

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH
SCHOOL DISTRICT.

OAH Case No. 2016020807

NON-EXPEDITED DECISION

On February 19, 2016, Student, by and through his parents, filed a due process hearing request (complaint) naming William S. Hart Union High School District. The complaint stated claims that required both an expedited and non-expedited hearing.¹

Administrative Law Judge Adrienne L. Krikorian heard the non-expedited issues in this matter in Santa Clarita, California on August 23, 24, 25, 29, 30 and 31, 2016.

Attorneys Christy Ferioli and Ben Conway represented Student. Mother and Father each attended the hearing for half a day and testified. Student did not attend.

Attorney Daniel Gonzalez represented District. District's Special Education Director Sharon Amrhein attended the hearing for District on all hearing dates and testified.

OAH granted a continuance for the parties to file written closing arguments and the record remained open until September 19, 2016. Upon timely receipt of the written closing arguments, the record closed and the matter was submitted for decision.

¹ OAH set the expedited and non-expedited claims for separate hearings. The expedited hearing occurred on March 22, 23, 24, 29, and 30, 2016. OAH issued the expedited decision on April 18, 2016.

ISSUES²

1) Did District deny Student a free appropriate public education and deprive Student's parents the opportunity to participate meaningfully in the development of Student's individualized educational programs from February 2014 to September 3, 2015, by:

a) Failing to appropriately assess Student in all areas of suspected disability, specifically functional behavior, emotional disturbance, and an assessment by a psychiatrist or clinical psychologist to determine Student's medically related disabilities (1) from February through August 2014; (2) from January 27, 2015 through March 30, 2015; (3) in the April 2015 Psychoeducational Assessment; and (4) from April 27, 2015 through February 2016;

b) Failing to provide prior written notice that District i) had determined that Student did not require additional evaluations, ii) the IEP team required additional data regarding Student's functional behavior and emotional disturbance, and/or iii) it had determined Student required no additional evaluations;

c) Failing to convene an IEP team meeting during the spring of 2014 to review and revise Student's IEP in response to his lack of anticipated educational progress;

d) Failing to report accurately Student's present levels of performance in his January 27, 2015, and April 17, 2015 IEP's;

e) Failing to develop appropriate emotional and behavioral goals to address Student's unique needs in his January 27, 2015 IEP;

f) Failing to implement Student's IEP's by failing to timely provide Educationally Related Intensive Counseling Services in conformity with his IEP's; and,

g) Failing to consider all relevant data to meet the full extent of Student's academic, developmental, and functional needs when designing Student's IEP's dated January 27, 2015, February 3, 2015, April 17, 2015, September 17, 2015, November 2, 2015, and November 11, 2015?

² On the first day of hearing, Student withdrew the following sub-issues articulated in Paragraph 122 of his complaint: (a), (g), (h), (t), (w), and (z). Issue Par. 122(p) was originally included in the statement of issues in the prehearing conference statement as Issue 1(g). Student also withdrew Issue Par. 122(p). Upon agreement by both parties, the ALJ added Paragraph 122 (r) as Issue 1(g). The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

2) Did District deny Student a FAPE from February 2014 through August 2014 and from January 27, 2015, until District initiated a disciplinary change of placement in August 2015, by failing to offer and provide Student with:

- a) An appropriate placement in the least restrictive environment; and
- b) Appropriate educationally related services and supports, including a separate resource room or itinerant services, and ERICS or other psychological counseling?

3) Did District deny Student a FAPE from September 3, 2015, through February 18, 2016, by:

- a) Failing to generate a timely assessment plan, conduct a timely assessment, and convene a timely IEP team meeting to discuss the assessment;
- b) Failing to notify Parents that it refused to assess Student;
- c) Failing to convene an IEP team meeting in response to Parents' September 3, 2015 request for an IEP meeting;
- d) Failing to offer or provide Student with an appropriate educational program and related services; and,
- e) Failing to maintain and timely provide Parents access to all of Student's educational records?

SUMMARY OF DECISION

Student contended that District committed a variety of procedural violations, including failing to timely and appropriately assess Student during the statutory period. Student also challenged the appropriateness of District's placement offers and related services in connection with his eligibility of emotional disturbance. As a result, Student asserted that Parents were deprived of the opportunity to meaningfully participate in developing Student's IEP's, and Student was denied a FAPE. District contended it met all of its obligations under the IDEA and it provided Student with a FAPE at all relevant times.

Student met his burden on Issues 1(a)(2) and 1(a)(3) relating to assessments between January 27, 2015, and April 2015. Student proved that at the January 27, 2015 IEP team meeting, the IEP team had knowledge of Student's extensive disciplinary history, his diagnosis of a non-specific mood disorder, and the impact of Student's attention-seeking and threatening behavior on his peers at school and on District staff. District did not consider assessing Student's educational needs related to his diagnosis of non-specific mood disorder and District's concerns for his behavior directed toward his peers and staff at the January 27, 2015 IEP or after the February 3, 2015 manifestation review meeting. Its failure to do so

was a procedural violation that deprived Parents of information that would have made their participation at the April 16, 2015 IEP more meaningful. When District did assess Student in early April 2015 in preparation for his triennial IEP, the assessment was cursory and directed to confirming his eligibility. District did not do a thorough triennial psychoeducational assessment in compliance with the IDEA or recommend that Parents pursue additional medical or clinical assessments to determine the medical basis for his diagnosis of mood disorder not otherwise specified. A more thorough assessment given what District historically knew about Student would have provided information to the IEP team and Parents. The information would have helped Parents participate with District in designing intensive educationally based therapy to address his medical diagnosis and better control his behaviors at school. District's failure to initiate assessments and do a properly comprehensive assessment in 2015 resulted in depriving Parents of the opportunity to participate meaningfully in the development of Student's educational program. Student is entitled to an independent educational evaluation at public expense and staff training, as described below.

Student did not meet his burden on any of the remaining issues.

FACTUAL FINDINGS³

Jurisdiction

1. Student is a 15-year-old boy who resided in District's boundaries at all relevant times. He was eligible for special education under the categories of emotional disturbance and other health impairment related to attention deficit hyperactivity disorder. Parents, who are divorced, share educational rights for Student, and reside within District's boundaries.

Background Before February 18, 2014

2. Student became eligible for special education in 2009 under the eligibility category of other health impaired due to ADHD. Student's school records dating back to second grade contain a significant number of incidents of serious behavioral issues that resulted in suspensions and discipline. Those behaviors included threatening and hitting other students; teasing and aggression toward others; emotional outbursts after engaging in behavior incidents; threatening to rape a female student in the fifth grade; and threats to others on social networks.

3. In May 2010, the Los Angeles County Mental Health Department assessed Student due to behavioral and emotional problems interfering with his access to education.

³ This Decision relies upon some of the Factual Findings and Legal Conclusions in the Expedited Decision.

The assessor recommended mental health counseling⁴ for Student and the family, based on his difficulties shouting out, name calling, teasing other students, and other off-task behaviors. District amended his IEP on June 2, 2010, to include mental health services on an outpatient basis and added emotional disturbance to his IEP as a secondary eligibility. Student's October 2011 triennial psychoeducational evaluation confirmed his eligibility under the categories of other health impairment and emotional disturbance.

4. Student transitioned from elementary school and attended seventh grade at Rancho Pico Junior High School during the 2013-2014 school year. On October 11, 2013, Student's IEP team met for his annual review. The IEP team agreed, based on his present levels of performance, Student's behaviors and academic progress at school did not require a behavior support plan or designated instructional service of counseling. The IEP team offered placement at Rancho Pico in District's Special Day Class 3 (SC3) with ERICS services, which replaced the counseling. The SC3 class was a smaller classroom utilizing a positive behavioral support system based on levels, with incentives. Student spent 50 percent of his time in a general education classroom and extra-curricular activities. The IEP included three goals relating to verbalizing needs, social skills goals, and raising his hand and reducing off-topic comments to gain attention. Parents consented to the IEP, which District implemented.

5. District's ERICS program consisted of intensive, long-term, and comprehensive individual and group counseling or therapy services for children eligible for special education. The IEP team determined frequency and duration. Students commonly received at least 50 minutes to an hour a week of service, which could also include a parent component weekly or close to weekly. District had 41 ERICS therapists and served five districts in the Santa Clarita special education local plan area. District's ERICS counselors were all licensed professionals with a high degree of mental health training. They were trained in research-based protocols, theories and philosophies and utilize those in their work with students. ERICS counselors prepared a Child Adolescent Functional Assessment Scale report periodically as a tool for the ERICS counselor to use in working towards the student's goals and for collaboration with other team members.

6. ERICS counselors periodically administered the Functional Assessment Scale to each student they worked with. The Functional Assessment Scale consisted of eight subscales and provided a clinical picture in real time of a child's capabilities and functional impairments. The counselor used the report as a tool to monitor progress and gain insight into how interventions were working relative to a child's goals, and as a basis for the ERICS

⁴ Educationally related mental health counseling (also known as ERMHS) was referred to as AB 3632 services until July 1, 2012, when Assembly Bill 114 abolished the service. The County provided the service until that time. School districts became responsible for educationally related mental health counseling after July 1, 2012. At hearing, District referred to those services as Educationally Related Instructional Counseling Services and it will be referred to throughout this Decision as ERICS or ERICS services.

counselor to provide information to the IEP team on present levels of performance. Its objective was to facilitate collaboration with other IEP team members. The counselor might generate a report based upon a particular incident involving severe behaviors that prompted the counselor to call an IEP team meeting. The Functional Assessment Scale was not intended as a diagnostic tool or to inform the IEP team's decision to assess a student.

7. ERICS counselor Michelle Garvin provided individual ERICS services to Student on at least a weekly basis during the 2013-2014 school year. Ms. Garvin was a licensed school psychologist with a master's degree in clinical psychology. Her qualifications and work experience qualified her to offer opinions regarding Student's behaviors and emotional needs at the time she provided counseling services to Student. Student's IEP included one hour a week of family counseling at Parents' request; Parents accessed that service through Ms. Garvin only two or three times during the school year.

8. Dr. Nicholas Betty oversees all ERICS services for District, including program administration, consultation with ERICS therapists in implementing IEP goals, and staff training. He has a PhD in clinical psychology with an emphasis in depth psychology, and a pupil personnel services credential in school counseling. He participates as a public member of the California Department of Education Student Mental Health Policy Workgroup, which makes recommendations to the CDE or state legislature. As part of his duties, he reviews but does not conduct psychoeducational evaluations. He is familiar with District's therapeutic educational placements. He first became familiar with Student during the 2013-2014 school year while Ms. Garvin was Student's ERICS counselor. Dr. Betty was qualified to and did provide credible expert testimony and opinions.

9. Dr. Betty supervised and collaborated with Ms. Garvin as needed. Ms. Garvin issued her first Functional Assessment Scale report on October 13, 2013, rating Student with a score of 60 on a scale of zero to 160. Student rated in the moderate range in moods and emotions, where depressed mood or sadness was persistent for half of the time.

10. In November 2013, Student engaged in an incident where he threatened other students and his teacher. District initiated a threat assessment because Student had made concerning comments that included threats of suicide. On December 2, 2013, Ms. Garvin prepared a Functional Assessment Scale report relating to the November behavior incident. She rated Student with a score of 100, indicating Student showed moderate concerns in the areas of poor judgment or impulsive behavior resulting in dangerous or risky activities that could lead to harm to others, and a depressed mood or sadness at least half of the time.

11. The IEP team met on December 5, 2013, to review placement and services. Ms. Garvin reported that Student focused on negative perceptions of the social pressures around him, and engaged in negative talk. In her opinion, Student's behaviors were consistent with Student's desire for attention from peers and adults and related to his ADHD and emotional disturbance. The IEP team discussed positive reinforcements and other strategies to assist Student and made no changes to the IEP.

February 18, 2014 Through August 2014

12. Student's reported disciplinary behaviors began to increase between February and May 2014. He engaged in incidents of cutting and self-injurious behavior, suicidal ideations, and Student's self-reporting that he belonged to a gang, brought guns and pills to school, shot someone in the stomach, and had been kicked out of his house. Staff notified Parents on each occasion and referred Student to Ms. Garvin after each incident. Until early May 2014, none of the behaviors prompted Ms. Garvin or any other District staff to request an IEP meeting. In her opinion, she successfully managed Student's behavior and social emotional needs at school during that time through ERICS services with Student. Student often sought her out during brunch and lunch. He made some progress toward his first two annual behavior goals. Neither party offered specific evidence as to progress toward the third behavior goal. Ms. Garvin generated a Functional Assessment Scale report on March 17, 2014; Student scored a total of 70, with ratings of moderate in moods/emotions and self-harmful behavior.

13. Student also received private counseling during this period from clinical psychologist Kathy Studden, who occasionally collaborated with Ms. Garvin. Ms. Studden did not testify at hearing.

14. Student's primary areas of need were behavioral. Student's special education teacher Michael Kuchera observed that Student appeared more withdrawn and less engaged in late April and May. Student demonstrated extreme perceptions about his peers and events. During the same time, Student missed assignments in his general education art class and appeared more withdrawn to his teacher, Ms. Levy-Holm. He had a grade of F in that class, which Ms. Levy-Holm discussed with Student, offering him the opportunity to make up missing assignments to bring up his grade. Student did not submit the missing assignments. He made academic progress in his other classes.

15. On May 20, 2014, Student brought two razor blades to school. He used the blades to cut himself on his upper arm; pulled them out in front of several students during an argument with peers and brandished the blades and swung them toward his peers; made threats to cut his peers; and made inappropriate sexual comments towards a female peer. Mother acknowledged to District staff that Student had also engaged in cutting himself at home. District staff reported the incident to authorities who conducted a threat assessment. Student was hospitalized and placed on a 72-hour hold. A medical team diagnosed him with a mood disorder not otherwise specified. Father informed District of the medical diagnosis. A psychiatrist prescribed Student with anti-depressant medication, which the doctor monitored. Parents did not pursue further private medical evaluations or psychiatric treatment of Student as a follow-up to the diagnosis of non-specific mood disorder.

16. Dr. Betty credibly explained at hearing that a diagnosis of a mood disorder not otherwise specified historically referred in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition to a clinician's opinion that something is happening with the patient, based on a situational, cultural, or diagnostic uncertainty. The diagnosis meant that

the clinician did not have sufficient information to make a specific diagnosis. The “not otherwise specified” classification was eliminated in the more recent Diagnostic Manual’s Fifth Edition to eliminate diagnostic uncertainty. Dr. Betty did not explain how the change in the classification of Student’s medical diagnosis between fourth and fifth versions of the Diagnostic Manual would or should have affected District’s obligations to further explore the condition through assessment of Student or a referral for a clinical or medical evaluation.

