

1 I. BACKGROUND

2 In January 2001, Plaintiff transferred to Imperial Elementary School, a school
3 operated by Defendant, Orange Unified School District. Plaintiff was enrolled in the
4 second grade during the 2001-2002 school year, with Faye Isaacson as his teacher.
5 (Administrative Law Judge Decision (“ALJD”) 11-2-06 at 4.)

6 On March 14, 2002, Dr. Maxann Shwartz conducted a psycho-educational
7 assessment of Plaintiff. Although Dr. Shwartz determined that Plaintiff displayed
8 significant emotional issues, these issues had not escalated to the point of impacting
9 Plaintiff’s academic performance. Therefore, Dr. Shwartz opined that Plaintiff was *not*
10 eligible for special education programming under the category of “severe emotional
11 disturbance.” (ALJD 11-2-06 at 4-5; AR 6-30-06, 25: 24-25, 26: 1, 71: 7-10). On March
12 21, 2002, Defendant convened an Individual Education Plan (“IEP”) meeting, where the
13 IEP team determined that Plaintiff did not qualify for special education services, per Dr.
14 Shwartz’s recommendations. (ALJD 11-2-06 at 6; AR 6-21-06, 92: 3-5, 25, 93: 1-4, AR
15 Ex. F-4).

16 In August 2002, Plaintiff entered the third grade class of Sarah Hughes. Despite
17 excelling academically, Plaintiff was placed on a “behavior contract” for disorderly
18 behavior. (ALJD 11-2-06 at 6; AR 6-21-06, 26: 24-25, 27: 1-3, 60: 17-25, 61: 1-5.)

19 On September 19, 2002, Plaintiff’s mother requested a mental assessment of the
20 Plaintiff due to his continued defiant behavior in the home. On September 21, 2002,
21 Defendant jointly made a request for the Orange County Mental Health (“OCMH”) to
22 conduct a mental assessment after Plaintiff was suspended for drawing a picture depicting
23 a student shooting a gun at another student who was running away (“Picture”). At the top
24 of this Picture was the phrase, “Do not desterve [sic]! Or I’ll destroy you!” (ALJD 11-2-
25 06 at 7; AR Ex. I-43.)

26 On October 28, 2002, OCMH clinical psychologist, Dr. Mark A. Schwartz,
27 conducted a Mental Health Assessment (“MHA”) on Plaintiff. Dr. Schwartz recommended
28 family counseling for the Plaintiff and his parents. Dr. Schwartz also recommended that

1 Plaintiff be referred to Children and Youth Services for psychiatric services. (ALJD 11-2-
2 06 at 7.)

3 On November 14, 2002, Emily Popp conducted a psycho-educational assessment of
4 Plaintiff and came to the conclusion that although Plaintiff displayed “some significant
5 social emotional issues,” Plaintiff still did not meet the eligibility criteria for special
6 education under the category of “serious emotional disturbance.” (ALJD 11-2-06 at 7-8;
7 AR 6-22-06, 80: 15-22; AR 6-27-06 181: 21-23.) On November 22, 2002, Plaintiff’s IEP
8 team was again convened, where Plaintiff was again found ineligible for special education
9 services. (ALJD 11-2-06 at 8; AR 8-29-06, 63: 7-19.)

10 In April 2003, during spring break, Plaintiff was hospitalized due to violent tantrums
11 prompting his mother to call the police for assistance. Plaintiff was hospitalized from
12 April 6, 2003 to April 15, 2003. Defendant was notified of Plaintiff’s hospitalization on
13 April 9, 2003. (ALJD 11-2-06 at 10; AR 6-21-06, 69: 3-14, 80:5-13.) On May 15, 2003,
14 Plaintiff returned to school, and the school year ended shortly thereafter. Plaintiff’s overall
15 performance for the third trimester was not markedly different than the previous two, and
16 Plaintiff continued to progress academically. (ALJD 11-2-06 at 10; AR 8-17-06, 81: 1-14.)

