. Mother and Hillsides staff prepared a letter dated December 13, 2013, generically addressed to the “school psychologist” at San Rafael. This letter requested a comprehensive assessment of Student because of various behavior problems. The letter refers to Student as verbally assaultive, physically aggressive, and threatening. Student would curse, hit, kick, bite, damage property, and elope. Mother did not mail or deliver the letter; she did not know who might have. No evidence indicated the letter was sent and San Rafael has no record of its receipt.

45. Not having heard from her, Dr. Peinado prepared and mailed a second letter to Mother on December 20, 2013, again enclosing the December 12, 2013 Assessment Plan. Mother signed the Assessment Plan on January 10, 2014. San Rafael received the executed plan on January 13, 2014. San Rafael began the assessment within two weeks.

46. On January 22, 2014, Student refused for more than a half hour to go to class. When office staff directed him to go, Student started using profanities and walked off campus. He was suspended for two days. On January 31, 2014, when instructed to go to class, Student insistently and continuously directed abusive and insulting language at staff, in a loud manner in the presence of other students and parents.

47. On February 12, 2014, Student used excessively vulgar language in class and told the teacher, who approached to correct Student, that he would be dead. He was suspended for one day. On February 21, 2014, Student was vulgar with teachers and staff, repeatedly walked out of class, refused to return to class, and physically intimidated staff in the front office by yelling, cursing, and throwing doors. He was suspended one day. On February 25, 2014, Student left school without permission and his actions placed himself and staff members in danger. Student berated staff with vulgar and offensive language, bordering on threats. On each occasion, San Rafael contacted Hillsides to come and retrieve Student, as well as write a letter notice of suspension.

#### THE FEBRUARY 28, 2014 INCIDENT

48. Around 11:00 a.m., February 28, 2014, Mr. Ramirez was in the school auditorium to check on a school assembly, when he received a call on the radio for help. He went outside; it was about 11:10 a.m. A girl student was straddling a six-foot metal fence. Mr. Ramirez went to the girl, got her, and set her down. Mr. Ramirez saw Student standing there. Student and the girl had already been suspended by the classroom teacher and sent to the school office, because they were both screaming profanities at each other. Instead of going to the office, the girl tried to climb the fence. Neither Student nor the girl was where they were supposed to be.

49. Mr. Ramirez instructed the girl and Student to go to the front office. Student said, "I didn't do anything you fucking asshole." When again directed to go to the office, Student said, "I fucking hate you" and screamed, "Don't fucking touch me." Mr. Ramirez put his hands in the air and said that nobody wanted to touch him and that he should go to the office. Student then took a seven-foot running start and jumped up, wildly swinging, trying to punch Mr. Ramirez. Mr. Ramirez put up his arm to keep from being hit. Student backed and ran again, this time getting to Mr. Ramirez, scratching Mr. Ramirez' face and breaking his glasses. Student fell on his bottom, took off his shoes, and threw them at Mr. Ramirez, hitting another teacher. Ms. Torres was present and started to intervene, but Mr. Ramirez asked her to stand back because she too might be injured.

50. Student got up, ran down a hall screaming profanities, and exited the campus, barefooted. Mr. Ramirez ran to his office, retrieved his car keys, and shadowed Student for about a mile as he walked toward Hillside. Student would occasionally stop, pick up dirt clogs, and throw them at Mr. Ramirez. About 100 yards from the Hillside campus, Hillside staff retrieved Student.

51. Mr. Ramirez suspended Student for five days and recommended that Student be expelled for physically assaulting and attempting to cause physical injury at San Rafael. Mr. Ramirez made inquiries as to the proper process. District's Office of Child Welfare, Attendance and Safety directed Mr. Ramirez to complete and return an Initial Incident Report/Recommendation for Expulsion. Mr. Ramirez did as instructed. District also obtained statements from three witnesses: a parent, a teacher and an instructional aide.

52. Hillside prepared its incident reports. No one from Hillside witnessed the incident and no one talked with anyone who did. Hillside's report was Student's version of events. Hillside reported the incident to the DCFS child protection hotline. Two detectives from the Pasadena Police Department went to Hillside to talk to Student. Student said he did not want to talk about the incident. Mr. Ramirez was never contacted by DCFS.

53. On March 3, 2014, a pre-expulsion meeting was held. Mr. Ramirez, Mother, Dr. Peinado, Ms. Rivera, Ms. Ruiz, and other Hillside staff attended the meeting. A witness gave an account of the February 28, 2014 incident, which was consistent with that of Mr. Ramirez. The attendees discussed Student's physically aggressive behaviors. District decided to recommend expulsion, at a yet-to-be-scheduled expulsion hearing. This was confirmed in a letter from the Office of Child Welfare, Attendance and Safety.

54. At the pre-expulsion meeting, Mother asked if Student could be placed on independent study. The assessment process was over and Student's initial IEP team meeting was scheduled the following week. Everyone agreed and Student went on independent study. Student would work on study packets prepared by San Rafael teachers; Hillside personnel would then return the completed study packets to San Rafael. This process would be repeated regularly.

*The Psychological-Educational Assessment*

55. San Rafael started the assessment of Student by gathering additional documentation and information. Ms. Gomez received a January 21, 2014, fax from DCFS that listed Student's education history. Ms. Gomez contacted all six schools. One school responded that Student never attended; another was unsure if Student attended. The other four schools did not respond. Similarly, Pinewood Elementary School did not respond to her earlier letter. San Rafael had none of Student's prior school records at the time of assessment.

56. From Mother, Dr. Peinado obtained signed releases that he sent to Hillsides and Student's county social worker. The psychologist received Student's Health and Education Passport (January 22, 2014).<sup>5</sup> Before receipt of the Passport, District was unaware of Student's mental health history. Dr. Peinado commenced assessment; his findings and recommendations were set forth in the Student's Psychological-Educational Assessment Report, dated March 3, 2014.

57. Dr. Peinado had been a bilingual school psychologist for 19 years and had worked for District the previous 12 years. He earned a bachelor's degree in sociology from the University of California at Irvine, a master's degree in counseling and administration from California State University, Los Angeles, and a doctoral degree from the University of Oregon's school of psychology, with a special education specialization. He held a Pupil Personnel Services credential in school psychology. Dr. Peinado also held a Behavior Intervention Case Manager certification, which requires regular renewal. This certification included training on developing behavior intervention plans and behavior support plans, as well as conducting functional behavior assessments.

