

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016050013

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on April 22, 2016, naming Sacramento City Unified School District.

Administrative Law Judge B. Andrea Miles heard this matter in Sacramento, California, on June 16, 20, 21, 22, 23, 27, 28, and 29, 2016.

Maureen Tabari, Attorney at Law, represented Student. Student's mother and father attended the hearing.

Jessica T. Gasbarro, Attorney at Law, represented Sacramento City. Rebecca Bryant, Sacramento City's Special Education Director and Special Education Local Area Plan (SELPA) Director, attended the hearing on behalf of Sacramento City.

At their request, a continuance was granted on June 29, 2016, for the parties to file written closing arguments and the record remained open until July 25, 2016. Student's written closing argument was timely. Sacramento City's written closing argument was filed 23 minutes after the close of business on July 25, 2016, without explanation for its untimeliness. Student made no objection to the untimely filing. Since Student was not prejudiced by the 23 minute delay in the filing of Sacramento City's

written closing argument, it was accepted and considered. The record was closed upon receipt of both written closing arguments, and the matter was submitted for decision.

PROCEDURAL MATTERS

On the first day of hearing, June 16, 2016, the ALJ reviewed the issues for the case with counsel, because of the large number of issues and some ambiguity in the way the issues were framed. Both parties were provided the opportunity to be heard regarding the issues at that time. Student's motion to dismiss several additional issues was granted. Sacramento City moved to dismiss Issue 3(a).¹ When asked for clarification regarding the issue, Student asserted that Issue 3(a) was alleging a reduction of educational accommodations under Student's 504 Plan during the 2014-2015 school year. OAH lacks jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973, Section 1983, the Americans with Disabilities Act, and related state and federal civil rights laws. Accordingly, Sacramento's motion to dismiss Issue 3(a) for lack of jurisdiction was granted.

On June 20, 2016, the parties were provided a copy of the proposed reframed and reorganized issues, based on the June 16, 2016 discussion. Student was directed to clarify the time period covered within several of her issues. On June 21, 2016, Student identified the time periods for the aforementioned issues. Both parties had the opportunity to be heard on all issues. On June 27, 2016, an Order Identifying the Issues for the Due Process Hearing was issued to the parties, which memorialized the reframed and reorganized issues as identified on June 20, 2016. On July 1, 2016, an amended order was issued to correct a clerical error.

¹ This issue was identified as Issue 3(a) in the June 13, 2016 Order Following Prehearing Conference.

In her closing brief, Student withdrew Issue 7(h),² alleging that Sacramento City committed a procedural violation during the 2015-2016 school year by failing to hold an IEP team meeting per Parents' request dated March 3, 2016. Accordingly, that issue is dismissed.

ISSUES³

Issue 1: Did Sacramento City deny Student a free appropriate public education during the 2013-2014 school year, beginning April 22, 2014, by:⁴

- a. failing to conduct assessments in all areas of suspected disability;
- b. failing to find Student eligible for special education; and
- c. failing to offer appropriate supports, services, and goals?

² As referenced in the Amended Order Identifying Issues for the Due Process Hearing.

³ The ALJ has reorganized reframed the issues for clarity. The issues as outlined in this Decision are the only issues heard and decided. The ALJ has the authority to redefine a party's issues providing no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

⁴ April 22, 2014, was the beginning of the applicable two year statute of limitations per Education Code section 56505, subdivision (l), and Student did not contend that there were grounds to toll the statute of limitations. During the PHC, Student indicated that she filed her complaint on April 21, 2016, so beginning date of this issue was identified as April 21, 2014. However, upon further review it was determined that Student's complaint was filed after the close of business on April 21, 2016, so it is deemed filed on April 22, 2016. The beginning date of this issue is amended accordingly.

Issue 2: Did Sacramento City deny Student a FAPE from the beginning of the 2014-2015 school year through May 19, 2015, by:

- a. failing to identify Student as a child with special needs;
- b. failing to assess Student for special education; and
- c. failing to hold an individualized education program team meeting to develop appropriate supports, services, and placement?

Issue 3: Did Sacramento City deny Student a FAPE beginning May 20, 2015, through April 21, 2016, because its initial assessment, dated May 20, 2015, failed to assess Student in all areas of suspected disability?

Issue 4: Did Sacramento City deny Student a FAPE beginning May 20, 2015, through April 21, 2016, because its May 20, 2015 psychoeducational assessment failed to assess Student appropriately?

Issue 5: Did Sacramento City deny Student a FAPE beginning May 20, 2015, through April 21, 2016, by failing to offer Student appropriate goals, accommodations, services, and placement in the May 20, 2015 IEP?

Issue 6: Did the December 15, 2015 IEP deny Student a FAPE from December 15, 2015, to April 21, 2016, by failing to:

- a. offer Student appropriate goals and services; and
- b. find Student eligible for special education under the category of emotional disturbance?

Issue 7: Did Sacramento City deny Student a FAPE during the 2014-2015 school year by committing the following procedural violations:

- a. failing to assess Student in response to Parents' January 19, 2015 request;
- b. having a policy of determining eligibility for special education outside IEP team meeting;
- c. intentionally misrepresenting the IEP process by telling Parents that in order

- for Student to be found eligible under the category of emotional disturbance under the IDEA, they would have to go through a process separate from the IEP process;
- d. having a policy of offering accommodations and services based on a student's special education eligibility category rather than based on a student's unique needs;
 - e. misrepresenting to Parents that Sacramento City could not have Student assessed in the area of emotional disturbance nor find Student eligible under the category of emotional disturbance without using a process separate from the IEP process at the May 20, 2015 IEP team meeting; and
 - f. failing to consider emotional disturbance as an eligibility category for Student at the May 20, 2015 IEP team meeting?

Issue 8: Did Sacramento City deny Student a FAPE during the 2015-2016 school year by committing the following procedural violations:

- a. having a policy of determining eligibility for special education outside the IEP team meeting;
- b. having a policy of offering supports, services, and accommodations based on a student's special education eligibility category rather a student's unique needs;
- c. having a policy of not providing one-to-one instruction to meet a student's unique needs;
- d. having a policy of not tailoring curriculum to meet a student's individual needs;
- e. failing to convene an IEP team meeting when Student was not making appropriate progress;
- f. failing to consider Parents' input at the December 15, 2015 IEP team meeting;

- g. failing to hold an IEP team meeting after Parents advised Sacramento City on January 25, 2016, that Student could no longer attend school; and
- h. failing to provide an appropriate response to Parents' December 15, 2015, January 25, 2016, February 10, 2016, and March 1, 2016 requests for home hospital instruction or home instruction;⁵

Issue 9. Did Sacramento City deny Student a FAPE during the 2015-2016 school year to the date of hearing by preventing Parents from meaningfully participating in the April 18, 2016 IEP team meeting by:

- a. failing to consider Parents' input during the IEP team meeting;
- b. not asking Parents any questions regarding Student's needs;
- c. inappropriately disregarding Student's need for specialized instruction, therapeutic interventions, and residential treatment;
- d. disregarding the recommendations and evaluations of independent educational evaluator, Dr. Kristin Gross;
- e. disregarding the recommendations of Student's educational therapist, Elizabeth Cowie;
- f. misrepresenting content of conversation regarding Student's needs with Student's psychiatrist, Dr. Chiu;

⁵ The terms home hospital instruction and home instruction were used interchangeably during the hearing. Home hospital instruction is governed by California Code of Regulations and is a potential placement option for special education students, who meet specific criteria. This type of instruction can be provided for a student either at home or in the hospital. It has commonly become referred to as home hospital instruction. This Decision addresses the issue of home hospital instruction only. This Decision will refer to it as home hospital instruction.

- g. predetermining its offer of placement in Hiram Johnson's learning disabled class; and
- h. failing to disclose that Sacramento City had been considering Hiram Johnson High School's learning disabled classroom as a placement prior to the IEP team meeting?

Issue 10: Did Sacramento City deny Student a FAPE from May 20, 2015, through the date of hearing when it failed to implement the May 20, 2015 IEP, by:

- a. failing to provide Student social worker counseling services;
- b. failing to provide Student with all accommodations; and
- c. failing to provide Student with specialized academic instruction?

Issue 11: Did the April 18, 2016 IEP, deny Student a FAPE from April 18, 2016, through April 21, 2016, by failing to:

- a. offer Student appropriate goals and services, including one-to-one academic support, social emotional services, and placement;
- b. find Student eligible for special education under the category of emotional disturbance; and
- c. offer Student home hospital instruction or home instruction?

SUMMARY OF DECISION

This Decision finds that from March 31, 2015, to May 20, 2015, Sacramento City failed to meet its child find obligation by failing to identify and assess Student for special education services. Additionally, it finds that the May 20, 2015 IEP offer, as amended on December 15, 2015, was not reasonably calculated to offer Student a FAPE, causing Student to be denied a FAPE beginning May 20, 2015 and ending April 18, 2016. The April 16, 2016 IEP further failed to provide Student a FAPE from April 18, 2016 through April 21, 2016.

Since this Decision affords relief to Student for the substantive denial of a FAPE

from March 31, 2015, to April 21, 2016, it is unnecessary to decide a number of issues relating to that same time period. In the event that Student proved those allegations to be true, any relief that might be ordered is subsumed in the relief this Decision affords. Therefore, those issues are not decided.

However, Student also alleged that Sacramento City committed eight procedural violations at the April 18, 2016 IEP team meeting that resulted in Parents being denied meaningful participation in the IEP process and denying Student a FAPE during the 2015-2016 school year. This Decision finds that Student did not meet her burden of proof on any of those issues.

Student's allegation that Sacramento City denied Student a FAPE because it failed to implement the May 20, 2015 IEP was not addressed in this Decision. Since this decision determines that the May 20, 2015 IEP failed to provide Student a FAPE, it is not necessary to determine whether it was implemented.

Due to Student being denied a FAPE beginning March 31, 2015, and ending April 21, 2016, this Decision orders Sacramento City to fund compensatory education for Student in the form of a 12-month prospective placement in a residential placement, specifically, Heritage Residential Treatment Center in Provo, Utah, along with providing Student transportation to and from Heritage, and travel and lodging expenses for Parents to attend two yearly visits to Heritage. If Heritage is unable to accept Student immediately for any reason, Sacramento shall locate and fund a comparable residential treatment program.

FACTUAL FINDINGS

JURISDICTION

1. Student is a 15-year-old girl who resided with her mother, father, and two sisters within the geographical boundaries of Sacramento City Unified School District at

all times relevant to this case. On May 20, 2015, Sacramento City found Student eligible for special education under the category of other health impairment.

RELEVANT PRIOR EDUCATIONAL HISTORY

2. Student's academic history, beginning with kindergarten and through the sixth grade showed varying degrees of struggle in the areas of attention, work habits, math, and reading. In second grade, she was placed on a 504 plan⁶ that provided her with many classroom accommodations to address her continuing academic struggles and a diagnosis of attention deficit hyperactivity disorder (ADHD). She remained on a 504 plan until she was found eligible for special education services on May 20, 2015. Beginning in second grade, Parents provided Student with the services of private tutors. Throughout fourth grade, Student seemed to make steady progress academically. However, she had lower grades in fifth and sixth grades, which reflected her academic struggles. She also developed an aversion to school at that time, and demonstrated this through multiple absences and tardies.

3. In response to Parents' requests, Sacramento City conducted its own assessments of Student in January 2009. However, Student was not found eligible for special education at the IEP team meeting held after the assessment. Parents obtained several private assessments of Student in August 2010, November 2010, and September 2012, and provided Sacramento City with copies of the assessment reports when received. Each assessment raised some concerns about Student in the areas of social-

⁶ A Section 504 plan is an educational program created pursuant to 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 accommodations to children who have physical or mental impairments that substantially limit a major life activity, such as learning.

emotional functioning, processing, attention and/or academic skills, but none of these concerns rose to a level that indicated special education eligibility.

2013-2014 SCHOOL YEAR

4. During the 2013-2014 school year, Student attended seventh grade at California Middle School. Student was placed in general education language arts and math classes, which were co-taught by a general education teacher and a special education teacher. The classes were designed to assist students who were experiencing academic difficulties. Student also attended a math intervention class to provide her with additional support in the area of math.

Sacramento City's 2013 Assessment

5. Towards the end of Student's sixth grade year, Sacramento City agreed to assess Student at Parents' request. Due to the fact that the school year was reaching the end, Sacramento City did not complete the assessment until the following school year.

6. As part of Sacramento City's health assessment, Student's treating psychiatrist, Dr. Sufen Chiu, provided the school nurse with information regarding Student's diagnoses and medications. Dr. Chiu had diagnosed Student previously with depressive disorder, anxiety disorder, ADHD, and a learning disorder. She believed that Student's issues stemmed from her growth hormone deficiency,⁷ which made it difficult to treat Student's disorders fully with medication.

7. Kelly Wade, a special education teacher at California Middle School, conducted the academic portion of the testing. Ms. Wade administered the Woodcock Johnson III Normative Update Tests of Achievement to Student. The results of the

⁷ The record is unclear as to exactly when Student was diagnosed with a growth hormone deficiency. However, she began daily growth hormone injections around 2011.

testing indicated that Student's ability to apply academic skills was within the average range, compared with others of her age level. Student tested in the low average range in mathematics.

PSYCHOEDUCATIONAL PORTION OF THE ASSESSMENT

8. In mid-September 2013, Holly Gennuso, a school psychologist with Sacramento City, conducted a psychoeducational assessment of Student. Ms. Gennuso's assessment consisted of a teacher interview, classroom observations, testing observations, review of records, administration of standardized testing, and utilization of ratings scales.