17. On May 27, 2014, Student’s IEP team held a manifestation determination review and an IEP team meeting. The team acknowledged that Student had extreme perceptions about his peers and events. They concluded the May 20, 2014 behaviors were a manifestation of his emotional disturbance. The team considered an interim 45-day alternate educational setting for Student given his potential danger to others. Father did not want Student to go to another school. He requested that District allow Student to finish the nine remaining school days in the general education setting at Rancho Pico so he could be with his friends. District agreed to a modified day schedule for the remainder of the school year, where Student went to school for his art and history classes. He received independent study for one hour a week from Mr. Kuchera, and ERICS services. The team developed a behavior goal and behavior intervention plan. The team agreed to reconvene before the start of the 2014-2015 school year to discuss placement.

18. Ms. Garvin’s June 2, 2014 Functional Assessment Scale report scored Student at 140 out of a maximum of 160, showing severe ratings in the area of community based involvement with the legal system, and moderate in behavior toward others, moods/emotions and self-harmful behavior. Parents did not request District to assess Student and no District staff member expressed the need to conduct educationally related assessments to further pursue Student’s emotional needs in the school environment.

19. On June 12, 2014, the IEP team met to discuss Student’s updated behavior intervention plan, his behavior goal, and placement for eighth grade. The IEP team discussed a recent incident where Student made statements about being “a Neo-Nazi and Satanist” and stated he wanted revenge on his ex-girlfriend for breaking up with him. Other students shared with school staff that they were frightened of and for Student. The IEP team concluded his difficulties at school revolved around peer interactions, inappropriate social skills, and self-harm. He became overwhelmed when he felt others were upset with him. The types of threats he expressed to his peers during unstructured times were concerning because those students were in his mainstream classes. The IEP team discussed placing Student in a more therapeutic setting at Sequoia Charter High School, in the Special Day Class 6 program (SC6). The SC6 was a moderate-severe program for students with social-emotional and behavioral challenges, with ERICS services for Student and Parents. The campus had a small student population of approximately 50 students, was secured by gates, had five ERICS counselors on campus, and serviced children with IEP’s who were eligible as emotionally disturbed. The IEP team recommended a 30-day IEP after the start of school to discuss the appropriateness of the SC6 placement. District staff did not recommend or consider assessing Student or discuss other placements.

20. Parents did not consent to District's placement offer on June 12, 2014, because they wanted to research placement options, including visiting Sequoia and considering home schooling with additional private support. Student wanted to attend a general education placement. Parents declined District's offer of ERICS services, including family counseling, during extended school year. Parents wanted Student to interact with typical peers at summer camp and in a private foreign exchange program in which Father was participating, because Parents felt Student would benefit more from those interactions. Student's schedule did not permit him to participate in ERICS services during extended school year.

21. Parents and Student visited Sequoia before Student's next IEP meeting with District staff, including Sequoia school psychologist Shazia Shah, who explained the SC6 program to Parents. Ms. Shah has a joint master's of science degree in educational counseling and marriage and family therapy. She is a licensed counselor in marriage and family therapy, and a California and nationally credentialed school psychologist. She has worked for District as a school psychologist, servicing children with special needs since 2011. Ms. Shah first learned about Student during the 2013-2014 school year. She attended the June 12, 2014 IEP team meeting and participated in the discussion regarding Student's potential placement in the SC6 program at Sequoia.

22. Ms. Shah was aware that Student had a medical diagnosis of a mood disorder not otherwise specified. In her opinion, that was a vague characterization. She did not recommend in 2014 that District conduct any educationally related assessments or that Parents seek additional medical evaluations to determine the extent of Student's mood disorder.

23. On August 13, 2014, District held an amendment IEP team meeting to discuss Student's placement for the 2014-2015 school year. Student and Parents attended the meeting. Parents and Student did not like the Sequoia campus, which they felt was too restrictive. Parents also heard negative comments about it from acquaintances. They asked about accommodations for Student in the general education setting at Placerita, which District explained. Parents declined District's offers of the SC3 program at Rancho Pico and SC6 program at Sequoia for the 2014-2015 school year. Parents and Student wanted Student to attend his home school at Placerita Junior High School in a general education setting where Student could be with his friends; they did not want him to have special education at Placerita. Parents expressed their voluntary right to decline placement in special education and place Student at his home school.

24. Parents voluntarily withdrew Student from special education at the August 13, 2014 meeting. District staff, including Ms. Garvin, disagreed that Parents should remove Student from special education. Before exiting Student from special education, District staff explained District's obligation to provide Student with a FAPE, Parents' procedural rights including the right to file for due process, and discussed the consequences to Student if Parents removed him from special education. Case Manager Jennifer Nicholson explained the safeguards to students in special education versus those in general education, including in

the area of discipline, accommodations and services. District did not offer to further assess Student to explore the educational impact of his diagnosis of mood disorder not otherwise specified.

25. In September 2014, District developed a section 504 plan for Student, with placement at Placerita.⁵ In hindsight, at hearing, Parents claimed they did not understand in fall 2014 what a Section 504 Plan was, or that no special education program would be in place for Student after Parents removed him from special education. Father claimed he did not know that Student had a Section 504 Plan at the beginning of the 2014-2015 school year. Parents also claimed at hearing they did not understand at the time the significance of removing Student from special education. Because their testimony on this subject was in hindsight, and based in part on information they had recently learned from their expert, Dr. Lauren Stevenson, it was not persuasive. Their credibility was questionable on this issue because several members of the IEP team explained the consequences of removing Student from special education to Parents at the August IEP meeting. District staff's testimony was more credible as to whether Parents knew about Student's status as a non-special education student during fall 2014.

26. On October 20, 2014, District disciplined Student for using a controlled substance at school. Other students observed him inhaling ("huffing") from an aerosol dust can on campus. They reported the incident to school staff. District suspended Student from Placerita and transferred him with Mother's consent to La Mesa Junior High School. On January 20, 2015, while at La Mesa, Student threatened through electronic media to bring a gun to school to harm himself and another student. On January 26, 2015, District held a section 504 manifestation determination meeting. The team concluded Student's threatening behavior was a manifestation of his disability of emotional disturbance. District suspended Student from school for five school days and the section 504 team transferred him from La Mesa back to Placerita. The section 504 team recommended that Parents consider returning Student into special education. Parents agreed to attend an IEP team meeting to discuss special education.

January 27, 2015 Return to Special Education and Disciplinary Incident

27. On January 27, 2015, District held an intake IEP team meeting to consider Student's re-entry in special education. Parents, Student, and all required District staff attended the meeting. Some of the same staff had attended the section 504 meeting the day before. Mother and Father accepted a copy of District's notice of procedural safeguards. The meeting lasted approximately one and one-half hours. The IEP team reviewed Student's educational history and records, including the first semester of the 2014-2015 school year.

⁵ A "Section 504 plan" is an educational program created pursuant to the federal antidiscrimination law commonly known as Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et. seq. (2000).) Generally, the law requires a district to provide program modifications and accommodations to children who have physical or mental impairments that substantially limit a major life activity such as learning.

The team discussed Student's credit status towards graduation. Student's general education teacher Erik Olsen discussed Student's performance in his physical education class during the first semester of the school year at Placerita. Father expressed interest in Student's participation in the track team. At Parents' request, the IEP team agreed Student was eligible for special education under the primary category of other health impairment and secondary category of emotional disturbance. Placerita only had two special education programs on its campus, a resource program and a program to address students with low cognitive issues. The District IEP team members concluded that neither was appropriate for Student. The IEP team reviewed the August 2014 FAPE offer and discussed placement options including general education with and without supplemental aids and accommodations, resource support, and the SC3 and SC6 programs. However, at Parents' request, the IEP team agreed to place Student in a general education class at Placerita through 2015 extended school year with special education support through a study skills class and ERICS services for Student and Parents.

28. The IEP team did not develop special education goals or a behavior intervention plan at that meeting. The IEP team agreed to hold a 30-day review meeting after collecting data to add goals, develop a behavior intervention plan, review present levels of performance and placement, and consider extended school year for 2015. Parents did not request and the IEP team did not recommend educationally related assessments or pursuit of additional information relating to Student's diagnosis of a mood disorder not otherwise specific.

29. However, for the interim, the IEP team created and reviewed in detail the terms of a behavior contract with Parents and Student, which they all signed at the meeting. The contract required Student to improve his behavior toward peers, including prohibiting: spreading rumors; causing alarm; saying things that scare others; using profanity; harassing or intimidating anyone; bullying; and threatening peers with emotional or physical harm.

30. At the conclusion of the meeting, Student attended scheduled classes at Placerita. Within a few hours, other students reported that Student had confronted two peers during lunch break and threatened, using profanity, to retaliate against them for "ratting" on him regarding the "huffing" incident in October 2014. Other students reported that Student had previously communicated threats of retaliation against the two boys to other students through electronic media. District suspended Student for five days, pending expulsion proceedings before the school board.

31. On February 3, 2015, District held a manifestation review team meeting regarding the January 27, 2015 incident. Parents attended with Student. Student's conduct was not a manifestation of his disabilities.⁶ District offered to enter into an agreement to suspend Student's expulsion under specific terms. Parents declined. District placed Student on home school instruction with ERICS services pending expulsion proceedings, offering one hour a day of home study for each day of school. District did not propose to assess

⁶ Expedited Decision dated April 18, 2016.

Student to further explore his mood disorder or emotional issues as they impacted his educational environment. The offer of home study and ERICS services was consistent with District's expulsion procedures for general education students.

32. Student lived alternately between Parents between February 3, 2015, and mid-March 2015. District postponed expulsion proceedings from the end of March to May 20, 2015, to accommodate Parents' scheduling needs. The Los Angeles Superior Court detained Student briefly for an unspecified amount of time during late March or early April 2015 for making threats against his peers and District staff on social media. The court limited his use of social media and cell phones. The court also put Student on house arrest in March 2015 and ordered him to live full-time with Mother. Placerita school principal Jan Hayes-Rennels wrote a letter to the Superior Court on April 13, 2015, expressing concern about Student returning to a District school, informing the court that staff and students were seriously concerned for their safety based on Student's history of threatening conduct, and describing the serious nature of Student's actions.

33. Teacher Tim LeMaster provided direct instruction to Student for a total of 35 hours from February 10 through March 26, 2015. Sessions lasted from one and one-half to two hours. Mr. LeMaster has a master's degree in counseling and credentials in counseling and teaching and had experience working with children with emotional difficulties. In Mr. LeMaster's credible opinion, based on assessments of Student's work, and their interactions during instruction, Student's behavior was compliant, he followed instructions, he understood materials taught, produced work product, and received an educational benefit from the instruction.

34. Teacher Jeff Albert provided seven hours of direct instruction from April 14 through April 23, 2015. Mr. Albert has a master's degree in cross-cultural curriculum, a bachelor's degree in psychology, and teaching credentials in social studies and multi-subject kindergarten through 12th grade. District has employed him for 20 years. Based upon Student's work product and Mr. Albert's assessment of his work, Student received educational benefit from the services he provided.

35. ERICS counselor Nicole Prado made three unsuccessful attempts from February 3 through March 3, 2015, to call both parents to schedule ERICS services, but could not reach them. Father denied that he ever received a call or message from Ms. Prado. Mother claimed she worked during the day and may have received a message from Ms. Prado. Ms. Prado requested that District administrators intervene to try to schedule counseling sessions. Ms. Prado provided Student one ERICS services session on March 16, 2015, which Mr. LeMaster scheduled in collaboration with a home study session. Student missed the next scheduled ERICS services session on March 23, 2015. Parents did not credibly explain at hearing why they did not schedule more counseling sessions, other than their testimony relating to Student's temporary incarceration in late March and early April. District eventually removed Student from Ms. Prado's caseload, for reasons she did not

know. Father claimed the month of April was “a bad month” for him and he had little involvement with Student’s activities because Student was living with Mother.⁷

April 16, 2015 Triennial Psychoeducational Assessment

36. In preparation for Student’s triennial assessment, school psychologist Laura Ramirez conducted a psychoeducational assessment of Student in April 2015, documented in a report dated April 16, 2015.⁸ District initiated the assessment by mailing an assessment plan dated March 30, 2015, to Father, who signed and returned the plan. The evidence was not conclusive as to whether District also mailed the plan to Mother.

37. Ms. Ramirez has been a licensed educational psychologist since 1995. She is a board certified professional counselor. She holds additional certifications, including as a behavior intervention case manager and in crisis prevention. She has worked in various capacities for District involving special education students since August 2000. Ms. Ramirez first met Student in September 2014 at the Section 504 team meeting. She reviewed and was familiar with Student’s educational history, special education file, and his online records of attendance and disciplinary incidents. She was aware of the May 2014 manifestation determination. She attended the January 27, 2015 IEP team meeting, which she facilitated. She also attended the February 3, 2015 manifestation review meeting and was actively involved in the manifestation review process. She spoke to Student one-on-one at an IEP meeting for the purpose of engaging him and to make him at ease with the process. Ms. Ramirez was qualified to assess and render credible opinions about Student’s eligibility and psychological and social emotional needs.

38. The purpose of the April 2015 assessment was to review Student’s progress, and to determine continued eligibility and the need for special education services under other health impaired and emotional disturbance. As part of her assessment, Ms. Ramirez reviewed records regarding Student’s health⁹, developmental and family history, educational history, and previous triennial assessments including his September 2011 triennial psychoeducational assessment. She reported Student’s behavioral history at school in detail. She knew medical professions diagnosed Student in May 2014 with an unspecified mood

⁷ Expedited Decision, page 8, par. 21.

⁸ This non-expedited Decision corrects reference in Factual Findings Paragraphs 25 and 27 of the Expedited Decision issued on April 18, 2016, as to who conducted the triennial psychoeducational assessment on April 16, 2015. The erroneous reference in Paragraphs 25 and 27 to Ms. Shazia Shah as the assessor did not materially affect the legal conclusions in the Expedited Decision because the assessment was not at issue in the expedited hearing and had no material impact on the ultimate legal conclusions. The findings as to Ms. Shah’s professional qualifications in Paragraph 25 of the Expedited Decision were accurate.

⁹ Father did not return an updated health questionnaire before Ms. Ramirez completed her report.

disorder but she did not request or receive any information that the diagnosis had been confirmed. She did not have or pursue a release of medical records to follow up with the hospital on the diagnosis. Parents did not provide District with reports from any independent clinical or medical evaluations generated by outside counselors or mental health providers.

39. Ms. Ramirez did not observe Student at school because at the time he was receiving home instruction. She interviewed Mr. LeMaster, whom she determined had the only relevant information regarding Student's performance in an educational setting. Mr. LeMaster reported to her that Student had strong academic ability and good reasoning skills; demonstrated good interpersonal skills; and worked toward achieving his best if he sensed that was the expectation of his instructor. Ms. Ramirez concluded Student's cognitive skills were in the average range.