58. Dr. Peinado utilized standardized assessment tools. For cognitive functioning, he attempted to administer the Woodcock-Johnson III Cognitive and the Das-Naglieri Cognitive Assessment System. Student completed one subtest on the Woodcock-Johnson and refused to participate in any more subtests on either cognitive instrument. When Dr. Peinado attempted to use another tool, Student was not willing. Due to Student's low level of frustration tolerance, Dr. Peinado had no standard scores for Student's cognitive abilities. However, based on his interviews, San Rafael school records, observations, and information from Mother and teachers, Dr. Peinado's professional opinion was that Student's cognitive abilities were within the average range, at least.

59. Ms. Rivera administered the Kaufman Test of Educational Achievement, 2nd

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<sup>5</sup> Welfare and Institutions Code section 16010, subdivision (a), requires that a foster child's case plan include a summary of the health and education information or records . . . "including mental health information or records, of the child." This summary is referred to as the child's health and education passport.

Edition, to Student. She had given the test approximately 60 times. She was San Rafael's resource specialist program specialist for the 2013-2014 school year and had worked for District since 2009. She also worked with Student as a teacher mentor and testified at the hearing. She had a bachelor of arts in psychology from California State University, Fullerton, and a master's in special education from California State Polytechnic University, Pomona. She held an education specialist, mild/moderate, special education credential, with an autism authorization and a multiple subject teaching credential.

60. Ms. Rivera administered the Kaufman Test to Student over three sessions. The test commonly required multiple sessions. Mother was present. Ms. Rivera computed the results, which were properly described and reviewed in the assessment report. Overall, Student's educational achievement performance scores were average to extremely below average. She expected the low scores because, in her opinion, Student's emotional needs impacted his performance. During the testing sessions, Student became angry, cried, and cursed. This was consistent with prior interactions with Student; Ms. Rivera described him as an angry child who would scream and have emotional outbursts when asked to attend class or do school work. During the testing sessions, Ms. Rivera had great difficulty getting Student on task. He would shake in anger, wanting to return to Hillside.

61. For basic psychological processing skills, Dr. Peinado employed standardized tests in which Student demonstrated average levels of performance for simple visual perceptual skills and below average for visual motor integration, visual basic processes, auditory phonological index and auditory memory index. Student had deficits in visual sequencing, visual complex processing, and auditory cohesion.

62. Relevant to Student's social and emotional state, Dr. Peinado reviewed all available records, including District's Data Director and Aeries electronic databases. The Health and Educational Passport indicated that Student was diagnosed with Intermittent Explosive Disorder in August 2008. Dr. Peinado reviewed Student's mental health hospitalizations from 2011 through 2013, observing that Student was admitted because he was considered a danger to himself and others. He considered the many diagnoses related to the disruptive, impulsive, emotional outbursts and physical aggression.

63. Dr. Peinado had little opportunity to observe Student in class, because Student would not attend. He interviewed Student, who said he enjoyed sports and being in the role of a helper or assistant. He found school very hard and boring, particularly math and reading. He had difficulty making friends. Dr. Peinado observed Student during the assessment sessions. Mother, Hillside staff, and San Rafael staff were present during all assessments. Student would become frustrated and overwhelmed after 40 to 60 minutes. Student was easily distracted, fidgeted in the chair, looked around the room, and made comments. In his prior interactions with Student, Dr. Peinado observed Student becoming easily upset, using foul language, and leaving school premises. When Student became very upset and felt betrayed, significant challenges emerged in an effort to calm or soothe Student.

64. Dr. Peinado used standardized questionnaires and rating scales to assess

Student's behavior and emotional status. These included: Reading Behavior Checklist for Parents; Behavior Assessment System for Children, 2nd Edition; Structured Developmental History Questionnaire; Vineland Adaptive Behavior Scales, Second Edition; and Conners' Comprehensive Behavioral Rating Scale. For attention behaviors, he employed the home and school versions of the Attention Deficit Disorders Evaluation Scale. The behavior scales, by Mother and teachers, rated Student as having clinically significant and at-risk behaviors for aggression, depression, upsetting thoughts, defiance, social problems, conduct disorder, oppositional defiance disorder, withdrawal, adaptability, study skills, and violence potential.

65. Dr. Peinado cited a prescription physician's statement dated November 20, 2013, from Student's Health and Education Passport. The doctor commented on Student's history of irritable and reactive mood, low frustration tolerance and anger outbursts. "His behavior is described as escalating quickly to the point in which he would engage in throwing things, banging his head and being aggressive. He has struggles with issues of not listening to directions, defiance and poor impulse control." The physician said that Student's psychotropic medication was recently increased due to his continuing symptoms.

66. Dr. Peinado reviewed Hillside's December 20, 2013, Mental Health Referral form, which listed the following behaviors: does not complete assignments; tends to withdraw; is aggressive towards people; tantrums; disruptive; persistently angry; does not enter classroom and refuses to attend. He also summarized Student's conduct since starting at San Rafael, including his many assertive discipline incidents and the physical attack on Mr. Ramirez. Teachers and staff provided similar appraisals, stating that Student refused to go to class, became easily angry and defiant, would become agitated and curse, when presented with any type of work.

67. Dr. Peinado applied state and federal legal standards in determining Student's eligibility for special education placement and services. Student did not demonstrate Autistic-Like Behaviors. Student's inappropriate behaviors were related to social-emotional issues that had yet to be resolved. Student did not have significant below average general intellectual functioning and therefore did not have an intellectual disability. Student was not eligible as a child with a specific learning disability, pursuant to the Education Code criteria.

68. Dr. Peinado recommended that Student's primary eligibility was serious emotional disturbance. Dr. Peinado determined that the assessment data, mental health history and diagnoses, interviews, and documents, supported his conclusion that Student met two of the five Education Code criteria for serious emotional disturbance: First, an inability to build or maintain satisfactory interpersonal relationship with peer and teachers. Second, inappropriate types of behavior or feelings under normal circumstances exhibited in several situations. Dr. Peinado found Student to exhibit these characteristics over a long period of time and to a marked degree, adversely affecting Student's educational performance.

69. Dr. Peinado also recommended a secondary eligibility under the criteria of

other health impairment because of his diagnosed attention deficit hyperactive disorder. His findings were also based upon the attention deficit evaluation scales, as well as observations and teacher comments.