9. As part of her assessment, Ms. Gennuso conducted a 30-second momentary time sampling recording to measure Student's on-task behaviors in class. During the 20-minute observations session, Student was on-task 75 percent of the time. Despite exhibiting off-task behavior, Student completed her work. The classroom teacher indicated that Student required some prompting to initiate and complete tasks. At the time of the assessment Student had only been attending California Middle School for several weeks.

10. Ms. Gennuso used the Kaufman Assessment Battery for Children, Second Edition, to measure Student's verbal and nonverbal cognitive abilities and general intelligence. Parts of the Kaufman focused on Student's ability to store and retrieve information (memory). Student's overall cognitive ability fell into the average range.

11. Ms. Gennuso provided the Vanderbilt ADHD Diagnostic Teacher Rating Scale to three of Student's teachers to assess for possible attention deficits and hyperactive behaviors. The Vanderbilt also screens for oppositional defiant disorder, conduct disorder, and anxiety/depression. All three teachers' questionnaires indicated "not significant" ratings in all categories. The teachers also noted that Student academic performance in class was average.

12. Ms. Gennuso utilized the Behavior Rating Inventory of Executive Function to assess Student's executive functioning skills. The Behavior Rating Inventory is a questionnaire for parents and teachers. Ms. Gennuso provided the questionnaire to Parents. The results indicated that Student presented with difficulty with working memory, setting goals and developing appropriate steps ahead of time to carry out tasks, organizing materials and keeping her workspace clean, and checking her work.

13. Ms. Gennuso determined that Student did not fit the criteria for the eligibility category of specific learning disability because she did not find a significant discrepancy between Student's ability and achievement. She also determined that Student did not meet the eligibility criteria for other health impairment because although Student had a formal medical diagnosis of ADHD, the results of the current assessment did not reveal that behaviors relating to her diagnosis were significantly impacting her abilities to learn and acquire new skills, nor were they impacting her alertness, strength, or vitality. She based this on her testing and the fact that Student was receiving average grades in her classes.

October 9, 2013 IEP Team Meeting

14. On October 9, 2013, Sacramento City held an IEP team meeting to review the current assessments of Student and to determine whether Student qualified for special education. During the meeting, Parents expressed their concerns about Student's academic performance. They also explained to other team members that they did not believe that Student's previous elementary school had been implementing Student's 504 Plan.

15. Teacher reports indicated that Student was receiving the grade of A- in most classes and the grade of B- in her intervention math class. Student's grade in her math intervention class was lower because she was not completing all of her work. The health report, the psychoeducational report, and the academic achievement report were

reviewed during the meeting.

16. The IEP team members determined that Student did not meet the eligibility criteria for specific learning disability because the testing did not show a significant discrepancy between ability and achievement level. The team also found that Student did not meet the eligibility criteria for other health impairment. Even though Student had a diagnosis of ADHD, the district members of the team felt that the current assessment did not indicate that Student's ADHD was significantly impacting her ability to learn or acquire new skills, nor was it impacting her alertness, strength, or vitality.

17. The IEP team agreed that Student should continue receiving accommodations through a 504 Plan. They suggested that the 504 Plan include: a daily check of Student's planner that teacher signs and makes comments in; prompting; redirection; extended time for work; no timed tests; photographs of homework assignments taken; and preferential seating.

Student's Academic Performance

18. At the time of the testing, Student was performing well academically. At the end of the first quarter, Student was receiving A's in both pre-algebra and language arts. Student experienced some academic difficulties throughout the year, but her academic performance throughout the school year far exceeded that of the past several years. Throughout the school year, Parents provided Student with private tutoring services.

2014-2015 SCHOOL YEAR

19. Student attended summer school between seventh grade and eighth grade. During the 2014-2015 school year, Student attended eighth grade at California Middle School. That year, California Middle began following Common Core standards. Sacramento City again placed Student in a co-taught language arts class and math class.

The co-taught classes allowed the teachers to provide additional assistance to students.

20. As in the year before, Student also participated in a math intervention class. However, Student struggled in the class and transferred out of the class during the first quarter after Parents expressed their concerns to the school administration that the class was too difficult for Student. At the end of the first quarter of the school year, Student received mostly B's and C's on her report card. Student received the grade of D in the elective class, leadership.⁸ She also received an A+ in physical education.

21. As the school year progressed, Student's academic performance declined. As Student's academic performance declined so did her self-esteem. Although, one of Student's strengths continued to be her ability to get along with others socially, she felt that some of her peers were bullying her at school. Parents became concerned about Student's poor academic performance and expressed their concern to Student's teachers and the principal. By mid-January, Student's academic performance had declined to such low point that Parents requested to hold a Student Study Team meeting, an informal meeting between parents and staff to discuss a variety of student issues.

January 14, 2015 Student Study Team Meeting

22. On January 14, 2015, the Student Study Team, including Parents, met to discuss Student's poor academic performance. At the time of the meeting, Student was receiving the following grades: a C in language arts, a C+ in history, an F in science and math, an A in physical education, and an A- in leadership. Student was struggling to complete her homework, engage in classroom discussions, and utilize the additional assistance available to her from teachers and aides.

⁸ Student transferred into the elective leadership class after she transferred out of her math intervention class.

23. At the meeting, Parents shared their concerns about Student's declining academic performance and declining mental health. Parents explained to the other members of the Student Study Team that Student was struggling to get to school in the morning because of her negative feelings towards school. In the first quarter Student had been absent from school two times and tardy to school two times. However, during the second quarter Student was absent two times and tardy to school eight times.

24. One of the concerns raised by Student's teachers was Student's failure to complete her work. Parents explained the difficulty they were having getting Student to do her homework. When Parents encouraged Student to complete her homework, Student would become very upset and hostile. A large portion of Student's drop in grades was due to her failure to complete her work.

25. In an attempt to address Student's declining academic performance, the Student Study Team developed an action plan for Student. The action plan allowed Student to retake math quizzes once Parents indicated that she had studied, assigned a teacher to work with Student on developing an organizational system, provided preferential seating for Student, and called for teachers and Student to create a signal so that Student could discretely indicate when she needed help from teachers. However, the opportunity to retake math quizzes was already an accommodation for Student, as was preferential seating. The action plan failed to address Student's difficulty in getting to school in the morning, except to state that Student "will arrive to school on-time." It also failed to address Student's difficulty completing her homework.

26. At the time of the Student Study Team meeting, Sacramento City had sufficient notice to suspect that Student might have a disability that was affecting her educational performance. Not only was Sacramento City aware that Student's grades had declined, but they were also aware that she was experiencing difficulty in getting to school because of her mental health. Additionally, Student's poor academic

performance was not just limited to the second quarter of her eighth grade year. Although she had performed fairly well academically during her seventh grade year, she had performed poorly academically in fifth and sixth grade, as evidenced by grades and state testing scores. Sacramento City's 2013 psychoeducation assessment report reached the determination that Student was not eligible for special education at least in part to the fact that Student was receiving average grades at the time of the assessment.

27. By the time of the Student Study Team meeting, Student was obviously struggling academically and her teachers were aware of her struggle. This change in circumstance combined with Student's poor academic history and knowledge of Student's diagnosis of anxiety and depression was enough to alert Sacramento City that Student may have a disability that was affecting her educational performance and that it should conduct an assessment to determine whether Student qualified for special education services.

Prior Written Notice Declining Request to Assess

28. Parents were not satisfied that the newly created action plan would adequately address Student's deficits. As such, on January 19, 2015, Parents asked Sacramento City to assess Student for special education services.

29. On January 28, 2015, on behalf of Sacramento City, Nafeesah Young, a school psychologist with Sacramento City, sent Parents a prior written notice indicating that Sacramento City was declining Parents' request to assess Student at that time. Sacramento City declined to assess Student because it believed the general education classroom was appropriate to address Student's needs.

30. When Sacramento City issued the prior written notice, Student was receiving the following grades: an A in leadership and physical education, a C in history and language arts, and a D in math and science. Her cumulative grade average for the term was 2.3. However, Student's grades had declined from the previous quarter and

she was receiving the grade of D in two core classes.

31. Sacramento City based its decision not to assess Student partially on the fact it had assessed Student in October 2013 and determined that Student did not qualify for special education. Sacramento City asserted in its letter that the accommodations provided in Student's 504 Plan adequately addressed her needs and that Student's behaviors related to her ADHD diagnosis were not significantly impacting her ability to learn and acquire new skills. These findings were in direct contrast to Student's academic performance and failed to acknowledge Parents' reporting of her mental health status. Although, at the time of the issuance of the letter, Student's grades were slightly higher than when the Student Study Team met, she was still receiving the grade of D in two of her core classes and having difficulty getting to school in the morning. The prior written notice did not address the issue of whether Student's social-emotional health was impacting her ability to perform at school.

Student's Further Declining Mental Health and Academic Performance

32. In late February 2015, Parents discovered a note written by Student on her cell phone. In the note, Student expressed that people were calling her "a slut and a whore" and that she could not see a point in living. She wrote that she believed that would end up on the street because she was not smart and that she would live in constant pain. In the note Student did not reference that the name-calling was occurring at school; however, Student later told Parents she was being bullied at school. Until finding that note, Parents were unaware of Student being called those names by her peers at school.

33. Around this same time, Parents discovered that Student was engaging in the self-injurious behavior of "cutting." Student was using various items to cut into her skin on different parts of her body, causing them to bleed and scar. Student told Parents that she was punishing herself by cutting herself and that her behavior was in direct

relation to her feelings about school.

34. Over the next several weeks, Parents became increasingly concerned regarding Student's mental health and feared that she might attempt to take her own life. On March 9, 2015, Mother sent an email to the principal of California Middle, copying Sacramento City's special education program specialist, Tammy Fein, on the email. In the email Mother expressed her concerns about Student's mental health and ability to attend school. Mother attached to the email a copy of Student's note from late February that Parents had discovered. Student did not attend school on March 9 and 10, 2015 because she was too depressed.

35. At Dr. Chiu's direction, Parents took Student to be assessed by Sutter Center for Psychiatry to determine whether Student was a danger to herself or others. After being assessed by Sutter Psychiatry, Student was admitted to Sutter's intensive mental health outpatient program to address her suicidal ideations, depression, and anxiety. She attended the program from 8:30 a.m. to 2:00 p.m. every day for 10 days. As part of the outpatient program, Student learned Dialectic Behavior Therapy coping skills to help manage her negative feelings and impulses.

36. On March 17, 2015, Mother notified Sacramento City that Student was participating in the intensive outpatient program and of her intended additional absences from school. At some point in March 2015, Parents informed Sacramento City that Student was engaging in self-harm. Based on this information, Sacramento City made the decision to assess Student for special education services. On Friday, March 20, 2015, Sacramento City provided Parents with a proposed assessment plan. On Monday, March 23, 2015, Parents signed and returned the proposed assessment plan.

37. California Middle offered Student independent study during her absence. However, Student was unable to complete her schoolwork because she was exhausted every day after returning from the outpatient program. California Middle reduced the

amount of course work for Student, but she still had great difficulty completing the work.

38. On April 13, 2015, Student returned to school. Around that same time, she began weekly therapy sessions with a psychologist from Sutter. However, Student had difficulty integrating back into school. At Parents' request, Sacramento City allowed Student to work with the independent study teacher on campus instead of attending math class due to Student's anxiety over the class.

39. Student continued to experience suicidal ideations and engaged in self-harm. On April 19, 2015, she was admitted to Sutter Health's inpatient psychiatric program. She remained hospitalized until April 24, 2015. After being released from the hospital, Student returned to school. However, on April 30, 2015, Mother informed the principal of California Middle that Student could no longer continue attending school there because her "anxiety, depression, and suicidal thoughts were overwhelming her." At that time, Parents requested that Student be referred for educationally related mental health services. That same day, Ms. Young made a referral to Sacramento City's mental health team about assessment for those services.

40. Despite her absence from school, Student continued to experience suicidal ideation, depression, anxiety, and suicidal ideations. As a result, she was hospitalized again on May 18, 2015, at Sutter Health's inpatient psychiatric program. Sutter released her on May 22, 2015, and she returned to school after being released from her second hospitalization.

Sacramento City's 2015 Assessment

41. In the spring of 2015, Sacramento City conducted an assessment of Student to determine her eligibility for special education services. The assessment consisted of a health assessment by the school nurse, an academic achievement assessment conducted by a special education teacher, and a psychoeducational

assessment conducted by school psychologist, Ms. Young.

42. The academic achievement assessment consisted of the administration of the standardized test, the Woodcock-Johnson III Normative Update. The Woodcock-Johnson is a normed test made up of a series of subtests that measure a student's academic achievement skills. The testing results indicated that Student's basic reading score, reading comprehension skills, brief reading skills, and written expression skills all measured in the average range when compared to other students in her same age group. Student's broad mathematics, math calculations skills, math reasoning skills, and brief mathematic skills measured in the below average range when compared to Student's same age peers.

PSYCHOEDUCATIONAL PORTION OF THE ASSESSMENT

43. Ms. Young conducted a psychoeducational assessment of Student. She is trained to administer psychoeducational testing and conducts a large number of psychoeducation assessments per year, a portion of which are initial assessments. Ms. Young's psychoeducational assessment procedures consisted of a review of records, interview of one of Student's teachers, observations of Student during testing, administration of standardized tests, and teacher and parent assessment questionnaires. She followed all testing protocols when administering the tests to Student. Ms. Young was unable to observe Student in the classroom because Student was not attending school at the time of the assessment.