17 During the 2003-2004 school year, Plaintiff continued to display emotional
18 instability in the home and in school. Popp initiated another assessment of Plaintiff.
19 Although Popp received consent to conduct the assessment on Plaintiff from his parents
20 on August 27, 2003, she was unable to do so. The following day Plaintiff threatened to
21 commit suicide, and was consequently placed in the Orangewood Group Home. Plaintiff
22 was enrolled in the William Lyon School of the Orange County Department of Education
23 (“OCDE”), located on the grounds of Orangewood Group Home. (ALJD 11-2-06 at 11;
24 AR 6-22-06, 188: 13-16, AR 8-29-06, 7:13-20.)

25 On October 23, 2003, OCDE’s psychologist, Dr. Russell Griffiths, conducted an
26 assessment of Plaintiff and determined that Plaintiff met the eligibility criteria for special
27 education services under the category of “serious emotional disturbance.” (ALJD 11-2-06
28 at 12; AR 8-29-06, 12: 7-15, 13: 1-25, 14: 1-8.) Defendant convened an IEP meeting,

1 where Plaintiff was found eligible for special education. Among the members of the IEP
2 team was Popp, who agreed with the findings of eligibility. (ALJD 11-2-06 at 12.) The
3 IEP team also placed Plaintiff at Canyon Acres Group Home. As part of its program,
4 Canyon Acres provides psychotherapy and family counseling. (ALJD 11-2-06 at 12; AR
5 6-27-06, 18: 8-25, 25: 14-25, 26: 1-25, 115: 3-17.) Plaintiff returned to the Defendant
6 district in November 2003, and was placed in the Special Day Class of Michelle Lovitt at
7 Crescent Intermediate School. (ALJD 11-2-06 at 12).

8 On March 16, 2004, Plaintiff filed a petition with the COAH, naming Defendant and
9 OCMH as respondents. (ALJD 11-2-06 at 13.) On April 30, 2004, the three parties
10 entered into a partial agreement during a mediation session. Plaintiff withdrew the petition
11 with prejudice as to OCMH in exchange for OCMH agreeing to fund the cost of Plaintiff's
12 placement at Canyon Acres and to provide case management quarterly and as needed.
13 Plaintiff was to remain at Crescent Intermediate School for the present, and an IEP meeting
14 was to be held prior to the end of the school year. (ALJD 11-2-06 at 13.)

15 On May 26, 2004 and June 9, 2004, IEP meetings were held to review Plaintiff's
16 behavior plan. At both meetings, the IEP team agreed with Jennifer Gonzalez, school
17 psychologist, that Plaintiff should be placed in a nonpublic school which specializes in
18 educating children who are eligible for special education under the category of "severe
19 emotional disturbance." On June 28, 2004, Plaintiff began attending Canal Street
20 Elementary School,(ALJD 11-2-06 at 14.)

21 By October 7, 2004, Plaintiff's behavior showed significant improvement and the
22 IEP team discussed "mainstreaming" Plaintiff back into the public school environment.
23 Although the IEP team was convened on January 24, 2005 to recommend mainstreaming
24 Plaintiff into the least restrictive environment of the public school, the IEP team refrained
25 from doing so because Plaintiff was also scheduled to return to the custody of his parents
26 at around the same time. The IEP team believed that two transitions would not be in the
27 child's best interest. (ALJD 11-2-06 at 14.)

28 On March 7, 2005, Plaintiff and his parents started therapy with Ms. Maryanne

1 Rigby. They had met Ms. Rigby at a local church, where they were attending parenting
2 classes in the “Love and Logic” method. (ALJD 11-2-06 at 15; AR 6-30-06, 140: 11-19.)

3 On April 14, 2005, the IEP team met and determined that Plaintiff should continue
4 at the Canal Street Elementary School. Plaintiff’s parents declined to accept services
5 offered by the OCMH because they preferred the “Love and Logic” therapeutic program
6 that they were using at Ms. Rigby’s recommendation. (ALJD 11-2-06 at 15.)

7 Plaintiff returned to Canal Street Elementary School during the 2005-2006 school
8 year. Although Dr. Michael Mullen, a clinical psychologist with OCMH, recommended
9 that Plaintiff receive psycho-therapy, the parents declined to accept OCMH services.
10 (ALJD 11-2-06 at 17; AR 8-18-06, 48: 8-21.)