70. Dr. Peinado's professional opinion was that Student required a therapeutic setting in order to receive educational benefit. The behavioral scales, the documented vulgar and physical outbursts, the extensive mental health hospitalizations, the mental health diagnoses, the psychotropic medications, and the long-documented history of physical aggression – all caused Dr. Peinado to conclude,

“Currently, [Student] is a danger and a physical threat to himself, to other students, and to staff. [Student's] needs at this time are beyond the general education setting. [Student] would benefit from a therapeutic and more controlled setting to support his social-emotional needs.”

#### *Initial IEP Team Meeting*

71. District convened Student's initial IEP team meeting on March 11, 2014. Attending were: Mother, Student, Mr. Ramirez, Dr. Peinado, general education teachers Eric Cid-Lopez and Priscila Leon, Ms. Rivera, Ms. Ruiz, Ms. Andreozzi, Mr. Hernandez, Mr. Washington, county social worker Nuria Tejada, Hillside Residentially Based Services facilitator Laura Alcantara, and Nadia Gabaldon, a DCFS education consultant.

72. Ms. Rivera discussed the academic achievement assessments. Dr. Peinado presented his psychological-educational assessment report, which had been made available to Mother. He recommended that the team make Student eligible as a student with emotional disturbance and, secondarily, other health impaired because of his ADHD and attention deficits. The team was agreed upon the eligibility categories. The team considered and wrote seven goals in the areas of reading comprehension, writing, math, and social emotional needs. They also discussed various accommodations and modifications, many of which were in the assessment report.

73. District members of the team agreed that Student required a therapeutic educational setting and offered 100 percent specialized academic instruction at Focus Point Academy, a cooperative school staffed and funded by District, the Los Angeles County Department of Mental Health, and Pacific Clinics. Dr. Peinado, Ms. Rivera, and Mr. Ramirez, as well as the other District team members, believed that a small group therapeutic educational setting was necessary to address Student's social and emotional needs, in order for him to access his academics. District members believed that the placement offer, given Student's history of mental illness and physical aggression, was the least restrictive environment. District's offer of a FAPE also included 60 minutes a week of counseling, transportation, and the listed accommodations.

74. Some of the Hillside staff disagreed, arguing there was no serious

consideration given to a less restrictive environment, such as a special day class, before moving to a therapeutic school. Mr. Hernandez opined that Focus Point Academy was just not a good placement. The meeting turned somewhat heated; breaks were taken. Ms. Ruiz was not present through the entire meeting because she was with Student; however, she believed there was no discussion of less restrictive environments. Mother said she had previously visited Focus Point Academy and did not think it was a good place for Student.

75. Mother, Ms. Ruiz, and Mr. Hernandez claim that District team members refused to discuss or consider any placement less restrictive than Focus Point Academy. Dr. Peinado, Mr. Ramirez, and Ms. Rivers state that Dr. Peinado explained why Student required a therapeutic environment and that a special day class would, even with supports, not provide a suitable environment. Student was smart; the Focus Point Academy program would address Student's emotional needs and impulsive aggression, so he could access and benefit from his education. As in his report, Dr. Peinado expressed concern about Student's physically aggressive behaviors that might cause injury or harm to Student, other pupils, teachers or staff. Though there was no substantial discussion regarding other placement than the proposed therapeutic school, District addressed why other placements were inappropriate and inadequate to address Student's severe emotional dysfunction and physical aggression, thus enabling Student to benefit from his education. Mother and the Hillside staff actively participated in the IEP meeting.

76. Though the IEP document had an attached behavior intervention plan, the witnesses from Hillside did not remember discussing the plan, claiming they did not see it until they received the IEP after the meeting. Ms. Rivera recalled some discussion about the behavior support plan by the team; she had worked with Dr. Peinado on the behavioral goals for the behavior intervention plan. Dr. Peinado prepared the plan and believed it was available at the IEP team meeting. Though the plan may have been available at the meeting, the team did not comprehensively discuss the behavior intervention plan.

77. Mother declined District's offer of placement in Focus Point Academy but was in agreement with eligibility, goals, counseling, and accommodations.

### *Focus Point Academy*

78. James Albanese had worked for District and been the principal of Focus Point Academy for three years. Previously, he was employed by the Los Angeles County Office of Education as a compliance officer, an assistant principal for Fairvalley Principal's Administrative Unit, and an interim director of several sites for students with emotional disturbance. Mr. Albanese testified in a forthright and engaging manner, demonstrating a detailed knowledge of Focus Point students and programs. His responsibilities included the retention and evaluation of all teachers and aides, the training, and the development of a positive behavioral intervention program at Focus Point. He provided details regarding Focus Point composition, program, purpose, success, and challenges. He responded to difficult questions when cross-examined by Student's counsel in a frank manner, acknowledging some past incidents that pointed out needed changes, which were

accomplished.

79. Focus Point was a self-contained, center-based District-operated public school for special education students, from kindergarten through grade 12, who had significant social/emotional and behavior needs. It is a cooperative effort of District, the Los Angeles Department of Mental Health, and Pacific Clinics. Students were primarily placed at Focus Point through the IEP process. The Focus Point students required a smaller therapeutic setting and more intensive programs with behavior intervention systems that were available on District's general education campuses, even in special day classes.

80. At the time of hearing, Focus Point had 60 students – 12 in elementary, 11 in middle school, and the rest in high school. Not all Focus Point students were eligible for special education under emotional disturbance. More than 60 percent of the students were clients of DCFS; 15 percent of those resided at Hillside. The classes had six to eight students, except for one high school class which had ten. All of the high school students were on general education curriculum to obtain a regular high school diploma. Mr. Albanese's duties included reviewing the IEP, the behavior intervention plan, and the behavior support plan of each Focus Point student. At the 30-day IEP team meeting, convened for each incoming student, the team would consider additional assessments and services.

81. Focus Point personnel included nine credentialed special education teachers, eight behavioral interventionists, 12 instructional aides, four one-to-one aides, a school psychologist, a health clerk, two clinical supervisors (one from the outside agency Pacific Clinics and another from Pasadena Mental Health, a District program), four licensed clinical social workers (from Pacific Clinics and Pasadena Mental Health), two mental health professionals, and a rehabilitation specialist. All personnel attended monthly meetings during the school year and daily meetings during the summer. Mr. Albanese arranged for training in how to reward students, how to redirect student movement, de-escalation, antecedent recognition, 16 elements of positive behavior intervention, and how to transition students to a comprehensive campus.