40. Ms. Ramirez administered the Behavior Assessment System for Children, Second Edition. Although District mailed copies of the parent questionnaire with the assessment plan to at least Father at the end of March 2015, only Father returned the completed Behavior Assessment questionnaire to District. Mother denied at hearing that she ever received the assessment plan or questionnaire. Student also completed and returned the Self Report-Adolescent form of the Behavior Assessment.

41. The Behavior Assessment covers externalizing and internalizing behavior, behavior symptoms and social adjustment behavior based on the participant's responses to the questionnaires. If the Behavior Assessment had produced inconsistent results with Student's records Ms. Ramirez might have considered using a second assessment tool such as the Achenbach System of Empirically Based Assessment – Child Behavior Checklist. In Ms. Ramirez's opinion, the results from the Behavior Assessment were consistent with Student's history reported in his records. Father's scores rated Student clinically significant or at risk in the areas of feelings of depression, anxiety, social stress, interpersonal relationships, perceptions of interactions with others, and conduct. Father rated him at the high end of the normal range, almost at risk, in attention. Student's scores indicated he did not perceive himself as having attentional difficulties. He scored himself at risk in the areas of internalizing problems and on the emotional symptoms index, indicating that he saw himself as having social anxiety problems at school, along with emotional issues and difficulty adjusting to stresses in his environment. The results of Father's and Student's scores were consistent with previous assessments of Student's delinquent behavior and problems socializing. Ms. Ramirez concluded Student was good at making others believe he was fine while actually having a poor sense of self.

42. Ms. Ramirez did not use any other standardized assessment tools, and did not conduct a clinical interview of Student. Her only observation of Student was during a previous unspecified IEP meeting, where she had a brief conversation with him. She did not report that she made any conclusion relative to her assessment from that conversation. She did not personally interview Father, Mother, ERICS counselor Ms. Garvin, any of Student's teachers or his counselor from Placerita during the first semester of 2014, or any District administrators who had expressed concern for safety as a result of Student's behaviors. She

did not follow up with Mother, with whom Student lived exclusively at that time, to obtain her responses to the Behavior Assessment parent form. She did not ask for a medical release or consider any follow up assessments to Student's 2014 medical diagnosis of mood-disorder not otherwise specified. She did not reach any conclusions as to whether or not any of Student's prior behavioral incidents justified pursuing additional assessments including evaluations to understand better the educational impact of Student's diagnosis of mood disorder not otherwise specified. She did not consider obtaining input from Dr. Betty or any of District's ERICS counselors regarding Student's disability of emotional disturbance to determine whether other testing might provide additional information.

43. Referencing the legal criteria for eligibility based upon emotional disturbance, Ms. Ramirez concluded in her report that Student remained eligible for special education as a student with an emotional disturbance, based upon his inability to build or maintain satisfactory interpersonal relationships with peers and teachers, and his general pervasive mood of unhappiness or depression. She also concluded he remained eligible for other health impairment under the legal definition of that term. His cognitive skills fell within the average range, consistent with prior assessment results. Student's behavioral and social emotional issues impacted him more than his diagnosis of attention deficit disorder. She recommended that the IEP team consider a therapeutic placement in the SC6 program at Sequoia.

44. Parents retained Dr. Lauren Stevenson after February 18, 2016, to conduct an "independent" clinical psychological evaluation of Student. Dr. Stevenson has a doctorate in psychology, and is a clinical practitioner with limited experience working in school settings. A large portion of her clinical experience has been in prison settings; at Phoenix House, a non-profit drug and rehabilitation organization; and in private practice. She has frequently worked with and evaluated adolescents. She has conducted 250-300 clinical evaluations of people with mental health disorders in the past 10 years. She has also performed independent educational evaluations for school districts. She reviewed Student's records, including Ms. Ramirez's April 2015 psychoeducational report. Her standard fee for an independent educational evaluation, including attendance at an IEP meeting, is \$5,500. No one had yet paid her fee at the time of hearing. Dr. Stevenson was qualified to and did offer credible and relevant expert opinions regarding District's assessments and District's offer of ERICS services during the relevant time period.

45. Dr. Stevenson persuasively criticized District's assessments, and lack of assessments, from and after January 2015. District's school psychologists, in their role as providers of psychological assessments and treatment, had enough information about Student's serious behaviors at school as far back as late May 2014 to recommend and conduct further assessments of Student related to those maladaptive behaviors.

46. Dr. Betty opined a clinical psychological evaluation's function is similar to a psychoeducational evaluation. The function of both assessments is to delineate strengths and weaknesses. A clinical evaluation's purpose is to provide a diagnosis and medical understanding of a patient. In contrast, however, a psychoeducational evaluation provides an

educationally based understanding of a pupil's medical diagnosis and needs. Psychiatric evaluations are based on neurological and biologic perspectives. School psychologists, who are not licensed or certified to conduct clinical or medical evaluations, should incorporate a child's medical condition into their evaluations if those conditions affect education. However, a school district cannot determine the medical diagnosis of a child, because doing so is outside of the scope of the educational duties of a district. District psychologists do not make medical diagnoses; instead, they make recommendations to families to see a psychiatrist to get a diagnosis.

47. District did not conduct a functional behavioral assessment of Student or develop a behavior intervention plan between February 3 and April 16, 2015, after Student returned to special education. Because Student was on home study and had no direct contact with peers in the school setting, Ms. Ramirez opined that a functional behavioral assessment during that time was not appropriate for Student. Based on her qualifications and experience as a school psychologist and her experience in giving assessments, her opinion was credible.

48. Ms. Ramirez's April 16, 2015 psychoeducational report was not sufficient. Multiple deficiencies in Ms. Ramirez's assessment report consisted of those elements not included: a detailed historical analysis of Student's multiple disciplinary incidents related to his emotional disturbance; a clinical interview with Student; any input from Mother; no reference to observations of Student in any educational setting; reliance only on the Behavior Assessment from Father and Student; and insufficient testing instruments. District's knowledge of Student's disciplinary history of severe behavioral problems and of the May 2014 diagnosis of a mood disorder not otherwise specified should have triggered Ms. Ramirez to conduct a more thorough triennial psychoeducational assessment in the areas of emotional functioning. She should have reported the correlation between Student's past history and his present situation, which prompted expulsion.

49. The April 2015 psychoeducational assessment consisted of the minimum necessary to confirm eligibility related to Student's strengths and weaknesses for the IEP team. It did not explore in depth Student's educational needs related to his social emotional behaviors at school utilizing all of the assessment tools District had available to it.

April 17, 2015 IEP and Return to School

50. On April 17, 2015, District held an IEP team meeting for Student. Parents, Student and required District staff attended the meeting. Ms. Shah and Brandi Davis, Sequoia's SC6 program administrator, attended telephonically. The IEP team excused ERICS counselor Ms. Prado from attendance. Student actively participated in the meeting, along with Parents. Parents informed the IEP team they were in the process of finding a new private therapist for Student.

51. The IEP team reviewed Student's present levels of academic performance. Mr. LeMaster reported Student was a bright intelligent young man with excellent writing skills. His English skills were a relative strength compared to his math skills. He tended to

be impulsive when working on assignments and in decision making, although he performed better with prompts to take his time. He was able to re-focus attention with clear expectations and short breaks. He was a goal setter. Student commented that his ADHD made it difficult for him to focus and his thinking could be “all over the place.” Resource specialist Charlene Honnen reviewed Student’s academic records, noting that Student’s academic skills were not an area of concern necessitating an academic assessment. Student’s school counselor Victor Solis reported Student was on track to graduate high school with a diploma. He had 105 credits out of 107 required for junior high school, with a 2.68 grade average.

52. Ms. Ramirez reported on behalf of Ms. Prado that Ms. Prado and Student were in the rapport building stages; Student presented as open and willing to share information on his history. He was very concerned about being evaluated, had difficulty accepting responsibility and appeared to see himself as a victim of the school overacting and misunderstanding him.

53. Ms. Ramirez reported her assessment findings and recommendations, including her observations that Student suffered from depression, anxiety, and inability to build or maintain peer relationships. The IEP team changed Student’s primary eligibility to emotional disturbance, reclassifying other health impairment as his secondary eligibility. The IEP team reviewed his behavior goal from 2014, which he had not met; developed four goals in the areas of social, emotional, and behavior; and a behavior intervention plan.

54. As placement options, the IEP team considered general education, and the SC6 program at Sequoia, and ERICS services. The team agreed Student would benefit from ERICS services through extended school year to avoid regression in the areas of social emotional/behavioral skills. Ms. Shah reported that, during her tour of Sequoia with Parents and Student, Student expressed interest in attending a comprehensive high school because he was interested in playing a sport.

55. District offered placement in the SC6 program at Sequoia with weekly ERICS services for Student and Parents. Parents consented to the IEP. The IEP team agreed Student would start school on April 27, 2015, so Student could complete his home study assignments. The IEP team informed Parents and Student of Sequoia’s communication and technology procedures, which would be reviewed at Student’s orientation and Parents agreed they would review the guidelines on a regular basis. The team also discussed certain restrictions on class assignments involving technology, in which, consistent with the court’s orders barring him from social media. District would prohibit Student from participation in those assignments. District did not recommend further assessments.

56. Placerita assistant principal Ms. Thompson met with Father and Student on April 21, 2015. Father and Student signed an agreement that suspended Student’s expulsion. The Agreement required Student to follow all school rules and policies and not violate any of

the provisions of Education Code section 48900 or 48915¹⁰ to maintain the suspension of the expulsion. The Agreement also provided if Student violated Education Code section 48900 or any District or school site rules and regulations governing pupil conduct, the District's Governing Board, in its sole discretion, could revoke the suspension of the expulsion. The superintendent's designee signed the Agreement and set it for approval on the Governing Board's May agenda.

57. Student began attending Sequoia on April 27, 2015, with ERICS services. District's Governing Board officially expelled Student effective May 20, 2015. However, the Governing Board also approved the Agreement. The Agreement went into immediate effect and suspended the expulsion.

58. Student attended the remainder of the 2014-2015 regular school year and 2015 extended school year at Sequoia. He did not have any reported behavior incidents at Sequoia resulting in discipline. He received regular ERICS services from Cory Christensen, consistent with his IEP. Mr. Christensen has a master's degree in psychology and is a licensed marriage and family therapist. He has worked as an ERICS counselor for District since 2011. Parents accessed ERICS family services three times in May 2015. The IEP team met on May 27, 2015, for a 30-day review. The IEP team discussed Student's present levels of performance in academics and behavior. Student's grades were all A's except in math where he had a B/C. He participated in the debate team. Student did not engage in any of the target behaviors identified in his behavior intervention plan, which the team agreed to put "on hold" unless or until Student engaged in the targeted behaviors. The team reviewed Student's goals and modified his behavior goal related to making appropriate comments. Student's placement at the time of this IEP meeting met Student's academic, behavioral and social emotional needs and he made progress.

59. The IEP team discussed the option of a dual enrollment involving Sequoia and a general education campus for the spring 2016 semester if Student met the criteria for attendance, behavior and showed progress toward goals and adequate grades. The IEP team agreed that continued placement at Sequoia was the least restrictive environment to meet Student's needs. Parents consented to the amended IEP.

60. Mr. Christensen's June 2, 2015 Functional Assessment Scale report rated Student at 80 out of a total of 160. Student's behaviors were severe in the area of school/work based on his earlier expulsion for making a serious threat to hurt a teacher. His behaviors were moderate in the area of self-harmful behavior, which related to Student's earlier threats to hurt himself, kill himself, and wanting to die.

¹⁰ Education Code sections 48900 and 48915 address the rights of a school principal or superintendent to recommend expulsion if a child engages in a variety of prohibited behaviors including habitual use of profanity; serious physical injury to another person, except in self-defense; possession of any knife or other dangerous object of no reasonable use to the pupil; or unlawful possession of any controlled substance.

August 25, 2015 Disciplinary Incident and Expulsion

61. Student began the 2015-2016 school year in the SC6 program at Sequoia. He had no significant reported behavior incidents during the first two weeks of school. He accessed his education and appropriately interacted with his peers.

62. On August 25, 2015, Student captured a lizard from the side of the building, twisted its neck and broke off its head, and dropped the carcass on the ground in the presence of other students. Afterwards, Student went to the classroom and showed blood on his hand from the lizard to other classmates. He told them he did not feel bad about killing the lizard because he was “a psychopath.” Student also shared the incident with his teacher, showed the dead lizard to another classmate; and told the teacher he was reading “The Anarchist’s Cookbook.”¹¹ School counselor Mr. Christensen and Ms. Shah met with Student after the incident to determine Student’s state of mind. He showed lack of remorse and no empathy.

63. District suspended Student from school for one day on August 26, 2015.¹² Parents came to school to discuss the incident and meet with Ms. Shah and Mr. Christensen. Mr. Christensen and Ms. Shah recommended Parents pursue a clinical psychiatric evaluation of Student to determine the extent of his previously diagnosed non-specified mood disorder. Parents did not follow up on the recommendation before February 18, 2016.

64. On September 3, 2015, Student’s public defender wrote to District on Mother’s behalf advising that Mother did not want Student to return to Sequoia. She requested a home schooling plan, and copies of Student’s educational records; a referral for mental health assessment and mental health services for Student; and an IEP meeting to discuss placement. She informed District that Parents were not withdrawing Student from District or special education at that time.

65. On September 8, 2015, District informed Parents in writing that Student’s one-day suspension was a violation of the Agreement, and District immediately expelled him from District pursuant to the Board’s May 20, 2015 ruling. District’s special education director Sharon Amrhein credibly testified regarding District’s procedures for expulsion and how District applied those procedures to Student. District implemented its standard procedures of expulsion for Student as a special education student at the time of expulsion. District expels students for the remainder of the current semester plus an additional semester. In Student’s case, District expelled Student through the remainder of the 2015-2016 school

¹¹ Neither party offered evidence explaining the significance of “The Anarchist’s Cookbook.”

¹² In accordance with the Order from the Expedited Decision in this matter, District held a manifestation determination review pertaining to the lizard incident in May 2016. Dr. Stevenson participated along with Parents. The review team determined that Student’s behavior was not a manifestation of his disabilities, a conclusion with which Dr. Stevenson concurred during her testimony at the non-expedited hearing.

year. District staff contacts parents of expelled special education students to offer alternative placements where they can continue to receive special education and related services. District offered Student one hour a day of home study through October 8, 2015. Along with the offer, District provided Mother with a list of District-chartered community based schools, including Opportunities for Learning Charter School, all of which were available to provide Student with special education services after home study ended. District staff routinely assists students expelled from District campuses in enrolling in alternative placements and, for special education students, ensures they receive special education services.