44. Ms. Young administered the Naglieri Cognitive Assessment System to assess Student's cognitive functioning. This norm-referenced test uses eight subtests to assess a student in the areas of planning, attention, simultaneous, and successive processing, as well as, determining a student's full scale cognitive functioning level. Student scored in the average range in the area of successive processing and in the below average range in the three other areas. The successive processing testing

required Student to either reproduce a particular sequence of events or answer questions that require correct interpretation of the linearity of events. The testing results found Student's full scale cognitive functioning to be in the below average range.

45. Ms. Young utilized the Naglieri Nonverbal Ability Test-Individual Interpretation to assess Student's nonverbal ability independent from measurement of verbal, math, and reading skills coupled with minimal motor requirements. This low-pressure test allowed for a fair evaluation of Student's nonverbal cognitive ability. Student scored in the average range, which is higher than she scored on the Naglieri Cognitive Assessment System.

46. Ms. Young administered the Bender Visual-Motor Gestalt Test, Second Edition, to assess Student's level of maturity in visual-motor perception. Results of the test put Student's fine motor copying skills in the high range and recall skills in the average range. Ms. Young found Student's cognitive ability to be in the average range, based on all of the cognitive testing results.

47. The NICHQ Vanderbilt Assessment Rating Assessment is a questionnaire (scale) completed by a student's teacher and parents to assess possible attention deficits and hyperactive behaviors at school and home. Ms. Young provided the scale to Student's teacher for completion. Parents completed the scale provided by Ms. Young together. Unfortunately, Student's teacher did not return the scale in time for the results to be included in the assessment report. The results of Parents' scale indicated that Student displayed significant signs of inattention, oppositional defiance, anxiety, and depression while at home and in the community.

48. The Behavior Assessment System for Children, Second Edition, is a system of rating scales designed to identify emotional and behavioral problems that are significantly different from the average population or selected clinical population. Ms. Young provided the questionnaires to Mother, Student, and Student's teacher, Kelley

Wade. Ms. Young chose Ms. Wade to complete the scale, because she worked with Student during seventh and eighth grade. Ms. Young compared the ratings from the questionnaires to the general norm group, which consisted of adolescent females and males.

49. Scores in the significant range suggest a high level of maladjustment. Scores in the at risk range identify either significant problems that may not be severe enough to require formal treatment or potential problems that require monitoring. The Behavior Assessment System provides various ways to control threats to the validity of the results. The results from Mother's and Student's responses indicated "caution" for consistency and Student's responses indicated that Student had a tendency to rate herself more negatively.

50. The results from Student's questionnaire indicated that she saw herself as clinically significant scores in the areas of attitude towards teachers, social stress, anxiety, depression, sense of inadequacy, hyperactivity, inattention/hyperactivity, emotional symptoms, interpersonal relationships, self-esteem and personal adjustments. The results of Ms. Wade's questionnaire indicated clinically significant results in the areas of internalizing problems, learning problems, and attention problems. She rated Student as at risk in the areas of depression, withdrawal, atypicality, social skills, leadership, study skills, and functional communication.

51. The results of the psychoeducational assessment showed that Student showed significant challenges with executive functioning, potentially due to Student's ADHD diagnosis. However, the validity of the testing results were compromised by the fact that Student was struggling with anxiety, depression, and suicidal ideations, as demonstrated by significant difference between Ms. Young's testing results and prior testing. Ms. Young's opinion was that Student's performance on the testing was influenced by Student's emotional issues and was not a true reflection of her ability. Ms.

Young indicated in her report that testing results should be interpreted with extreme caution.

52. Due to the disparity between the prior testing results and the testing results from the current assessment, Ms. Young had difficulty determining whether Student qualified for special education under the category of specific learning disability. Ultimately, she found that the results of the testing did not indicate that Student had a processing disorder, therefore, did not meet the eligibility criteria for a specific learning disability.

53. The testing results indicated that Student had clinically significant attention problems at home, school, and in the community. Ms. Young determined that those behaviors were adversely impacting Student's ability to learn, acquire new skills, and impacted Student's alertness, strength and vitality. Ms. Young found that Student fit the eligibility criteria for the special education category of other health impairment.

54. In her report, Ms. Young recommended that the instructional modifications and task modifications she listed be implemented to assist Student in school. Additionally, Ms. Young indicated that Student might benefit from educationally related mental health services that focused on the following areas that were affecting her educational success: anxiety, internalization of problems, attitude towards teachers, social stress, depression, sense of inadequacy, attention problems, and personal adjustment.

55. Typically, Sacramento City requires a separate assessment to determine whether a Student requires educationally related mental health services. Sacramento City's mental health teams conduct educationally related mental health assessments. Sacramento City has two mental health teams. Both mental health teams are composed of a school psychologist, a behavior interventionist, and a social worker. A mental health team conducts the assessment and makes recommendations for services, but the

decision on whether to provide services and the amount of services falls within the discretion of the IEP team.

56. Based on Student's mental health state and the results of her assessment, Ms. Young recommended that Student receive educationally related mental health services without going through the separate assessment process. Electing to wait for an educationally related mental health services assessment would have delayed the provision of services to Student.

May 20, 2015 IEP Team Meeting

57. On May 20, 2015, the IEP team met to review the current assessments and to determine whether Student was eligible for special education. By the time of the meeting, Student had completed a 10-day intensive outpatient therapy program and was recently hospitalized for a second time in Sutter's psychiatric unit.

58. Mother informed the IEP team that Student had been cutting herself and did not want to attend school. On days when Student attended school, she was only able to remain for one to two periods before she started feeling that she might engage in self-harm. Student's attendance during the second half of the school year had been sporadic at best, with increasing length of periods of absences. By the time of the meeting, Student had been absent from 192 class periods.

59. After reviewing the results of the assessments, the IEP team determined that Student was qualified for special education under the category of other health impairment. The IEP team did not really discuss whether Student qualified for special education under the category of emotional disturbance. Instead, the IEP team decided to wait to discuss that issue until Student had started high school and had a chance to settle in to her new program.

60. The IEP team identified two of Student's strengths as her social skills and that she was "well-liked." Student had a number of friends at school and when was

attending school she spent time socializing with her friends. Reports from Student's teachers were provided during the meeting. Lack of attendance was a repeated concern in the teachers' reports.

61. In an effort to address the concern over attendance, the IEP team developed an attendance goal. Student had been attending school on a modified four period schedule with additional academic support from the school's independent study teacher on math. The goal required Student to maintain attendance and arrive to school on time with 96 percent accuracy in five out of five days per week as measured by attendance records. However, the IEP never addressed how that goal was to be implemented or supported. Considering the number of absences that Student had during the 2014-2015 school year, it was unreasonable to believe that Student's attendance would improve to such a great extent without extensive support.

62. The next goal addressed Student's needs in the area of coping skills. Through her private counseling Student had been learning coping techniques. However, when she was at school, she would become very anxious and would not be able to calm herself. Instead, Student would contact Parents and request they pick her up from school. The goal required that by May 2016, Student would use the coping strategies she had learned to calm herself when she became upset or anxious, or when an adult cued her with one prompt or less, remain at school, and return to her scheduled activity in four out of five opportunities for three consecutive weeks. To support this goal, the IEP team decided to provide Student with 30 minutes of educationally related mental health services per week. During the counseling sessions, a social worker would teach her various coping strategies.

63. The services offered to support this goal failed to take into account Student's high level of clinical anxiety and depression. By the time of the meeting, Student had already received counseling and training on the utilization of coping

strategies from mental health professionals during her psychiatric hospitalization and her 10 day of intensive outpatient mental health therapy program. Yet despite that counseling and training Student still was having tremendous difficulty attending school. The offered counseling services failed to address the depth of Student's anxiety and depression and the effect that it was having on Student's ability to access her education. Lara Roach, a member of one of the mental health teams, was part of the IEP team. On her recommendation, Student was offered 30 minutes per week of educationally related mental health services. During the hearing, Ms. Roach was unable to explain the reasoning behind offering only 30 minutes of counseling per week, except to say that in her experience it was not beneficial to take students out of class more than 30 minutes per week.

64. The IEP also addressed Student's deficits in the area of executive functioning by providing a goal in that area. However, the goal was not measurable, as it did not establish Student's present level of performance. The goal stated "baseline data not available due to lack of attendance." The goal required that by May 2016, Student would use "given organization system and visual posting" to turn in homework assignments on the assigned day in the assigned manner without staff prompting with 80 percent accuracy during three consecutive weeks as measured by teacher and staff observations and reporting. Not only was the goal confusing, the IEP failed to provide the support or creation of a "given organization system." Although, the accommodations did provided for use of an assignment notebook planner and "organization checks/cues," the goal itself did not indicate if that was the referenced organization system.

65. Despite Student's lack of access to the academic curriculum and declining academic performance, due to her absence from school, the IEP did not provide Student academic goals. Student was struggling in math and testing supported that she needed

assistance in the area of math calculation, but the IEP did not provide a goal in the area of math or provide Student with any specialized academic instruction.

66. The IEP offered Student 30 minutes weekly of resource program specialist “check in” services. The IEP did not define what this “check in” entailed. This offered service fell woefully short of addressing Student’s academic needs. A student’s knowledge and skills build throughout the school year. Therefore, Student’s substantial absences from school would have impacted her knowledge and skill base. The IEP should have provided some sort of academic remediation, particularly in the area of math, to address Student’s academic needs.

67. Prior to the meeting, Parents decided that Student would be attending the Met Sacramento during the next school year. The Met is a charter school that is part of Sacramento City Unified School District. Sacramento City provides the Met’s special education services. The Met is a nontraditional educational setting that focuses on project-based learning through internships. Technically, the Met is an independent study school, although it functions in a more structured manner than some independent education programs. Students attend classes three days a week and an internship two days a week. The Met requires Students to locate and obtain internship positions.

68. The Met follows an advisory model, where the school body is separated into 13 different advisories. An advisory is a cohort of students lead by an advisor who is a credentialed teacher. Students remain in the same advisory during all four years of high school, thus allowing students to build a strong bond with their advisors and fellow students.

69. Four times a year, students are required to create a presentation, called an exhibition, about what they have learned during that school quarter. The exhibition provides a comprehensive look at a student’s performance during that quarter. It covers a variety of areas including, internships, grades, books read, community service, cultural

events attended, and whether there has been an improvement or decline in grades. Students present their exhibitions to their peers, teachers, and families. The Met allows modifications of the method of presentation and content of the exhibitions depending on a student's needs.

70. The IEP team discussed the Met as a placement option for Student, however, no staff members from the Met participated in the meeting. The IEP team members felt that the Met would be conducive to Student's learning because it provided a lower stress environment and would allow her to form a strong relationship with her advisor during the four years. The IEP team did not discuss placing Student in a more restrictive setting, such as a special day class, nonpublic school, or residential placement. Parents relied on the district members of the IEP team to provide guidance on the appropriate placement for Student.

71. Although the Met offers a unique learning environment, it also requires students to function with a higher level of independence than is required of students in a more traditional high school setting. With Student's executive functioning deficits, self-esteem issues, and academic deficits, she would have difficulty working in such an independent educational setting. The evidence showed that Student required more structure and support from her school placement.

72. The May 20, 2015 IEP offer failed to provide appropriate, measurable goals, appropriate services, and an appropriate placement to meet Student's needs. Although the accommodations contained in the IEP addressed Student's established needs, they did not contain an organizational system as referenced in the executive functioning goals.

73. In total, the IEP offered Student very little more than her 504 Plan. Although the IEP offered Student mental health services, the amount of offered services fell short of what she required. By the time of the meeting, Student had already

undergone one psychiatric hospitalization and participated in an intensive psychiatric outpatient program. Despite the intensive psychiatric treatment Student had received, she continued to experience such severe anxiety over attending school that she was hospitalized for a second time only the day before the meeting. Considering Student's fragile mental health, Sacramento City should have offered Student a placement with far more comprehensive therapeutic services.

74. The IEP offer was designated to begin May 20, 2015 and end May 20, 2016. Parents consented to the IEP offer in full.

2015-2016 SCHOOL YEAR

75. During the 2015-2016 school year, Student attended ninth grade at the Met. The school year began on September 3, 2015. Scott Ford was the only resource specialist program teacher at the Met. As such, Mr. Ford was responsible for making sure that Student's IEP was implemented, including providing the 30 minutes weekly of resource specialist program check-in services. He also acted as the liaison between staff and Parents.

76. Student's absenteeism and tardiness began early in the school year. At school, Student would frequently become overwhelmed with anxiety. She would text message and call Parents repeatedly, demanding to be picked up immediately from school because she could not cope with the anxiety and wanted to hurt herself.

77. By October 14, 2015, Student had already been absent at least one time because she was too depressed to go to school, and she had left school early three times because she was anxious. At home, Student was becoming more hostile towards Parents when they questioned her about her schoolwork. At school, Student started lashing out at teachers and classmates when she became frustrated. Later, when she was calmer, she would become depressed because she realized she was not creating a positive reputation for herself at school.

78. Per her IEP, Student received educationally related mental health services. However, she was not always available for the sessions due to her absences. When she did attend, she was not very engaged in the sessions. During one of the scheduled appointments, Student declined to attend and elected to remain in class to work on her exhibition.

79. Parents attempted to coordinate Student's private counseling and school based counseling by copying Ms. Roach, the social worker who provided Student the mental health services, on the emails they sent to Student's private therapist about Student's increasing anxiety and depression to keep her informed. These emails provided Sacramento City notice regarding Student's difficulties at school.

80. Normal everyday situations at school caused Student's anxiety to spin out of control. However, it was difficult for teachers, including Mr. Ford, to understand Student's true level of anxiety and how seemingly normal situations would trigger it. Parents also struggled with that same issue, until reaching a better understanding through family counseling.