11
12 II. LEGAL STANDARD

13 A district court reviews the decision of the ALJ under a modified *de novo* standard.
14 *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471-73 (9th Cir. 1993). The court’s
15 decision must be supported by the preponderance of the evidence, giving due weight to the
16 administrative proceedings by the ALJ, if the court finds that the ALJ’s decision was
17 “careful, impartial and sensitive to the complexities presented.” *Id.* at 1476.

18
19 III. DISCUSSION

20 A school district is required to provide its students with a Free Appropriate Public
21 Education (“FAPE”). *Gregory K. v. Longview School District*, 811 F.2d 1307, 1314 (9th
22 Cir. 1987). Under IDEA, a student in need of unique educational needs must be afforded
23 an IEP, reasonably calculated to provide the student with “some educational benefit,” in
24 order to comport with providing a student with adequate FAPE. *Id.*

25 In order for a student to qualify for special education services under the category of
26 “severe emotional disturbance,” the student must exhibit emotional disturbance to a marked
27 degree, which *must adversely affect educational performance*. A student is deemed to
28 suffer from emotional disturbance if the student displays any of the following

1 characteristics: (1) an inability to learn which cannot be explained by intellectual, sensory,
2 or health factors; (2) an inability to build or maintain satisfactory, interpersonal
3 relationships with peers and teachers; (3) inappropriate behavior or feelings under normal
4 circumstances exhibited in several situations; (4) a general pervasive mood of unhappiness
5 or depression; or (5) a tendency to develop physical symptoms or fears associated with
6 personal or school problems. 34 C.F.R. 300.7(c)(4)(I).

7 The facts presented by both parties clearly show that the Plaintiff displayed a
8 significant degree of emotional disturbance, in varying degrees, from day one. Therefore,
9 the key issue is limited to whether the Plaintiff's emotional disturbance, in fact, *adversely*
10 *affected his educational performance*.

11 **THE ALJ ADDRESSED FIVE (5) ISSUES DURING THE ADMINISTRATIVE HEARING:**

12
13 *1. Did Defendant deny Plaintiff a FAPE by failing to find him eligible for special education*
14 *services under the category of serious emotional disturbance in March 2002?*

15 The ALJ found that the Defendant did not deny Plaintiff a FAPE because Defendant
16 correctly determined Plaintiff's ineligibility. His findings were fully supported by the
17 facts in the record. Furthermore, this issue is no longer under review by this Court because
18 Plaintiff has conceded in his Reply Brief that Plaintiff was not eligible for special education
19 services following the March 2002 assessment. (ALJD 11-2-06 at 22.)

20 *2. Did Defendant deny Plaintiff a FAPE by failing to find him eligible for special education*
21 *services during the 2002-2003 school year?*

22 Plaintiff alleges that Defendant failed to conduct the required standardized academic
23 assessment when assessing Plaintiff's special education eligibility in November 14, 2002.
24 (ALJD 11-2-06 at 7-8; AR 6-22-06, 80: 15-22, AR 6-27-06 181: 21-23.) Plaintiff argues
25 that Defendant's failure to independently reassess Plaintiff's academic skills, through
26 standardized testing, for the eligibility assessment on November 14, 2002 caused
27 Defendant to mistakenly conclude that Plaintiff's severe emotional disturbance was not
28 affecting his educational performance. Plaintiff further argues that this failure caused the

1 parents to incur unnecessary medical expenses to properly identify and treat Plaintiff's
2 condition.

3 Defendant concedes that an independent test to measure Plaintiff's academic skills
4 was not conducted for the eligibility assessment on November 14, 2002. Instead, the
5 psychologist, Emily Popp, relied on the academic measurements taken for the eligibility
6 assessment on March 14, 2002, in conjunction with updated interviews and independent
7 observations that Popp conducted as well as reviewing records of Plaintiff's academic
8 performance in class, as provided by the Plaintiff's teacher, Sarah Hughes. (ALJD 11-2-06
9 at 7-8; AR Ex. I-42.) Popp testified during the Administrative Hearing that the
10 standardized academic performance tests conducted for the eligibility assessment on March
11 14, 2002 was still valid for the subsequent assessment on November 14, 2002. (ALJD 11-
12 2-06 at 7-8; AR 6-27-06, 181: 23-25, 182: 1-17.) Popp stated that it was not necessary to
13 conduct another standardized academic test in light of the fact that the previous assessment
14 occurred within one year. (ALJD 11-2-06 at 7-8; AR 6-27-06, 181: 23-25, 182: 1-17.)