66. Mr. Christensen generated an exit Functional Assessment Scale report dated September 11, 2015. He reported Student's behaviors caused him to be a threat to others because of aggressive potential, reflecting a total score of 120 out of 160.

67. Mother chose not to enroll Student in any of the placement options offered by District. Instead, she requested continued home study. In response to Mother's request, District staff communicated telephonically and by email with Mother to arrange for home study and ERICS services. District staff prepared an amendment to Student's IEP to reflect the home study placement and ERICS services. Because of changes requested by Mother's attorney, Mother did not sign the final IEP amendment until mid-November 2015.

68. District teacher Fidel Garcia provided 72 home study hours to Student beginning September 26, 2015, and continuing until February 8, 2016. The total hours, which District typically provided two hours a day, included 30 hours of makeup sessions caused by administrative delays in getting the services started and an IEP amendment finalized. Mr. Garcia was a credentialed special education teacher at Sequoia. He has a master's degree in counseling and psychology. Mr. Garcia provided the service at Mother's home. Student did not miss any scheduled hours of services; his behavior was excellent; he was determined to and did earn a grade of "A" in all subjects. His penmanship improved and he became proficient in printing because he was restricted from using electronic devices. Student was eager to learn and Mr. Garcia found Student a pleasure to work with. Student received educational benefit from the home study provided by Mr. Garcia.

69. After Mother signed the November 2015 IEP amendment, District assigned Richard Posalski, District's clinical coordinator for counseling, as Student's case manager for ERICS services on November 18, 2015. From that time until February 18, 2016, Mr. Posalski attempted several times to schedule counseling sessions for Student, first through Mother, and later through Father. In part due to conflicting schedules and miscommunications between Parents, Mr. Posalski was never successful in setting up an appointment for Parents or Student that Student attended.

70. Student's attorney requested a complete copy of all Student's educational records on November 6, 2015.¹³ District responded by producing records on November 10,

¹³ On September 19, 2016, before the record closed, Student's counsel filed with OAH a written stipulation of facts dated September 19, 2016, signed by both counsel. The

12, and 18, 2015. Student's attorney requested additional records on February 1, 2016. District responded and produced responsive documents on February 9, 2016, and informed counsel February 11, 2016, that it had produced all responsive documents in its possession. Student did not receive all of the records his counsel asked for before the end of the statutory period in this case, and in some instances until shortly before hearing.

71. On February 16, 2016, Father informed Mr. Posalski that Parents had decided to seek professional services outside of the District and he was not certain he wanted Student to receive the services District was offering. Student became a ward of the Los Angeles Superior Court in late February 2016. The Court placed him in a residential setting where he attended Pacific Lodge School. Pacific Lodge consisted of a highly structured and small class size setting where accommodations to the regular education program were provided to meet Student's individualized needs. Student had an IEP without a behavior intervention plan, was successful in the court-ordered setting, and accessed his education. He was released back to Parents in early August 2016.

Independent Assessment and Recommendations

72. Dr. Stevenson reviewed Student's educational records in preparation for the May 2016 manifestation determination review meeting, which she attended. She began her clinical assessment of Student in early August 2016 before the court released Student from court custody. Her assessment included an interview with Mother, whom she found did not understand that what Student was experiencing was a product of mental health problems. Instead, Mother felt Student was misunderstood, and not capable of understanding his actions. During testing, Mother did not endorse many of Student's symptoms that were generally occurring, finding him to be average in many areas of behavior. Father had a disciplinarian approach to Student's behaviors. He was angry with him for the behaviors and did not appear to appreciate the mental health basis for his problems.

73. Dr. Stevenson acknowledged at hearing that her assessment was "ongoing" and her report was abbreviated and incomplete. She would have liked to conduct additional diagnostic tests on Student that were not yet age appropriate; she had not yet observed Student in the educational setting; she had not yet interviewed Ms. Garvin or other District staff. She provisionally diagnosed Student with borderline personality disorder requiring primary treatment consisting of dialectical behavioral therapy, which she characterized as the "gold standard." Dialectical behavioral therapy generally consists of four phases. Supervised and certified clinicians must deliver the therapy. Dr. Stevenson, who has offered the therapy in the past but does not currently do so, knew of no qualified therapists that practiced within a reasonable geographic area of Student's residence. Providing that service in the school setting would be difficult because of the cost and based on the need for supervised experience during dialectical behavioral therapy. Dr. Stevenson did not elaborate

Stipulation related to the issue of request for records and authenticity of certain documents. The ALJ marked and admitted the Stipulation as Exhibit S87.

on the cost of the treatment or the duration or frequency appropriate for Student to address his educationally related needs.

74. District's expert, Dr. Betty, credibly and persuasively criticized Dr. Stevenson's report and provisional diagnosis of Student. Dr. Betty also credibly challenged her diagnostic conclusions. Overall, Dr. Betty opined that the draft report lacked specificity, relied on incomplete data, and he cautioned against the pitfall of "diagnostic immaturity." The diagnosis was premature, not necessarily appropriate for an adolescent and not conclusive based on its provisional nature.

75. Dr. Betty also credibly criticized Dr. Stevenson's recommendation for dialectical behavioral therapy. It is most commonly administered in an in-patient setting, although can occur on an outpatient basis if provided by someone trained and familiar with all of the treatment's components. The provider must have certification with an advanced degree in psychology or a related discipline. Only the Linehan Institute offers certification. The Institute keeps a database of certified providers, none of whom was within District's geographic area based on Dr. Betty's research.

76. Dr. Stevenson's report and her testimony regarding diagnosis and treatment was not relevant or persuasive as to whether District should have known that Student suffered from the specific medical diagnosis of borderline personality disorder from February 2014 until February 2016. Her report did not exist at the time of any of the IEP team meetings at issue. Student's IEP team did not have Dr. Stevenson's report or the benefit of any of her findings at any time before she testified. As discussed below in connection with the snapshot rule, the report itself and its diagnostic conclusions had minimal relevance to the issues.

Expert Opinions on Student's Program and Placement

77. Dr. Stevenson's credible and relevant opinions, discussed in part above regarding Ms. Ramirez's assessment, were those that her review of records informed. She credibly testified to Student's educational program during the statutory time at issue. She concurred with District that Student's eligibility for special education was emotional disturbance and other health impairment. She recommended placement in a "specialized school," such as a non-public school, with a smaller student to teacher ratio that specializes in children with emotional problems. Dr. Stevenson did not express any opinions as to either the appropriateness of District's SC6 therapeutic program at Sequoia or how or whether a non-public school setting differed from the SC6 program at Sequoia.

78. Before the May 27, 2014 manifestation determination review meeting, the IEP team had enough information to determine that ERICS services was appropriate for Student and that placement in the SC6 program at Sequoia was also appropriate. However, Dr. Stevenson criticized District's later offers of ERICS services. After Student returned to special education in January 2015, District's school psychologists should have been aware that Student required more clinical interventions based upon Student's history of behaviors

resulting in discipline including expulsion. Under the snapshot rule, her criticisms were only relevant as to educationally related therapeutic interventions, and not as to her recommendations for independent clinical therapy directed toward her medically based diagnostic conclusions.

79. Student's Functional Assessment Scale score of 140 in June 2014 were high enough to justify consideration by the IEP team at that time of a more therapeutic placement, which it did. Dr. Betty credibly opined that the IEP team's recommendation for District's therapeutic SC6 program at Sequoia was appropriate. Sequoia was consistent with the type of placement Dr. Stevenson recommended. The program offered unique groups that used research based techniques in areas of interest for the students, who all had a history of complex behaviors. Parent counseling was available for all students with ERICS services in their IEP's. Parent counseling was very important because outcomes were better when parents collaborated and enforced techniques at home. The lack of parental participation complicated the outcome of ERICS services.

80. Student attended Sequoia for only 11 weeks in 2015 before his expulsion. That was not enough time for District staff to determine effective strategies toward managing Student's behaviors in that setting.

LEGAL AUTHORITY AND CONCLUSIONS

Introduction – Legal Framework under the IDEA¹⁴

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)¹⁵ 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 free appropriate public education (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 individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20

¹⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

¹⁵ All future references to the Code of Federal Regulations are to the 2006 edition.

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 Dist. 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).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).)

5. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. West* (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[.]) In this case, Student filed the complaint and has the burden of proof on all issues.

Issue 1(a) through (g): Procedural Violations of the IDEA

ISSUE 1(A)(1) - FAILURE TO CONDUCT APPROPRIATE ASSESSMENTS - FEBRUARY THROUGH AUGUST 2014

6. Student contends District denied him a FAPE and deprived Parents of the opportunity to participate meaningfully in the development of his educational program. First, Student argues District did not adequately assess him from February through August 2014 to determine the extent of his social emotional and behavioral needs. Student argues that he historically manifested symptoms of a behavioral mood disorder that his expert, Dr. Stevenson, provisionally diagnosed in August 2016 after Parents filed their complaint in this matter. Student also argues District had a duty to conduct a medical or psychiatric evaluation of Student. District contends it did not deny Student a FAPE. District argues it had no legal duty to conduct medical evaluations of Student; Parents did not ask for a functional behavioral assessment during this time relieving District of any duty to assess; its assessments were appropriate; and it did not deny Student a FAPE.

LEGAL AUTHORITY – PROCEDURAL VIOLATIONS

7. 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 (*Target Range*)). The hearing officer “shall not base a decision solely on non-substantive procedural errors, unless the hearing officer finds that the non-substantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian to participate in the formulation process of the individualized education program.” (Ed. Code, § 56505, subd. (j).)

8. Procedural violations that interfere with parental participation in the development of the IEP “undermine the very essence of the IDEA.” (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.) An IEP cannot address the child’s unique needs if the people most familiar with the child’s needs are not involved or fully informed. (*Ibid.*) A school district cannot independently develop an IEP without input or participation from the parents and other required members of the IEP team. (*Target Range, supra*, 960 F. 2nd at p. 1484.) A school district’s failure to conduct appropriate assessments 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.)

LEGAL AUTHORITY – ASSESSMENTS

9. To determine the contents of an IEP, a student eligible for special education under the IDEA must be assessed in all areas related to his or her suspected disability and no single procedure may be used as the sole criterion for determining whether the student has a disability or whether the student’s educational program is appropriate. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code § 56320, subd. (e), (f).)

10. For purposes of evaluating a child for special education eligibility, the assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 (*Vasheresse*) [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

11. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) No single measure shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

12. Individuals who are both “knowledgeable of the student’s disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area” must conduct assessments of students’ suspected disabilities. (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).)

13. 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).)

LEGAL AUTHORITY – DUTY TO CONDUCT HEALTH OR MEDICAL EVALUATIONS

14. When a student has a diagnosis of a chronic illness, the student may be referred to the school district for a health assessment. The IEP team shall review the following information: the type of chronic illness; possible medical side effects and

complications of treatment that could affect school functioning; and educational and social implications of the disease and treatment. (5 Cal. Code Reg. §§ 3021.1(a) & (b).) A health assessment focuses on diagnoses, health history, and those specific health needs while in school which are necessary to assist a child with a disability. (*L.J. v. Pittsburg Unified Sch. Dist.*, No. 14-16139, 2016 WL 4547360, at *10 (9th Cir. Sept. 1, 2016) (*L.J. v. Pittsburgh*).)

15. An IEP is designed to deal with a student’s unique needs rather than the definition of the child’s disability. Where a school district continuously addressed the behavioral manifestations and needs created by a child’s mental health disorder, the failure to obtain an official diagnosis did not provide a basis for finding a procedural violation of the IDEA. (*J.K. v. Fayette Cty. Bd. of Educ.*, No. CIV.A. 04-158-JBC, 2006 WL 224053 (E.D. Ky. Jan. 30, 2006) (*JK v Fayette*).)

LEGAL AUTHORITY – SNAPSHOT RULE

16. An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).) The Ninth Circuit has endorsed the “snapshot rule,” explaining that an IEP “is a snapshot, not a retrospective.” The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*)

LEGAL AUTHORITY – DUTY TO ASSESS AFTER EXPULSION

17. A child with a disability who is removed from the child’s current placement under title 20 United States Code section 1415(k)(1)(C) shall continue to receive i) educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and (ii) as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (20 U.S.C. § 1415k(1)(D); 34 C.F.R. § 300.530(d).)

ANALYSIS

18. As a preliminary matter, Student argued in his closing brief that “the snapshot rule” articulated in *Adams, supra*, 195 F.3d at p. 1149, does not apply to the analysis of procedural violations. Student claims that he was unable to find any “precedential legal authority” applying the snapshot rule to procedural violations. Student argues District had no valid test results to choose from during the statutory period, and therefore the snapshot rule does not apply. Student’s argument was not persuasive. The snapshot rule focuses the analysis of the appropriateness of an IEP on the information available to the IEP team at the time it developed the IEP. It is illogical to assume that, when looking at the elements an IEP team considers in creating an IEP, including for example historical data, assessment reports, and teacher interviews, one would not consider as part of the analysis what was known about those items at that time, whether the information was accurate or complete, or whether necessary elements were missing. In this case, Student’s argument attempts to bootstrap

Dr. Stevenson's provisional diagnosis and conclusions into the analysis of what the IEP team knew, did not know or should have known as far back as 18 months before her evaluation was conducted.

19. The principles underlying the snapshot rule developed by the Ninth Circuit in *Adams, supra*, 195 F.3d at p. 1149, are to prevent the analysis from relying on what one knows at the time of hearing as opposed to what a school district knew or should have known at the time in question. This approach was supported in *E.M. v Pajaro Valley Unified School District, et al.* (9th Cir.2011) 652 F.3d 999, 1006. A trier of fact can use later acquired information to inform the analysis to the extent it informs the trier of fact in administrative proceedings that the same characteristics existed and or were available or evident to the IEP team when it developed the IEPs. In *E.M.*, the Ninth Circuit Court of Appeals was faced with the issue of whether the *district court*, under 20 U.S.C. 1415(i)(2)(C)(ii), incorrectly rejected as "additional evidence" an evaluation report that did not exist until three years after the administrative hearing. The court held that the *district court* erred by not considering whether the report was otherwise admissible and relevant to the determination of whether the district met its obligations to the student under the IDEA several years earlier. (*E.M., supra*, 652 F.3d at p. 1006.) However, the holding in *E.M.* does not abrogate the general principle articulated in *Adams, supra*, 195 F.3d at p. 1149, that the actions of school districts cannot be judged exclusively in hindsight, which is applicable to administrative hearings. In judging the validity of assessments, the determination of what tests are required is made based on information *known at the time*. (See *Vasherese, supra*, 211 F.Supp.2d at pp. 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

20. Notwithstanding *Adams* and the snapshot rule, Dr. Stevenson's report existed at the time of the hearing; it was admitted into evidence; and Dr. Stevenson testified for a full day of hearing and offered opinions, which were given due weight by the hearing ALJ. The ALJ also considered her opinions based on Dr. Stevenson's report to the extent that they related to her review of records and District's assessment available to the April 17, 2015 IEP team. However, Dr. Stevenson's conclusions as to Student's diagnosis and recommended treatment were given little weight under *Adams, supra*, 195 F.3d at p. 1149, because they were never presented to District at any IEP meeting.