81. Parents kept in constant contact with the Met's staff, both through email and conversations. They informed the Met staff of Student's struggles both at home and at school. Parents continuously requested help from the teachers and administrators on getting Student to school and helping her complete her school work. In early October 2015, Student was failing mathematics. Mr. Ford provided Student, and several other students who were having difficulty in math, tutoring sessions two times a week. Student also used the afterschool tutoring services provided for all students at the school. Despite this additional help, Student continued to receive a failing grade in math.

82. Around this same time, Student's tardiness to school increased. Student's anxiety and depression made it difficult for Student to get to school in the morning. She

fixated on the clothing she was going to wear, changing her clothes numerous times before being able to leave home. Subsequently, Student would be diagnosed with obsessive compulsive disorder. Parents asked for Ms. Roach's help to assist them with getting Student to school on time.

83. As a plan to help get Student to school on time, Mr. Ford offered to have Student start her day in his classroom when she was feeling anxious. He would give her a cup of tea and allow her to get acclimated before she went to her scheduled class. The staff at the Met attempted to find informal ways to help get Student to school on time and to help her remain at school. However, those efforts were not enough and Student's absences and tardiness increased. Student required more substantial interventions, through her IEP, to address her needs.

84. As the first exhibition neared on October 28, 2015, Student became even more anxious. She worked on preparing her exhibition, but she had not completed very much academic work, had not attended an internship, and had not participated in community service; nor had she read any books, so her exhibition was not complete. The staff at the Met, including the principal, agreed to allow Student to modify the content of her exhibition and she was not required to present it to all of the expected audience due to her anxiety.

85. Although securing and working at an internship was integral and a required part of the Met's program, Student never worked at an internship. Student's advisor, the principal, and the teachers decided that pursuing an internship was not a good plan for Student due to her attendance issues.

86. In an effort to hold Student accountable for arriving to school on time, the administration required Student to serve detention for her tardiness. Parents supported the administration in this effort in the hopes it would have a positive effect on Student's attendance. However, this attempt was ineffectual and Student continued to be tardy to

school.

87. At the end of the first quarter, Student received two C's, three D's, and one F. On November 19, 2015, Parents asked Sacramento City to hold an IEP team meeting to discuss Student's progress and other potential supports for her. Student's attendance had become even more sporadic due to her anxiety over her performance in school. Parents also asked that Student be assessed to determine her reading and math levels. Parents' request for achievement testing in math and reading was declined due to the completion of the academic testing conducted in May 2015. Parents were referred back to the prior scores and were offered the opportunity to review them with the school psychologist.

88. In December 2015, Mother inquired about having Student's eligibility changed to emotional disturbance. After Mother's inquiry, Mr. Ford started the referral process to the mental health team so that data could be collected and Student further assessed. The referral process required Parents and teachers to fill out interview forms.

89. The same mental health teams that conduct the educationally related mental health services assessments also conduct the assessments to determine whether students meet the eligibility criteria for emotional disturbance. This testing is broader than the testing conducted for educationally related mental health assessments. The mental health team conducts the assessments and makes findings as to whether a student meets the eligibility criteria of emotional disturbance. As with any assessment, a finding of meeting or not meeting the eligibility criteria is merely a finding and the decision as to whether a student qualifies for special education services remains in the hands of the IEP team.

90. Parents and Student's teachers completed the interview forms, which were submitted to the mental health team. An IEP team meeting was scheduled to discuss Parents' concerns.

December 15, 2015 IEP Team Meeting

91. On December 15, 2015, Sacramento City held an IEP team meeting to discuss Parents' concerns regarding Student's poor academic performance and her absence from school. At the time of the meeting, Student had attended very little school in December. Because the Met was technically an independent study program, it was not required to report school attendance information to the state. It did have its own method for tracking attendance, but due to the nature of the Met's program, that information was not always accurate. As such, it was difficult to determine how much time Student had been absent from school.

92. The IEP team was comprised of Parents; Mr. Ford; Vince Wolfe, principal; Taisiya Kulbidyuk, school psychologist; Ms. Roach; Jessica McKendree, a behaviorist; and Elizabeth Cowie, a private educational therapist. Parents asked Ms. Cowie to attend because they had retained Ms. Cowie to provide one-to-one education therapy for Student.

93. During the meeting, Parents presented a letter from Dr. Chiu dated December 14, 2015. In the letter, Dr. Chiu explained that she had been Student's psychiatrist since January 2011 and that Student had many signs of "learned helplessness." Mother provided the IEP team with information that she had collected on learned helplessness. Learned helplessness is not a medical diagnosis, but instead a type of behavior that some students develop when they experience repeated failures in school. In the letter, Dr. Chiu explained that Student had experienced so many failures in school that she no longer willing to attend school or make an effort to learn.

94. Parents requested that Student receive one-to-one instruction outside of the classroom setting. Parents wanted the one-to-one instruction to replace her current placement at the Met. At this meeting, Parents did not request that Student be placed on home hospital instruction. Mr. Ford informed Parents that Sacramento City did not

provide one-to-one instruction because it was far too restrictive.

95. Mr. Ford's statement was not an accurate reflection of a policy of Sacramento City. The evidence showed that depending on a student's needs, Sacramento City provided one-to-one instruction through home hospital instruction and as part of a continuum of educational options available at school. Sacramento City provides one-to-one instruction from a credentialed teacher or instructional aide as a push-in or pull-out service as required by a student's needs. Student has taken the position that she is only able to receive an educational benefit when provided with one-to-one instruction, no matter the educational placement.

96. Upon inquiry by Ms. Roach, Parents indicated that pull-out educationally related mental health services were not necessary. Based on Parents information, the IEP was amended from 30 minutes weekly of educationally related mental health services per week to 15 minutes of social worker consultation with teacher, Parents, and mental health provider, three times a month.

97. The IEP team discussed various possibilities for modifying Student's school schedule to help her get to school. The team also discussed further modifying the requirements for her exhibition. Despite Student's chronic absenteeism and her declining mental health, Sacramento City did not offer to provide Student with any additional services; nor did they offer Student a different placement. The only amendment to Student's May 20, 2015 IEP, was the change from the provision of direct service to consultation for the mental health related services. The December 15, 2015 IEP, failed to address any of Student's academic and emotional needs.

98. Parents requested for Student to be assessed to determine whether she met the eligibility criteria for emotional disturbance. Ms. Roach explained to the IEP team the process for having Student assessed by the mental health team to determine whether she qualified for special education under the category of emotional

disturbance.

Student's Requests for Home Hospital Instruction

99. Student returned to school in January 2016 for a short period. On January 25, 2016, Parents sent Sacramento City an email indicating that Student was no longer going to be attending school. Student had become increasingly depressed and despondent. In this same email Parents requested that Sacramento City provide Student with home hospital instruction.

100. In order for a student eligible for special education to be placed by the IEP team on home hospital instruction, the student must provide a note, signed by a physician stating the diagnosed condition, and certifying that the condition prevents the student from attending a lesser restrictive placement, and a projected calendar date for the student's return to school.

101. On January 26, 2016, Parents provided Sacramento City with a letter from Dr. Chiu. The letter indicated that Student's current school setting may actually be harming Student. She recommended that Student receive home hospital instruction or another setting in order to enable her to make academic progress. The letter closed by saying that if immediate intervention did not occur that Student was at high risk for hospitalization.

102. As Mr. Ford was Student's case manager, he was expected to start the application for home hospital instruction. However, he was unfamiliar with the process and did not realize that it was his responsibility to initiate the process.

103. Both the December 14, 2015⁹ and the January 26, 2016 letter were

⁹ In the December 14, 2015 letter from Dr. Chiu, presented by Parents at the December 15, 2015 IEP team meeting, she did not recommend home hospital

forwarded to Michele Coon. Ms. Coon is a home hospital teacher and she coordinates Sacramento City's home hospital instruction program. While students are placed in home hospital, Ms. Coon acts as their case manager.

104. Ms. Coon reviewed Dr. Chiu's letters to determine whether they contained the information required under the California Code of Regulations' requirements for home hospital instruction. The letter from December 14, 2015 did not indicate that home hospital instruction was being requested. In the letter dated January 26, 2016, Dr. Chiu did not certify that the severity of Student's anxiety and depression prevented her from attending a less restrictive placement. Instead, she indicated that she was recommending home hospital instruction or "another setting." Since home hospital instruction is the most restrictive placement in the continuum of placements, "another setting" would have been a less restrictive placement, and the letter failed to meet the criteria of California Code of Regulations.

105. Since the letter did not meet the specifications set forth in the California Code of Regulations, Ms. Coon contacted Mr. Ford and asked him to gather additional information from Parents. On March 1, 2016, Parents sent Sacramento City an email reiterating their request for home hospital instruction. Accompanying the email was a completed home hospital instruction packet. However, the portion filled out by Dr. Chiu only provided medical codes and did not specify the conditions preventing Student from attending school.

106. Ms. Coon and her supervisor asked that the school nurse contact Dr. Chiu for clarification of the information contained in the application. In order to be able to have the nurse speak with Dr. Chiu, the appropriate medical release forms needed to be

instruction. At the hearing, Dr. Chiu clarified that she was not recommending home hospital instruction at that time.

secured from Parents.

107. After speaking with Dr. Chiu, the nurse summarized her notes in an email that she sent to Ms. Coon. At the April 18, 2016 IEP team meeting, Ms. Coon read that email to the IEP team. During her testimony, Dr. Chiu indicated that the email was an accurate reflection of her conversation with the nurse.

108. Dr. Chiu indicated that she thought that Sacramento City should place Student at a school for emotionally disturbed students and not at a general education high school in a special day class. She explained that Student needed to be in a setting with students "like her" and in small classes with a large amount of supports. During her testimony, Dr. Chiu clarified that what she was describing was a therapeutic residential program, although she did not specify as such during the conversation.

109. That additional information provided by Dr. Chiu confirmed that she was not certifying that Student's medical conditions were preventing her from attending a less restrictive placement. Even a therapeutic residential placement is considered a less restrictive placement than home hospital instruction. Without proper certification from a physician or psychiatrist, Sacramento City could not place Student on home hospital instruction.

Assessment Plan and Request for Independent Education Evaluation

110. On January 11, 2016, Sacramento City's mental health team generated an assessment plan and sent it Parents the following day. On January 20, 2016, Parents sent Sacramento City a request to have it fund an independent educational evaluation. Parents requested the independent evaluation because they disagreed with Sacramento City's May 20, 2015 psychoeducational assessment of Student. On January 28, 2016, Sacramento City agreed to Parents request for an independent psychoeducational evaluation. That same day, Parents informed Sacramento City that they had located an independent evaluator. Parents chose Kristin Gross, Ph.D., a private neuropsychologist

who assesses children and young adults, to conduct the independent evaluation. Dr. Gross has been a licensed clinical psychologist since September 2003. She received her doctorate in clinical psychology from Palo Alto University in 2002. On February 5, 2016, Sacramento City agreed to fund an independent educational evaluation by Dr. Gross.

Dr. Gross's 2016 Neuropsychological Assessment

111. In February 2016, Dr. Gross conducted an assessment of Student. Her assessment consisted of an initial interview with Parents; review of records provided by Parents; telephone consultations with Dr. Chiu, Ms. Cowie, and two of Student's psychotherapists; and administration of standardized and non-standardized testing.

112. For her record review, Dr. Gross only relied on records and information provided by Parents. She did not request any documentation from Sacramento City, nor did she interview any of Sacramento City's staff as part of her assessment. Mother, who was very frustrated and upset with Sacramento City, supplied much of the background information for the assessment. Dr. Gross testified that she did not interview any of Student's teachers or provide them with of the testing questionnaires because Student had been out of school for such a long period that the teachers would not have relevant information to provide. At the beginning of testing, Student had been out of school for under two months.

113. The tone of Dr. Gross's assessment report was not that of an unbiased, expert, but rather that of overly dramatic advocate. Under the section "Relevant Background Information," she indicated that the following was a summary of Student's "troubled life." However, Dr. Gross indicated in this section that Student is "very social" and as having, three to four close friends as well as a boyfriend and that she spends her afternoons "hanging out" with her friends. She also indicated that Student was described as a "normal teenager" when it came to things unrelated to school. That description seems to be contrary to Dr. Gross's use of the descriptive term "troubled

life.”

114. Again, in that same section of the report, Dr. Gross wrote, “During those years and into high school, [Student] reportedly was bullied and mistreated by teachers, who did not understand nor ‘cared’ to support her.” Dr. Gross does not attribute from where she gained this information and reports it as a fact. During the hearing, she testified that she believes that Mother supplied her with that information. In her report she also made the exaggerated statement, “By December 2015 [Student] was diagnosed with ‘Learned Helplessness’ due to her life long failure succeeding in school and not receiving the support she needs.” This statement ignored the above average grades that Student received in elementary school, and in some middle school classes, and her positive performance on state testing during many school years. As discussed above in this Decision, Student did experience academic struggles, but Dr. Gross’s report certainly exaggerated the pervasiveness and extent of those struggles prior to eighth grade.

115. Despite the fact that Dr. Gross testified that she had attended between 75 to 100 IEP team meetings, she continues to be unfamiliar with the fact that Student’s must meet specific legal criteria to be found eligible for special education. At no place in her report, or during her testimony, did she address whether Student met the legal criteria for eligibility under the categories of other health impairment, specific learning disability, or emotional disturbance.