82. All personnel received annual training on behavior intervention. They all received annual mandatory training on Crisis Prevention Intervention, which included training in accepted means of physical restraint. Focus Point had students who were physically aggressive and the proper training of staff was essential to address crisis situations in a safe and successful manner. Teachers received regular training on the behavior support plans throughout the year.

83. For those students who came with a behavior support or intervention plan, Focus Point would start collecting data on the student to see if the plan required modification. All behavior data, with goals, are placed in the school's computer system. The students received individual therapy and group therapy on campus. An assigned clinical psychologist would conduct educationally related intensive counseling services assessments. Teachers provided daily social skills lesson and implemented positive behavior interventions.

84. Mr. Albanese cited to statistics, which supported his view that Focus Point was successful in transitioning students back to comprehensive general education campuses. For example, 87 students transitioned from Focus Point to a comprehensive campus during the 2012-2013 school year, 26 students the following year, and seven students had already transitioned for the 2014-2015 year. Transition strategies included dual enrollment, involving the comprehensive campus, and a student transition plan.

85. Within the prior seven weeks, 10 students ran away from campus. If a student left, Focus Point personnel would follow, keeping the student in line of sight at all times. Focus Point would involve the parents or group home. Mr. Albanese believed the school had been successful in getting eloping students to return. Mr. Albanese said he had called the police when there was an assault, theft, possession of a weapon, and any incident that would require mandatory reporting.

*Student's Expert, Nancy Franklin*

86 Nancy Franklin testified as an expert witness on behalf of Student and offered an opinion about the adequacy of District's proposed behavior intervention plan and the impact of not having used a functional behavior assessment as a basis for the behavior intervention plan. Ms. Franklin was a Board Certified Behavior Analyst. At the time of the hearing, she provided in-home applied behavior analysis support to staff, families and children as a supervisor, with the Inclusive Educational and Community Partnership. She was teaching at Saint Mary's College in behavioral development. She was employed by the Los Angeles Unified School District for 31 years, during which she served as Director of Least Restrictive Environment Professional Development, Coordinator for the Behavior Support Office. She supervised and supported inclusion facilitators throughout the Los Angeles Unified School District, trained teachers, administrators, and paraeducators on inclusion strategies for student with behaviors in general education settings, and supervised behavior specialists. Ms. Franklin possessed the education and experience to offer an opinion regarding a behavior intervention plan. She met with Student, once, observing while having him participate in varying activities. She also reviewed the written materials that Student's counsel provided.<sup>6</sup>

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<sup>6</sup> District determined that Student provided Ms. Franklin with documentation, which had not previously been provided District. Ms. Franklin said the documents did not influence her expert opinion. The administrative law judge reviewed these documents *in camera* and concluded that they probably had some effect upon Student's expert. After being assured by Student's counsel that all necessary signatures for release had been obtained, the documents were admitted into evidence for purposes of this due process proceeding, only. These documents, referred to as Student's October 30, 2013, Los Angeles County-Department of Mental Health Initial Assessment and Client Care Coordination Plan (with quarterly reports), provided valuable information regarding Student's mental health and behavioral history, much of which was unavailable to District prior to hearing.

87. Ms. Franklin provided three basic reasons as to why District's behavior intervention plan for Student was inadequate. First, the behavior intervention plan misidentifies Student's target behavior as not starting or completing in-class assignments or homework, despite ongoing and consistent verbal prompting and/or one-on-one assistance. Based on her review of Student's records, Student's target behavior was associated with his impulsivity and aggressive tantrums. Second, having identified the target behavior, District's behavior intervention plan proceeds to inconsistently, nonsensically, or inadequately answer the questions on the behavior intervention plan form. For example, the behavior intervention plan's indication in Item 3, that the need for the behavior plan is extreme, does not match a target behavior of not completing assignments. Item 10 asks what teaching strategies are necessary, but the answer read, "[Student] needs to learn to ask for help in order to complete tasks."

88. Ms. Franklin's third reason for the behavior intervention plan's inadequacy was that a proper behavior intervention plan required first conducting a functional behavior assessment. The functional behavior assessment would have provided the answers to the behavior intervention plan form's questions. She opined that, since District did not first conduct a functional behavior assessment, the behavior intervention plan was meaningless. If the target behavior was defined as physical aggression, one simply could not have developed a behavior intervention plan without a functional behavior assessment.

89 Ms. Franklin conducted many functional behavior assessments. She observes the student across multiple environments, between 15 to 30 hours. She would interview people in the child's life, gaining understanding of where and how the behavior was occurring. Then, she would observe how the child did left alone and when asked to do a nonpreferred task, exploring the contingencies that might change the child's behaviors. Basically, Ms. Franklin would be gathering data that would reveal why a child was choosing a behavior.

90. This data would enable the assessor to develop substitute behaviors and teaching strategies, as outlined by the behavior intervention plan form. Without the functional behavior assessment information, teaching strategies would just be guesswork. She emphasized that, in her expert opinion, District's behavior intervention plan for student was inadequate and that a functional behavior assessment was required in order to develop a meaningful and effective behavior intervention plan.

*Student's Expert, Kimm Campbell*

91. Student's expert witness Kimm Campbell testified about the planning and services that were required by federal law to adequately service students with mental/behavioral health needs. Ms. Campbell was a licensed clinical social worker who has served as the Director of Human Services in county systems of care programs in North Carolina and Florida. Ms. Campbell had an extensive background in developing, coordinating, and implementing health services to children and adult consumers. She had been part of hundreds of IEP teams that developed mental health service for students.

92. Generally, Ms. Campbell opined that pupils with Student's background of complex trauma required a team of school and community staff to develop an IEP. These team member included social workers, behavior specialists, case managers, mental health providers, and any other person who was part of the student's community. She opined that a team of professions and caregivers should have considered an array of service that would have been necessary to meet Student's unique needs and enable him to achieve educational benefit. Such services should have included school counseling, input from his private counselor, one-on-one service support, social work services, and response to behavior other than suspensions.