21. Student did not establish that, by not assessing Student during February through August 2014, District deprived Parents of the opportunity to participate in the development of his educational program, denied Student a FAPE, or deprived him of educational benefit. ERICS counselor Ms. Garvin credibly testified that she periodically generated Functional Assessment Scale reports to use as a tool for collaboration with the IEP team on Student's behavioral issues. She scored Student at 70 in her March 2014 Functional Assessment Scale report, which was one of the lowest scores Student had rated over the two-year period at issue. From February through mid-May 2014, Ms. Garvin and the school staff successfully managed Student's behaviors at school and he accessed his educational program and made some progress toward his social emotional and behavior goals. Academics were not an area of concern for Student. Ms. Garvin did not see a need to formally assess Student

to determine his educational needs related to his behavior. None of the District IEP team members, or Parents, requested any assessments. Although Student's behaviors both at home and school began to escalate in the second semester of the 2013-2014 school year, Student offered no credible evidence that District had reason to suspect that Student's educationally related social emotional or behavioral needs at school had changed from February through mid-May 2014 warranting any additional assessments to address Student's educational needs. Dr. Stevenson's testimony supported this finding.

22. In May 2014, Student cut himself with a razor blade at home and school, which resulted in his hospitalization and a 72-hour hold. The IEP team met on May 27, 2014, and determined the behavior to be a manifestation of his disability of emotional disturbance, referring him for a threat assessment. While hospitalized, a doctor medically diagnosed Student with a mood disorder, not otherwise specified, and placed him on medication. Although Father informed District of the diagnosis, Parents did not provide District with any additional information relating to Student's medical diagnosis of mood disorder after his hospitalization or ask District to assess Student. Student's private counselor attended and participated in the manifestation review and IEP meetings on May 27, 2014. She did not recommend or request further assessments to the IEP team or provide additional information about Student's mood disorder, although she expressed concern about Student's behaviors.

23. Dr. Stevenson credibly opined that, at the time of the May 27, 2014 manifestation review and IEP meeting, District should have initiated assessments to explore further the educational impact of Student's medical diagnosis of a non-specific mood disorder. Dr. Betty opined that District staff was not qualified to conduct psychiatric evaluations. The IDEA does not specifically require a school district to "provide an evaluation by a licensed physician in order to determine [a child's] medically related disabilities" as Student argues. A district-conducted health assessment focuses on known diagnoses, health history, and those specific health needs while in school which are necessary to assist a child with a disability. The IDEA does not require District to conduct a psychiatric evaluation. (See, *L.J. v. Pittsburgh.*, *supra*, 2016 WL 4547360 at p. *10; *JK v Fayette*, *supra* 2006 WL 224053 at *5). However, District was obligated to consider all relevant information, including medical diagnoses, and the impact of that information on Student's educational program and needs. It was obligated to seek additional assessments if necessary to further determine his needs. District should have at least recommended to Parents the need for further assessments or requested permission from Parents to further investigate Student's medical diagnosis, which directly affected his behavior at school. Thus, Student proved that District committed a procedural violation of the IDEA by failing to initiate assessments at or shortly after the May 27, 2014 IEP team meeting.

24. However, that procedural violation did not result in deprivation of parental participation or a denial of FAPE or educational benefit for Student. The IEP team had enough information at that time, including the medical diagnosis of a non-specific mood disorder, which was medically controlled and monitored by a psychiatrist, to recommend an interim therapeutic placement for the remaining nine days of school and extended school

year. The IEP team designed the recommendation to address Student's social emotional and behavior needs when at school. The IEP team considered all information relevant to Student's recent behavioral incident. It offered Student the SC6 program at Sequoia, a small therapeutic campus with approximately 50 students whose eligibility was emotional disturbance, and five ERICS counselors on staff. Father, who actively participated in the meeting, rejected the offer, instead requesting District to allow Student to return to the general education setting at Placerita to complete the nine remaining days of the 2014-2015 school year. District did not deprive Parents of the opportunity to participate in the development of Student's education program or deny Student a FAPE or educational benefit by not initiating assessments at the May 27, 2014 meeting.

25. The IEP team met again on June 12, 2014, at the end of the regular school year. District was aware at the time of the meeting that Student's behaviors had been escalating and his relationships were at risk with peers and staff. The team discussed a recent incident where Student boasted to his peers that he was a neo-Nazi. The IEP team was familiar with Student and his present levels of performance and history of behaviors. District did not offer to initiate further assessments to determine whether Student's non-specific mood disorder would affect District's placement offer or services. District's argument that Parents did not ask for assessments is irrelevant because whether or not a parent asks for an assessment does not abrogate a district's obligation under the IDEA to assess if circumstances warrant an assessment.

26. Here, for the reasons discussed above, from May 27, 2014, through June 12, 2014, District's failure to at least discuss assessing Student or to generate an assessment plan to further explore the impact of his social emotional issues on his educational environment was a procedural violation. However, Parents actively participated at the June 12, 2014 meeting. They were aware of Student's behavioral history, his recent medical diagnosis, and his behaviors at school. District again offered Student a more therapeutic placement in the SC6 program at Sequoia, with ERICS services, including during extended school year 2014. Parents and Student expressed concern about placement in a restrictive therapeutic setting. They were concerned about the impact such a placement would have on his ability to mainstream into a general education high school. Student wanted to be in a general education setting. Parents asked for time to consider other placement options, including home study with additional support. They declined ERICS services for the summer of 2014. The procedural violation did not deprive Parents of the opportunity to participate in the development of the June 12, 2014 IEP or development of Student's educational program.

27. Based on Student's June 2014 Functional Assessment Scale scores, Dr. Betty credibly opined that District had the resources available, including ERICS services and the offer of the SC6 program at Sequoia, to address Student's social emotional needs known to District at the time as they related to his access to education. At the time of the June 2014 IEP meeting, District made an appropriate placement offer to Student based on the information it had. Parents declined to accept the placement offer, including ERICS services. They wanted to visit Sequoia and consider other options, and they wanted Student to participate in non-school-related peer relationships during the summer. District's failure

to discuss assessing Student or offer an assessment plan to Parents at the June IEP team meeting did not deny Student a FAPE or educational benefit before the start of the 2014-2015 school year.

28. District held another IEP team meeting a week before school started in August 2014. At that meeting, Parents declined District's placement and services offers at Sequoia, and voluntarily withdrew Student from special education. District staff disagreed with Parents' decision and explained the consequences of withdrawing Student from special education. They explained the difference between the services and supports Student would receive in a general education setting and the Sequoia placement in special education. Parents were present at the meeting with Student, and actively participated. As discussed above, although District should have at least recommended initiating additional assessments at the August 2014 IEP team meeting, Student did not prove that its failure to do so impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process regarding the provisions of a FAPE, or caused a deprivation of educational benefits. Once Parents removed Student from special education, which was their right, absent a request from Parents to assess him for renewed eligibility, District's duty to assess Student ceased.

29. In summary, under these facts, Student did not prove by the preponderance of evidence that District's failure to assess Student from February through August 2014 was a procedural violation of the IDEA denying him a FAPE or educational benefit, or significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE. District had sufficient knowledge of Student's educationally related needs to make an appropriate offer of placement and services to Student during that time.

ISSUE 1(A)(2) - FAILURE TO CONDUCT APPROPRIATE ASSESSMENTS –
JANUARY 27, 2015 – MARCH 30, 2015

30. Student contends District did not assess him from January 27, 2015 through March 30, 2015 to determine the extent of his social emotional and behavioral needs. District contends its assessments were appropriate. District contends it did not deny Student a FAPE and it had no duty to assess Student during this time because Parents never asked for an assessment and his behavior on January 27, 2015 was not a manifestation of his disability.

31. Legal Authorities 7 through 17 are incorporated by reference.

32. Student met his burden of proving that District committed a procedural violation by failing to assess Student before the April 2015 triennial assessment, and that the procedural violation significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE.

33. At the January 27, 2015 meeting, prompted by a disciplinary incident a few days before, the IEP team met to return Student to special education. The team considered

Student's history, present levels of performance while in general education, his medical diagnosis of mood disorder not otherwise specified, and acquired sufficient information to offer a therapeutic educational placement to address Student's academic, social and emotional needs, develop a behavior contract, and plan for a 30-day review to create a behavior implementation plan and behavior goals. Ms. Ramirez was present at that meeting and was familiar with Student's history of behaviors. However, none of the IEP team members discussed or considered additional assessments, particularly given their expressed need to gather data to develop behavior goals and a behavior intervention plan. No one from District credibly explained why District did not offer to conduct assessments at that meeting, including a functional behavioral assessment, given their knowledge of his medical diagnosis and their expressed concerns about Student's continued and escalating threatening and serious behaviors at school.

34. For example, a functional behavioral assessment may have determined or reexamined the triggers and consequences for Student's aggressive behavior and informed the IEP team as it developed Student's behavior intervention plan. The information would have assisted District and Parents in determining how Student's behaviors could be better managed in the school environment once he returned to school on the suspended expulsion. District had sufficient information about Student in January 2015 to suspect Student may have a greater need for social emotional support warranting a more comprehensive psychoeducational assessment. Whether or not Student's behavior was a manifestation of his disability, his behaviors were interfering with his ability to access his education.¹⁶

35. District had recommended Student for expulsion from school for serious behaviors that greatly concerned school staff, even though at the time Parents had declined to agree to a suspension of the expulsion. District staff was aware of Student's criminal court proceedings. District did the minimum necessary to continue providing Student with an educational program and ERICS, to the extent he accessed those services. In fact, Ms. Hayes-Rennels wrote to the Superior Court advising that District did not want Student to return to District because of safety concerns. However, District had not yet officially expelled Student. District offered a suspension of the expulsion, and Student was still in special education, which entitled him to continued services including assessments.

36. District's failure to at least initiate an assessment plan to begin assessments of Student between January 27, 2015, and late March 2015, when Ms. Ramirez began her assessments, was a procedural violation of the IDEA that deprived Parents of the opportunity to effectively participate in the development of Student's educational program. Parents were confused about the reasons underlying Student's behaviors at school. While living with

¹⁶ On February 3, 2015, the IEP team determined Student's behavior of retaliatory threats against other students on January 27, 2015, was not a manifestation of his disability. District placed Student on home study with ERICS pending expulsion. However, nothing prevented District from initiating an assessment plan for Student or from conducting assessments, including delving into his medical diagnosis in relationship to his school behaviors, while he was on home study.

Mother, Student made threats through social media relating to his peers in March 2015 leading to house arrest and court proceedings, of which District was aware. If on or after January 27, 2015, District had initiated more comprehensive assessments when Student returned to special education, exploring in more depth his needs related to his mood disorder diagnosis, the IEP team including Parents would have had additional information to design a comprehensive program to address those needs in the educational environment. The procedural violation was material to parental participation.

37. Student prevailed on Issue 1(a)(2) because the procedural violation significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE.

ISSUE 1(A)(3) - APRIL 2015 PSYCHOEDUCATIONAL ASSESSMENT

38. Student contends District did not adequately assess him in the April 2015 psychoeducational assessment to determine the extent of his social emotional and behavioral needs. District contends its assessments were appropriate.

39. Legal Authorities paragraphs 7 through 17 are incorporated by reference.

40. Student met his burden of proof that District's triennial psychoeducational assessment in April 2015 was insufficient resulting in a procedural violation. Dr. Stevenson's opinion that District should have performed a more comprehensive evaluation of Student was strongly persuasive. Ms. Ramirez was qualified to administer the assessment to Student, and she did so appropriately to a limited extent. However, the assessment was not sufficiently comprehensive, given the escalation in Student's behavioral history both at home and school following his last triennial IEP in 2011. Student's behavioral history was replete with disciplinary incidents, suspensions, and, at the time of this assessment, expulsion. Student had a known history of an unspecified mood disorder. He had been away from special education supports and services for six months. District staff were fully aware that Student had serious emotional issues that were interfering with his access to his education, including expulsion from District. They did not want him to come back to a District school because of fear for their safety and that of other students, based on his behavior at school and outside of school directed toward students and staff.

41. Ms. Ramirez's assessment focused mainly on confirming eligibility. She did not focus her assessment on whether Student had additional educational needs related to his emotional disturbance eligibility, based upon information available to her. Ms. Ramirez did not interview Student, Parents, or any District staff who had interacted with Student from May 2014 until the time of her assessment. She interviewed Mr. LeMaster, who only saw Student a few hours a week outside of a regular school setting from February through mid-April 2015. Ms. Ramirez should have interviewed a variety of people with knowledge of Student, including Student, Parents, Ms. Prado, Ms. Garvin, and Placerita staff, for example, in order to develop a full understanding of Student's needs at the time of her assessment. Dr. Betty credibly testified that District's mental health staff was highly trained and skilled,

and experienced in working with children with emotional issues. Given the serious nature of Student's behaviors, Ms. Ramirez should have made further inquiries about Student's diagnosis of non-specific mood disorder. Ms. Ramirez should have consulted with Dr. Betty or other ERICS staff as to appropriate assessment tools given Student's medical diagnosis to better inform the ERICS counselor and IEP team about Student's needs.

42. Ms. Ramirez only observed Student at IEP team meetings and never in the educational setting. Ms. Ramirez did minimal testing. Student lived with Mother at the time. Knowing Student's behavioral history at school, Ms. Ramirez's reliance only on Father's and Student's reporting on the Behavior Assessment form was insufficient and incomplete without Mother's participation. Ms. Ramirez should have administered additional research-based testing instruments designed to explore Student's social emotional and behavioral needs at school, such as the Achenbach Assessment, which she testified was an option she chose not to use.

43. The limited nature of the psychoeducational assessment, targeted primarily at eligibility, caused the assessment to be deficient, which was a procedural violation of the IDEA. District had the opportunity beginning in February 2015, given its willingness to allow Student to return to school under a behavior contract and a suspended expulsion, to recommend to Parents that District conduct more extensive evaluations exploring his needs in the area of emotional disturbance. Ms. Ramirez's failure to conduct a more comprehensive assessment deprived Parents, and the IEP team, of valuable information they needed regarding Student's social emotional needs and appropriate interventions to avoid the types of peer related issues Student persistently experienced.