116. As part of her assessment, Dr. Gross clinically diagnosed Student with several disorders under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. She provides various recommendations, including that Student should be placed in residential therapeutic placement, and that regardless of where she is placed, she needs to receive one-to-one instruction from a professional trained in working with learning-disabled children, such as an educational therapist or special education teacher.

April 18, 2016 IEP Team Meeting

117. On April 18, 2016, Sacramento City convened an IEP team meeting to discuss the results of the independent psychoeducational evaluation and the request for home hospital instruction. The meeting was scheduled to last one and one-half hours. However, the meeting ended early due to a fire alarm.

118. Sacramento City and Parents recorded the IEP team meeting. Both parties submitted a copy of their respective recordings from the meeting, which were admitted as evidence and considered by the undersigned.

119. Dr. Gross presented the findings of her assessment at the IEP team meeting. Dr. Gross recommended that Student be placed in a therapeutic residential placement and receive one-to-one instruction in that placement. Several of the district team members expressed their concerns that Dr. Gross did not interview or collect any data from the Met's staff members. They also voiced their concerns that Dr. Gross did not address eligibility criteria as part of her report.

120. As Student's tutor, Ms. Cowie reviewed Student's present levels of performance.¹⁰ She indicated that through her assessments and work with Student that she was performing at about a fourth or fifth grade level in reading and in math. She stated that Student's curriculum should be provided at that level in order to meet her needs.

121. After the team discussed Student's present levels of performance, Ms. Cowie presented proposed goals and accommodations for Student. At the meeting, the information provided by Ms. Cowie was termed "extremely important to the meeting"

¹⁰ In December 2015 and January 2016, Student attended only a few days of school at the Met. Ms. Cowie was providing Student with one-to-one instruction, using materials she deemed appropriate for Student's present levels of performance.

by one of the Sacramento City team members. After Ms. Cowie presented her proposed goals and accommodations, the Sacramento City members asked if they could have a copy to incorporate into the IEP because they were "right on the mark." The evidence established that Sacramento City IEP team members did not disregard Ms. Cowie's recommendations during the meeting.

122. After the IEP team finished listening to Ms. Cowie's presentation, a discussion regarding placement began. Sarah Pieschl, school psychologist, suggested Hiram Johnson as a potential placement option. Parents asked questions about the program and Mother asked whether it provided one-to-one instruction. It was explained that the other students in the class would have learning disabilities similar to Student and the work would be modified to address those issues.

123. Several of the IEP team members worked with the Hiram Johnson program, so they were familiar with the learning disabled special day class at Hiram Johnson. A description of the program was provided to Parents that included information that the high school had a student support center with counseling services available throughout the day.

124. When the fire alarm sounded, the team members had to exit the facility. After the meeting resumed, a few minutes later, the team discussed moving forward with an assessment by the mental health team and reconvening the meeting at a later date. Mother inquired in a frustrated tone whether Sacramento City would be making an offer of placement that day. In response, Parents were told that Sacramento City's offer that day was for placement at the learning disabled special day class at Hiram Johnson. Subsequently, arrangements were made for Parents to view the program.

125. At the end of the meeting, the Sacramento City members wanted to retain a copy of the accommodations and goals recommended by Ms. Cowie. However, Mother insisted that the copies be returned to Parents, unless Sacramento City was

willing to pay the cost for Ms. Cowie's time in creating them. The proposed accommodations and goals were returned to Mother.

The IEP Offer

126. Several days after the meeting, Sacramento City provided Parents with its written offer of FAPE, which included an offer of placement at Hiram Johnson in the special day class for learning disabled students. The IEP offer only contemplated the period from April 18, 2016 through May 20, 2016 for services and placement. However, as of the date of the hearing, Sacramento City had not convened an IEP meeting to provide Student with IEP offer that extends beyond that date.

GOALS AND SERVICES

127. The IEP contained seven goals including, the three goals from the May 20, 2016 IEP, a new coping skills goal, and three new academic goals. The new goals were designed to be met by April 2017, whereas, the goals from the prior IEP were designed to be met by May 2016. As previously discussed, the goals from the May 20, 2015 IEP were defective for a number of reasons.

128. Additionally, the new goals failed to address Student's needs appropriately. For example, the new coping skills goal required Student to identify and practice appropriate coping strategies during counseling sessions. As drafted, this goal was impossible for Student to meet because a necessary component of the goal, specifically the counseling sessions, was not offered as part of the IEP. The IEP failed to offer Student any direct counseling services so the goal could not be supported. The IEP only offered Student three, 15 minutes sessions of consultative social worker services per month. Per the IEP, the assigned social worker was to consult with "teacher, parents, and mental health provider."

129. At that time of the meeting, Student was in such acute mental distress in

relation to school, that she was incapable of completing any work independently. She required breaks every 20 to 25 minutes in order to be able to continue working on schoolwork.

130. At the IEP meeting, Father described a recent incident during which Student became so upset over having to do some schoolwork to prepare for her lesson with Ms. Cowie that she melted down into tirade that lasted for hours. By the end of her tirade, she was sitting in her bedroom closet, repeatedly banging her head against the wall. Parents nearly committed Student to the hospital that evening. They elected not to commit her because she was eventually able to calm down. Despite this information, the IEP did not provide Student with therapeutic supports to address her severe school-based anxiety. This failure alone is enough to establish that the IEP was not reasonably calculated to meet Student's needs.

131. Although, the academic goals were based loosely on the information provided by Ms. Cowie during the meeting, the IEP team never discussed the goals as drafted in the IEP. The offered academic goals were confusing, unmeasurable, and did not have clearly defined baselines. For example, the reading goal was tied to a fifth grade reading standard, but did not define her reading ability level in the goal's baseline. Additionally, the goal indicated that Student would be able to comprehend a reading passage at her "independent reading level" or "grade level." It would have been impossible to accurately measure Student's progress on the goals, because Student's grade level would have been 10th grade, but her independent reading level was only fifth grade.

PLACEMENT

132. The IEP offered Student placement in Hiram Johnson's special day class for learning disabled students. Hiram Johnson is a large public high school with general education classes and special day classes on its campus. The special day classrooms are

intermixed with the general education classrooms and some of the special day class student's attend general education classes. Each of the learning disabled special day classes are content specific, so students attend each class period in a different classroom with a different teacher.

133. The special day classes for learning disabled students did not have embedded therapeutic supports for students. The campus has a Student Support Center, where all of Hiram Johnson's students can go to speak to social workers or social worker interns about any issues they are experiencing in school. Since the IEP failed to offer Student any direct counseling services, she would have had to self-advocate in order to access the Student Support Center's services. The evidence shows that Student's emotional state was such that she would have had tremendous difficulty engaging in any sort of self-advocacy in a school setting. As such, Student would not have had access to counseling services during her school day.

134. On the whole, the offered IEP failed to address Student's mental health needs and her academic needs appropriately. The IEP did not offer Student with any sort of transition plan to help her return to school after being absent for nearly a six month period. It was simply unreasonable to believe that a student, who had such profound school-based anxiety, would simply be able to start attending school without substantial therapeutic supports. The evidence shows that at the time of the April 18, 2016 IEP team meeting, Student required placement in a therapeutic residential treatment program. Dr. Chiu's testimony, which is discussed below, supports this finding.

DR. GROSS'S TESTIMONY

135. Although Student attempted to prove that the results from Ms. Young's testing were inaccurate or that she did not properly administer the testing, she did not present any evidence showing such. Instead, Student presented the expert testimony of Dr. Gross, who testified that Ms. Young's psychoeducational assessment did not assess

Student in all areas of suspected disability because she failed to assess Student in the areas of attention, memory, and executive functioning. She also asserted that Ms. Young's testing of Student in the area of social and emotional functioning was insufficient because she should have followed up with additional testing.

136. Dr. Gross's testimony regarding Ms. Young's report was not compelling for several reasons. First, Dr. Gross was incorrect in her assertion that Ms. Young did not assess Student in the areas of attention, executive functioning, and memory. Ms. Young assessed Student in the area of attention by administering the Cognitive Assessment System, the NICHQ Vanderbilt Assessment Rating Assessment, and the Behavior Assessment for Children. She assessed Student in the area of executive functioning through the Behavior Assessment System for Children and found that Student had "significant challenges" in that area. Ms. Young included her findings regarding Student's attention, executive functioning, and memory in her report.

137. Little weight is given to Dr. Gross's contention that Ms. Young should have conducted further social-emotional testing beyond just using a "rating scale only." She never supported this contention by providing a reason why additional testing was needed; nor did she indicate what kind of testing was needed. To assess Student's social-emotional functioning, Ms. Young provided the Behavior Assessment for Children questionnaires to Student, Mother, and Student's teacher. In her own assessment, Dr. Gross used rating scales, including the Behavior Assessment for Children, when assessing Student's social-emotional functioning. The only additional type of testing Dr. Gross used to assess Student's social-emotional function was the Rorschach. Rorschach testing involves the assessor showing a person a series of inkblots and asking the person to interpret the meaning of the inkblots. The Rorschach is a non-standardized, non-normed testing that requires the assessor subjectively to interpret the responses and is not considered best practices for a psychoeducational assessment.

138. Dr. Gross's credibility as an unbiased, expert witness was undermined substantially by portions of her testimony and her behavior during her testimony. During her testimony, Dr. Gross mumbled, had difficulty staying on track, and was confusing. At one point, she began crying during direct examination by Student's counsel. This show of emotion was inappropriate in light of the line of questioning before her. Later, during cross-examination, Dr. Gross explained the reason that she cried was because she believed that Student's school, teachers, and Sacramento City's unwillingness to support Student created her "emotional disturbance" and that this was "sad" and one of the "worst cases" she had ever seen.

139. This comment is in direct contrast to information Dr. Gross provided in her own assessment report. In her report, she indicated "At age 10 years, [Student] was diagnosed and treated for growth hormone deficiency (completed in June 2015 by daily injection), which, according to Dr. Chiu, affects the developing brain and can cause cognitive and mood problems." This information shows that at a very minimum that Student is predisposed to emotional disturbance due to her medical condition. Additionally, according to Dr. Gross's assessment report, Student indicated during testing that she was depressed and anxious most of time. At the time of Dr. Gross's testing, Student was not attending school and yet she continued to exhibit signs of emotional disturbance. Dr. Gross's biased comments, her overly emotional behavior at hearing, and the partial tone of her report all undermine the validity of her opinions and recommendations.

DR. CHIU'S TESTIMONY

140. In stark contrast to the testimony of Dr. Gross, the testimony of Student's witness, Dr. Chiu, Student's treating psychiatrist, was extremely credible and compelling. Dr. Chiu was also Student's witness. She is a board certified and licensed child and adolescent psychiatrist, and has vast experience treating adolescents with emotional

disorders. Dr. Chiu received her bachelors from Cornell and her doctorate and medical degree from University of Maryland School of Medicine. Dr. Chiu did her residency in pediatrics, general psychiatry, and child and adolescent psychiatry at Brown University. From 2000 to 2003, Dr. Chiu participated in a research fellowship in clinical neuroscience at Harvard Medical School. Dr. Chiu has taught at Brown Medical School, Harvard Medical School, and University of California Davis Medical School. Dr. Chiu has authored a number of medical publications, which are utilized by numerous medical schools across the country.

141. Dr. Chiu has been Student's treating psychiatrist since 2011. Parents first brought Student to Dr. Chiu for evaluation because she experiencing learning and attentional issues at school. Starting in 2011, Dr. Chiu recommended that Parents pursue special education services for Student. Over the years, Dr. Chiu's diagnosis of Student has developed as Student aged. She believes that Student's self-harm is related directly to her anxiety over school. When Student stopped attending school, she stopped engaging in self-harm.

142. Dr. Chiu is familiar with Hiram Johnson and believes that a special day class there would not be an appropriate placement for her. She does not believe that Student would be able to learn in that environment and that Student would not feel safe there. Student is at risk for suicide due to her depression and her low self-esteem.

143. Dr. Chiu believes Student requires placement at a therapeutic residential facility to be able to access her education. At this stage, she does not believe that Parents will even be able to get Student to attend a nonpublic school in this geographic area. It has been her experience that when students have been out of school for a long period of time, for similar reasons as Student, they require a therapeutic residential placement before they are able to reenter school. Dr. Chiu believes that this is true for Student.

144. Dr. Chiu finds residential placement to be the last resort because it is very disruptive to a child's relationship with her parents. Nonetheless, her opinion is that Student should be placed in a therapeutic residential placement, and it has been given great weight. Dr. Chiu maintained this same opinion back at the time of the April 18, 2016 IEP team meeting.

PARENTS' REQUESTS FOR REIMBURSEMENT

145. Parents are requesting reimbursement for the educational therapy services provided by Ms. Cowie. However, Parents did not provide any sort of invoice to support their request. Ms. Cowie estimates that Parents have paid her approximately \$3,600 for her services. In her closing brief, Student requested reimbursement of \$3,600 for fees.

146. Additionally, Parents are requesting reimbursement of fees paid to Susan Miltner, an educational consultant. In March 2016, Parents hired Ms. Miltner to help them locate a proper placement for Student. Ms. Miltner recommended that Parents place Student at the residential treatment center, Heritage School, located in Provo, Utah. According to Student in her closing brief, Parents are requesting reimbursement of \$4,550 that they paid to Ms. Miltner for her services. Parents submitted a copy of the invoice from Ms. Miltner and canceled checks as proof of payment. Ms. Miltner did not testify at the hearing nor did Student submit any sort of report with Ms. Miltner's findings.

HERITAGE SCHOOL

147. Student is seeking compensatory educational services in the form of placement at the residential therapeutic center, Heritage School, located in Provo, Utah. Heritage is a nonpublic school, certified by the California Department of Education, which has both a residential and an academic portion; designed to serve students ages 12 through 18.

148. The student body at Heritage is comprised of approximately 112 students. Generally, approximately half of Heritage's student body is composed of students, who have been placed at Heritage through the IEP process by school districts in California. The remainder of the student body is composed of students placed at Heritage by school districts from other states or through private funding.

149. The residential and academic portions of the program are integrated to provide consistency for student. Both programs have embedded therapeutic supports, including the availability of counseling services throughout the day and night. Each of the 11 residential homes has three staff members, who supervise and assist students under the direction of home director and two team leads.

150. Heritage would place Student in their Elevated Academy, a residential program designed to help students struggling with mood disorders. Elevated Academy provides individual, group, family, and recreational therapy to help students learn mood regulation. Additionally, Students work on their executive functioning skills in both the residential program and the academic program.

151. Heritage assigns all students a therapist to provide students' individual therapy. Students can access their therapist, or any one of the 16 other staff therapists, 24 hours a day. The program has experience working with students like Student, who have experienced suicidality and engaged in self-harm. Staff members are trained in de-escalation methods to assist students who are experiencing a volatile emotional crisis.

152. Special education teachers teach the academic subject specific classes. Fifteen academic support staff members are available to assist students with their work during class. Classes are designed to allow students to complete their homework during the school day. In the event that a student cannot complete her work during the school day, the student can complete that work during homework hour at the residential program.

153. If a student were unwilling or unable to attend school due to anxiety, one of the staff members would remain with the student to provide support and help get the student ready for school. A therapist would also be available to help the student regulate her emotions. The majority of Heritage's students have experienced academic failure in school and so are supportive of their fellow students who experience school-based anxiety.

154. Heritage requires two family visits per year. The program does not require that siblings visit to the program, although they are welcome. Heritage does not provide lodging for families during visits, but it does provide meals for families while they are on campus.

155. On average, 12 months is the length of stay necessary for students in the Elevation Academy to complete the program. From a student's first day at Heritage, the staff focuses on helping a student gain the skills she needs to transition back to into her home and a lesser restrictive educational placement.

156. At the time of the hearing Jenn Sommers, senior admissions officer at Heritage, testified that a spot was available for Student in both the residential program and the academic program. Parents toured Heritage and were able to meet some of the girls who were part of the residential program. The girls were very open about their former struggles, including engaging in cutting and school avoidance, and they shared how much they have progressed since entering the program. After touring the program and meeting some of the residents, Parents felt that Heritage would be an appropriate fit for Student.

STUDENT'S REQUEST FOR ONE-TO-ONE INSTRUCTION

157. Ms. Cowie testified that Student requires one-to-one instruction going forward because she is incapable of working on her own. However, Ms. Cowie was unfamiliar with the program proposed by Parents and would have no way of knowing

whether Student would be require one-to-one instruction in a therapeutic residential placement. According to Ms. Sommers's testimony, many of the students at Heritage have a similar history of school anxiety and school refusal, but are successful at Heritage. The type of one-to-one instruction Student seeks is not a part of Heritage's program, although Ms. Sommers indicated that if it were a part of Student's IEP they would arrange to provide it at an additional cost.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA¹¹

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), 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)¹² 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, higher education, 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 that special education and related services are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal.

¹¹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

¹² All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 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)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the

definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, 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) & (f); 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, § 56502, 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); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 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, thus she bears the burden of proof on all issues.

ISSUE 1: DID SACRAMENTO CITY DENY STUDENT A FAPE DURING THE 2013-2014 SCHOOL YEAR, BEGINNING APRIL 22, 2014?

A. Failing to Conduct Assessments in All Areas of Suspected Disability

5. Student contends that Sacramento City failed to meet its child find

obligations when it failed to assess Student during the 2013-2014 school year beginning April 22, 2014. Sacramento City contends that it did not fail its child find obligation because Sacramento City assessed Student in the fall of 2013 and found her ineligible for special education.

6. School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may be in need of special education and related services. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56171, 56300 et seq.) This ongoing duty to seek and serve children with disabilities is referred to as “child find.” California law specifically incorporates child find in Education Code section 56301, subdivisions (a) and (b). This duty extends to all children “suspected” of having a qualifying disability, not just to the children ultimately determined to be disabled. (34 C.F.R. §§ 300.8, 300.111(c)(1); *N.G. v. Dist. of Columbia* (D.D.C. 2008) 556 F.Supp.2d 11, 25 (N.G.))

7. In 2001, the Hawaii federal district court held, “[T]he child-find duty is triggered when the [district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.” (*Department of Educ., State of Hawaii v. Cari Rae S.*, (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194 (*Cari Rae*)). The Ninth Circuit Court of Appeals has not yet articulated a test for determining when a district’s child find obligation is triggered. In a recent unpublished opinion, the Ninth Circuit advised that the oft-cited *Cari Rae* standard espoused by the federal district court of Hawaii has not been adopted by two sister circuits. (*G.M. v. Saddleback Valley Unified School Dist.*, (9th Cir. July 18, 2014, No. 12-56627) 583 Fed.Appx. 702, 703, fn. 1.)

8. The Sixth and Third Circuits have since promulgated child find tests that differ significantly from the *Cari Rae* standard. Third Circuit noted that child find does

not require "a formal evaluation of every struggling student." (*D.K. v. Abington School Dist.* (3rd Cir. 2012) 696 F.3d 233, 249 (*D.K.*)). The *D.K.* test does not require districts to "rush to judgment or immediately evaluate every student exhibiting below-average capabilities, especially at a time when young children are developing at different speeds and acclimating to the school environment." (*Id.* at 252.) Additionally, the court in *D.K.* found that when a district has conducted a comprehensive evaluation and found a student ineligible for special education, that district is entitled to monitor the student's progress before considering further evaluation. (*Id.* at pp. 251-252.) The Sixth Circuit established an even more stringent test, holding that the individual claiming a child find violation must demonstrate "that school officials overlooked clear signs of disability and were negligent in failing to order testing or that there was no rational justification for not deciding to evaluate." (*Board of Educ. of Fayette County, Ky. v. L.M.* (6th Cir. 2007) 478 F.3d 307, 313 (*L.M.*))

9. Additionally, in 2014, the federal district court for the Northern District of California held, "the state has reason to suspect that a child may have a disability where: (1) there is a suspicion that a student has an impairment that is affecting the student's educational performance; or (2) a parent requests special education services or an assessment of eligibility for special education services." (*Simmons v. Pittsburg Unified School Dist.* (N.D.Cal. 2014) 2014 WL 2738214 at p. 6.)

10. In analyzing a child find violation, the actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

11. During the 2013-2014 school year beginning April 22, 2014, Sacramento

City's did not have reason to suspect Student might be eligible for special education as a child with a disability. With the support of her 504 Plan, Student was performing well academically. Thus, Sacramento City's child find obligation was not triggered during this period.

12. Once a child is identified as potentially needing specialized instruction and services, the district must conduct an initial evaluation to confirm the child's eligibility for special education. (20 U.S.C. § 1414(a)(1); 34 C.F.R § 300.301; Ed. Code, § 56302.1.) Either a parent or school district may initiate an initial evaluation. (34 C.F.R. § 300.301(b).)

13. In this case, since Sacramento City reasonably did not identify Student as a student potentially needing specialized instruction, it had no obligation to assess Student during the 2013-2014 school year beginning April 22, 2014. Additionally, Parents made no request to assess Student for special education services during the 2013-2014 school year after April 22, 2014. Thus, Sacramento City did not deny Student a FAPE during the 2013-2014 school year by failing to conduct assessments of Student in all suspected areas of disability.

B. Failing to Find Student Eligible for Special Education

14. Student argues that had Sacramento City not failed in its child find duties 2013-2014 school year beginning April 21, 2014, Student would have been found eligible for special education services before May 20, 2015.

15. Child find does not guarantee eligibility for special education and related services under the IDEA. It is merely a locating and screening process that is used to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the public agency must conduct an initial evaluation to confirm the child's eligibility for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.)

16. A student is eligible for special education and related services if he is a

“child with a disability” such as an emotional disturbance, other health impairment, or specific learning disability and, as a result thereof, needs special education and related services that cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subds. (a) & (b) [uses term “individual with exception needs”].) A student shall not be determined to be a child with a disability if the prevailing factor for the determination is a lack of appropriate instruction in reading or mathematics or if the student does not otherwise meet the eligibility criteria under federal and California law. (20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b); Ed. Code, § 56329, subd. (a)(2).) California further specifies that a student whose educational needs are primarily the result of a temporary physical disability, social maladjustment, or environmental, cultural, or economic factors, is not an individual with exceptional needs. (Ed. Code, § 56026, subd. (e).)

17. A school district is not authorized to provide special education services without completing an initial assessment and without a determination by the IEP team that a student is eligible for such services. (20 U.S.C § 1414(a)(1)(A); Ed. Code, § 56320.) Without an initial assessment, Student could not be found eligible for special education. Since Sacramento City did not have a duty to assess Student, it did not deny Student a FAPE by failing to find her eligible for special education during the 2013-2014 school year beginning April 22, 2014.

C. Failing to Offer Appropriate Supports, Services, and Goals

18. Since Student was not eligible for special education services, Sacramento City had no duty under the IDEA to offer Student an IEP with appropriate supports, services, and goals. Thus, Sacramento City did not deny Student a FAPE by failing to offer Student appropriate supports, services, and goals during the 2013-2014 school year, beginning April 22, 2014.

ISSUE 2: DID SACRAMENTO CITY DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2014-2015 SCHOOL YEAR THROUGH MAY19, 2015 BY FAILING TO IDENTIFY STUDENT AS A CHILD WITH SPECIAL NEEDS, FAILING TO ASSESS STUDENT, AND FAILING TO HOLD AN IEP TEAM MEETING TO DEVELOP APPROPRIATE SUPPORTS, SERVICES, AND PLACEMENT?

19. Student contends that Sacramento City failed in its child find duty during the 2014-2015 school year, until May 20, 2015, by failing to identify Student as child with special needs; failing to assess Student to determine whether she was eligible for special education services; and failing to hold an IEP team meeting to develop an IEP for Student with appropriate supports, services, and placement. Sacramento City argues that Student's declining grades were not enough to trigger its child find duties and as such, it did not have a duty to assess Student or hold an IEP team meeting to find her eligible and to develop an appropriate IEP.

20. By mid-January 2015, Student's academic performance had declined to such low point that a decision was made to hold a Student Study Team meeting. At the time of the meeting, Student was receiving the following grades: a C in language arts, a C+ in history, an F in science and math, an A in physical education, and an A- in leadership. Student was struggling to complete her homework, engage in classroom discussions, and utilize the additional assistance available to her from teachers and aides. At the meeting, Parents shared their concerns about Student's declining academic performance and declining mental health. Student was struggling to get to school in the morning because of her negative feelings towards school. During that quarter, Student had eight tardies.

21. Student's poor academic performance was not just limited to the second quarter of Student's eighth grade year. Although Student performed fairly well academically during her seventh grade year, she had performed poorly academically in fifth and sixth grade, as evidenced by grades and state testing scores. Sacramento City's

2013 psychoeducation assessment report reached the determination that Student was not eligible for special education at least in part to the fact that Student was receiving average grades at the time of the assessment.

22. Sacramento City had sufficient notice on January 14, 2015, to suspect that Student was a child with a disability who may need to be assessed. Thus, Sacramento City violated its child find by failing to identify and assess Student for special education services as of January 14, 2015.

23. When a student is referred for special education assessment, the school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral, not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral. (Ed. Code, § 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, § 56321, subd. (c)(4).) The district has 60 days from the date it receives the parent's written consent, excluding days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days, to complete the assessments and develop an initial IEP, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

24. When a school district violates its child find duties and its obligation to refer a child for assessment, those violations constitute procedural violations of the IDEA. (*Cari Rae S.*, supra, 158 F.Supp. 2d 1190 at pp.1196-1197; *Park v. Anaheim Union High School Dist.*, et.al. (9th Cir. 2006) 464 F.3d 1025, 1031.) A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation of the IDEA results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student; or (3) caused a

deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2) & (j); *Target Range, supra*, 960 F.2d at p. 1484.)

25. Sacramento City's violation of its child find duties and its obligation to refer Student for assessment constituted a procedural violation of the IDEA and resulted in denial of FAPE. Had Sacramento City identified Student as a child "suspected" of having a qualifying disability and commenced the assessment procedures at the time of Student Study Team meeting on January 14, 2015, the evidence established that Student should have been found eligible for special education earlier and started receiving special education.

26. If Sacramento City had properly identified Student under child find and referred her for assessment on January 14, 2015, Sacramento City would have had until January 29, 2015 to provide the student's parent with a written proposed assessment plan. Parent would have had at least 15 days receipt of the assessment plan to sign and return it to Sacramento City. (Ed. Code, § 56321, subd. (a).) Parents returned the proposed assessment plan presented to them in March 2015 the next business day after receiving it. Assuming Parents had been timely provided with an assessment plan by Sacramento City on January 29, 2015, and returned the assessment plan to Sacramento City by the following day, January 30, 2015, the district has 60 days from the date it receives the parent's written consent to complete the assessments and develop an initial IEP. Therefore, Sacramento City would have been required to hold Student's IEP team meeting no later than March 31, 2015. The weight of the evidence supports the finding that Sacramento City would have found Student eligible for special education services on March 31, 2015. Thus, Sacramento City denied Student a FAPE beginning March 31, 2015 until the IEP team meeting on May 20, 2015. After May 20, 2015, Student continued to be denied a FAPE for additional reasons as discussed below.

ISSUE 3: DID SACRAMENTO CITY DENY STUDENT A FAPE BEGINNING MAY 20,

2015, THROUGH APRIL 21, 2016, BECAUSE ITS INITIAL ASSESSMENT, DATED MAY 20, 2015, FAILED TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY?

27. Student contends that Sacramento City denied Student a FAPE beginning May 20, 2015 and ending April 21, 2016, by failing to assess her in all areas of suspected disability because it did not assess Student for educationally related mental health services. Sacramento City asserts that it assessed Student in all areas of suspected disability.

28. In evaluating a child for special education eligibility, and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

29. Student contends that Sacramento City failed to assess Student in the area of mental health. Sacramento City completed a psycho-educational assessment of Student that was found to be appropriate as discussed below. The psycho-educational assessment and other information available to the IEP team established that Student had needs in the area of mental health. Therefore, Student failed to meet her burden of establishing that Sacramento City's May 20, 2015 initial assessment failed to assess Student in all areas of suspected disability, in particular mental health.

ISSUE 4: DID SACRAMENTO CITY DENY STUDENT A FAPE BEGINNING MAY 20, 2015, THROUGH APRIL 21, 2016, BECAUSE ITS MAY 20, 2015 PSYCHOEDUCATIONAL ASSESSMENT FAILED TO ASSESS STUDENT APPROPRIATELY?

30. Student contends that she was denied a FAPE from May 20, 2015 through April 21, 2016 because Sacramento City's May 20, 2015 psychoeducational assessment

failed to appropriately assess Student in the areas of social-emotional functioning, executive processing, and memory. Sacramento City denies this allegation.

31. No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).) Assessments must be conducted by 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.” (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).)

32. Tests and assessment materials must be validated for the specific purpose for which they are used; administered in accordance with any instruction provide by the producer of the assessment; selected and administered so as not to be racially, culturally, or sexually discriminatory; and provided and administered in the student’s primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. §§ 1414(a)(3)(A)(i)-(iii) & (b)(3)(A)(v); Ed. Code, § 56320, subd. (a).)

33. Persons who conduct assessments shall prepare a written report, as appropriate, of the results of each assessment. The report shall include, but not be limited to: (a) whether the pupil needs special education and related services; (b) the basis for that determination; (c) the relevant behavior noted during the observation of the pupil; (d) the relationship of that behavior to the pupil’s academic and social functioning; (e) educationally relevant health and development, and medical findings; (f) for pupils with learning disabilities, the discrepancy between achievement and ability that cannot be corrected without special education services; (g) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and (h) the need for specialized services, materials, and equipment for pupils with low incidence disabilities. (Ed. Code, § 56327.)

34. In conducting the May 20, 2015 psychoeducational assessment, Ms. Young, a trained school psychologist, used valid, standardly accepted testing measures to assess Student in the areas social-emotional functioning, executive processing, memory, and other areas of suspected disability. Although Student presented the testimony of Dr. Gross in support of her contention that Ms. Young's assessment was not legally compliant, Dr. Gross's testimony was not persuasive on this issue. As such, Student failed to prove that Sacramento City's psychoeducational failed to appropriate assess Student.

ISSUE 5: DID SACRAMENTO CITY DENY STUDENT A FAPE BEGINNING MAY 20, 2015, THROUGH APRIL 21, 2016, BY FAILING TO OFFER STUDENT APPROPRIATE GOALS, ACCOMMODATIONS, SERVICES, AND PLACEMENT IN THE MAY 20, 2015 IEP?

35. Student argues that Sacramento City's May 20, 2015 IEP failed to offer her appropriate goals, accommodations, services, and placement. Sacramento City argued its May 20, 2105 IEP offered Student a FAPE.

36. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.)

37. Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

38. The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and

emotional needs that affect academic progress, school behavior, and socialization.

(County of San Diego v. California Special Educ. Hearing Office (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs.

(Seattle School Dist. No. 1 v. B.S. (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

39. 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)(i)(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)(i)(III); Ed. Code, § 56345, subd.(a)(3).) The IEP must show a direct relationship between present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) The IDEA does not require a particular number of goals nor does it require goals for every particular manifestation of the Student's disability.

40. "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).)

41. At the time of the IEP team meeting, Student's mental health had decompensated and she had been hospitalized a second time for suicidal ideations. She had been absent from school for a considerable amount of time. The IEP failed to appropriately address Student's emotional needs by providing appropriate goals, services, and placement. Despite Student's delicate mental state, the IEP only offered Student 30 minutes of educationally related mental health services per week.

42. The coping goal itself failed to take into account Student's present level of

performance in that area. Student's anxiety and depression were school-based. The goal required that by May 2016, Student would use the coping strategies she had learned to calm herself when she became upset or anxious, or when an adult cued her with one prompt or less, remain at school, and return to her scheduled activity in four out of five opportunities for three consecutive weeks. To support this goal, Sacramento City only offered Student 30 minutes weekly of mental health related services. This amount of counseling services was insufficient to support the coping goal established in the IEP. In addition, Student had already been receiving training in coping skills through private counseling, and still was suffering from anxiety related to school attendance and schoolwork.

43. In an effort to address Student's poor school attendance, the IEP team provided an attendance goal. The goal required Student to maintain attendance and arrive to school on time with 96 percent accuracy in five out of five days per week as measured by attendance records. However, the IEP never addressed how that goal was to be implemented or supported. Considering the large number of absences that Student had during the 2014-2015 school year, it was unreasonable to believe that Student's attendance would improve to such a large extent without extensive support.

44. The IEP failed to address Student's deficit in the area of executive functioning appropriately. Although the IEP provided a goal in area of executive functioning, it was not measurable as the IEP failed to establish a baseline for Student's executive functioning skills. Additionally, the IEP failed to provide proper support for this goal. The goal required Student to use the "given organizational system" but the IEP contained no provision for the establishment of that "given organizational system."

45. Despite Student's lack of access to the academic curriculum and declining academic performance, due to her absence from school, the IEP did not provide Student academic goals. Student was struggling in math, and testing had indicated that she

needed assistance in the area of math calculations, but the IEP did not provide a goal in the area of math, nor did it call for her to be provided with any specialized academic instruction in this area.

46. An IEP must contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the regular education curriculum, and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

47. The IEP failed to provide Student with any accommodations or supports to address her anxiety and depression that would help her in attaining her coping and attendance goals.

48. Both federal and state laws require a special education child to be educated in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with non-disabled peers "to the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (2006); Ed. Code, § 56040.1.) The least restrictive environment doctrine requires a school district, in making placement decisions, to offer a placement "as close as possible to the child's home." (34 C.F.R. § 300.116(b)(3) (2006); see 71 Fed.Reg. 46588 (Aug. 14, 2006) ["The Department has consistently maintained that a child with a disability should be educated in a school as close to the child's home as possible, unless the services identified in the child's IEP require a different location."].)

49. Although the Met offers a unique learning environment, it also requires students to function with a higher level of independence than in a traditional high school setting. With Student's executive functioning deficits, self-esteem issues, and

academic deficits, she had great difficulty working in such an independent educational setting. The evidence showed that Student required more structure and support from a placement. Placing Student back into the general education setting at the IEP team meeting of May 20, 2015, particularly given the lack of appropriate supports and services in the IEP, was setting her up for failure.

50. The May 20, 2015 IEP offer was not reasonably calculated to provide Student with an educational benefit. Accordingly, Sacramento City denied Student a FAPE from May 20, 2015 to December 15, 2015.

ISSUE 6: DID THE DECEMBER 15, 2015 IEP DENY STUDENT A FAPE FROM DECEMBER 15, 2015, TO APRIL 21, 2016?

A. Failing to Offer Appropriate Goals and Services

51. Despite Student's chronic absenteeism and her declining mental health, Sacramento City did not offer to provide Student with any additional services or goals in the amended IEP. At the time of the meeting, Student was clearly not making appropriate progress. However, the only amendment to Student's May 20, 2015 IEP was the change from the provision of direct service to consultation for the mental health related services. The May 20, 2015 IEP as amended on December 15, 2015 was not reasonably calculated to provide Student with an educational benefit. Therefore, Sacramento City denied Student a FAPE from December 15, 2015 to April 21, 2016.

ISSUE 8: DID SACRAMENTO CITY DENY STUDENT A FAPE DURING THE 2015-2016 SCHOOL YEAR BY COMMITTING PROCEDURAL VIOLATIONS?

52. Although this Decision finds a denial of FAPE occurred over the majority of the 2015-2016 school year, the following allegations cover a time period beyond that. Therefore, the following issues are being analyzed and decided.

A. Policy of Determining Eligibility Outside the IEP Team Meeting

53. Student alleges that Sacramento City denied Student a FAPE during the 2015-2016 school year by maintaining a policy of determining a student's eligibility for special education services outside of the IEP process. In Student's closing brief, she addressed this issue by citing to her factual and legal argument as set forth in Issue 6(b). As she did not argue any additional facts and circumstance specific to the 2015-2016 school year, the legal conclusion set forth in this Decision for Issue 6(b) is incorporated. Thus, Student failed to meet her burden on this issue.

B. Policy Regarding Offering Supports, Services, and Accommodations

54. Student contends that she was procedurally denied a FAPE during the 2015-2016 school year because Sacramento City had a policy of offering supports, services, and accommodations based on a student's special education eligibility category rather than a student's needs. This contention mirrors that made by Student regarding Issue 6(d). The factual and legal analysis addressing Issue 6(d) is incorporated herein. As Student has not provided any compelling evidence that Sacramento City had this policy in the 2015-2016 school year, Student failed to meet her burden on this issue.

C. Policy of Not Providing One-to-One Instruction

55. Student argues that Sacramento City denied Student a FAPE during the 2015-2016 by having a policy of not providing one-to-one instruction to meet a student's needs. Sacramento denies that such a policy exists.

56. Student bases her argument on Mr. Ford's statement at the December 15, 2016 IEP team meeting. He indicated that Sacramento City does not provided one-to-one instruction because it was far too restrictive. However, Mr. Ford's statement was not an actuate reflection of a policy of Sacramento City. The evidence showed that depending on a student's needs, Sacramento City provided one-to-one instruction

through home hospital instruction and as part of a continuum of educational options available at school. Sacramento City provides one-to-one instruction from a credentialed teacher or instructional aide as a push-in or pull-out service as required by a student's needs. Therefore, Student failed to establish that Sacramento City has a policy of not providing one-to-one instruction to Students.

D. Policy of Not Tailoring Curriculum to Meet a Student's Needs

57. Student argues that Sacramento City denied Student a FAPE during the 2015-2016 school year by having a policy of not tailoring curriculum to meet a Student's needs. The evidence supports a contrary finding. At the April 18, 2016 IEP team meeting, Ms. Cowie indicated that Student's curriculum for math and reading needed to be presented at a fourth or fifth grade level. The district members of the team indicated that such a modification of curriculum could be provided in the learning disabled special day class at Hiram Johnson. Therefore, Student failed to meet her burden of proving that Sacramento had such a policy.

ISSUE 9: DID SACRAMENTO CITY DENY STUDENT A FAPE DURING THE 2015-2016 SCHOOL YEAR TO THE DATE OF HEARING BY PREVENTING PARENTS FROM MEANINGFULLY PARTICIPATING IN THE APRIL 18, 2016 IEP TEAM MEETING?

A. Failing to Consider Parents' Input

B. Not Asking Parents Any Questions Regarding Student's Needs

58. As plead, Issues 8(a) and 8(b) are interrelated and so are analyzed together. Student contends that she was procedurally denied a FAPE during the 2015-2016 school year because the district members of the IEP team at the April 18, 2016 IEP team meeting failed to consider Parents' input and failed to ask Parents any questions regarding Student's needs. Parents are equal members of the IEP team and need the opportunity to meaningfully participate in the IEP process. Student failed to provide any

legal support that the district members have a responsibility to solicit information directly from Parents during an IEP team meeting.

59. During April 18, 2016 meeting, Parents shared information about Student's past and current needs both personally and through their expert, Ms. Cowie. It is not uncommon for differences of opinion to occur between team members about what constitutes an appropriate IEP offer for a student. Certainly a difference of opinion between district team members and Parents occurred during the April 18, 2016 IEP team meeting. However, Student failed to present sufficient evidence to support her contention that the district members of the IEP team "failed to consider" Parents' input. Testimony from Sacramento City's witnesses indicated that Parents' input was considered during the IEP team meeting. Accordingly, Student has failed to meet her burden of proof on both of these issues.

C. Inappropriately Disregarding Student's Needs

60. Student contends that Sacramento City denied Parents meaningful participation at the April 18, 2016 IEP team meeting by inappropriately disregarding Student's need for specialized instruction, therapeutic interventions, and residential treatment. Student seems to be arguing in her closing brief, that because Sacramento City did not offer Student placement at a therapeutic treatment program it disregarded Student's needs. However, throughout the meeting the district members were focused on Student's needs. After listening to Ms. Cowie's presentation, a discussion ensued about whether Student's needs could be met at the learning disabled special day class at Hiram Johnson. The team discussed residential placement, but decided that it was too restrictive of an environment. The evidence shows that Student failed to meet her burden on this issue.

D. Disregarding Dr. Kristin Gross's Recommendations and Evaluations

61. A school district is required to consider the results of a privately procured assessment when developing and revising an IEP. (Ed. Code, §§ 56341.1, subds. (a) and (d)(3), 56381, subd. (b)(1).) The results of an evaluation obtained by the parent at private expense must be considered by the school district, if the evaluation meets public agency criteria, in any decision made with respect to the provision of FAPE to the child. (20 U.S.C. § 1414(d)(3) & (4); 34 C.F.R. § 300.502(c)(1).) However, the school district is not required to adopt the recommendations of an independent evaluation. (*Ibid.*; Ed. Code, § 56329, subd. (c).)

62. Student argues that Sacramento City denied Parents meaningful participation at the April 18, 2016 IEP team meeting by disregarding Dr. Gross's evaluation and recommendations. At the meeting, Dr. Gross presented her findings and the IEP team members asked her questions. Some of the district members of the IEP team expressed concerns that Dr. Gross did not collect data from the staff at the Met as part of her assessment. Additionally, some district members expressed their concerns that Dr. Gross did not address the eligibility criteria in her report or in detail during the meeting. The evidence shows that the IEP team did consider Dr. Gross's assessment, but chose not to adopt the recommendation without further testing and information. Therefore, Student did not prove that Sacramento City denied Parents meaningful participation at that April 18, 2016 IEP meeting by failing to consider Dr. Gross's assessment and recommendation.

E. Disregarding Elizabeth Cowie's Recommendations

63. Student argues that Sacramento City prevented Parents from meaningfully participating in the April 18, 2016 IEP team meeting by disregarding Ms. Cowie's recommendation. Student's argument directly contradicts the evidence presented at hearing. At the meeting, the information provided by Ms. Cowie at the meeting was

termed "extremely important to the meeting" by one of the district's members. After Ms. Cowie presented her proposed goals and accommodations, the district members asked if they could have a copy to incorporate into the IEP because they were "right on the mark." The evidence shows that Student failed to meet her burden of proof on this issue.

F. Misrepresenting Conversation with Dr. Chiu

64. Student asserts that Sacramento City denied Parents meaningful participation at the April 18, 2016 IEP team meeting by misrepresenting the content of the conversation that occurred between the school nurse and Dr. Chiu regarding Student's needs. Sacramento City asserts that the conversation was accurately related at the April 18, 2016 IEP team meeting.

65. The overwhelming evidence in this case indicates that Ms. Coon accurately related the content of the conversation that occurred between the school nurse and Dr. Chiu regarding Student's needs. The nurse memorialized her conversation in an email to Ms. Coon. Ms. Coon read that email to the IEP team on April 18, 2016. At the hearing, Dr. Chiu indicated confirmed that the email accurately reflected the content of the conversation. She also confirmed that she did not tell the nurse that she was recommending that Student be placed in a residential program. Student failed to meet her burden on this issue.

G. Predetermining Offer of Placement

66. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any

group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

67. “[T]he informed involvement of parents” is central to the IEP process. (*Winkelman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524 [167 L.Ed.2d 904]). Protection of parental participation is “[a]mong the most important procedural safeguards” in the Act. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

68. Predetermination of an IEP offer violates the above requirements. It occurs when a school district has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. v. Las Virgenes Unified Sch. Dist.* (I) (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. opn.].) A district may not arrive at an IEP team meeting with a “take it or leave it” offer. (*JG v. Douglas County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.) “Participation must be more than mere form; it must be meaningful.” (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted].)

69. Student argues that Sacramento City denied Parents meaningful participation during the April 18, 2016 IEP team meeting by predetermining the offer of placement to be the learning disabled special day class at Hiram Johnson. Sacramento City argues that the offer was not predetermined and that it grew out of the discussion over Student’s need.

70. Several of the IEP team members worked with various high schools in the district, including Hiram Johnson. After the IEP team finished listening to Ms. Cowie’s presentation, a discussion regarding placement began. Hiram Johnson was presented as an option. However, the meeting, which was scheduled for an hour and one half, was cut short by a fire alarm being set off. After the meeting resumed, the team discussed moving forward with an assessment by the mental health team and reconvening the

meeting at a later date. Mother inquired in a frustrated tone whether Sacramento City would be making an offer of placement that day. In response, Parents were told that Sacramento City's offer that day was for placement at the learning disabled special day class. Subsequently, arrangements were made for Parents to view the program.

71. The April 18, 2016 IEP offer of placement is limited to the period beginning April 18, 2016 and ending May 20, 2016. Sacramento City intended to convene another IEP team meeting to discuss placement further after Parents had an opportunity to tour the Hiram Johnson program and for additional testing to take place. The weight of the evidence shows that Sacramento City's offer of placement was not predetermined.

H. Failing to Disclose Considering Hiram Johnson

72. Student argues that Sacramento City procedurally denied Student a FAPE during the 2015-2016 school year by failing to disclose to Parents that it was considering the learning disabled special day class at Hiram Johnson as a placement for Student. Student's argument on this issue is subsumed to her argument in Issue 8(g). Thus, the legal analysis set forth above in Issue 8(g) is incorporate by reference. Student failed to meet her burden on this issue.

ISSUE 10: DID SACRAMENTO CITY DENY STUDENT A FAPE FROM MAY 20, 2015, THROUGH THE DATE OF HEARING WHEN IT FAILED TO IMPLEMENT THE MAY 20, 2015 IEP?

73. Student contends that Sacramento City denied Student a FAPE during the from May 20, 2015, through the date of hearing by failing to implement Student's May 20, 2015. Specifically, Student alleges that Sacramento City failed to provide all of the social worker counseling services, accommodations, and specialized academic instruction outlined in Student's IEP. Sacramento City argues that it implemented

Student's operative IEP during the period in question.

74. A failure to implement an IEP may deny a child a FAPE and thereby give rise to a claim under the IDEA. (*Van Duyn, et al. v. Baker School District 5J* (9th Cir. 2007) 502 F.3d 811, 820-822.) Minor implementation failures are not actionable given that special education and related services need only "conform" to the IEP. (20 U.S.C. § 1401(9).) When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs "when there is more than a minor discrepancy between the service a school provides to a disabled child and the service required by the child's IEP." (*Id.* at pp. 815, 821-822.) *Van Duyn* specifically rejected a "per se" standard whereby any failure to implement the IEP as written gave rise to an automatic IDEA violation. Instead, when implementation failures occur, it requires analysis of the nature, extent, and impact of the failure. (*Id.* at pp. 824-825.)

75. This Decision has found that Student was denied a FAPE because the May 20, 2015 IEP did not appropriately meet Student's needs. Even if a material failure to implement the defective was found, it still could not result in a denial of FAPE, because inherently the defective IEP never offered Student a FAPE. Therefore, if the violation was found true, this Decision could not provide Student with any effectual relief. Accordingly, this issue need not be decided.

ISSUE 11: DID THE APRIL 18, 2016 IEP DENY STUDENT A FAPE BEGINNING APRIL 18, 2016, THROUGH APRIL 21, 2016?

A. Failing to Offer Appropriate Goals, Services, and Placement

76. Student contends that Sacramento City's April 18, 2016 IEP failed to offer her appropriate goals, accommodations, services, and placement. Sacramento City argued its May 20, 2105 IEP offered Student a FAPE. The evidence supports Student's contention.

77. The April 18, 2016 IEP failed to address Student's mental health needs and her academic needs appropriately. The IEP's offered goals were measurable and were not supported by the offered services. Three of the goals were carried over from the prior defective May 20, 2016 IEP and they continued to have the same defects as previously analyzed. The new coping goal was impossible to meet, because a key component of the goal was missing, specifically the counseling services necessary to support the goal. The only sort of mental health based service offered in the IEP was 45 minutes monthly of social worker consultative services. The failure to offer Student any direct counseling services was a fatal flaw of this IEP, as the evidence clearly shows that Student had significant mental health needs, which prevented her from accessing her education.

78. The offer of placement may have addressed Student's academic deficits, but it failed to address Student's mental health needs. The offered placement failed to offer Student any therapeutic supports to address her school avoidance. The failure to offer those supports prevented Student from accessing her education.

79. Sacramento City argues that their offer of placement was the least restrictive setting for Student to receive a FAPE. Conversely, Student argues that her needs could only be met appropriately by a placement in a therapeutic residential program. Student's argument on this issue is far more compelling than Sacramento City's.

80. A school district must provide a residential placement to a student with a disability, if such a placement is necessary to provide the student with special education and related services. (34 C.F.R. § 300.104.)

81. In this case, residential placement was the least restrictive placement for Student at the time of the IEP team meeting. She did not have the ability to access her education in a lesser restrictive setting. Student's school based anxiety was so severe

that she was unable to go to school. Dr. Chiu's compelling testimony supports a finding that Student would not be able to access her education even through placement at a local nonpublic school, because Parents would not be able to get Student to attend school, whereas, a residential placement would provide therapeutic supports specifically to assist Student with school avoidance issues.

82. On April 18, 2016, Student required a residential placement because it was necessary for her to be able to receive special education and related services. Student certainly would not receive a FAPE if she were unable to attend school to access the offered special education services. For this reason and those referenced above, Sacramento City denied Student a FAPE beginning April 18, 2016 through April 21, 2016, because its April 18, 2016 IEP offer was not reasonably calculated reasonably calculated to provide Student with an educational benefit.

ISSUES NOT DECIDED

83. Since this Decision affords relief to Student for a substantive denial of a FAPE from March 31, 2015 through April 21, 2016, it is unnecessary to decide a number of issues relating to that time period. Any relief that might be ordered for those violations, if proved, is subsumed in the relief this Decision affords. For that reason, Issue 6(b), Issues 7(a)-(f), Issues 8(e)-(h), and Issues 11 (b)-(c) are not decided here.

REMEDIES

1. Student prevailed on Issues 2(a)-(c), 5, 6(a), and 11(a). As a remedy, Student requests compensatory education along with development and implementation of an appropriate IEP.

2. ALJ's have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Committee of Burlington v. Department of Educ.* (1985) 471 U.S. 359 at pp. 370, 374 [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 (*Puyallup*.) 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); *Puyallup, supra*, 31 F.3d at p. 1497.)

3. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d at p. 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Id.* at 1497.) An award of compensatory education need not provide a “day-for-day compensation.” (*Student W. v. Puyallup School Dist., supra*, 31 F.3d at p. 1497.)

4. An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

5. This Decision finds that Sacramento City denied Student a FAPE from March 31, 2015 through April 21, 2016. That loss of an educational benefit has created a substantial harm to Student. Dr. Chiu’s credible and compelling testimony supports the finding that Student requires placement in a therapeutic residential treatment center in order to be able to access her education. The evidence further established that Heritage is a residential placement that will meet Student’s unique needs and provide her with educational benefit.

6. A hearing officer may not render a decision, which results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school if the school has not been certified pursuant to Education Code section 56366.1. (Ed. Code, § 56505.2,

subd. (a).) In this case, Heritage, a nonpublic school, has been certified under Education Code section 56366.1.

7. Based on Student's loss of educational benefit, as compensation, Sacramento City shall fund her prospective placement at Heritage School for 12 months. The ordered duration of time is based on the evidence that, on average, students require a 12-month stay at Heritage before they can successfully transition to a lesser restrictive educational placement. The 12-month period shall begin as soon as Heritage accepts Student as a student.

8. As part of the compensatory education, Sacramento shall fund all application fees and any initial assessments required by Heritage. Additionally, Sacramento City shall fund Student's transportation to and from the placement and Parents' transportation to and from the placement, so they can escort Student to the program. Sacramento City shall also fund the travel expenses for Parents to visit Student at the residential facility for the two required family visits. Parents' travel expense shall include round-trip transportation for Parents, lodging expenses not to exceed \$90 per day for a double occupancy room, and meal expenses not to exceed \$100 a day for both Parents, unless Heritage provides Parents' meals. The allotted dollar amount for lodging and meal expenses are generally based upon those used by the State of California for travel reimbursement of its employees.

9. Parents' request for reimbursement of Ms. Cowie's educational therapy services is denied, as Student failed to provide an invoice to support the actual cost of those services and denoting an itemization of costs.

10. All other requested relief has been considered and is denied.

ORDER

1. As compensatory education, Sacramento City shall fund Student's prospective placement at Heritage for 12 months. That funding shall cover all

application fees and any initial assessments required by Heritage. That 12-month period shall begin as soon as Heritage accepts Student as a student.

2. In the event the Heritage is unable or unwilling to accept Student into its program, Sacramento City shall identify and fund a therapeutic residential program comparable to Heritage and Sacramento City's obligation shall transfer to that residential program. Additionally, during the 12-month period, if the IEP team agrees to a different therapeutic residential placement, Sacramento City's obligation shall transfer to the agreed upon residential program.

3. Sacramento City shall fund Student's transportation to and from the placement and Parents' transportation to and from the placement, so they can escort Student to the program. Sacramento City shall also fund the travel expenses for Parents to visit Student at the residential facility for the two required family visits. Parents' travel expense shall include round-trip transportation for Parents, lodging expenses not to exceed \$90 per day for a double occupancy room, and meal expenses not to exceed \$100 a day for both Parents, unless Heritage provides Parents' meals.

4. Parents shall provide Sacramento City written evidence of Heritage's approval of their proposed visits along with their request to Sacramento City to fund each trip.

5. In the event that Student's IEP team, including Parents, agree in writing that Student no longer requires a residential placement to receive a FAPE, Sacramento City's obligations to fund this compensatory residential placement shall end upon Student's return to the family home.

6. All other requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard

and decided. Here, Student prevailed on Issues 2(a) – (c), 5, 6(a), 11(a). Sacramento City prevailed on all Issue 1(a)-(c), 3, 4, 8(a)-(d), and 9(a)-(h). The remaining issues were not decided.

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).)

DATED: August 8, 2016

_____/s/_____

B. ANDREA MILES

Administrative Law Judge

Office of Administrative Hearings