93. In Ms. Campbell's experience, these services were provided to students with mental/behavioral needs on the general education campus and did not require special staffing. She acknowledged that she did not have experience making these services available at a separate site. Yet, she believed such services needed to be first tried on a less restrictive site.

94. Ms. Campbell claimed that the IEP failed to provide a FAPE for Student because it did not contain strategies or interventions to help Student reach meaningful behavior goals. She claimed that the IEP did not have input from Parent, a behavioral specialist, and special education teachers. Ms. Campbell acknowledged that San Rafael should have been informed of Student's history of physical aggression and mental health history when Student first enrolled.

## LEGAL CONCLUSIONS

### *Introduction – Legal Framework under the IDEA<sup>7</sup>*

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit.

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<sup>7</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

5, § 3001, subd. (p).) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures with the participation of parents and school personnel that describes the child’s needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (“*Rowley*”), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).)

5. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA

administrative hearing decision is preponderance of the evidence].) Thus, in this matter, Student had the burden of proof as to all issues.

### *Issue 1 - Child Find*

6. In Issue 1, Student contends that District violated its child find obligations by failing to refer Student for assessment after Student manifested verbal and physical aggression. District contends that it met its child find obligations because Student was enrolled as a general education student, District was unaware of Student's mental health history, District employed increasingly intense general education interventions, including its tiered response to intervention program and the student study team, and within five weeks of Student's first attending, District provided Mother an assessment plan. For the reasons set forth below, Student did not demonstrate by a preponderance of the evidence that District failed to fulfill its child find duties.

7. School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may be in need of special education and related services. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56171, 56300 et seq.) This ongoing duty to seek and serve children with disabilities is referred to as "child find." California law specifically incorporates child find in Education Code section 56301. (Ed. Code, § 56301, subs. (a) & (b).) "The purpose of the child-find evaluation is to provide access to special education." (*Fitzgerald v. Camdenton R-III School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.)

8. A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (*Department of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

9. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that District knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education*. (3rd Cir. 1993) 993 F.2d 1031, 1041 .) A pupil shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code § 56303.)

10. The evidence showed that District quickly responded to Student's initial behavioral outbursts with interventions, which increased in intensity until Student was referred for assessment. The timeline of Student's behaviors indicated that these interventions were initially effective.

11. Student was a stranger to District until he started attending San Rafael on November 4, 2013, as a fifth grade general education student. He resisted attending class. The next day, Student resisted going to class and was verbally aggressive; he was suspended for a day. On November 8, 2013, Mr. Ramirez suspended Student for three days because he verbally and physically attacked Mr. Ramirez in his office.

12. Mr. Ramirez did not initiate expulsion proceedings. Since Student was a general education pupil, San Rafael implemented increasingly intensive behavioral interventions to address Student's resistance to attend class. San Rafael employed its Response to Interventions program, moving Student through Tier Two and Tier Three interventions. This included paring Student with teachers and aides, who worked to encourage him to attend and remain in class.

13. Mr. Ramirez asked Ms. Torres who was not assigned to a classroom, to support Student. San Rafael held a Student Study Team meeting, at which participants discussed Student's behaviors and possible responses. San Rafael cooperated with HillSides in tracking Student's behaviors on weekly logs, as requested by therapist Ms. Ruiz. These efforts were productive. Though getting him to class continued to be a struggle, Student did not have another assertive discipline report for four weeks, on December 5, 2013. Within a week of that incident, Dr. Peinado mailed Mother an assessment plan.

14. Student argues that the initial outbursts and his continued resistance to attend class were sufficient to trigger District's child find duties and refer him for assessment. However, during the first few months of Student's enrollment, the only entities and individuals who were aware of the urgency of Student's emotional health needs were DCFS, the Department of Mental Health, the HillSides staff, with whom District had cooperated, and Mother.

15. Neither HillSides nor DCFS informed San Rafael of Student's documented history of verbal and physical aggression, the attacks upon Mother, his siblings and foster care parents, or the threats and attack upon the county social worker. San Rafael was unaware that Student lost multiple prior foster care placements because of aggressiveness. San Rafael did not know of Student's six hospitalizations because he was deemed a threat to himself and others, the numerous mental health diagnoses, or his prescription of psychotropic medication. San Rafael was not even informed by those responsible for him of Student's ADHD diagnosis.

16. Enrolling Student in the local elementary school's general education fifth grade class, without revealing the disturbing mental health profile and physically aggressive history, was irresponsible of HillSides. Those who possess information relevant to a school district's capability to weigh and appraise a student's needs and provide appropriate educational services should share such information.

17. During testimony, HillSides staff testified that various privacy laws limited the information that they could share with the school. Such posturing is both illogical and

disingenuous. DCFS placed Student at Hillside's Residentially Based Services program because it determined that Student required a therapeutic setting; his aggressive behaviors had exhausted less restrictive placement. The purpose of Student's Residentially Based Services placement was to provide a program that was aware of Student's mental health diagnoses and history and that was prepared to address his needs with therapy, positive behavioral supports, and staff trained in safely responding to impulsivity and physical aggressiveness. The 2007 Residentially Based Services Initiative's primary goal was to provide a framework of permanency, well-being, and safety for children with multiple failed foster family placements.

18. Enrolling Student in San Rafael, without first sharing Student's mental health history and needs, contradicted the purpose of Student's Residentially Based Services placement. Student was put in a general education elementary school, amongst teachers and staff, who were unaware of his mental health and aggression. The safety of Student, fellow pupils, teachers, and staff, was compromised. Those responsible for Student during the school day were improperly and unfairly denied vital information, as acknowledged by Student's expert, Ms. Campbell.

19. Privacy laws did not prevent DCFS or Hillside's from sharing Student's mental health history. Privacy laws merely needed to be addressed. Once assessment commenced, Dr. Peinado asked Mother to sign releases; she did and DCFS provided documentation. When it was time to obtain experts for hearing, Student's counsel shared more detailed information with the retained witnesses than with District and, when about to be ordered to produce such documents, had no difficulty in obtaining all necessary releases.

20. Considering what little it knew, District responded to Student's behaviors in an appropriate manner, steadily increasing interventions. Such interventions were successful in diminishing Student's aggressive outbursts for four weeks. By the fifth week, District had already prepared an Assessment Plan for Mother. Under these facts, where Hillside's should have, but did not, provide District the information it needed, Student has not demonstrated that District failed to meet its child find duties.