44. Although Student asserted that District should have conducted a psychiatric or clinical psychology evaluation to explore his medical diagnosis of mood disorder, Student did not prove District was obligated to do so. Student did not offer any legal authority or expert testimony supporting a finding that District was obligated to undertake a psychiatric or clinical evaluation of Student to explore further his medical diagnosis. District's staff was not trained or qualified to conduct medical or clinical assessments of Student. However, at the very least, District should have urged Parents to seek a private, psychiatric or other clinical evaluations to further explore Student's medical diagnosis.

45. Student did not prove that the deficiencies in the April 2015 assessment deprived him of a FAPE or educational benefit. Based on the information available to the IEP team at the meeting, District made an appropriate offer of placement in the therapeutic program at Sequoia with weekly ERICS individual and family counseling. As discussed below, after Student returned to school, he attended Sequoia, received educational benefit and regularly accessed ERICS counseling.

46. However, the procedural deficiencies of Ms. Ramirez's report in combination with District failure to pursue further exploration of Student's behaviors related to his emotional disturbance eligibility resulted in denying Parents the opportunity to participate meaningfully in the development of Student's educational program in April 2015.

Ms. Ramirez's assessment did not provide Parents with a complete picture of Student's needs at the time. Without that information, Parents could not make clear and informed decisions about Student's program. They could not properly evaluate whether District's April 16, 2015 IEP was appropriate, or whether Student needed more behavior related interventions. They could not properly evaluate whether they needed to be more actively involved in the family counseling component of the ERICS services. The lack of a comprehensive assessment thus deprived them of an opportunity to participate meaningfully in the process of developing Student's IEP.

47. Student met his burden on Issue 1(a)(3) by the preponderance of the evidence. District failed to appropriately assess Student. It failed to recommend to Parents to obtain more extensive clinical or medical evaluations of Student. District should have further explored Student's educational needs related to his medical diagnosis of a mood disorder not otherwise specified. District's failure to appropriately assess, or refer Parents for medical or clinical evaluations, was a procedural violation depriving Parents of potentially valuable information that may have given them the opportunity to be more informed and then more meaningfully participate in Student's IEP meetings. This Decision discusses Student's remedies below.

ISSUE 1(A)(4) AND ISSUE 3(A) – ASSESSMENTS - APRIL 27, 2015 THROUGH
FEBRUARY 2016

48. In Issue 1(a)(4), Student contends District deprived Parents of the opportunity to meaningfully participate in the development of his educational program by failing to timely and appropriately assess Student until the end of August 2015. In Issue 3(a), Student contends District denied Student a FAPE by failing to initiate an assessment, conduct one, and hold an IEP meeting to discuss that assessment from September 3, 2015 until February 18, 2016, after District expelled him from District schools. District contends it met its obligations to Student. Student failed to meet his burden of proof on this issue.

49. Legal Authorities paragraphs 7 through 17 are incorporated by reference.

50. A child with a disability who is removed from the child's current placement under title 20 United States Code section 1415(k)(1)(C) shall continue to receive i) educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (20 U.S.C. § 1415k(1)(D); 34 C.F.R. § 300.530(d).)

51. District did not commit a procedural violation for failing to assess Student from the end of April 2015 until before the August 2015 lizard incident. From April 27, 2015, until late August 2015, Student attended and successfully accessed his educational environment, without incident. District successfully managed Student's educational needs in the SC6 program at Sequoia. District had an IEP team meeting at the end of May 2015, at

which the IEP team discussed Student's present levels of performance. Student was making progress and his behaviors were under control with regular intervention from Mr. Christensen. Student was adjusting to his new environment. He had no behaviors that suggested he needed a functional behavioral assessment at that time. Mr. Christensen based his Functional Assessment Scale report in June 2015 on Student's past behaviors causing expulsion, not on his performance at Sequoia. Mr. Christensen scored Student at 80.

52. After the lizard incident in August 2015, District expelled Student from District schools until the end of the school year. The incident was not a manifestation of Student's disability. District's obligation to Student was the same as that owed to an expelled general education student. However, District was required to provide Student with access to an educational program and necessary related services as a special education student, and to conduct a functional behavioral assessment to address his behaviors in a classroom setting.

53. Student contends District should have initiated an assessment, and held a timely IEP meeting after Mother's attorney requested a mental health referral for assessment and mental health services on September 3, 2015. Student's expulsion did not relieve District of its obligation to provide Student with an educational program or necessary services, which it did. However, Student had already qualified for mental health counseling under the ERICS program. District offered to continue that service as part of Student's post-expulsion services. Student did not prove a functional behavioral assessment was appropriate after August 2015. Student offered no persuasive legal authority to support his claim that District had a duty to assess Student to explore the impact of his medical diagnosis on the school environment after District expelled him for disciplinary reasons not related to his disabilities.

54. Student did not meet his burden of proving District procedurally violated the IDEA during this time period that resulted in significantly impeding the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE or depriving Student of an educational benefit or a FAPE.

ISSUE 1(B) AND ISSUE 3(B) - FAILURE TO PROVIDE PRIOR WRITTEN NOTICE

55. Student contends District had an affirmative obligation to notify Parents that it did not see a need for additional information or assessments of Student or that it had decided not to assess Student. District contends it had no such obligation.

56. Legal Authorities paragraphs 7 and 8 are incorporated by reference.

57. A school district must provide written prior notice to the parents of the child, whenever the local educational agency proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. The prior written notice shall include: a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to

take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; sources for parents to contact to obtain assistance in understanding the provisions of this subchapter; a description of other options considered by the IEP Team and the reason why those options were rejected; and a description of the factors that are relevant to the agency's proposal or refusal. (20 USC §§ 1415(b)(3) and (c)(1).)

58. Student did not meet his burden of proving that District committed a procedural violation by not sending Parents a letter stating it did not need additional information or assessments, or that it refused to assess Student. The IDEA requires a school district to notify parents when it *refuses* to initiate a change or conduct an assessment. Here, the evidence established that District never "refused" to initiate a change to Student's program or assess him. Instead, District never considered assessing until late March 2015, which violation this Decision addresses in Issue 1(a).

59. The only request for an assessment referral from Student's representatives was in September 2015, for a mental health assessment and services. Student was already qualified for those services, and District did not refuse to provide them. Although after September 2015 District did not write to Parents to confirm its "refusal" to assess Student for mental health, District nevertheless offered the related service based on his eligibility for those services dating back to 2010. Mother was aware of District's offer of ERICS. She consented in writing to the services in the November IEP amendment, and Parents never accessed and eventually declined those services.

60. Student did not prove by a preponderance of the evidence or citation to any relevant legal authority that, under these facts, District was required to tell Parents in writing that it was not considering assessments of Student, determined it was not going to assess Student, or needed no further information about Student. Student did not meet his burden of proof on this issue.

ISSUE 1 (C) - FAILING TO CONVENE AN IEP TEAM MEETING - SPRING 2014

61. Student contends that his "lack of anticipated educational progress" toward his three behavior goals in his October 2013 IEP should have put District on notice of the need to hold an IEP team meeting in the spring of 2014. District contends that it was not obligated to hold an IEP meeting during spring 2014. Student did not meet his burden of persuasion.

62. Legal Authorities paragraphs 7 and 8 are incorporated by reference.

63. A school district must ensure that the IEP team revises the IEP, as appropriate, to address "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. §

300.324(b)(2).) California law provides that an IEP team “shall meet” whenever “[t]he pupil demonstrates a lack of anticipated progress.” (Ed. Code, § 56343, subd. (b).) An IEP team shall meet whenever a parent or teacher requests a meeting to develop, review, or revise the individualized education program. (Ed. Code § 56343(c).)

64. As discussed above, during the time between February 18, 2014, and the end of the 2014-2015 school year, Student accessed his education, and he made academic progress in school. His IEP team targeted his goals toward behavior and social skills. Student argues that March 2014 progress notes on behavior goals one and two reflected he had not met his goals or he “continued to struggle.” However, Student made some progress and did not have unmanageable behaviors triggering Ms. Garvin to call for a special IEP meeting. Student offered no evidence that Student was not making “anticipated educational progress” in the spring of 2014 that should have triggered the IEP team to call a meeting.

65. The IEP team properly convened, as discussed above, on May 27, 2014, after the razor-cutting incident. It convened again on June 12, 2014, to discuss a new placement for the 2014-2015 school year. Student did not prove that District committed a procedural violation of the IDEA in the spring of 2014 by failing to convene an IEP meeting because of lack of anticipated progress on his three IEP behavior-related goals.

ISSUE 1 (D) - PRESENT LEVELS OF PERFORMANCE - JANUARY 27 AND APRIL 17, 2015

66. Student contends District failed to report accurately all relevant data pertaining to his present levels of performance in his January 27, 2015 IEP and his April 17, 2015 IEP. He asserts that, at the very least, District could have “recycled” present levels of performance from earlier IEP’s into Student’s January 2015 IEP. He also argues that the April 2015 IEP did not include reference to present levels related to his current social emotional or behavioral functioning. District contends it accurately reported Student’s present levels of performance as known to it at the time of the IEP meeting.

67. Legal Authorities paragraphs 7 and 8 are incorporated by reference.

68. An IEP is a written document detailing, in relevant part, the student’s current levels of academic and functional performance; a statement of measurable academic and functional goals; a description of the manner in which goals will be measured; a statement of the special education and related services that are to be provided to the student and the date they are to begin; an explanation of the extent to which the child will not participate with nondisabled children in a regular class or other activities; and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) When developing an IEP, the IEP team must consider the child’s strengths, the parent’s concerns, the results of recent assessments, and the academic, developmental and functional needs of the child. (34 C.F.R. § 300.324 (a)(1); Ed. Code, § 56341.1, subd. (a).)

69. When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

70. Student did not meet his burden of persuasion in Issue 1(d). First, regarding the January 27, 2015 IEP, Student offered no credible opinions as to what or how any missing information on present levels resulted in a procedural violation that 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. District held the January 27, 2015 IEP meeting to return Student into special education. District's obligations were analogous to the situation where a student transfers into a new district with an outdated IEP. Student did not prove that District was obligated to develop new present levels of performance at the January 27, 2015 IEP.

71. The Placerita IEP team, including Parents, discussed Student's immediate past academic performance, and his history of behaviors in developing the January 27, 2015 initial IEP with a behavior contract pending 30-day review. The IEP team members had access to all of his school records, and team members were familiar with Student based on his history at various District schools. Parents and Student actively participated in the meeting and offered input. Numerous District staff reported on Student's academic and behavioral history while he was out of special education. The IEP team agreed, without objection from Parents, they wanted to collect data and to reevaluate Student within 30 days after he re-enrolled as a special education student in Placerita's general education program with resource support. In part, the IEP team needed that 30-day period to observe Student's behavior as a special education student in the modified Placerita program so it could develop appropriate behavior goals and refine the behavior intervention plan. District was compliant with its obligations under Educ. Code, § 56325, subdivision (a)(1). Student also offered no credible evidence that District inaccurately recorded the present levels of performance in the January 27, 2015 IEP, or that present levels were incomplete at the January 27, 2015 IEP. Therefore, Student did not prove District committed a procedural violation under the IDEA that impeded the 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.

72. Student argues that District should have recorded present levels using historic information, or at least import present levels from earlier IEP's. The argument was not persuasive, in part because at the October 2013 IEP team meeting, which developed three behavior goals, everyone agreed Student was doing so well in transition to middle school that he did not need a behavior support plan at that time. Those present levels were no longer relevant to Student based on his subsequent history. The May 27, 2014 IEP was a manifestation review meeting at which the IEP team modified his placement for the remaining days of school after a serious behavior incident. Student did not prove those

present levels were relevant or applicable at the time Student returned to special education in January 2015. In summary, as to the January 2015 present levels of performance, District did not commit a procedural violation by failing to report accurately all relevant data pertaining to his present levels in his January 27, 2015 IEP.

73. Student argues that the present levels in the April 17, 2015 IEP did not include current, vital information about the ways in which Student's disabilities impaired his education. Student failed to offer any credible opinions as to what information known to the IEP team at that time was missing. Student enrolled at Placerita as a special education Student in general education with resource support and ERICS services on January 27, 2015, the same day as the initial IEP meeting returning him to special education. Within a few hours, Student engaged in a serious incident of misbehavior that resulted in his suspension and eventual expulsion from District. Student was on home study and house arrest at the time of the April 17, 2015 IEP. The IEP team had no opportunity to observe Student's behavior at school after the January 27, 2015 incident, and therefore District's accessibility to Student's present levels of performance was understandably limited from January 27 until the April 17, 2015 IEP.

74. As discussed above, the April 17, 2015 IEP team relied in part on Ms. Ramirez's April 2015 assessment report. The snapshot rule under *Adams, supra*, 195 F.3d at p. 1149, is applicable here. The IEP team had a current psychoeducational assessment that confirmed eligibility under emotional disturbance. Although the report was not sufficiently comprehensive in exploring the impact of Student's diagnosis of mood disorder on his educational environment, the IEP team also heard reports from Student's home school teacher Mr. LeMaster, other District staff members, considered Student's educational background, and received input from Parents and Student. The IEP team considered all relevant information before it at that time, including Student's recent serious behavioral incidents in March 2015 that led to his house arrest while he was on home study. Based on the information available to the team, and after considering the psychoeducational report and Student's history, the IEP team renewed its offer of placement in the therapeutic SC6 program at Sequoia with ERICS. District's IEP offer was an appropriate placement based on Student's behaviors known to District at the time.

75. Notwithstanding the insufficient psychoeducational assessment, Student offered no credible evidence that the present levels of performance identified in the April 2015 IEP were inaccurate at the time the team recorded them. Nor did he offer any credible evidence that any such inaccuracy, if it existed, resulted in a procedural violation of the IDEA denying Student a FAPE or significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE.

ISSUE 1(E) - EMOTIONAL AND BEHAVIORAL GOALS

76. Student contends District failed to develop appropriate goals in the areas of social emotional and behavior in the January 27, 2015 IEP. Student argues District could have "recycled" goals from prior IEPs in order to comply procedurally with the IDEA.

District contends that Student was newly admitted to special education and District needed time to collect data to develop an appropriate and current goal. Student's argument was not persuasive. Student did not meet his burden of proving that the failure to include a goal in this IEP was a procedural violation.

77. Legal Authorities paragraphs 7, 8 and 66 are incorporated by reference.

78. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

79. As discussed above, District did not develop a behavioral goal in the January 27, 2015 IEP because Student was returning to special education on that date, and the IEP team needed time to evaluate Student's behaviors during the first 30 days of his reenrollment as a special education student. Student's behavior within two hours of that meeting resulted in him not returning to school until the end of April 2015. Therefore, the absence of a behavior goal in the January 27, 2015 IEP had no impact on his educational program during the time he was out of school. District's decision to wait 30 days before developing goals did not constitute a procedural violation.