15 Dr. Nathan Hunter, a clinical psychologist, who testified at the Administrative
16 Hearing opined that Popp's assessment of Plaintiff's ineligibility was correct. (ALJD 11-2-
17 06 at 9; AR 6-29-06, 143: 25, 144: 5-24, 145: 1-4.) Dr. Hunter further explained that
18 "when a reassessment is conducted within a relatively short period of time[,] such as within
19 one year[,]...it is not necessary to conduct new standardized academic achievement testing
20 because the best evidence of academic deterioration would be the child's report card and
21 the classroom teacher." (ALJD 11-2-06 at 9; AR 6-29-06, 218: 5-18, 23-25, 219: 1-7.) In
22 the present case, Popp analyzed Plaintiff's report card and conferred with his teacher to
23 determine that Plaintiff was performing at or above grade level; thereby properly
24 precluding Plaintiff from becoming eligible for special education services. (ALJD 11-2-06
25 at 8; AR 6-22-06, 164: 2-5.)

26 Plaintiff tendered Dr. Russell Griffiths, an educational psychologist, to testify on
27 Plaintiff's behalf during the Administrative Hearing. Dr. Griffiths stated that he would
28 have "administered [another] standardized academic achievement test" during the

1 eligibility assessment on November 14, 2002 “to determine whether [Plaintiff’s] education
2 was being affected by his emotional difficulties.” (ALJD 11-2-06 at 9; AR 8-29-06, 13:
3 9-25, 14: 1-8, 15: 6-14, 43: 3-22, 54: 2-15.) Dr. Griffiths, however, also acknowledged that
4 other school psychologists rely on “reports from the classroom teacher and grade reports”
5 instead of standardized testing if the previous academic test had already been done within
6 one year. (ALJD 11-2-06 at 9; AR 8-29-06, 63: 7-24.) Furthermore, Dr. Griffiths also
7 admitted that Plaintiff’s eligibility could have gone either way in November 2002, even if
8 he had conducted the assessment. (AR 8-29-06, 68: 9-11.)

9 The ALJ appropriately considered the fact that the Defendant did not administer a
10 second standardized academic testing before finding Plaintiff ineligible for special
11 education services in November 2002. (ALJD 11-2-06 at 23.) Upon proper consideration
12 of these facts, the ALJ correctly concluded that the November 2002 assessment by the IEP
13 team was properly conducted, and the Plaintiff was not eligible for special education under
14 the category of serious emotional disturbance because Plaintiff’s emotional difficulties
15 were not adversely affecting his educational performance. (ALJD 11-2-06 at 23.)
16

17 *3. Has Defendant denied Plaintiff a FAPE since the 2002-2003 school year?*

18 On October 23, 2003, Plaintiff’s IEP team determined that Plaintiff was eligible for
19 special education services. (ALJD 11-2-06 at 12; AR 8-29-06, 12: 10-15, 13: 1-25, 14: 1-
20 8.) The ALJ correctly applied controlling law to the facts of this case to find that
21 Defendant properly implemented the IEP adopted by the OCDE, and also attempted to
22 amend the IEP in an effort to meet Plaintiff’s unique needs in the least restrictive
23 environment as conditions changed. (ALJD 11-2-06 at 14, 23.)

24 In addressing the requirements of IDEA in satisfaction of the requirement to provide
25 a FAPE, the U.S. Supreme Court held that the “purpose of providing access to a ‘free
26 appropriate public education’ is the requirement that the education to which access is
27 provided be sufficient to confer *some educational benefit* upon the handicapped child.” *Bd.*
28 *of Educ. v. Rowley*, 458 U.S. 176, 200 (1982) (emphasis added). However, access to

1 specialized instruction must be “*individually designed* to provide educational benefit to the
2 *handicapped child.*” *Id.* at 201 (emphasis added).