### *Issues 2 and 3 - Functional Behavior Assessment and Behavior Intervention Plan*

21. Student asserts that District's refusal to conduct a functional behavior assessment and fashion an appropriate behavior intervention plan amounted to a failure to assess Student in all areas of suspected disability and were procedural violations that denied Student a FAPE. District contends that it appropriately and adequately assessed Student's behavioral and emotional needs, that there was no legal requirement to conduct a functional behavior assessment, and that its proposed behavior intervention plan addressed Student's behavior. Further, even if a functional behavior assessment was warranted and the behavior intervention plan was inappropriate, neither procedural violation denied Student a FAPE. As discussed below, Student has not met his burden of proving that the lack of a functional behavior assessment and the proposed behavior intervention plan were procedural violations that denied Student a FAPE.

22. For purposes of evaluating a child for special education eligibility, the district must ensure that “the child is assessed in all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child’s needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

23. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessment materials must be used for purposes for which they are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii)); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).)

24. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3) [tests of intellectual or emotional functioning must be administered by a credentialed school psychologist], 56322 [assessment shall be conducted by persons competent to perform the assessment, as determined by the school district, county office, or special education local plan area]; 56324 [a psychological assessment shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed].) Persons knowledgeable of the student’s disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

25. If the evaluation procedures required by law are met, the selection of particular testing or evaluation instruments is at the discretion of the school district. Once selected, the instrument must be administered in accordance with the instructions provided by the producer, including use of composite scores if called for by the instructions. (Off. of Special Education Programs (OSEP) interpretative letter *Letter to Anonymous* (September 17, 1993), 20 IDELR 542; cited approvingly in OAH case *Manteca Unified School Dist.* (December 13, 2011) 111 LRP 7785.) The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 and 56329.)

26. Regulations implementing the Hughes Bill (Ed. Code §§ 56520, et seq.) required that a local educational agency conduct a functional analysis assessment, resulting in a behavior intervention plan, when a student exhibited a “serious behavior problem,” and

the IEP team found that the instructional/behavioral approaches specified in the student's IEP had been ineffective. (Cal. Code Regs., tit. 5, §§ 3001, subds. (d), (e), and (g).) Effective July 1, 2013, the Hughes Bill was repealed upon the passing of Assembly Bill 86 (AB 86). Under AB 86, an educational agency is no longer required to conduct a functional analysis assessment or create a behavior intervention plan for students exhibiting "serious behavior problems." Instead, the educational agency must follow the IDEA which provides that IEP teams must address behavior when it impedes a student's or other students' access to education. (Ed. Code, § 56520, amended.)

27. A school district's failure to conduct appropriate assessment or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) In matters alleging procedural violations, the denial of a FAPE may only be shown if the procedural violations impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

28. Student fails to demonstrate that the absence of a functional behavior assessment or the adequacy of the proposed behavior intervention plan denied Student a FAPE. District evaluated Student's emotional, mental, and behavioral needs, recommended a therapeutic placement, and fashioned a proposed behavior intervention plan to address a target behavior.

29. Dr. Peinado adequately assessed Student in all areas and Student has not challenged his assessment. He was a credentialed school psychologist for 19 years, and held a behavior intervention case manager certification. In conducting Student's social and emotional assessment, Dr. Peinado used all available information.

30. Dr. Peinado utilized standardized tools, such as the Woodcock-Johnson, the Cognitive Assessment System, and the Kaufman Test (administered by the qualified and experienced resource specialist) to measure Student's intellectual and academic abilities. He employed three different standardized tests to measure Student's psychological processing skills.

31. As to Student's social emotional state and behaviors, Dr. Peinado reviewed Student's Passport and analyzed its detailed history of Student's hospitalizations, diagnoses, prescriptions, and long documented aggressive behaviors. He reviewed San Rafael disciplinary reports and academic records; no prior school records were available. He interviewed Student, Mother, and teachers and observed Student during assessment and on campus. He used five different standardized questionnaires and rating scales to assess Student's behavior and emotional status, as well as a scale to gauge Student's attention deficits. District satisfied its legal obligations to fully assess Student.

32. Student asserts a functional behavior assessment was also necessary because District could not otherwise fashion a behavior intervention plan that addressed Student's behaviors. Student's well qualified expert, Ms. Franklin, strongly asserted that District's proposed behavior intervention plan identified the wrong target behavior and was internally inconsistent, failing to properly specify teaching strategies. Ms. Franklin emphasized that the only means of preparing an appropriate behavior intervention plan is to first conduct a thorough functional behavior assessment. She acknowledged that she herself had prepared a behavior intervention plan without a functional behavior assessment, but did not believe that to be the best practice.

33. Though provided the Department of Mental Health Initial Assessment and Client Care Coordination Plan, Ms. Franklin did not speak about Student's significant history of physical aggression, the psychiatric hospitalization, the mental health diagnoses, and the psychotropic medications. When asked if this information influenced her expert opinion, Ms. Franklin said it did not, because she focused on the proposed behavior intervention plan's inadequacies caused by the failure to conduct a functional behavior assessment.

34. Ms. Franklin is correct that a functional behavior assessment would have provided additional information and could have assisted in fashioning a more effective behavior intervention plan or additional behavior intervention plans for other identified target behaviors. However, her opinion did not explain how the absence of a functional behavior assessment and the alleged weakness of the behavior intervention plan were procedural violations that denied Student a FAPE. Ms. Franklin did not address how to assure the safety of Student, fellow pupils, teachers, and staff. Ms. Franklin did not discuss Dr. Peinado's professional opinion that Student required a therapeutic educational setting in order to access and benefit from his academics.

35. Student's assertion that a functional behavior assessment was required, in order to have evaluated Student in all areas of suspected disability, is not supported by the evidence. District had assessed Student in all areas of suspected disability. Qualified assessors utilized accepted standardized assessment tools and methods, properly interpreting and reporting the results. In choosing the assessment instruments, District decided that a functional behavior assessment was not necessary for purposes of determining Student's eligibility and making an offer of FAPE.

36. Even if Student had proved procedural violations, Student failed to demonstrate how such violations amounted to a denial of FAPE. Student asserts that a functional behavior assessment and a better crafted behavior intervention plan would have demonstrated that a less restrictive placement was feasible, thus impeding Student's right to a FAPE and depriving Student of educational benefit. Yet, here, the psycho-educational assessment report found that Student's mental health status, and the danger of potential harm posed by his physically aggressive impulsivity, required a therapeutic educational setting. Student has not shown that a functional behavior assessment or a better behavior intervention plan would have altered, or diminished the dangers posed by, Student's mental health status.

37. Student has not met his burden of proving that the lack of a functional behavior assessment and the proposed behavior intervention plan were procedural violations that denied Student a FAPE.

*Issue 4 - Compliance with Education Code section 56521.1*

38. Student contends that Education Code section 56521.1 mandated District to convene an IEP team meeting when it used emergency interventions upon Student and that District's failure to do so was a procedural violation that denied Student a FAPE. District contends that section 56521.1 is inapplicable.

39. Student does not demonstrate that District failed to comply with section 56521.1. This section became effective on July 1, 2013. It generally provides for a process to assure that appropriate behavioral intervention plans are in place for special education students, upon whom emergency intervention was used. Subsection (a) unambiguously states that the emergency interventions to which the statute refers are those used to control the behavior of an "individual with exceptional needs." Section 56531.1 is located within Education Code, Title 2, Division 4, Part 30 (Special Education Programs), Chapter 5.5 (Behavioral Interventions); these statutes concern special education students and program.

40. Therefore Education Code, section 56531.1 is inapplicable because at the time of both incidents, Student did not have an IEP and was in general education. Moreover, the evidence shows that District did not use emergency interventions upon Student.

41. Student has not shown that District utilized emergency interventions on him. Student claimed that Mr. Ramirez sat on him in the principal's office, and remained upon him until just before Ms. Ruiz arrived on November 8, 2013. However, as discussed in the above factual findings, Mr. Ramirez's statement and testimony regarding the incident were more credible than that of the Hillside Incident Report and the testimony of Ms. Ruiz and Mr. Hernandez, which exclusively relied on Student's assertions. Mr. Ramirez did not sit on Student and restrain him. He generally defended himself when Student tried to hit him by keeping Student at arm's length. Otherwise, he gave Student space as Student acted out and eventually calmed down.

42. Similarly, the incident of February 28, 2014, does not involve an emergency intervention as contemplated by section 56521.1. Like before, Student gave a version of events to Hillside staff which minimized his culpability. As determined in the factual findings above, Mr. Ramirez's report and testimony of the incident were more credible, as well as consistent with other witness reports. Student physically attacked Mr. Ramirez when Student was instructed to go to the front office. Mr. Ramirez merely tried to defend himself, by putting up his arms as Student jumped toward him. After hitting Mr. Ramirez in the face, and breaking his glasses, Student threw his shoes and ran off campus. Mr. Ramirez never restrained Student. Neither of the two incidents involved emergency interventions.

43. Given that Student was not in special education at the time of the incidents, and the evidence showed emergency interventions were not used, Student has not met his burden of proof as to Issue 4.

#### *Issue 5 - Least Restrictive Environment*

44. Student asserts that District denied him a FAPE by not offering a placement in the least restrictive environment when, upon a finding of initial eligibility, it refused to consider less restrictive placements than Focus Point Academy. District contends that its placement offer was the least restrictive environment because Student required a therapeutic educational setting to benefit from his educational program; lesser restrictive settings were not therapeutic. As discussed below, Student did not meet his burden of proving that a lesser restrictive setting would meet his mental health and emotional needs, enabling him to benefit from this education.

45. An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education ... designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) "An IEP is a snapshot, not a retrospective." (*Adams, supra*, at p. 1149.) The IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

46. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); Ed. Code, § 56031.) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, § 56000, subd. (b).) Mainstreaming is not required in every case. (*Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1056.) However, to the maximum extent appropriate, special education students should have opportunities to interact with general education peers. (Ed. Code, § 56040.1.) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the followed factors: "(1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect [the student] had on the teacher and children in the regular class; and (4) the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Bd. of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050].)

47. Student contends the law required District to offer Student a continuum of placement options; instead, Student was offered one of the most restrictive environments. Thus, Student claims he was denied a FAPE. Student's analysis, however, generally ignores

the psycho-educational report's persuasive findings and recommendations that Student's mental and emotional condition requires a therapeutic educational environment.

48. The *Rachel H.* analysis demonstrates that a general education setting is inappropriate for Student. Student refused to attend class, even though regularly paired with a mentor teacher. When urged to attend, he became volatile and aggressive. When in class, he would not stay for more than 20 minutes and would regularly fight and curse at peers and teachers. He refused to associate with fellow pupils, alienating his classmates. Significantly, Student had a deleterious effect on his classes, other children, and teachers because of his volatility and physical aggression.

49. Student's expert witness, Ms. Campbell, stated that Student was denied the opportunity to be in a lesser restrictive environment. She recited the statutes and regulations which discussed the continuum of placement options that were to be considered and offered, progressing to the more restrictive only when the less restrictive had been attempted. She claimed that the IEP did not have input from Parent, a behavioral specialist, and special education teachers.

50. Ms. Campbell's testimony on these points was simply not correct. Ms. Rivera participated in the assessment, interventions, IEP, and behavior intervention plan development. Dr. Peneido was also a credentialed behavior intervention case manager. Mother was interviewed and completed various standardized behavior scales and, thus, her input was considered as part of the assessment. Mother and Hillside staff also participated in the IEP team meeting, disagreeing with District members of the team.

51. Ms. Campbell largely ignores Dr. Peinado's conclusion that Student's mental and emotional needs requires an environment that is therapeutic in order to access and benefit from his academics. She does not address how a general education class, with resource teacher or one-on-one aide, is therapeutic. Ms. Campbell did not explain how a special day class for emotional disturbance would, even with counseling, provide Student with the inclusive, focused mental health support of a therapeutic setting given the depth of his needs and severity of behaviors.

52. Ms. Campbell acknowledged that San Rafael should have been informed of Student's history of physical aggression and mental health history when Student first enrolled. Yet, her recommendations, as well as Student's demand for a less restrictive environment, discounts the psycho-educational assessment report's finding that Student is a danger to himself, his fellow students, teachers, and staff.

53. Before Dr. Peinado's assessment, District knew little about Student's mental health history. Having obtained Student's Passport, Dr. Peinado learned of Student's documented physical aggression, hospitalizations because Student was a danger to himself and others, and the inability of therapy and medication to control Student's impulsivity and physical hostility. Dr. Peinado pointedly quoted one of Student's physicians, who said that Student continued manifesting symptoms of defiance, poor impulse control, throwing of

objects, and aggression, even though Student had been participating in Hillside's Residentially Based Services for two months.

54. Dr. Peinado was never allowed to see Student's October 2013 Department of Mental Health Initial Assessment, which was produced during the hearing. Significantly, Dr. Peinado's conclusions regarding Student's educational placement needs were in conformance with DCFS' and the Department of Mental Health's prior determinations regarding Student's residential needs. After numerous failed foster home placements, DCFS placed Student in the more restrictive environment of Hillside's because Student's behaviors were unmanageable in a lower level of care. Further, as affirmed by the Department of Mental Health, Student's continuing volatility and physical aggression required a therapeutic environment, as offered by Hillside's Residentially Based Services program.

55. The evidence herein does not support Student's assertion that District should have offered a less restrictive environment than a therapeutic educational setting. The evidence also does not support the assertion that a less restrictive environment could provide the needed therapeutic support. Therefore, District's offer of educational placement in a therapeutic setting is the least restrictive environment.

56. Having determined Student required a therapeutic setting, District offered Focus Point. Student claims that Focus Point is inappropriate, citing various shortcomings.

57. Focus Point is a cooperative effort of District, the Los Angeles Department of Mental Health, and Pacific Clinics. Mr. Albanese provided a detailed review of Focus Point's program, including a profile of the staff and student population. Focus Point has 60 students; Student would be with 11 in middle school. Focus Point would immediately gather data on Student, in accordance with his IEP goals and behavior intervention plan. At Student's 30-day IEP meeting, the team would consider additional assessments and services.

58. The staff included credentialed special education teachers, behavior interventionists, instructional aides, available one-to-one aides, school psychologist, clinical supervisors, licensed clinical social workers, mental health professionals, and a rehabilitation specialist. The assigned clinical psychologist conducts educationally related intensive counseling services assessments, as necessary. Students receive individual and group therapy, on campus. All staff are trained in positive behavior control, antecedent recognition, de-escalation, and how to transition students to comprehensive campuses. All behavior data is centralized on the school's computer system, with students' goals and intervention plans. Focus Point staff are regularly trained to address crisis situations in a safe and successful manner, including accepted means of physical restraint.

59. Mr. Albanese said that 10 students had run away from campus the previous seven weeks. He explained how Focus Point personnel responded to the situation, assuring the eloping students' safety, involving the parents or group home, getting most of the students to return to the program. Also, there had been incidents when the police were

called. Student argues that these incidents make Focus Point unsuitable because eloping students are not good role models and because Focus Point has a criminal element.

60. Pupils with emotional disturbance leave campus for many reasons and there is no indication that the number of students who left Focus Point was unusual for this population. Student has a history of elopement and Focus Point has experience in addressing eloping students, including their safety. Also, police are called to all public schools whenever there is an assault, theft, possession of a weapon, or any other reportable incident. Focus Point is not an exception in this regard. Student did not present any other evidence that Focus Point was not a suitable therapeutic educational placement.

61. In light of the extensive evidence discussed above, Student failed to meet his burden of proof that his need for a therapeutic educational placement could be met in a less restrictive environment than a school, such as Focus Point.

#### *Issue 6 - Provision of Various Services*

62. In Issue 6, Student alleges that District denied Student a FAPE because it failed to designate and provide the five listed supplementary services and supports. District contends that the cited services and supports would not change the need for a therapeutic educational placement. Further, the services and supports are available at Focus Point.

63. Student's argument regarding the listed services and supports is actually a variation of the assertion that District did not place Student in the least restrictive environment. In other words, Student claims that if District utilized these supports and services, Student could be placed in a less restrictive setting. However, Student did not introduce any evidence as to how these services and supports would meet Student's need of a therapeutic educational placement.

64. Ms. Campbell's contention that District should have utilized these myriad services before offering the Focus Point placement ignores the threshold determination of Student's therapeutic needs. Ms. Campbell does not address how these services will protect the safety of Student, fellow pupils, teachers, and staff.

65. Significantly, Focus Point provides the services and supports that Student's own expert believes are necessary for him to receive a FAPE. Issue 6(a) lists direct behavioral interventions, such as behavioral supports, skills building and other rehabilitative interventions, provided by qualified personnel, aides, and mentors. Mr. Albanese described the inclusive positive behavior interventions and supports, including the extensive training of staff, availability of counselors (even if counseling is not part of the student's IEP), and the building of adult relationships.

66. Issue 6(b) lists the coaching and training of teachers and staff. As summarized in the factual findings, Focus Point has extensively trained special education teachers, counselors, aides, school psychologists, and clinical psychologists. The staff is regularly

trained in positive behavioral intervention supports and strategies, all with the goal of transitioning a student back to a comprehensive campus.

67. Issues 6(c) and 6(d) refers to coaching and training of parent or guardian, as well as the mobilization of community resources. Mr. Albanese spoke about the inclusion of the parent or guardian in addressing a student's needs. As for community resources, Focus Point works with District public schools in developing transition plans to move a student to full-time attendance at a comprehensive campus, including dual enrollment strategies. Also, all the Focus Point students are on a general education curriculum, working toward receipt of a regular high school diploma. This includes transition plans into the local community, trades, business, and college.

68. Issue 6(e) refers to coordination of school activities with those of Student's non-school providers, in the areas of mental health and public systems, such as Student's psychiatrist, therapists, and counselors. Here, the Department of Mental Health is monitoring Student's progress in Hillside's Residentially Based Services program, which is a program that the Department encouraged Hillside to develop. Similarly, Focus Point is a cooperative effort involving District and the Department of Mental Health. Hillside's Residentially Based Services program and Focus Point are therapeutic settings – one residential and the other educational – which the Department of Mental Health helped develop and to which it continues to contribute. The Department of Mental Health's involvement in both programs favors the coordination of activities and services from both settings.

69. In sum, Student has failed to demonstrate by the preponderance of evidence that District denied him a FAPE by failing to separately provide the listed services. In fact, the evidence indicates that placement at Focus Point is a FAPE because it provides such services and supports to meet Student's unique needs.

#### ORDER

All relief sought by Student is denied.

#### PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all issues.