ISSUE 1(F) - FAILING TO IMPLEMENT STUDENT'S IEP'S THROUGH AUGUST 2015

80. Student contends District committed a procedural violation of the IDEA by not providing ERICS services to Student and Parents for the time and frequency called for in Student's IEP's.¹⁷ District contends it implemented the IEP's except where Parents declined services. Student did not meet his burden of persuasion as to this issue.

81. Legal Authorities paragraphs 7 and 8 are incorporated by reference.

82. When a student alleges a denial of FAPE based on the failure to implement an IEP, in order to prevail the student must prove that any failure to implement the IEP was "material," meaning that "the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 822.) "Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation." (*Ibid.*)

¹⁷ Student's complaint at Paragraph 122(x) alleges District "materially failed to implement Student's IEP" for the relevant statutory period. The parties confirmed on the first day of hearing that Issue 1(f) was limited to implementation of ERICS services.

83. First, Student offered no persuasive evidence to support a finding that District committed a procedural violation by failing to timely provide ERICS services to Student in conformity with his IEP. Student received ERICS services from February 2014 through the end of the 2013-2014 school year. Parents declined services for Student during the 2014 extended school year and he was out of special education for the first semester of the 2014-2015 school year until January 27, 2015. Student only accessed ERICS counseling one time from January 27, 2015 until late April 2015 although District attempted several times to schedule more sessions. After he enrolled at Sequoia in May 2015, Student regularly received ERICS services from Mr. Christensen until late August 2015. From November 2015 until February 2016 Mr. Posalski unsuccessfully attempted to schedule ERICS services. The evidence supports a finding that District offered the ERICS services after District expelled Student, but Student declined them.

84. Student argues that Mr. Christensen did not know that Student had a diagnosis of a mood disorder when he worked with Student, and he focused only on the effects of Student's ADHD. As such, Student argues District's asserted failure to address Student's IEP goals, and to provide ERICS services was a procedural violation. However, Mr. Christensen credibly testified that he was familiar with Student's school records, the April 2015 psychoeducational evaluation, and prior IEP's, all of which contained ample notes of Student's behavioral issues. The May 2014 IEP referred to Student's mood disorder. Student did not prove by credible evidence that Mr. Christensen was not sufficiently aware of Student's behavioral history to provide appropriate ERICS services to him. On the contrary, the evidence established that whatever services he did provide were successful. Until Student's lizard incident in mid-August 2015, which was not a manifestation of his disability, Student had no behavioral issues; he got along with his peers, participated in the debate team, and succeeded academically at school. Mr. Christensen's Functional Assessment Scale report for June 2015 scored Student 80 out of a total of 160 points, referring to Student's behaviors before Mr. Christensen began working with Student.

85. Dr. Betty opined that Parent counseling was an important component of ERICS services. Student argues that, because parents of children with a "serious mental health condition" do not understand how that condition impacts their child, District should have provided the amount of family counseling for Parents based on the IEP. Dr. Stevenson opined that at the time of her assessment in August 2016 Parents did not appreciate that Student's behaviors were associated with mental health problems. They attributed his behaviors to other factors, addressing them through discipline rather than therapy.

86. Parents did not access the services or declined the services when District offered them. From February through June 2014, Parents did not access the services on a regular basis. Ms. Garvin attempted to schedule sessions, but Parents did not attend. Father declined the services for extended school year, and Parents removed Student from special education in August 2014. After Student returned to special education on January 27, 2015, Ms. Prado unsuccessfully attempted to schedule ERICS family counseling. Neither parent credibly testified that they were available for ERICS services or sought out the service and

that District refused to provide them. The month of April was “a bad month” for Father and he had little involvement with Student’s activities because Student was living with Mother. Ms. Garvin was only able to provide one session for Student after intervention from Mr. LeMaster and Ms. Thompson. Mr. Christensen provided three hours of family counseling in May 2015 before the school year ended: one hour for Mother, one hour for Father, and one hour for family counseling. He offered family counseling during the summer. He scheduled a session with Mother who did not show up. He followed up with a phone call, but neither parent accessed the service for the remainder of the summer. He met with Parents and had one family counseling session after the lizard incident, when he recommended Parents obtain a psychiatric evaluation for Student. Parents’ testimony at hearing did not persuasively establish valid reasons why they did not access the service when offered to them.

87. Student offered no persuasive evidence that supports a finding that District was required to implement the service in the absence of Parents’ cooperation. Student did not meet his burden of proof that District failed to implement his IEP.

ISSUE 1(G) - FAILING TO CONSIDER ALL RELEVANT DATA

88. Student contends District procedurally violated the IDEA when developing Student’s IEPs dated January 27, 2015, February 3, 2015 IEP, April 17, 2015, September 17, 2015 IEP, November 2, 2015 IEP, and November 11, 2015. Student argues District failed to consider all relevant data, including the 1) concerns of parents for enhancing Student’s education, and 2) the results of initial or recent evaluations, to meet the full extent of Student’s academic, developmental, and functional needs. Student argues District’s failure to do so was a procedural violation that deprived Parents of the opportunity to participate meaningfully in Student’s educational program and/or denied Student a FAPE. District contends it had sufficient information to determine Student’s IEP needs in January and April 2015 and Parents meaningfully participated in developing each of the applicable IEP’s.

89. Legal Authorities paragraphs 7, 8, 65 and 66 are incorporated by reference.

90. When developing an IEP, the IEP team must consider the child’s strengths, the parent’s concerns, the results of recent assessments, and the academic, developmental and functional needs of the child. (34 C.F.R. § 300.324 (a)(1); Ed. Code, § 56341.1, subd. (a).)

91. Student did not meet his burden as to the January 27, 2015 IEP. As discussed above in Issue 1(d), District held the January 27, 2015 IEP, at which Parents and Student participated, for the express purpose of returning Student to special education after he had engaged in multiple incidents of misbehavior during the first semester of the 2014-2015 school year. That meeting occurred one day after a section 504 manifestation review meeting. Some District staff attended both meetings. They discussed Student’s educational history at District schools known to the IEP members at the time.

92. Student claims District IEP team members had and should have reviewed hundreds of pages of educational records in preparation for that meeting for which they had one day's notice. Under these circumstances, Student's argument was not persuasive. As discussed above, Student was new to special education at that meeting, and therefore the situation was analogous to a mid-year transfer student. (Ed. Code, § 56325, subd. (a)(1).) Under these facts, District was not obligated to extensively review present levels of performance, goals or other information from outdated IEPs during the first thirty days of after his enrollment as a special education student. Circumstances had changed from his last implemented IEP amendment in May 2014. The IEP team agreed District would collect data during the next 30 days and hold a review IEP to review the IEP, develop goals and a behavior intervention plan based on the data it collected. Under these facts, District complied with its obligations under Education Code section 56325, subdivision (a)(1). Student did not prove by the preponderance of evidence that District should have done otherwise to gather "relevant data" for the January 27, 2015 meeting.

93. The February 3, 2015 meeting was a manifestation review determination and not an IEP team meeting.¹⁸ Student did not provide any credible evidence that any data from Student's educational records would have provided additional relevant data given the purpose of that meeting.

94. As to the April 17, 2015 IEP, District IEP team members were familiar with Student, they relied on data from the April 2015 psychoeducational assessment, which was accurate and relevant, and they collaborated with both Student and Parents on the IEP placement and services that resulted in the April 17, 2015 IEP. The IEP team members had no information at that time informing them Student had any specific medical psychiatric diagnosis that may have changed his educational needs, other than the information Father provided to the IEP team in late May 2014 regarding the non-specific mood disorder diagnosis. Ms. Ramirez credibly testified that a functional behavioral assessment would not have provided useful data to the April 17, 2015 IEP team because Student was on home study at the time she assessed. Student did not prove that at this meeting the IEP team failed to consider all relevant data District had knowledge of at that time, or that its failure to do so resulted in a procedural violation depriving Parents of the opportunity to participate meaningfully in the development of the IEP offer.

95. The above is not inconsistent with the rulings in Issues 1(a)(2) and (3) above, finding that District's failures to initiate assessments of Student in January through April 2015 were inappropriate and significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE. The April 17, 2015 IEP team had enough information available to it to renew its FAPE offer for therapeutic placement at Sequoia, with ERICS services. Dr. Betty and Dr. Stevenson concurred that a small therapeutic environment with ERICS counseling were appropriate for Student.

¹⁸ The Expedited Decision discussed and evaluated the procedures followed on that date. The manifestation review team's decision, and upon what information it was based, was upheld in the Expedited Decision.

Dr. Stevenson, however, felt Student needed more therapy than the ERICS he was receiving in 2015. Given Student's disciplinary and behavioral history, the more comprehensive assessments would have provided valuable information to inform Parents, the IEP team, and ERICS counselors as to the impact of his medical diagnosis on his behaviors at school, so the IEP team could design interventions to help mitigate the behaviors Student exhibited at school. The fact that District should have more comprehensively assessed did not mean that it did not have enough information to make an appropriate offer of placement and some services.

96. After the August 2015 lizard incident, Student was expelled from District schools through the end of the 2015-2016 school year. District's only obligations to Student, as a child who was removed from his placement but who remained an eligible special education student, was to provide him with an educational program and services to enable him to progress, although in an alternate setting, and a functional behavioral assessment if appropriate. District did not hold IEP meetings but negotiated the terms of the educational program during expulsion through Student's attorney and Mother, culminating in a signed IEP amendment in mid-November 2015. Student did not offer any evidence as to what, if any, relevant information District neglected to consider during that time. Student was on home study, at Mother's request. Student offered no evidence that a functional behavioral assessment would have provided any relevant data that would change District's offer of ERICS services during home study during his expulsion. District did not procedurally violate the IDEA by failing to consider "all relevant data" to meet the full extent of Student's academic, developmental, and functional needs during the period at issue.

Issues 2(a) and (b): Denial of FAPE February 2014 through August 2014, and January 27, 2015 through August 2015

97. Student contends District: 1) failed to ensure a continuum of placement options was available to Student; 2) should have considered placement in a non-public school as part of the continuum of options; and, 3) failed to offer Student appropriate related services to address his social emotional needs, all of which resulted in a denial of FAPE. District contends it complied with procedural obligations and offered FAPE at all relevant times. Student did not meet his burden on Issue 2.

98. As to placement, Student contends District procedurally violated the IDEA by failing to include a non-public school as part of the continuum of placement options, resulting in a denial of FAPE and deprivation of parental participation. He argues that District should have discussed a non-public school placement at IEP meetings because Parents did not know that such a placement was an option that may have been appropriate for Student. As a result, Student contends, because Parents "may have accepted" the placement if offered, Parents were deprived of the opportunity to consider the full continuum of placement options. District contends it offered appropriate placement options based on Student's known needs and it was not required to include a non-public school on a discussion of the continuum of options. Student did not meet his burden of proof on this issue.

99. As to services, Student claims ERICS services were not sufficient for Student. Again, the Student largely bases his argument on hindsight relying on Dr. Stevenson's recent evaluation and recommendations, which were not available to District at the time it made its placement offers. Dr. Stevenson's recommendations therefore are not relevant under *Adams, supra*, 195 F.3d at p. 1149, or *E.M., supra*, 652 F.3d at p. 1006. Student's complaint also alleges District did not provide a separate resource room or itinerant services, both of which were not addressed by Student through evidence at hearing or in closing argument. Student did not meet his burden of persuasion as to this issue.

APPLICABLE LAW

100. Legal Authorities paragraphs 7 and 8 are incorporated by reference.

101. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*.) For a school district's offer of special education placement and services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.)

102. The determination of whether a school district offered Student a FAPE is focused on the appropriateness of the proposed placement under *Rowley*, not on whether the placement desired by parents is better. (See *Gregory K, supra*, 811 F.2d at p. 1314.)

103. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability 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); 34 C.F.R. § 300.114 (a); Ed. Code, § 56031.) 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 following factors: 1) "the educational benefits of placement fulltime 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 Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050] (*Daniel R.R.*); see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].)

104. If the IEP team determines a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R.*, supra, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.)

ANALYSIS

ISSUE 2(A) PLACEMENT

105. The determining factor of which placements should be included in the continuum at each IEP team meeting is what was appropriate based on Student's known needs at the time of the offer, not whether or not Parents would be likely to accept the offer. The May 27, 2014 manifestation review and IEP meeting took place after a serious event causing hospitalization where medical professionals diagnosed Student with a non-specific mood disorder and placed him on medication. District discussed placing Student in the SC6 program at Sequoia as an interim placement. When Parents declined to agree to that placement, District discussed placing Student into a general education placement for the remaining nine days of school, consisting of part of the day at the school site, and home study with ERICS counseling. Student offered no persuasive evidence that a non-public school was an appropriate placement for Student for the nine remaining days of the school year. District had an appropriate therapeutic program at Sequoia designed to meet Student's known needs based on Student's behaviors and their impact on him, the staff and his peers in the general education setting. As such, District was not required to include a non-public school as part of the discussion of placement options.

106. At the June 12, 2014 IEP meeting, District only discussed the more therapeutic setting in the SC6 program at Sequoia. Parents requested time to investigate their options, including home study with outside assistance, and declined ERICS. Student offered no persuasive evidence that a non-public school was an appropriate placement for Student at that time, which was similar to District's SC6 program at Sequoia.

107. At the August 2014 IEP meeting the IEP team discussed placement in general education at Placerita with no special education supports, the SC3 program at Rancho Pico and the SC6 program at Sequoia. District staff tried to persuade Parents not to remove Student from special education in favor of a general education setting. Student did not remain in special education after that meeting.

108. At the January 27, 2015 IEP team meeting, the IEP team discussed placement options including general education with and without supplemental aids and

accommodations, resource support, and the SC3 and SC6 programs. Based on the evidence, the SC6 program was similar to a non-public school. Student and Parents wanted Student to remain in general education, with resource support, at Placerita with his friends. Placerita did not have an SC3 program, which was more appropriate than general education based on Student's behaviors and their impact on him, the staff and his peers in the general education setting.

109. At the April 16, 2015 IEP, the IEP team discussed a general education setting with modifications and the SC6 program with ERICS in the context of Student's recent behaviors, the harmful effects to the general education population, and Student's needs. Parents agreed to place Student at Sequoia. Student offered no evidence supporting a finding that District was obligated to offer a non-public school under these facts, when it had a program that was similar and could meet Student's needs known to the IEP team at the time.

110. After District expelled Student in September 2015, District was obligated to provide Student with an educational program to enable him to work toward his goals, but in a different setting because of his expulsion. District offered home study in the interim until Student could enroll in one of the alternative school programs District offers to all general education students whom District expelled. Mother opted instead to keep Student on home study services with ERICS. Student offered no evidence supporting a finding that District was obligated at that time to offer a non-public school to Student after his expulsion.