3 In the present case, the facts in the record fully support the ALJ’s holding that
4 Plaintiff failed to demonstrate that the IEP adopted and implemented by Defendant for the
5 2003-2004 school year failed to meet Plaintiff’s unique educational needs and was not
6 reasonably calculated to provide him with educational benefit in the least restrictive
7 environment. (ALJD 11-2-06 at 23.)

8 During the 2004-2005 and 2005-2006 school years, the ALJ’s conclusion that the
9 IEPs were designed to, and did, address Plaintiff’s unique educational needs and were
10 calculated to, and did, provide Plaintiff with educational benefit is fully supported by the
11 facts in the record. (ALJD 11-2-06 at 23.)

12 In the present case, Plaintiff’s parents merely preferred a different therapy program
13 than the one which was offered by OCMH. IDEA does not require that a school district
14 implement the parents’ preferences as to what programs are to be provided, as long as the
15 IEP is *reasonably calculated* to provide *some* educational benefit. *See Blackmon v.*
16 *Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). (ALJD 11-2-06 at 23.)
17

18 4. *Did Defendant commit procedural violations of Student’s rights which resulted in*
19 *substantive denials of a FAPE?*

20 In matters alleging a procedural violation, a hearing officer may find that a child did
21 not receive a free appropriate public education only if the procedural inadequacies (1)
22 impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to
23 participate in the decision-making process regarding the provision of a FAPE to the child;
24 or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii). (ALJD
25 11-2-06 at 23-24.)

26 In March and November of 2002, Plaintiff was not eligible for special education, and
27 thus, did not suffer a loss of services to which he was entitled. Furthermore, Plaintiff failed
28 to demonstrate that he was denied FAPE in 2005 when Defendant failed to provide prior

1 written notice that it rejected Plaintiff's request for therapeutic services based on the Love
2 and Logic method. The ALJ properly found support in the record to conclude that, even
3 if Defendant failed to provide written notice of rejecting the Love and Logic method, this
4 procedural oversight did not amount to a procedural violation under 20 U.S.C. §
5 1415(f)(3)(E)(ii). (ALJD 11-2-06 at 23-24.)

6 During the February 8, 2008 Hearing, Plaintiff alleges an additional procedural
7 violation.¹ Plaintiff argues that Defendant's failure to convene an IEP meeting to discuss
8 Dr. Mark Schwartz's October 28, 2002 MHA amounts to a procedural error. Plaintiff
9 explains that the November 22, 2002 IEP meeting should have, but did not, consider Dr.
10 Schwartz's MHA. In fact, Exhibit L of the Administrative Record contains a letter dated
11 December 10, 2002, accompanying Dr. Schwartz's MHA. In the letter, Mr. John Saavedra,
12 Service Chief II, asks Defendant to "contact Mark Schwartz regarding the scheduling of
13 the IEP." (AR Ex. L.) The date of this letter suggests that the November 22, 2002 IEP
14 meeting may have been held without the benefit of Dr. Schwartz's MHA.

15 Defendant explains that Dr. Schwartz recommended family counseling for Plaintiff,
16 which does not configure into Plaintiff's educational performance. Defendant did not
17 directly address the issue of whether another IEP meeting should have been convened to
18 discuss Dr. Schwartz's MHA. In Defendant's written Opposition, however, Defendant
19 argued that the November 22, 2002 IEP meeting properly determined Plaintiff's
20 ineligibility, and thus, there was no obligation to hold another IEP meeting to discuss Dr.
21 Schwartz's MHA. (Opp'n at 23.)

22 The Plaintiff's oral argument is noted by this Court. The Court, however, is not
23 persuaded by Plaintiff's argument. The fact is undisputed that Plaintiff clearly displayed
24

25 ¹ Plaintiff never mentioned this additional procedural violation during the November 2,
26 2006 Administrative Hearing. In fact, when the Plaintiff attempted to raise this issue for the
27 first time in its Closing Brief *after* the Administrative Hearing, the ALJ issued an order
28 rejecting the addition of this new issue. (ALJD 11-2-06 at 2 n.2.) In subsequent moving papers
to this Court, Plaintiff fails to prove how Defendant's failure to conduct an additional IEP
meeting in December of 2002 amounts to the alleged procedural violation.

1 a significant degree of emotional disturbance at school and in the home. Thus, Dr.
2 Schwartz's evaluation regarding Plaintiff's emotional disturbance, at best, may have further
3 confirmed this undisputed fact. Furthermore, Dr. Schwartz was *not* called on October 28,
4 2002 to opine on whether Plaintiff was eligible for special education services under the
5 category of severe emotional disturbance. He was called specifically to evaluate the effect,
6 if any, the Picture may have had on Plaintiff and his classmates. The primary objective of
7 this evaluation was student safety, not Plaintiff's special education eligibility. Even if this
8 Court were to consider the contents of Dr. Schwartz's MHA, plain reading of the report
9 only provides further support of Emily Popp's subsequent conclusion that the Plaintiff's
10 emotional disturbance had *not* escalated to the point of affecting his educational
11 performance, as of November 14, 2002.

12 Emily Popp was the psychologist called on November 14, 2002 to make the official
13 recommendation on Plaintiff's special education eligibility. As part of her assessment,
14 Popp properly considered the very issue that Dr. Schwartz addressed in his October 28,
15 2002 MHA; namely the suspension that Plaintiff received in September of 2002, after
16 drawing the Picture. Upon considering the existence of this Picture, Popp agreed with Dr.
17 Schwartz's assessment and determined that because "[n]o previous threats are documented
18 and no further threats have been made since that day...[Plaintiff] does not meet the
19 eligibility criteria." (AR Ex. I-43.) Therefore, the November 22, 2002 IEP team properly
20 determined Plaintiff's ineligibility based on Popp's comprehensive assessment; and the IEP
21 team was not required to consider Dr. Schwartz's MHA.

22 Plaintiff suggested, however, that regardless of the November 2002 assessment,
23 Defendant was *required* to conduct another IEP meeting once it received Dr. Schwartz's
24 MHA in December of 2002. Plaintiff's contention is unpersuasive on two grounds. First,
25 as established above, Dr. Schwartz's MHA was *not* conducted to assist the IEP team in
26 determining Plaintiff's special education eligibility; rather, Emily Popp was called to make
27 the official recommendations to the IEP team. Second, the statutory language of IDEA
28 does not require a school to conduct an IEP meeting every time a new mental assessment

1 is conducted on the subject child. In order to satisfy FAPE, IDEA requires that students
2 with disabilities must be provided with an IEP. In order to identify a student as having a
3 disability, the school district has a “child-find” obligation to “identif[y], locat[e], and
4 evaluat[e]” children to determine their disabilities. 20 U.S.C 1412(a)(3)(A).

5 Defendant clearly satisfied this obligation when it *identified* and *located* Plaintiff so
6 that Popp could *evaluate* Plaintiff on November 14, 2002 to determine whether Plaintiff
7 suffered from a disability; namely severe emotional disturbance as defined in 34 Code of
8 Federal Regulations, section 300.7(c)(4)(I) and California Code of Regulations, title 5,
9 section 3030, subdivision (I). Subsequently, the IEP team properly followed Popp’s
10 recommendations and found Plaintiff ineligible for special education at the November 22,
11 2002 IEP meeting.

12 Even if this Court takes Plaintiff’s unsupported contention to be true and finds that
13 Defendant was required to conduct *another* IEP meeting in December of 2002, this alleged
14 procedural error was harmless to the “substantial rights” of the Plaintiff because, under
15 IDEA, a “procedural violation does not constitute a denial of a FAPE if the violation fails
16 to ‘result in a loss of educational opportunity.’” *R.B. v. Napa Valley Unified Sch. Dist.*, 496
17 F.3d 932, 942 (9th Cir. 2007) quoting *W.G. v. Bd. of Tr. of Target Range Sch. Dist. No. 23*,
18 960 F.2d 1479, 1484 (9th Cir. 1992); *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634, 651 (9th
19 Cir. 2005) (Gould, J., concurring). Here, Plaintiff has failed to prove by a preponderance
20 of the evidence that the alleged procedural error amounted to any loss in educational
21 opportunity. Plaintiff’s unsupported contention that Defendant’s failure to conduct an
22 additional IEP meeting in December 2002 was a *per se* procedural violation is
23 unconvincing.

24 Contrary to Plaintiff’s contention above, Emily Popp’s November 14, 2002
25 assessment took into consideration the very issue that Dr. Schwartz addressed in his
26 October 28, 2002 MHA - the Picture. Furthermore, Dr. Schwartz’s conclusion about
27 Plaintiff’s behavior is entirely consistent with Popp’s conclusion that Plaintiff’s emotional
28 disturbance had *not* escalated to the point of affecting his educational performance.

1 Therefore, even if Defendant had conducted another IEP meeting in December of 2002 to
2 further consider Dr. Schwartz’s MHA, the IEP team would not have had any new or
3 different information from what it had during its November 22, 2002 assessment; thereby
4 lacking any bases to change its assessment to suddenly find Plaintiff eligible for special
5 education. Furthermore, because “a procedural violation cannot qualify an otherwise
6 ineligible student for IDEA relief,” this alleged procedural error is harmless. *Napa Valley*,
7 496 F.3d at 942 (where the court found that the School District’s procedural error, in
8 failing to include the child’s special education teacher in the IEP team, was harmless
9 because subsequent consideration of the omitted teachers’ testimony at the Administrative
10 Hearing did not change the fact that the student was ineligible for IDEA benefits).²

11
12 5. *Are Plaintiff’s parents entitled to reimbursement of the costs they expended for mental*
13 *health services, residential respite care and other services in 2002 to 2006?*

14 The ALJ was correct in finding that because Plaintiff failed to prevail as to Issues
15 1 through 4, he is also not entitled to any reimbursements. (ALJD 11-2-06 at 24.)

16 IV. CONCLUSION

17 In light of the evidence presented at the Administrative Hearing and after giving due
18 weight to the ALJ’s conclusions, this Court finds that Plaintiff has failed to prove by a
19 preponderance of the evidence that Defendant’s November 22, 2002 assessment was
20 incorrect when it found Plaintiff ineligible for special education services under the category
21 of severe emotional disturbance.

22 In light of the oral arguments heard at the February 8, 2008 Hearing, in conjunction
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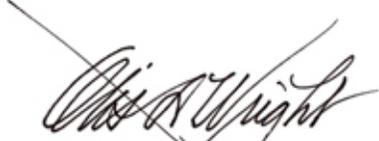
24 ² Defendant filed a Request, asking this Court to take judicial notice of *R.B. v. Napa*
25 *Valley Unified Dist.*, in addressing “what constitutes an ‘effect’ on academic performance.”
26 (Request at 2.) Plaintiff subsequently filed an Opposition to distinguish *R.B.* from the present
27 case. Plaintiff asks this Court to disregard *R.B.* despite acknowledging the fact that this “Court
28 may cite and rely on *any* appropriate authority in reaching its determinations and order.”
(Opp’n at 2.) (emphasis added). This Court, however, relies on *R.B.* for the proper application
of harmless error in procedural violations, which is for a reason separate and apart from either
party’s Request and Opposition. Therefore, it is not necessary to grant nor deny Defendant’s
Request or Plaintiff’s Opposition at this time.

1 with the evidence presented at the Administrative Hearing, Plaintiff has also failed to prove
2 by a preponderance of the evidence that the Defendant was required to conduct another IEP
3 meeting in December of 2002, after receiving Dr. Schwartz's October 28, 2002 Mental
4 Health Assessment.

5 Defendant further satisfied its obligation to provide FAPE to Plaintiff following their
6 assessment in October 23, 2003 when Plaintiff became eligible for special education
7 services. Plaintiff's contention that special education services provided by Defendant
8 following the October 23, 2003 assessment was inadequate is unconvincing. IDEA does
9 not require Defendant to implement the parent's preferred program (i.e., Love and Logic)
10 so long as the services it offered provided *some educational benefit*. Therefore, the ALJ's
11 factual findings are fully supported by the record and his legal conclusions are sound.
12 Accordingly, Defendant's Motion for Summary Judgment is GRANTED, Plaintiff's
13 Motion for Summary Judgment is DENIED, and the ALJ's decision is hereby AFFIRMED.

14
15 IT IS SO ORDERED.

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17 DATED: March 13, 2008

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21 _____
22 OTIS D. WRIGHT II
23 UNITED STATES DISTRICT JUDGE
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