111. Student's contentions that District should have discussed a non-public school as part of its consideration of placement options are largely based on hindsight, which is not consistent with *Adams, supra*, 195 F.3d at p. 1149. Student relies on a new, and irrelevant, fact offered in the closing brief but not offered at hearing: Student now currently attends a non-public school after his release from court custody. Student, relying on Dr. Stevenson's testimony, claims a non-public school would have offered the same or similar type of program as District's SC6 program at Sequoia. If that is true, District had no reason to discuss a non-public school because it had an appropriate program for Student. To the extent Student implies that he required a non-public school over the SC6 placement because he required the more restrictive setting of a non-public school, Student failed to prove this contention. He did not offer any credible and relevant evidence or opinions expressly describing the difference between a non-public school and District's SC6 program at Sequoia that supports a finding that one was different from the other on the continuum of options. Parents' consistent desire during the relevant time to put Student in a less restrictive environment, to the point of removing him from special education to accomplish that placement, contradicts Student's assertion that District should have compared a non-public school setting to Sequoia's program when it made its placement offers. Dr. Stevenson offered no opinion as to whether a non-public school was the same or different from the Sequoia program, or any opinion supporting the argument that District should have considered a non-public school as an appropriate placement as part of the continuum.

112. In summary, District did not procedurally violate the IDEA by failing to include a non-public school on the continuum of placement options based on Student's

needs. District had an appropriate program specifically designed to address Student's unique needs as they were known at the time to the District. District repeatedly offered the SC6 program at Sequoia, a small therapeutic campus for children with emotional disturbance, to Student at the May 27, 2014 IEP meeting and thereafter. Parents repeatedly insisted on a less restrictive environment for Student, to the point of withdrawing Student from special education rather than accept an offer of the SC6 class at Sequoia. Student did not meet his burden of proving by credible evidence that District denied Student a FAPE by failing to provide an appropriate placement, or deprived Parents of the opportunity to participate at IEP meetings by failing to offer to or discuss with Parents a non-public school as a placement option.

ISSUE 2(B) - SERVICES

113. Each of Student's relevant IEP's included weekly ERICS services for Student to address his behaviors related to his emotional disturbance eligibility. The IEP offered weekly family counseling. The evidence established that on numerous occasions Student received more time with his ERICS counselor than what the IEP called for. He responded positively to the service.

114. Dr. Stevenson agreed that ERICS was appropriate for Student through the end of the 2013-2014 school year. Her recommendation that Student required more intensive therapy after he returned to special education in January 2015 carried little weight because she based her opinion on a diagnosis that she made after the time frame at issue in the complaint, and on information not available to the IEP team at the time. Her recommendation that Student should receive dialectal behavioral therapy was based on a provisional clinical diagnosis from an evaluation performed shortly before this hearing. Student never presented her provisional report and recommendations to the IEP team at any time before she testified. The recommended therapy was an intensive clinical therapy that she admitted clinicians did not typically deliver in the school setting. Dr. Betty credibly testified that Dr. Stevenson's conclusions were of concern, because her evaluation was incomplete, her provisional diagnosis was very serious. Clinicians more appropriately provided the type of therapy she recommended in a non-educational environment. The evidence supported a finding that ERICS services were successful for Student, particularly from February 2014 through late May 2014, and late April 2015 until late August 2015, when Student accessed the service.

115. District did not deny Student a FAPE for failing to offer appropriate related services. Student offered no credible evidence or opinions supporting a finding that, during the applicable time frame, and for the periods Student was at school and a special education student, the relevant IEP teams had information that should have led them to conclude that Student required any other or different related services, including a resource room or itinerate services, to address his behaviors in the educational environment related to his diagnosis of emotional disturbance.

Issues 3(c) through (e) – FAPE - September 3, 2015, through February 18, 2016

ISSUE 3(C) - FAILURE TO CONVENE AN IEP MEETING AFTER PARENTAL REQUEST

116. Student contends District should have held an in-person IEP meeting after Parents' attorney requested one in September 2015. District contends it did not violate the IDEA by not holding an in-person meeting after Student's expulsion.

117. Legal Authorities paragraphs 7 and 8 are incorporated by reference.

118. A meeting requested by a parent to review an IEP pursuant to Education Code section 56343, subsection (c), shall be held within 30 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent's written request. (Ed. Code § 56343.5.)

119. Student did not meet his burden of proof as to this issue. District did not hold an in-person IEP meeting before November 17, 2015, when Mother signed the amendment IEP. However, its failure to do so was not a procedural violation and did not constitute a denial of FAPE. The evidence established that Mother, her attorney, and District representatives communicated in writing or by telephone for almost two months regarding Student's educational program. Mother rejected all of the alternative placement options offered by District, and eventually signed the IEP amendment for home study and ERICS services. Ms. Amrhein credibly testified that the IEP documenting Student's home study and ERICS services required modifications at the attorney's request, explaining the delay in signing. Mother actively participated in the decision making process, and Student received the full amount of home study services to which he was entitled until he became a ward of the court. Neither Parent offered testimony at hearing that District's failure to hold an IEP meeting affected their ability to finalize the home study program and ERICS services that their attorney had requested on their behalf. Therefore, District did not deny Student a FAPE, cause deprivation of educational benefits, or significantly impede parental participation in the decision-making process by not holding the IEP meeting in person.

ISSUE 3(D) - APPROPRIATE EDUCATIONAL PROGRAM AND RELATED SERVICE

120. Student contends District failed to provide an appropriate placement or services after his expulsion from September 3, 2015, through February 18, 2016. District contends it provided Student an education program through home study and ERICS counseling complying with the IDEA. Student did not meet his burden on this issue.

121. Legal Authorities paragraphs 7, 8, and 50 are incorporated by reference.

122. District complied with its obligations to provide Student with educational services during his expulsion. Student's attorney reviewed and modified the November 2015 IEP before Mother signed it. Mr. Garcia and Ms. Amrhein credibly testified that District provided Student with all of the hours of home study his IEP called for, including make-up

hours. He received educational benefit from the home study. Mr. Posalsky credibly testified that, once the IEP was signed, he made several unsuccessful attempts to schedule ERICS services for Student and the family. He was unable to successfully schedule sessions for Student, in part based on scheduling conflicts and miscommunications between and with Parents. Father rejected the service in February 2016, shortly before Student became a ward of the Court. Student did not prove that District 1) failed to provide appropriate home study services, or 2) did not make reasonable efforts to schedule ERICS services in order to implement his IEP, causing a denial of FAPE to Student.

ISSUE 3(E) - ACCESS TO ALL OF STUDENT'S EDUCATIONAL RECORDS

123. Student's contends that District committed a procedural violation by not timely providing Parents with his school records upon their request. District asserts that no procedural violation occurred. Student argues District's failure to provide timely all of Student's educational records was a procedural violation of the IDEA impeding Parents' right to participate in the decision-making process and denying Student a FAPE. Student further argues District did not initially provide some of the records when they were requested. District did not provide others until the time of hearing. District did not provide others at all, including progress reports on goals from the October 2013 and April 2015 IEPs. Student concludes that District's procedural violation impeded Parents ability to participate in the IEP decision-making process, and impeded Student's right to a FAPE.

124. Legal Authorities paragraphs 7 and 8 are incorporated by reference.

125. To guarantee parents the ability to make informed decisions about their child's education, the IDEA grants parents of a child with a disability the right to examine all relevant records relating to their child's "identification, evaluation and educational placement." (20 U.S.C. §1415(b)(1).) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing, or resolution session. (See 34 C.F.R. §300.613(a).) Parents have the right to receive copies of all school records within five business days after parents make a request. (34 C.F.R. § 300.613(a); Ed. Code, §56504.)

126. Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act. (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Education records include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b).)

127. Student offered no credible or persuasive evidence as to how District impeded Parents' rights or denied him a FAPE. In particular, 1) Parents' attorney made the request on Parents' behalf after District expelled Student from District schools through the end of the

2015-2016 school year, and, 2) District held numerous IEP meetings for Student over the relevant time at which Parents and Student attended and actively participated. Nor did Student provide any evidence that District denied him a FAPE or caused him to suffer a loss of educational benefit by any delay in Parents' receipt of his records. Student did not meet his burden of persuasion.¹⁹

REMEDIES

1. As a remedy for any violations of his or Parents' rights in this case, Student requested that District pay for Dr. Stevenson's independent evaluation; provide Student with a comprehensive dialectical behavioral therapy program; fund parent counseling through the same provider as Student's therapy provider; and train District staff on appropriate evaluation procedures. Student prevailed on Issues 1(a)(2) and 1(a)(3), that District failed to appropriately assess Student after January 27, 2015. Student is entitled to a remedy for those violations.

2. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra*, 471 U.S. 359, 374 [the purpose of the IDEA is to provide students with a disability "a free appropriate public education which emphasizes special education and related services to meet their unique needs."].) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

3. An independent educational evaluation at public expense may also be awarded as an equitable remedy if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-823.) Here, District conducted no assessments of Student related to his emotional disturbance eligibility, in particular, between late May 2014 and the triennial assessment in April 2015. The triennial assessment was not appropriate or sufficiently comprehensive. Student is entitled to an independent educational evaluation at public expense. Dr. Stevenson's fee for her

¹⁹ Student also argues that the lack of certain records impeded his ability to litigate due process claims against District. Student's assertion was irrelevant to the issues in this Decision or the earlier Expedited Decision and it was unsupported by any credible evidence. The two hearings lasted a total of nine days. The record consists of hundreds of pages of exhibits, and testimony from 19 separate witnesses, some of whom testified at both hearings. Student had ample opportunity during both hearings to raise objections relating to missing documents, and, if raised, the ALJ ruled on them to ensure due process. Student asserted no claims of prejudice at the non-expedited hearing relating to missing records.

independent psychoeducational evaluation and attendance at an IEP meeting was \$5,500. District offered no evidence that her fee was unreasonable. Accordingly, District shall fund an independent evaluation focusing on Student's emotional disturbance needs by a provider of Student's choosing, including attendance by the assessor at an IEP meeting, at a fee not to exceed \$5,500. Student may choose either to have District reimburse Parents for the costs of Dr. Stevenson's evaluation and attendance at the IEP meetings, for a total of \$5,500, or choose another independent assessor to conduct an independent evaluation, focusing on Student's emotional disturbance needs. If Student chooses the second option, District shall directly pay the assessor, up to the amount of \$5,500, which shall include the cost of that assessor's attendance at an IEP team meeting to discuss his or her assessment. Student shall inform District of which option he chooses within 30 days of the date of this Decision. If Student chooses the second option, he shall inform District of his choice of assessor at the same time. The independent assessor must be qualified under state law to perform the assessment.

4. Student seeks District-funded dialectal behavioral therapy and counseling for Parents from the same provider. Student did not meet his burden of proving what the cost of such therapy was; where Student could access the therapy relative to his educational environment; or to what extent it addressed Student's learning-related-needs. District's responsibility under the IDEA is to remedy the learning related symptoms of a pupil's disability, not to treat other, non-learning related symptoms. (*Forest Grove School Dist. v. T.A.* (D. Ore. 2009) 675 F.Supp.2d 1063, 1068, *affd.* (9th Cir. 2011) 638 F.3d 1234, 1238-39 [no abuse of discretion in denying parent reimbursement where district court found parent sought residential placement solely for student's drug abuse and behavior problems unrelated to school difficulties].) As discussed above in detail in the analysis of Issue 2(b), the evidence established Student had mental health needs that affected his social interactions in the educational environment. However, Student did not meet his burden of proving that District was obligated to fund dialectal behavioral therapy for Student, and related parental counseling, as a compensatory remedy to its failure to assess properly Student's educationally related needs.

5. Student also requests an order compelling District to train its staff on appropriate assessment techniques. The IDEA does not require compensatory education services to be awarded directly to a student. Staff training can be an appropriate compensatory remedy, and is appropriate in this case. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.* Also, e.g., *Student v. Reed Union School Dist.*, (Cal. SEA 2008) Cal. Ofc. Admin. Hrngs. Case No. 2008080580] [requiring training on predetermination and parental participation in IEP's]; *Student v. San Diego Unified School Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring training regarding pupil's medical condition and unique needs].)

6. As discussed in detail in the analysis of Issue 1(a)(3), Student proved that Ms. Ramirez's psychoeducational assessment was insufficient. The main purpose of her assessment was to confirm eligibility, and she administered minimal testing to do so. District's decision to change Student's primary eligibility to emotional disturbance as a result of the assessment did not abrogate District's duty to also address all of Student's needs, which were well known to District in January 2015 after Student returned to special education. Additionally, District failed to hold a manifestation determination review after the August 2015 lizard incident, as decided in the Expedited Decision. Training is an appropriate remedy.

7. Therefore, in order to assure that Student and other special education students are entitled to the procedural protections under the IDEA, District shall conduct staff training for all staff who works with special education students with the eligibility of emotional disturbance. The training shall address identifying the need for and undertaking appropriate assessment techniques and tools for students with emotional disturbance by, in part, addressing the assessment deficiencies identified in Issues 1(a)(3) and (4) of this Decision. Training shall also include proper procedures under title 20 United States Code section 1415(k) for special education students involved in disciplinary suspensions and or expulsion, including addressing the procedural violations identified in the Expedited Decision. The specific content and duration of the training shall be determined and conducted by a licensed psychologist chosen by District who has the qualifications to assess students with emotional disturbance eligibility and to provide services as an ERICS counselor.

ORDER

1. District shall fund an independent psychoeducational evaluation addressing Student's needs in the educational environment as emotionally disturbed, at public expense not to exceed \$5,500, including attendance at an IEP meeting to discuss the evaluation report. At Parents' option, they may either seek reimbursement up to \$5,500 for Dr. Stevenson's evaluation and attendance at an IEP meeting, or a psychoeducational or neuro-psychoeducational evaluation by a provider of their choosing. Parents shall notify District of their election within 30 days of the date of this Decision.

2. District shall within 45 school days of this Order conduct staff training for all staff who work with special education students with the eligibility of emotional disturbance under the IDEA and state regulations. The training shall address identifying the need for and undertaking appropriate assessment techniques and tools for students with emotional disturbance, addressing the assessment deficiencies identified in Issues 1(a)(2) & (3) of this Decision. Training shall also include proper procedures under the IDEA for special education students involved in disciplinary suspensions and or expulsion, addressing the procedural violations identified in the Expedited Decision. The format and duration of the training shall be determined and conducted by a licensed psychologist chosen by District who has the qualifications to assess students with emotional disturbance eligibility and to provide services as an ERICS counselor.

3. All other relief sought by Student is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student was the prevailing party on issue 1(a)(2) and 1(a)(3). District prevailed on all remaining sub-issues in Issue 1, all of Issue 2, and all of Issue 3.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATE: October 24, 2016

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings