BEFORE THE
OFFICE OF ADMINISTRATIVEHEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT	OAH Case No. 2016120475
SAN DIEGUITO UNION HIGH SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016101051

DECISION

San Dieguito Union High School District filed a due process hearing request with the Office of Administrative Hearings on October 27, 2016, naming Parents on behalf of Student. On December 13, 2016, Student filed a due process hearing request with OAH, naming District.[1] On December 19, 2016, OAH consolidated these cases. On February 2, 2017, OAH continued the consolidated matter.

[1] District filed its response to Student's complaint on December 23, 2016, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. March 27, 2017) ___ F.3d ___, 2017 WL 1131821, **5-6.)

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Administrative Law Judge Paul H. Kamoroff heard the consolidated matter in Encinitas, California, on February 9, 10, 14, 15, and 16, 2017.

Erin J. Minelli, Attorney at Law, appeared on behalf of Student. Student's mother and father attended the hearing. Student did not attend the hearing.

Courtney M. Brady, Attorney at Law, appeared on behalf of District. Charles Adams, District's Director of Special Education, attended the hearing.

At the request of the parties, OAH continued this matter for closing briefs. The record closed on March 13, 2017, upon receipt of written closing briefs.

ISSUES[2]

DISTRICT'S ISSUE:

1. May District assess Student in the areas of auditory processing, social-emotional functioning, and educationally related mental health services, without Parents' consent?

STUDENT'S ISSUES:

2. Did District deny Student a free appropriate public education for the 2015-2016 and 2016-2017 school years, by:

   a. Failing to hold an individualized education program team meeting from October 2015 through February2016;

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[2] The issues have been rephrased and reorganized for clarity. Student's issue 3(c) has been changed from "transition plan" to "transition services," because that more closely resembles her claim. The ALJ has authority to renumber and redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

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b. Failing to timely and appropriately assess Student in the areas of educationally related mental health services andsocial-emotional functioning; and

c. Failing to hold an IEP team meeting within 60 days of Parents signing an assessment plan?

3. Did District deny Student a FAPE in the offers of February 11, 2016, May 27, 2016, and September 6, 2016, by:

a. Failing to develop accurate present levels of performance;

b. Failing to offer appropriate goals;

c. Failing to offer appropriate transition services; and

d. Failing to offer an appropriate placement?

SUMMARY OF DECISION

Student had a history of moderate academic and social-emotional delays. Following her last agreed upon IEP, Parents requested that District place Student at a residential treatment center, a significant change in placement from the regular education classes that she had been receiving. In response, District attempted to reassess Student, but was unable to do so because of conditions Parents placed on the assessments. Those conditions vitiated Parents' consent to the assessments.

This Decision holds that District did not violate Student's rights by failing to timely hold and offer appropriate IEPs, or by failing to assess Student. The Decision also holds that if Student wants special education from District, Parents must consent, without conditions, to its assessments.

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FACTUAL FINDINGS

THE STUDENT

1. Student was a 17-year-old young woman whose adoptive parents resided within District's boundaries during the applicable time frame. She received special education under the eligibility category other health impairment, due to an attention deficit hyperactivity disorder.

2. Attention deficit hyperactivity disorder is a neurodevelopment disorder characterized by difficulties with executive functions that cause attention deficits, hyperactivity, or impulsiveness. As a result of her disability, Student had difficulty with attention and completing school work.

3. Student also demonstrated anxiety, depression, and periodic social difficulties. Although bright, Student had concurrent challenges maintaining friendships and managing academic stress. She normally received average to above average grades, but sporadically received below average grades as a result of her anxiety and attention challenges.

4. Since 2012, Student received IEPs that consisted of regular education with accommodations, specialized academic instruction, and counseling. She took medication daily for attention issues.

5. At the time of the hearing, Parents had unilaterally placed Student at Sedona Sky Academy, a residential treatment center for adolescent girls, in Rim rock, Arizona. Student was on track to receive a regular high school diploma in May 2017, and had been accepted to a four year university.

THE MAY 19, 2015 IEP

6. Student's last agreed upon educational program was offered during an annual IEP team meeting held on May 19, 2015. Student was 16years old and attended

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the 10th grade at Canyon Crest Academy, a District high school. Canyon Crest provided a progressive curriculum for an advanced student population. Each subject was completed within two quarters, or half of a school year, rather than a full school year.

7. Parents attended the May 2015 IEP team meeting, along with Dorothy Guinter, District's administrative designee and school psychologist; Omar Musisko, District's school psychologist; Angela Zuniga,[3] District's education specialist; and a regular education teacher. The team meeting included a triennial review of Student's program and related assessments that District had conducted in preparation for the meeting.

8. The IEP team found that Student continued to be eligible for special education under other health impairment, due to an attention disorder. Student had attention problems, struggled to manage academic stress, and made poor choices, which impacted her educational performance.

9. The IEP team reviewed Student's present levels of performance and offered an individualized transition plan, designed to assist her transition to post-high school education. Student had passed both the English Language Arts and Math components of the California High School Exit Exam. Student's grades were scattered. She struggled in Algebra II and was receiving a failing grade. Her remaining grades ranged from Cs to As. Student was polite and compliant to teachers and staff, but sometimes failed to complete assignments. Overall, Student had received sufficient passing grades and credits to be on track for a regular high school diploma, and was anticipated to graduate within the normal four years of high school.

10. Student had minor behavior incidents at school that included dress code violations, inappropriate social interactions, and cell phone use. The team agreed that

[3] Formerly, Angela Ciufo.

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Student did not require a behavior intervention plan and attempted to address her behavior problems through IEP goals and accommodations.

11. The IEP team reviewed the results of District's triennial assessments. District selected Mr. Musiskoand Ms. Zuniga to conduct Student's psycho educational evaluation.[4] Mr. Musisko received his bachelor's degree in psychology in 2005, and his master's degree in educational psychology in 2010. He had been a school psychologist for District for two years, and a school psychologist for the San Diego Unified School District at the time of the hearing. For seven years prior to working as a school psychologist, Mr. Musisko provided rehabilitative services for emotionally disturbed adolescents at a residential treatment center. Ms. Zuniga was Student's special education case manager. She was an education specialist who received her bachelor's degree in psychology in 2002, and her Accelerated Collaborative Teacher Preparation Program Education Specialist-Mild/Moderate Disabilities degree in 2005. Mr. Musisko and Ms. Zuniga were experienced assessors and each provided credible testimony during hearing.

12. Mr. Musisko and Ms. Zuniga reviewed Student's school records and health information; attained parent and teacher input; interviewed and observed Student; and formally assessed her.

13. The District assessors observed Student during class and testing. Student was polite and compliant. She was able to complete tasks without prompting, interacted appropriately with peers, and did not demonstrate any behavioral or social-emotional concerns.

14. To formally assess Student, Mr. Musisko selected the Woodcock-Johnson Test of Cognitive Ability, Third Edition; the Beery-Buktenica Developmental Test of

[4] In California, the term "evaluation" is used interchangeably with "assessment."

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Visual Motor Integration, Sixth Edition; the Behavior Assessment System for Children, Second Edition; and the Attention Deficit Hyperactivity Disorder Test.

15. The Woodcock-Johnson Test of Cognitive Ability assessed Student's intellectual abilities. The test was composed of a series of subtests that provided information regarding a pupil's verbal, thinking, and cognitive abilities. Student received scores in the average to superior range on all subtests. The Beery-Buktenica Developmental Test of Visual Motor Integration tested Student's ability to integrate visual and motor abilities. Student worked quickly and carefully on each task and demonstrated no deficits in that area.

16. The Behavior Assessment System for Children assessed Student's social and behavioral functioning. The test used rating scales in 25 areas to diagnose a variety of emotional and behavioral disorders. Scores were divided into three categories: normal, at-risk, and clinically significant. Scores in the clinically significant range suggested a high level of maladjustment. Scores in the at-risk range identified a problem that was not severe enough to require treatment, but required monitoring. Mr. Musisko administered rating scales to Student, Mother, and Student's history and art teachers. Student self-rated two scores at a clinically significant level: locus of control and somatization. Locus of control is an individual's self-perception of his/her control over external events. Somatization is a tendency to be overly sensitive to relatively minor physical problems and discomforts. Mother rated Student at a clinically significant level in one area, depression. Student's teachers did not rate Student at a clinically significant level in any area. Overall, Student had elevated concerns in the areas of conduct problems, depression, attention, anxiety, behavior, adaptability, and social skills, which required monitoring; but no behavior or emotional disorder.

17. During the behavior testing, Student indicated that she sometimes drank alcoholic beverages and sometimes thought about harming herself. Mr. Musisko was a

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careful assessor who further investigated those concerns with Student, her parents, school staff and teachers. Student had never drunk an alcoholic beverage at school, but had recently drunkan alcoholic beverage outside of school. Student sometimes lied, made poor choices with friends and boyfriends, and occasionally missed a tutoring class. Although she had only minor behavior problems, Parents perceived Student as an "out of control teenager."However, Student was normally compliant and respectful, and had not demonstrated self-harm at school or outside of school.

18. The Attention Deficit Hyperactivity Disorder Test assessed Student's hyperactivity, impulsivity, and inattention. Overall, Student had low to below average scores in each area, evidencing an attention disorder.

19. Ms. Zuniga administered the Woodcock Johnson Test of Academic Achievement, Third Edition, to measure Student's skills in reading, mathematics, writing, oral language, and academic knowledge. Student received average to high average scores in each area tested, with the exception of reading fluency, where she received a very superior score.

20. District's triennial psycho educational evaluation concluded that Student remained eligible for special education under the category other health impairment, due to an attention disorder. Mr. Musisko and Ms. Zuniga shared the results of their assessment with the IEP team during the May 2015 meeting. Parents asked questions and meaningfully participated throughout the IEP team meeting. Mother and Father each agreed with the assessors' testing and findings. Student's teachers and Parents agreed that Student's primary challenges were task completion, problem solving, and social-emotional functioning.

21. To meet those challenges, the IEP team offered Student five measurable, annual goals. Goal one required Student to complete assignments using a written agenda 90 percent of the time, measured by teacher records and observations. Goal

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two, in problem solving, required Student to seek support from school staff when faced with an academic or social challenge, with 90 percent accuracy in five of six trials, measured by staff observations. Goal three, in study skills, required Student to utilize various study strategies when preparing for tests, 85 percent of the time, measured by test scores. Goal four, in organization, required Student to place her assignments in a binder 90 percent of the time, measured by teacher observations. Goal five, in anxiety management, required Student to name and explain three-to-five healthy coping skills to reduce stress and anxiety at school, measured by the school psychologist.

22. To meet those goals, the IEP team offered Student the following services: 60 minutes per year of individual mentoring consultation; 60 minutes per month of specialized academic instruction consultation; 60minutes per year of individual vocational counseling; and 30 minutes per week, for 10sessions, of group counseling by the school psychologist.

23. District also offered Student the following accommodations for each class: access to a support class throughout the day; breaking apart of large assignments into smaller parts with specific timeframes; copies of notes; preferential seating near the instructor; repeated instructions; checking for understanding privately by the teacher; a separate setting for testing; and written directions and visual supports for auditorily presented material.

24. Parents and District agreed that Student was appropriately placed in regular education classes at Canyon Crest, with its advanced curriculum, and the IEP team again offered that placement. Student would spend 99 percent of her school day in regular education classes.

25. Parents consented to the May 2015 IEP, and that was Student's effective IEP through the applicable timeframe for this matter. There was no dispute regarding whether the IEP offered Student a FAPE. Student also failed to dispute the adequacy of

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District's triennial evaluations. Rather, Student contends that this IEP quickly became insufficient to meet her unique needs. For that reason, Student claims that she required an additional IEP team meeting soon after the May2015 triennial IEP, beginning in October 2015.

AUGUST THROUGH DECEMBER 2015

26. On August 25, 2015, Student began 11th grade at Canyon Crest. Corey Bess was the assistant principal at Canyon Crest during that time. Mr. Bess had met with and observed Student on numerous occasions and provided reliable testimony during the hearing regarding Student's behaviors. Overall, Student was polite, well-behaved, and elicited little comments from teachers or staff. However, she had one unexcused absence, five excused absences, and three behavior incidents during the fall of 2015.

27. The first behavior incident, in mid-September 2015, was the result of Student having a falling out with a friend. This resulted in each girl bullying the other on social media. Mr. Bess was a caring administrator who met with Student and her friend to mediate the dispute. He explained that each needed to coexist and respect the other's ability to feel safe at school. Mr. Bess called Mother, and met personally with Father, to explain what had occurred and help remediate the situation. No additional behavior concerns arose from that dispute.

28. The second incident, in late October 2015, involved Student composing an inappropriate writing assignment of a sexual nature, which resulted in an after school detention. Again, Mr. Bess contacted Parents. The third incident, in mid-December 2015, was Student leaving a class without permission. Mr. Bess met directly with Student. There were no further behavior incidents while Student attended Canyon Crest.

29. Student's five excused absences, during the first week of October 2015, were consecutive and due to illness. Because of Canyon Crest's advanced curriculum, one week of instruction at Canyon Crest was similar to two weeks of missed instruction

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at a normal school. Consequently, Student struggled to make up work she missed during her illness. As Student's special education case manager, Ms. Zuniga was concerned about Student's ability to complete her missing assignments. She communicated frequently with Student, her teachers, and Parents, to help Student make up any missing work. Student's teachers agreed to permit Student to turn in assignments late, and Student was able to pass each class by the end of the first quarter, although she received a below average grade in English.

30. In early November 2015, Parents requested a private meeting with Mr. Bess and Ms. Zuniga. Parents requested that no other school staff, including IEP team members, be present. Mr. Bess and Ms. Zuniga quickly complied with this request and met privately with Parents on November 13, 2015. Parents informed them that Student had begun participating in an after school counseling program for alcohol abuse. Student had not drank alcohol at school, but had at least one drinking incident outside of school. Parents desired to keep information regarding Student's outside counseling private, but they required District's assistance because Student would have to leave school early one day weekly to attend the program. Mr. Bess and Ms. Zuniga agreed to accommodate Student's schedule and Parents' request for privacy. District did not convene an IEP team meeting to address Parents' concerns, and none was requested. Mr. Bess offered to place Student in a school-based alcohol counseling program, which Parents declined.

31. District was on winter break from December 21, 2015, through January 1, 2016. Parents failed to share any additional concerns regarding Student's social-emotional needs with District prior to the winter break.

32. Mr. Bess and Ms. Zuniga diligently monitored Student's educational progress and each communicated frequently with Parents, Student, and her teachers throughout the fall of 2015. Yet, except for the foregoing, no other behavior or

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academic concerns were brought to their attention. Mother and Father each testified during the hearing. Their testimony was consistent with the testimony provided by Mr. Bess and Ms. Zuniga. In sum, Student was smart, polite, and well-behaved at school. However, as reflected in the May 2015 IEP, she occasionally made poor choices, drank alcohol on one occasion outside of school, had periodic social issues, and had difficulty completing assignments, which impacted her educational performance. Each District witness who was familiar with Student, including school psychologists Dorothy Guinter and Mr. Musisko, persuasively testified that the May 2015 IEP appropriately addressed those concerns. That testimony went uncontroverted. Evidence provided at hearing did not show a discrepancy in Student's conduct following the May 2015 IEP, which would have required an IEP team meeting in the fall of 2015. Parents did not request an IEP team meeting and no evidence was presented that showed Student required an IEP team meeting during that time to receive a FAPE.

JANUARY 2016

33. Student did not return to Canyon Crest when school began after the winter break. At the time of the hearing, she had not attended a District school since December 2015.

34. On December 31, 2015, Parents placed Student at Aurora Behavioral Health Care, a private mental health care facility in San Diego, California. Parents did not notify District of this placement until January 6, 2016, after Ms. Zuniga contacted them out of concern for Student's lack of attendance.

35. By email on January 6, 2016, Father informed District staff that Student was at Aurora, and that she might attend a residential treatment center facility following Aurora, insurance permitting. Father indicated that he would let District know "as soon as her situation is decided." Parents did not inform District why they placed Student at Aurora.

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36. Parents placed Student at Aurora from December 31, 2015, through January 8, 2016. However, during hearing, Student provided little evidence regarding Aurora. No witness from Aurora testified, and Student failed to call an expert witness to help explain why Student had required that facility.

37. By email on January 13, 2016, Parents requested that District convene an IEP team meeting for the purpose of transferring Student's placement to a District-funded residential treatment center.

38. On January 20, 2016, District timely responded to Parents' request for an IEP team meeting, and offered to hold a meeting on February 1, or February 4, 2016. On January 27, 2016, District offered additional dates for the IEP team meeting, and the parties agreed to February 11, 2016.

THE FEBRUARY 11, 2016 AMENDMENT IEP

39. District held an amendment IEP team meeting on February 11, 2016. The meeting was an addendum to Student's annual, May 2015, IEP team meeting. Student was discharged from Aurora on January 8, 2016, and Parents had unilaterally enrolled Student at Center for Discovery, an in-patient, residential treatment center in Whittier, California, for women and teens with eating, substance abuse, or mental health disorders. Center for Discovery did not provide an educational program and normally referred its student patients to the Whittier School District for educational services.

40. Parents attended the amendment IEP team meeting with their advocate Dr. Sara Frampton, an educational psychologist. Ms. Zuniga; Ms. Guinter; district program supervisor Tiffany Hazelwood; and Jennifer Parker, Student's American Sign Language, regular education teacher, also attended the meeting. District staff provided Parents a copy of their procedural safeguards and discussed the purpose of the meeting.

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41. Prior to the meeting, District had tried to obtain a release of information from Parents for Center for Discovery, to gather present information regarding Student's needs. Parents consented to District's authorization for release of information on January 8, 2016, but withdrew their consent for that release on January 27, 2016. As a consequence, District obtained limited information from Center for Discovery. Nonetheless, in a letter dated February 10, 2016, Center for Discovery shared with District that Student was admitted to its residential mental health unit on January 8, 2016, due to struggles with depression, suicidal ideation, and difficulties with interpersonal relationships. Additionally, Center for Discovery had diagnosed Student with major depressive disorder without psychotic features, and attention deficit hyperactivity disorder. Center for Discovery had provided Student group and individual therapy, planned on discharging her on February 14, 2016, and recommended that she be placed in a locked, residential treatment center. District IEP team members were puzzled by this information, as District staff had not observed Student demonstrate serious behaviors or suicidal ideation. Yet, District was not permitted access to Center for Discovery at that time, and was unable to discern the basis for that facility's findings.

42. The IEP team discussed an overview of Student's educational history. Student normally received average to above average grades, but sporadically received below average grades. Student had a history of minor behavior problems, but had not required a behavior intervention plan to access her education. Ms. Guinter, who had provided Student IEP counseling services during the fall 2015, had not observed any significant behavior, social, or emotional concerns. Student was polite but sometimes missed her counseling sessions to work on the school yearbook. Ms. Parker reported that Student participated in class, was bright, and had close friends. Student had difficulty turning in all of her assignments, and had earned a C+ prior to being withdrawn from Canyon Crest.

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43. Parents requested that District fund an unspecified, locked residential treatment center placement for Student beginning February 15, 2016, upon her discharge from Center for Discovery. Parents explained that Student required a locked, residential treatment center placement because Student had once stolen pills from Mother's car, had ran away from home on two occasions, and had left Canyon Crest by Uber[5] on two occasions. District staff was unaware of those behaviors, and disputed that Student had ever left the school campus without permission. There was no evidence provided during hearing that Student had abused any substance other than alcohol, or had eloped from any school or therapy location.

44. At the behest of their advocate, Parents did not inform District that Student had recently been the victim of a traumatic experience. Parents elected to not inform District because they believed that would violate Student's individual privacy rights. Consequently, they withheld information regarding the traumatic experience during the applicable time frame and during the due process hearing; with the brief exception that Student's private therapist, Nicole Beach, testified that Student had been subjected to an unspecified traumatic experience at an unspecified time.

45. District's Director of Special Education Charles Adams, and District's special education program supervisor Tiffany Hazelwood, testified during hearing. Each provided persuasive testimony that thoughtfully considered Student's needs and educational program. Up to the February 11, 2016 amendment IEP team meeting, Student had received a fully mainstreamed program in regular education classes, the least restrictive environment. Teacher and school staff had not observed Student elope, abuse alcohol, or demonstrate suicidal ideation. School psychologists Mr. Musisko and Ms. Guinter also had not observed those concerns during testing and counseling. Yet,

[5] Uber was a private transportation service.

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Parents wanted District to provide Student a residential treatment center, away from family and typical peers, based solely upon the information that they provided during the amendment IEP team meeting. District required additional information before offering that manner of placement.

46. During hearing, Mr. Adams established that school staff had legitimate concerns that removing Student from regular education to a residential treatment center, a highly restrictive placement, absent additional information, was not appropriate or lawful. Yet, the information provided by Parents and Center for Discovery raised serious concerns regarding Student's well-being and educational needs. In accord with those concerns, District offered Student two assessments: a social emotional evaluation by Ms. Guinter; and an educationally related mental health services evaluation, by Vista Hill.

47. Evidence established that District selected assessors who were qualified to perform the assessments proposed. Ms. Guinter was a school psychologist who had provided Student counseling at Canyon Crest. She received her bachelor's degree in psychology in 2001, and her master's degree in school psychology in 2007. During hearing, Ms. Guinter provided thoughtful and reliable testimony. Vista Hill was a nonpublic agency certified by the California Department of Education, which employed licensed marriage and family therapists to conduct mental health assessments. Ms. Guinter and Vista Hill each had significant experience assessing pupils like Student, who manifested social and emotional problems. District would reconsider Parents' request for a residential treatment center following Ms. Guinter and Vista Hill's assessments.

48. District offered Student the proposed assessments in two assessment plans, one each for the social-emotional assessment and the educationally related mental health services assessment. The assessment plans were in English, Parents' native language; were easy to understand; explained the types of assessments to be

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conducted; and notified Parents that no IEP would result from the assessment without the consent of the parent. Parents signed their consent to both assessment plans during the meeting. Parents signed an authorization for release of information for Aurora, but refused to sign the release for Center for Discovery.

49. While those assessments were being completed and to assist Student's transition back to Canyon Crest, District's amendment IEP team offered Student specialized academic instruction in a daily support class; group counseling, 30 minutes weekly; and educationally related mental health services individual counseling, 50 minutes weekly, delivered by a nonpublic agency. District offered those services in addition to the goals, accommodations, and services already included in the May 19, 2015 IEP. Student would be in regular classes 77 percent of the school day, and special education and counseling 23 percent of each school day. Parents did not consent to the amendment IEP offer, or to return Student back to Canyon Crest.

50. On February 15, 2016, Parents unilaterally placed Student at Sedona Sky. Parents refused to sign the authorization for release of information documents District provided them for Sedona Sky, or for any other agency. Parents believed that signing those authorizations would violate Student's privacy rights.

THE AUTHORIZATIONS FOR RELEASE OF INFORMATION

51. Throughout February, March, and April 2016, school staff, led by Ms. Hazelwood, made numerous attempts to attain Parents' consent to authorizations for release of information on the forms provided by District and Vista Hill. District staff informed Parents that the District would send its assessors to Arizona to assess Student at Sedona Sky, but that the releases were necessary for District to conduct the assessments.

52. On March 23, 2016, and April 2, 2016, Parents' then-attorney Cindy Lane sent District documents entitled "Authorization for Use or Disclosure of Health

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Information."The documents purported to provide District limited releases to access records and communicate with the private therapists at Center for Discovery and Sedona Sky. The releases placed conditions on and limited what documents could be provided to the assessors, and prohibited the disclosure of any therapy or counseling records. Ms. Lane felt it was important to protect Student's privacy and offered to review Student's records, and then produce summaries of those records for District, rather than permit District's assessors direct access to Student's records or testing. The authorizations also prohibited the release of information or records pertaining to pregnancy; contraception and abortion; sexual assault and rape services; diagnosis and/or treatment for infection, contagious, communicable, and sexually transmitted diseases; AIDS/HIV testing and/or treatment; and drug and alcohol abuse treatment. District was also barred from meeting, communicating with, or assessing Student unless Student's representative was present.

53. By email on April 15, 2016, Elizabeth Collins, a licensed marriage and family therapist employed by Vista Hill, informed District that the release provided by Parents was insufficient. She had reviewed the authorization with Vista Hill's program director and Chief Operating Officer, and Vista Hill determined that the restrictions impeded its ability to conduct a thorough mental health assessment. Vista Hill was also concerned by Parents' restriction that it could not release records to District. Given Parents' conditions, it was unethical to proceed with the assessment and Vista Hill elected to withdraw from its contract with District to assess Student.

54. Mr. Adams established that District's administrators trusted Vista Hill's judgment, and did not believe that a different assessor could thoroughly assess Student unless Parents withdrew the conditions included in their March and April authorizations. Consequently, District was unable to provide Student the educationally related mental health services assessment.

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55. Ms. Guinter similarly found Parents' authorizations to be overly prohibitive. She would be unable to select the social-emotional testing instrument of her choice, including the Behavior Assessment System for Children, because many social and emotional rating scales elicited information regarding alcohol or substance abuse, information that was barred by the authorizations. Ms. Guinter persuasively opined that a review of Center for Discovery and Sedona Sky's records, and unobstructed access to Student for observation and testing, was also necessary for her to thoroughly assess Student. Absent a thorough and careful assessment, it would not be possible to identify Student's deficits or to recommend appropriate services. Parents' conditions therefore impeded Ms. Guinter's ability to assess Student. Rather than provide Student a partial or incomplete evaluation, Ms. Guinter chose to not complete the social-emotional evaluation.

56. During hearing, Mr. Musisko persuasively corroborated Ms. Guinter and Vista Hill's concerns. He, too, found that Parents' conditions limited which testing instruments an assessor could utilize. The conditions also prevented the assessor from fulfilling his or her ethical obligation to conduct a thorough evaluation. Absent a thorough and complete evaluation, the therapist would be unable to properly diagnose Student or to offer appropriate therapy recommendations. Consequently, the conditions contained in Parents' authorizations made it impossible to conduct a complete social-emotional or mental health evaluation for Student.

57. On April 29, 2016, District sent Parents a prior written notice letter that informed them that it could not complete the social-emotional and educationally related mental health services assessments because of the conditions contained in their releases. District correctly informed Parents that those conditions invalidated Parents' consent to the assessments.

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DISTRICT'S ATTEMPTS TO HOLD AN ANNUAL IEP TEAM MEETING

58. On May 12, 18, and 27, 2016, District sent Parents notices for an annual IEP team meeting, offering various dates, in an attempt to timely schedule Student's annual IEP team meeting. Parents did not respond to those requests.

59. On May 27, 2016, District sent Parents a prior written notice letter that detailed District's attempts to hold the IEP team meeting, and offered additional dates for the meeting. District also offered to extend the February 2016 IEP offer until an IEP team meeting could be held and, given the pending summer break, offered counseling services during the extended school year. Student misconstrued the letter as an IEP offer, and mistakenly alleged that District's May 27, 2016 offer denied her a FAPE.

60. On August 31, 2016, District sent Parents another IEP meeting notice, this time for a September 6, 2016 meeting. Parents agreed to attend that meeting.

THE SEPTEMBER 6, 2016 IEP TEAM MEETING

61. District convened Student's annual IEP team meeting on September 6, 2016. Parents attended with their advocate Dr. Frampton and an attorney. Nicole Beach, a therapist from Sedona Sky, attended by telephone. Also in attendance were Ms. Zuniga; Ms. Guinter; Ms. Hazelwood; Vista Hill therapist Camille Goodin; a general education math teacher; and District's attorney. District provided Parents a copy of procedural safeguards at the beginning of the meeting.

62. The team first reviewed Student's present levels of performance. At Canyon Crest, Student was distracted in class and used her cell phone. Although Student was smart and did well when she applied herself, she inconsistently completed her assignments, which impacted her educational performance.

63. Ms. Beach was Student's primary therapist at Sedona Sky. She provided Student one hour weekly of individual counseling; one hour and 15 minutes of group

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counseling, three times weekly; and 30 to 45 minutes of parent counseling each week. Student frequently missed counseling sessions at Sedona Sky. When she did attend, she was not engaged in the therapy. Ms. Beach did not know what triggered Student's anxiety or maladaptive behaviors. Nonetheless, she reported that Student's primary problems, which included stealing, lying, peer relations, and coping skills, had improved while at Sedona Sky. Sedona Sky had diagnosed Student with attention deficit hyperactivity disorder, generalized anxiety disorder, unspecified depressive disorder, and parent/child relational problems. Student took medication daily for attention and depression.

64. Student had difficulty attending and participating in class when she first began attending Sedona Sky, and did not pass all of her spring 2016 classes. Student had shown academic improvement since then. By September 2016, Student was attending her classes and receiving average-to-above average grades in each course. Student was still on track to timely graduate.

65. Ms. Beach, Parents, and their representatives assisted District in updating Student's present levels of performance, reviewing progress towards prior goals, and developing new goals. Together, the IEP team offered Student five updated, measurable, annual goals in the areas of task completion; problem solving; study skills; organization; and anxiety management. Goal one required Student to record assignments in her agenda, and complete and turn in the assignment 90 percent of the time, measured by teacher records and observations. Goal two required Student to seek support from a case manager, therapist, or teacher, when faced with school challenges, to problem solve and follow a solution plan, 90 percent of the time in five of six trials, measured by staff observation and records. Goal three required Student to utilize specified study strategies when preparing for a test, to score at least 85 percent on tests, measured by school records. Goal four required Student to correctly place assignments in her binder,

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and eliminate clutter, with assistance, with 90 percent accuracy in six of eight trials, measured by teacher observation and records. The fifth goal required Student to name and explain three-to-five healthy coping skills to reduce stress and anxiety, measured by the school psychologist and Student's counselor.

66. During the meeting, Parents provided District four psychiatric reports for the first time: one each from Aurora and Center for Discovery, and two from Sedona Sky. However, Ms. Beach was not a licensed therapist, had not assessed Student, had not authored any of the reports, and was not qualified to interpret the reports. Each report redacted information regarding the traumatic experience so that information, and therapy pertaining to that experience, was illegible. The reports did not speak for themselves, and little information was provided to District to support those reports or describe how they had been ascertained.

67. District offered Student identical accommodations, services, and placement to those offered in the May 2015 annual IEP, as amended on February 11, 2016. Additionally, District offered Student weekly group and individual counseling during the extended school year.

68. During the meeting, District presented Parents another assessment plan, dated September 6, 2016. The assessment plan was in English; easy to understand; explained the types of assessments to be conducted; and notified Parents that no IEP would result from the assessment without the consent of the parent. Similar to the February 11, 2016 assessment plan, the updated plan proposed a social-emotional and an educationally related mental health services evaluation.

69. Parents consented to the September 6, 2016 assessment plan, but refused to sign District's authorizations for release of information that accompanied the assessment plan. Parents did not consent to the September 6, 2016 IEP.

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70. During the September 6, 2016 IEP team meeting, Student's advocate Dr. Frampton raised concerns regarding Student's auditory processing. On September 9, 2016, District sent Parents a prior written notice letter that included an updated assessment plan. The updated plan was identical to the September 6, 2016 plan, except that it added an auditory processing assessment. Included with the updated assessment plan was a notice of procedural safeguards and four authorizations for exchange of information, one each for Aurora; Center for Discovery; Sedona Sky; and the North Coastal Consortium for Special Education, District's special educational local plan area. Parents did not consent to the updated assessment plan or the authorizations.

71. Evidence established that all of the assessments proposed by District would be conducted by persons competent to conduct them. For example, a credentialed school psychologist, Ms. Guinter, would be responsible for conducting the social-emotional assessment. For the auditory processing assessment, District would utilize a speech and language pathologist. For the educationally related mental health services assessment, District no longer utilized Vista Hill. Instead, District selected a licensed psychologist, Dr. Crystal Bejarano, to conduct that assessment. Dr. Bejarano received her bachelor's degree in physical education in 1999, master's degree in school psychology in 2003, and doctorate in educational psychology in 2007. She had experience assessing pupils with special needs, and had worked for several school districts as a school psychologist, program specialist, and dispute resolution specialist.[6] Student provided no evidence that impugned the competency of District's assessors.

72. On September 22, 2016, District sent Parents another prior written notice letter. District again requested that Parents consent to the September 9, 2016

[6] Dr. Bejarano did not testify during the hearing.

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assessment plan, and its authorizations for exchange of information. Parents refused to sign the assessment plan or the authorizations, and District filed the instant matter to assess Student on October 27, 2016.

73. During hearing, District presented competent and consistent testimony from its therapists and administrators. A summation of their testimony established that District staff was familiar with Student and routinely met with her and Parents. Each witness who was familiar with the May 2015 triennial testing and IEP, including Mr. Musisko, Ms. Guinter, and Ms. Zuinga, persuasively testified that District's triennial testing, and IEP, appropriately met Student's unique needs. During the fall of 2015, school staff, including Ms. Guinter, Ms. Hazelwood, and Mr. Bess, had no reason to suspect that Student was not progressing in accord with her May 2015 IEP, or had reason to believe that another IEP team meeting was necessary at that time.

74. Similarly, each District witness who testified who was familiar with the February 11, 2016 amendment IEP, and the September 6, 2016 annual IEP, including Ms. Zuniga, Ms. Guinter, and Ms. Hazelwood, persuasively opined that those IEPs were based upon all information that was available to District and, on that basis, were appropriate to meet Student's unique academic and social-emotional needs.

THE FOUR PSYCHIATRIC REPORTS

75. Parents provided District four psychiatric reports during the September 6, 2016 IEP team meeting. Without producing any supplementary evidence to explain them, Student submitted those reports as evidence during the hearing.

76. The first report was a psychiatric evaluation and discharge summary from Aurora. The short report, dated January 7, 2016,was authored by Ivan Baroya, M.D., who did not testify during hearing, nor did any witness from Aurora. Student failed to call an expert witness to testify during hearing, and there was no evidence submitted that explained the reliability of the report in any manner. No evidence was submitted that

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described how Dr. Baroya obtained the information, including whether Dr. Baroya had assessed or even met with Student. Nor was there evidence submitted that described the assessor's experience, or how the report, and its findings, impacted Student's educational program.

77. The second report was an initial psychiatric evaluation from Center for Discovery. The four page report was authored by Jeff Litzinger, M.D., on January 10, 2016, who did not testify. The only witness from Center for Discovery was Michael Lemley, who was unfamiliar with the report and unqualified to testify in support of Dr. Litzinger's findings. There was no evidence presented showing the assessor's experience; how the data had been collected; whether it was reliable; or how the report's findings impacted Student's education.

78. The third and fourth reports were from Sedona Sky. One was a four page adolescent psychiatric evaluation authored by Tarry Wolfe, dated February 15, 2016. The other was a four page adolescent assessment compiled by Stephanie Rosebaugh, also dated February 15, 2016. Neither Ms. Wolfe nor Ms. Rosebaugh testified during the hearing, and no evidence was submitted that described the assessors' experience or qualifications. Sedona Sky witnesses Jason Metzger and Ms. Beach were not directly familiar with those reports or assessors, and were unqualified to interpret the results of psychiatric reports. No evidence was submitted showing how the reports' data had been collected, if the data was reliable, or what impact the reports had on Student's educational progress.

79. The four reports were not the type of evidence that speaks for itself. Each report required the supporting testimony of a psychiatric or psychological expert.

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Because Student failed to provide that supplementary evidence, the four reports constituted unsupported administrative hearsay and were given little weight.[7]

STUDENT'S WITNESSES

80. Student's witnesses did not contradict the evidence submitted by District. Mother and Father were diligent and loving parents. However, their testimony supported that District staff was vigilant and cooperative. A summation of Mother and Father's testimony showed that Parents and their representatives actively participated in each IEP team meeting. Outside of IEP team meetings, school staff, including Ms. Zuniga, Mr. Bess, and Ms. Hazelwood, frequently communicated with Parents and was responsive to their concerns. Teachers permitted Student to leave school early and to turn in assignments late, per Parents' requests. Parents did not request an IEP team meeting between the annual May 2015 IEP team meeting and the February 11, 2016 amendment IEP team meeting. Parents deferred to legal counsel and refused to provide information to District regarding the traumatic experience, and barred District from obtaining information regarding that trauma from the private facilities Student attended. Parents knowingly restricted District's ability to attain various records and significant information from Center for Discovery and Sedona Sky, and knowingly impeded District's ability to assess Student at Sedona Sky.

81. Student also called Michael Lemley, Jason Metzger, and Nicole Beach, to support her claims during hearing. Similarly, each witness failed to contradict the evidence submitted by District.

[7] Hearsay evidence is admissible if it supplements or explains direct evidence and can be considered reliable. (Cal. Code Regs., tit. 5, § 3082, subd.(b).)

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82. Mr. Lemley was Student's counselor at Center for Discovery. He earned his bachelor's degree in psychology in 2005, and a master's degree in social work in 2015. Mr. Lemley was not a careful witness and provided little insight regarding Student's educational needs. For example, Mr. Lemley had not reviewed Student's IEPs or educational records. Center for Discover did not provide academic services and Mr. Lemley was unfamiliar with how Student's social-emotional problems impacted her education. He was not familiar with District or the services it had offered Student, and provided no opinion as to the appropriateness of those services. Mr. Lemley testified that he had assessed Student; yet, it was later revealed that he had not assessed her. Nonetheless, Mr. Lemley opined that Student required placement at a residential treatment center because she experienced social problems, was dishonest, and because of the incident when she stole pills from Mother's car. However, Mr. Lemley failed to describe how those factors impacted Student's education, or necessitated the highly restrictive placement at a residential treatment center. Mr. Lemley failed to mention the traumatic experience during testimony, and offered no opinion whether that experience impacted Student's education. For those reasons, Mr. Lemley's testimony was not persuasive and did little to prove or disprove any of the presented issues.

83. Mr. Metzger was Sedona Sky's academic director. He earned his bachelor's degree in political science in 1993, and a master's degree in education in 2003. Sedona Sky was not certified as a non-public school, and had not received publicly funded students from California or Arizona. Mr. Metzger's brief testimony showed that Student had received passing grades at Sedona Sky, would timely graduate in May 2017, and had been accepted to various four year colleges. Mr. Metzger was not familiar with Student's IEPs, and did not provide any opinion regarding Student's social-emotional or mental health needs. Mr. Metzger failed to describe how Student's unique needs had been addressed at Sedona Sky, what those unique needs included, or why Student

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required placement at a residential treatment center. Overall, Mr. Metzger's testimony did little to support any of Student's issues.

84. Ms. Beach was Student's therapist at Sedona Sky. She earned a bachelor's degree in sociology in 2008, and a master's degree in applied sociology in 2011. Ms. Beach had provided Student individual and group counseling at Sedona Sky.

85. It was normal for Student to skip Ms. Beach's counseling sessions. As a therapist, Ms. Beach did not feel it was her responsibility to require that Student go to counseling. Although Sedona Sky was a residential treatment center, it was not a locked facility. Pupils were given the freedom to attend classes and services, and to leave the campus, at their own discretion.

86. Although Ms. Beach had been Student's therapist for over a year, she had not formally assessed Student or observed her in any class. Counseling was provided to Student outside of school hours, and Ms. Beach did not believe it was her role to observe Student during class or be familiar with her academic needs. She did not have information from Student's teachers, and was unfamiliar with how Student performed in class or among her classroom peers. Ms. Beach provided little insight regarding how Student's social and emotional problems impacted her education.

87. Ms. Beach testified that Student did not demonstrate self-harm or suicidal ideation, and was not at risk for running away from the campus, despite it not being a locked facility. A summation of Ms. Beach's testimony showed that Student was receptive to the limited counseling that she received at Sedona Sky, but still demonstrated difficulty with social relationships and honesty. Ms. Beach discussed the traumatic experience with Student during individual counseling, and was the only witness to reference that experience at hearing. Yet, Ms. Beach's description of the traumatic experience was brief. She did not explain what had happened, when it happened, or what effect it had on Student's well-being. Moreover, Ms. Beach no longer

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counseled Student regarding the traumatic experience. She testified that the experience, while stressful, did not impact Student's education. Similar to each witness who testified during hearing, Ms. Beach did little to support any of Student's claims.

88. In sum, the documentary and testimonial evidence presented during hearing failed to show that Student had been denied educational rights, or that she required placement at a residential treatment center to receive a FAPE. Consequently, Student failed to meet her burden of proof on any issue.

89. For its issue, District submitted overwhelming evidence that Student required the proposed assessments and that Parents' conditions had vitiated their consent to the assessments.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA[8]

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20U.S.C.§ 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)[9]; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living; and (2) to ensure that the

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

[9] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

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

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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 (*Mercer Island*) [In enacting the IDEA, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit," or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The Supreme Court recently clarified and expanded upon its decision in *Rowley*. In *Endrew F. v. Douglas County School District*, the court stated that the IDEA guarantees a FAPE to all students with disabilities by means of an IEP, and that the IEP is required to be reasonably calculated to enable the child to make progress appropriate in light of his or her circumstances. (*Endrew F. v. Douglas County School District* (March 22, 2017, No. 15-827) 580 U.S.____ [___ S.Ct. ___, ___ L.Ed.2d ___], 2017 WL 1066260 (*Endrew F.*).)

5. 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.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) By this standard, Student had the burden of proof for her issues, and District had the burden of proof for its issue.

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6. To assist courts and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*Mercer Island*, *supra*, 592 F.3d at p. 947.) "First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (*Rowley*, *supra*, 458 U.S. at pp. 206-207.) "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." (*Id.* at p. 207.)

7. A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or caused a deprivation of educational benefits for the child. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (hereafter *Target Range*).)

ISSUE 1: DISTRICT'S RIGHT TO REASSESS STUDENT

8. District requests an order permitting it to assess Student in the areas of social-emotional functioning, educationally related mental health services, and auditory processing, in accord with its September 9, 2016 assessment plan. Student responds that Parents' consent to the February 11, 2016, and September 6, 2016 assessment plans, and the authorizations Parents provided District in March and April 2016,were sufficient for District to complete its assessments.

9. A local educational agency must conduct a reassessment at least once every three years, unless the parent and the agency agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) The agency must also conduct a reassessment if it determines that the

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educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd.(a)(1).) Here, District last assessed Student in May 2015, Student's triennial evaluation. Therefore, District's issue pertains to a reassessment of Student.

10. If parents do not consent to a reassessment plan, the district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd.(a)(3).)

11. It is well settled that Parents who want their children to receive special education services must allow reassessment by the district, with assessors of its choice. (*Johnson v. Duneland Sch. Corp*. (7th Cir. 1996) 92 F.3d 554, 558; *Andress v. Cleveland Indep. Sch. Dist.* (5th Cir.1995) 64 F.3d 176, 178-79; *Gregory K. v. Longview Sch. Dist*. (9th Cir. 1987) 811F.2d; *Dubois v. Connecticut State Bd. of Educ*. (2d Cir. 1984) 727 F.2d 44, 48.)

Assessment Notice was Proper

12. Without an order after a due process hearing, reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain parental consent, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3),(c)(1); 34 C.F.R. § 300.304(a); Ed. Code, §§ 56321, subd. (a).) The notice consists of the proposed assessment plan, and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of the parent; explain the types of assessments to be conducted; and notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).)

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The district must give the parent at least 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd.(a).)

13. On February 11, 2016, District provided Parents two proposed assessment plans and a copy of their procedural rights, in person, during an amendment IEP team meeting. After February 11, 2016, District gave Parents more than 15 days to approve the plans. The assessment plans were in Student's and Parents' native language of English. Each adequately identified the assessments that District proposed to conduct; one identified a social emotional assessment and the other identified an educationally related mental health services assessment. The assessment plans also explained that no IEP would result from the assessments without Parents' consent.

14. On September 6, 2016, District provided Parents another proposed assessment plan and a copy of their procedural rights, in person, during an IEP team meeting. On September 9, 2016, District provided Parents an updated proposed assessment plan, notice of procedural safeguards, and four authorizations for exchange of information. The assessment plans were easy to understand and in Student's and Parents' native language of English. Each adequately identified the assessments that District proposed to conduct; the September 6, 2016 plan identified social-emotional and educationally related mental health services assessments. The September 9, 2016 plan included those assessments and added an auditory processing assessment. The assessment plans explained that no IEP would result from the assessments without Parents' consent. After September 9, 2016, District gave Parents more than 15 days to approve the plans.

15. Parents timely consented to the February 11, 2016, and September 6, 2016 assessment plans, but refused to sign the authorizations for exchange of information that accompanied each plan. Parents also refused to consent to the September 9, 2016 assessment plan or the related authorizations. The evidence established that District

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made reasonable efforts to obtain Parents' authorizations for the assessment plans, and their consent to the September 9, 2016 plan. All statutory requirements of notice were met, and the reassessment plans complied with the applicable statutes.

Reassessment of Student was Warranted

16. The circumstances warranted the reassessment of Student in all of the areas identified in the September 9, 2016 assessment plan. Student had not been assessed since May 2015, and no evidence existed that she had ever received an educationally related mental health services or auditory processing assessment. District's May 2015 assessments found that Student was appropriately placed in regular classes at Canyon Crest, a District school. However, following the May 2015 assessments, Parents removed Student from Canyon Crest and unilaterally placed her at Aurora and Center for Discovery, mental health facilities, and later at Sedona Sky, an out-of-state residential treatment center. During the February 11, 2016, and the September 6, 2016 IEP team meetings, Parents requested that District place Student in a residential treatment center. In sum, Parents requested that District remove Student from a fully mainstream educational program in regular classes with typical peers, to a highly restrictive program with no access to typical peers, because of mental health problems that had not been previously diagnosed or observed by District assessors or staff. During hearing, Student requested that District reimburse Parents for costs relating to Aurora, Center for Discovery, and Sedona Sky, and to fund the remainder of Student's high school at Sedona Sky. Student's attendance at those placements, and Parents' request for public funding, triggered District's duty to assess Student in the areas of mental health and social-emotional functioning to determine whether Student required a residential treatment center to receive a FAPE.

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17. During the September 6, 2016 IEP team meeting, Student's advocate informed District staff that auditory processing was a suspected area of deficit. Consequently, District had an obligation to assess Student in that area for a disability.

18. Student's requests for placement at a residential treatment center and for help in the area of auditory processing, were frustrated by Parents' restrictions on District's ability to access Student and to review her educational records. Without new assessments, District did not have the information it required to determine whether Student required a residential treatment center, or if she could receive a FAPE in a less restrictive environment. New assessments would have also permitted District to determine Student's present levels of academic and functional performance for the purpose of writing goals and offering services, including in the areas of mental health, social-emotional functioning, and auditory processing; or for determining an appropriate educational placement in the least restrictive environment, as required for Student's IEP. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

19. Student had complex mental health needs that may have been significantly impacted by abuse. Consequently, District required information in the areas of mental health, which included the proposed social-emotional and educationally related mental health services evaluations, to provide her a FAPE. District was obliged by law to assess her in all areas of suspected disability. (20 U.S.C § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).)

20. For the foregoing reasons, Student's educational and related service needs warranted a reassessment in the areas proposed in the September 9, 2016 assessment plan.

The Proposed Assessments would be Conducted by Competent Persons

21. Reassessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34

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C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils shall be made in accordance with Education Code section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, §§ 56322, 56324, subd. (a).)

22. All the assessments proposed by District would be conducted by persons competent to conduct them. The evidence established that each assigned assessor had the licensure and training required to conduct the assessment to which he or she was assigned. For example, the social-emotional assessment would be performed by a credentialed school psychologist; the auditory processing assessment by a speech and language pathologist; and the educationally related mental health assessment by a licensed psychologist. The qualifications of the proposed assessors complied with legal requirements and were not disputed by Student.

Parents' Conditions Invalidated their Consent to District's Assessments

23. As long as the statutory requirements for assessments are satisfied, parents may not put conditions on assessments; "selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities." (*Letter to Anonymous* (OSEP 1993) 20 IDELR 542.)

24. While Student's unique needs may have been complex, the primary legal issue at hand is not novel or complex. It is well settled that parents may not place conditions on a school district's ability to assess. Federal courts have held that a parent who insists on placing conditions on assessments may be regarded as having refused consent. In *G.J. v. Muscogee County Sch. Dist*. (M.D. Ga. 2010) 704 F.Supp.2d 1299, affd. (11th Cir. 2012) 668 F.3d 1258, for example, parents purported to agree to a reassessment. However, they attached conditions to their approval, including requiring particular assessors, meetings with parents before and after the assessments, and

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limitations on the use of the assessments. The District Court deemed this a refusal to consent, noting, "With such restrictions, Plaintiffs' purported consent is not consent at all." (*Id.*, 704 F.Supp.2d at p. 1309.)In affirming, the Eleventh Circuit found that parents' conditions "vitiated any rights the school district had under the IDEA for the reevaluation process . . . ."(*Id.*, 668 F.3d at p. 1264.)

25. Similarly, in *Student R.A. v. West Contra Costa Unified Sch. Dist*. (N.D. Cal.,Aug. 17, 2015, Case No. 14-cv-0931-PJH) 2015 WL 4914795 [nonpub. opn.] (*R.A.*), a parent approved an assessment plan on the modest condition that she be allowed to observe the assessment when conducted. The District Court found that condition vitiated the mother's consent: "[t]he request to observe the assessment amounted to the imposition of improper conditions or restrictions on the assessments, which the District had no obligation to accept or accommodate."(*Id.* at p. 3.)

26. Here, Parents refused to consent to District's September 9, 2016 assessment plan, or to the four authorizations for exchange of information included with that assessment plan. On that basis, District properly sought a Judge's order to assess Student without Parents' consent.

27. Nonetheless, Student asserts that Parents' consent to the February 11, 2016, and the September 6, 2016, assessment plans were sufficient for District to conduct the social emotional and mental health assessments. Student argues that the conditions Parents placed on those assessments did not invalidate their consent. However, the conditions Parents placed on District's ability to assess were far more cumbersome than the modest condition at issue in *R.A.*, where the mother simply wanted to observe the assessment. (*Ibid*) Here, Parents' documents entitled "Authorization for Use or Disclosure of Health Information," which purported to authorize District's assessments, significantly limited District's access to educational records, to Student's private therapists, and to Student. In addition, the releases

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prohibited the disclosure of any therapy or counseling records and prohibited the release of information or records pertaining to pregnancy; contraception and abortion; sexual assault and rape services; diagnosis and/or treatment for infection, contagious, communicable and sexually transmitted diseases; AIDS/HIV testing and/or treatment; and drug and alcohol abuse treatment. This final category was especially relevant to Student, whose Parents had reported to District was participating in an after school counseling program for alcohol abuse. (See, *Ashland School Dist. v. Parents of Student E. H.* (9th Cir. 2009) 587 F. 3d 1175, school district not required to reimburse parents when student's placement at the residential placement based on problems at home rather than at school.) Those conditions unlawfully limited the testing instruments the assessor could select for the assessment. Finally, District was barred from meeting, communicating, or assessing Student unless Student's representative was present. By the standard established in *R.A.*, Parents' conditions extended far past what was reasonable or permissible.

28. Evidence overwhelming showed that those conditions restricted District's ability to competently assess Student. Ms. Collins, the licensed marriage and family therapist employed by Vista Hill, informed District that the release provided by Parents was insufficient and impeded her ability to conduct a thorough mental health assessment. Given Parents' conditions, it was unethical to proceed with the educationally related mental health assessment and Vista Hill elected to withdraw from its contract with District to assess Student. As established by Mr. Adams, District's administrators trusted Vista Hill's opinion, and did not believe that a different assessor could thoroughly assess Student unless Parents withdrew their conditions. Consequently, District was unable to provide Student the educationally related mental health services assessment. This remained true when District selected Dr. Bejarano to conduct the assessment, as she, too, would be bound to Parents' conditions.

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29. School psychologists Ms. Guinter and Mr. Musisko similarly found Parents' conditions to be overly burdensome. The conditions prohibited the assessor from selecting the social-emotional testing instrument of her choice. Testing that was barred by Parents' conditions included the commonly used Behavior Assessment System for Children, because the rating scales elicited information regarding alcohol or substance abuse -- information that was prohibited by the releases. In addition, Ms. Guinter and Mr. Musisko credibly opined that a review of Center for Discovery and Sedona Sky's records, and unobstructed access to Student for observation and testing, was necessary to thoroughly assess Student. Parents' conditions prevented the assessor from fulfilling his or her ethical obligation to conduct a thorough evaluation. Absent a thorough and complete evaluation, the assessor would be unable to properly diagnose Student or to offer appropriate therapy recommendations. Consequently, the conditions contained in Parents' releases made it impossible to conduct a complete social-emotional or mental health evaluation for Student. Rather than provide Student a partial or incomplete evaluation, District correctly elected to not complete the assessments.

30. On April 29, 2016, District sent Parents a prior written notice letter that properly informed them that it was unable to complete the social-emotional and educationally related mental health services assessments because of the conditions contained in their releases. District correctly informed Parents that those conditions invalidated Parents' consent to the assessments. Again, on September 9 and 22, 2016, District requested that Parents consent to its assessment plans and the related authorizations, which were necessary to conduct the assessments. Parents refused District's requests, thereby preventing the assessments from being performed.

31. During hearing, Student proffered no evidence that contradicted District's evidence, or to support the belief that District could have thoroughly assessed Student while complying with the conditions Parents imposed. Rather, Student, individually,

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argues that she is entitled to withhold certain information regarding her mental health from her parents, pursuant to the Health Insurance Portability and Accountability Act, a 1996 Federal law that restricts access to individuals' private medical information, and the Family Educational Rights and Privacy Act, a Federal law that protects the privacy of student education records. This argument raises a conflict between Student, individually as an unconserved minor, and Parents, who are seeking public funding for a private school based upon Student's mental health needs. It is not within the jurisdiction of OAH to determine or enforce Student's individual rights under HIPAA or FERPA. However, it is well settled under the IDEA that the conditions imposed by Parents were not lawful and invalidated their consent to District's reassessment.

32. Because Parents lacked the lawful ability to place conditions on District's reassessment, and because those conditions impeded the reassessment, District correctly treated Parents' conditions as a refusal to consent to reassessment. (*G.J. v. Muscogee County Sch. Dist.*, *supra*, 704 F.Supp.2d 1299*; Student R.A. v. West Contra Costa Unified Sch. Dist.*, *supra*, 2015 WL 4914795.)

33. Based upon the foregoing, a preponderance of evidence showed that reassessment was warranted, District's proposed reassessment met statutory requirements, and Parents refused to consent to reassessment. Accordingly, District may reassess Student in accord with its September 9, 2016 assessment plan.

ISSUE 2: DISTRICT'S FAILURE TO HOLD IEP TEAM MEETINGS AND TO ASSESS STUDENT

34. Student complains that she was denied a FAPE because District failed to timely hold IEP team meetings, and because it failed to assess her in the areas of social emotional functioning and educationally related mental health services.

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District's Failure to Hold an IEP Team Meeting

35. Student first asserts that District should have held an IEP team meeting sometime between October 2015 and February 2016.

36. A district must have an IEP in effect for each child with exceptional needs at the beginning of each school year. (20 U.S.C. § 1414(d) (2)(A); 34 C.F.R. § 300.323(a); Ed. Code, § 56344, sub. (b).)

37. There is no dispute that District timely convened Student's annual IEP team meeting on May 19, 2015. That IEP was in effect at the beginning of the 2015-2016 school years. Student's next annual IEP was not warranted until May 2016. Student's claim therefore pertains to District's failure to convene an addendum IEP team meeting between October 2015 and the February 11, 2016 amendment IEP team meeting. Student presented little evidence to support her claim that she required an IEP team meeting during that time.

38. For example, Student's witnesses Mr. Lemley, Mr. Metzger, and Ms. Beach were not familiar with the May 2015 IEP, or the placement and services provided by District during the fall 2015. None offered any opinion regarding the appropriateness of Student's educational program.

39. Contrary to Student's claim, testimony provided by Parents and school staff indicated that the May 2015 IEP addressed the very problems that Student demonstrated when she attended Canyon Crest following that IEP. Student had demonstrated moderate behavior problems prior to the May 2015 IEP. Student sometimes made poor choices, had drunk on one occasion outside of school, had inappropriate social interactions, and had difficulty completing assignments. The May 2015 IEP team had comprehensively assessed Student, including in the area of behavior; reviewed school and Parent concerns during the IEP team meeting; and agreed to goals and accommodations to address those problems. Student failed to present

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documentary or testimonial evidence to show that that the May 2015 triennial IEP, which was implemented during the fall 2015, was inappropriate to meet Student's educational needs.

40. Shortly after Student's triennial IEP and assessments, she began 11th grade at Canyon Crest. As established by Mr. Bess, Student was polite, well-behaved, and elicited little comments from teachers or staff. She had one unexcused absence, five excused absences, and three behavior incidents during the fall of 2015. The behavior incidents were moderate and similar to past problems that involved poor choices and inappropriate social interactions. Student's behaviors during the fall of 2015 did not impede her access to education. Mr. Bess quickly and carefully addressed each behavior incident and no additional concerns arose while Student attended Canyon Crest.

41. Student's five excused absences were due to illness and resulted in Student missing assignments. However, Ms. Zuniga worked diligently with Student and her teachers to help Student complete the missed assignments, and Student was able to pass each class, albeit with one below average grade. Evidence failed to establish that an IEP team meeting was required due to Student's grades or academic needs.

42. At Parents' request, Mr. Bess and Ms. Zuniga met privately with Parents on November 13, 2015, to discuss Student participating in an after school counseling program for alcohol abuse. Student had not drank alcohol at school, but had engaged in at least one drinking incident outside of school. Parents desired to keep that information private from other school staff, including Student's IEP team. There was no evidence presented that Student had abused alcohol or substances at school, or that such abuse had interfered with her educational program. It was not necessary to convene an IEP team meeting to address that concern, and none was requested.

43. Mr. Bess and Ms. Zuniga diligently monitored Student's educational progress and each communicated frequently with Parents, Student, and her teachers

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throughout the fall of 2015. Yet, no other behavior or academic concerns were brought to their attention. Student was smart, polite, and well behaved at school. However, as reflected in the May 2015 IEP, she occasionally made poor choices, drank alcohol on one occasion outside of school, had periodic social issues, and had difficulty completing assignments, which impacted her educational performance. Each school district witness that was familiar with Student, including school psychologists Ms. Guinter and Mr. Musisko, persuasively testified that the May 2015 IEP appropriately addressed those concerns. That testimony went uncontroverted. Evidence provided at hearing did not show a discrepancy in Student's conduct following the May 2015 IEP, which would have necessitated an IEP team meeting in the fall of 2015. Parents did not request an IEP team meeting and no evidence was presented that showed Student required an IEP team meeting during that time to receive a FAPE.

44. District was on winter break from December 21, 2015, through January 1, 2016. Parents placed Student at Aurora over the winter break, beginning on December 31, 2015. Parents did not notify District of this placement until January 6, 2016, after Ms. Zuniga contacted them out of concern for Student's lack of school attendance.

45. By email on January 6, 2016, Father informed District staff that Student was at Aurora and, on January 13, 2016, Parents requested that District convene an IEP team meeting.

46. On January 20, 2016, District timely responded to Parents' request for an IEP team meeting, and offered to hold a meeting on various dates. On January 27, 2016, District offered additional dates for the IEP team meeting, and the parties agreed to February 11, 2016. Accordingly, District timely convened an amendment IEP team meeting for Student on February 11, 2016, which Parents and their representative attended.

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47. Based on the foregoing, a preponderance of evidence shows that District did not deny Student educational rights by failing to timely hold an amendment IEP team meeting.

District's Failure to Assess and to Hold an IEP Team Meeting to Review those Assessments

48. Student next complains that she was denied a FAPE because District failed to assess her in the areas of educationally related mental health services and social-emotional functioning; and by failing to convene an IEP team meeting within 60 days to review those assessments. As found herein, there is no dispute that Student required a mental health and social-emotional reassessment, as District determined that the educational or related service needs of Student warranted a reassessment. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).)

49. As analyzed above, District properly provided Parents with proposed reassessment plans on February 11, 2016, September 6, 2016, and September 9, 2016. (Ed. Code, § 56321, subd. (a).) Parents signed their consent to the February 11, 2016, and September 6, 2016, proposed reassessment plans. Student's claims regard District's failure to assess Student per those assessment plans, and to hold an IEP team meeting to review the assessments.

50. A school district is required to complete an assessment or reassessment and hold an IEP team meeting to review the results within 60 days of receiving parental consent to assess, exclusive of school vacations in excess of five schooldays and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

51. District does not dispute that it did not assess Student per the February 11, 2016 and September 6, 2016 assessment plans, or hold an IEP team

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meeting within 60 days of Parents signing those plans. However, as found herein, Parents' refusal to sign the authorizations for release of information provided by District, and the conditions they placed in the authorizations they provided District in March and April 2016, invalidated their consent to the assessment plans. District therefore was not lawfully permitted to assess Student without Parents' consent or a Judge's order. As a result of Parents' conduct, District was unable to conduct the reassessments or to hold an IEP team meeting within 60 days to review the assessments.

52. For the foregoing reasons, Student failed to prove by a preponderance of the evidence that District denied her a FAPE by failing to convene IEP team meetings or by failing to assess her.

ISSUE THREE: THE FEBRUARY, MAY AND SEPTEMBER 2016 IEP OFFERS

53. Student alleges that District's offers of February 11, 2016, May 27, 2016, and September 6, 2016, denied Student a FAPE by failing to develop accurate present levels of performance; offer appropriate goals; offer an appropriate transition plan; and offer an appropriate placement.

54. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v.State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) School districts need to "offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (*Endrew F.*, *supra*, 580 U.S.____ [___ S.Ct. ___, ___ L.Ed.2d ___ (2017 WL 1066260.)

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The Present Levels of Performance and Goals

55. Student alleged that the goals contained in her IEPs were defective because they were not based upon accurate present levels of performance. District disputed this claim and asserted that the goals it developed were based on accurate present levels of performance and adequately addressed Student's needs. In the alternative, District correctly argues that if the present levels of performance or goals were inadequate, that was because Parents did not permit District to reassess Student and failed to provide it access to Student's present educational records.

56. In developing the IEP, the IEP team is mandated to consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).)

57. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within

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a year. (Ed. Code, § 56344.) By this standard, Student's September 6, 2016 annual IEP was required to contain a statement of measurable annual goals.

58. Student mistakenly alleges that District denied her a FAPE by failing to offer goals based upon accurate present levels of performance in the February 11, 2016 amendment IEP, and District's May 27, 2016 letter. District was not obligated to offer goals in the February 11, 2016 IEP because that was an amendment IEP to the May 19, 2015 annual IEP, which is not in dispute. District had no obligation to offer new goals within an amendment IEP. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

59. Student misconstrues District's May 27, 2016 prior written notice letter as an IEP offer. Rather, District's letter informed Parents of its many attempts to schedule Student's annual IEP team meeting; offered additional dates for the annual IEP team meeting; and offered to extend Student's last annual IEP, the May 2015IEP, as amended on February 11, 2016, until the annual IEP team meeting could be held. Consequently, District had no obligation to offer Student new goals in the May 27, 2016 letter.

60. Evidence demonstrated that the September 6, 2016 annual IEP offered Student appropriate goals based upon accurate present levels of performance. For example, Ms. Guinter, Ms. Zuniga, and Ms. Hazelwood established that District offered adequate goals based upon the information that was available to it at the time the goals were proposed. The September 6, 2016 IEP team meeting included Parents, their advocate, their attorney, and Student's private therapist, Ms. Beach. Also in attendance were Ms. Zuniga; Ms. Guinter; Ms. Hazelwood; a general education math teacher; and District's attorney. Ms. Beach, Parents, and their representatives assisted District staff in updating Student's present levels of performance, reviewing progress towards Student's prior annual goals, and in developing new goals in identified areas of need. Together, the IEP team offered Student five updated, measurable, annual goals in each area of

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identified need, including task completion; problem solving; study skills; organization; and anxiety management. Each goal properly identified teachers, school psychologist, counselors, and/or other school staff to assist Student in attaining the goal and to measure progress.

61. Although District had not been permitted to assess Student, and had not observed her since December 2015, that did not mean the present levels of performance or resulting goals were defective. Evidence showed that the goals offered were measurable, and were annual goals in areas of deficit that had been identified by Parents, representatives, and private therapist, along with qualified District staff. During hearing, Student's witnesses failed to challenge the adequacy of those goals.

62. Overall, there was no evidence that the present levels of performance or goals were inappropriate. Had Student permitted District to provide those goals, it could have ensured tracking and progress in Student's areas of need.

63. In light of the lack of evidence that Student submitted to support this claim, she failed to prove that District denied her a FAPE by failing to offer accurate present levels of performance or appropriate goals.

The Transition Services

64. Student complains that her IEPs denied her a FAPE because they failed to provide adequate related services to assist her transition from the private mental health facility, or residential treatment center, back to Canyon Crest. During the hearing, Student failed to elicit any testimony or provide any documentary evidence indicating that Student was denied a FAPE due to a lack of transition services.

65. As previously noted in Legal Conclusion 2, an IEP must include related services that are required to assist a child in benefiting from special education. Related services are:

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> transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) . . . .

(20 U.S.C. § 1401(26)(A).) State law adopts this definition of related services, which are called "designated instruction and services."(Ed. Code, § 56363, subd. (a).) The regulation that defines "mental health services" for the purpose of Chapter 26.5 includes psychotherapy. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

66. The February 11, 2016 amendment IEP offered Student services while the social-emotional and mental health evaluations were being conducted. Those increased services were offered specifically to assist Student's transition back to Canyon Crest from her private placement. The transition services included daily specialized academic instruction in a support class; group counseling, 30 minutes weekly; and educationally related mental health service individual counseling, 50 minutes weekly, delivered by a nonpublic agency. Those services were offered in addition to the goals, accommodations, and services already included in the May 19, 2015 IEP, Student's triennial IEP. Student would have been in regular classes 77 percent of the school day, and special education and counseling 23 percent of each school day; an increase in

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services from the 99 percent of the school day in regular classes offered in the May 2015 IEP.

67. On May 27, 2016, District offered by letter to extend the foregoing services. District offered similar services during the September 6, 2016 IEP. All of the offers incorporated and bolstered the May 19, 2015 IEP, which was based on the most recent testing available to District. In light of the information that was available to District, District witnesses, including Ms. Guinter, Mr. Musisko, and Ms. Zuniga, persuasively opined that the District had offered Student a FAPE.

68. In contrast to District witnesses who were knowledgeable of Student's educational programs, none of Student's private providers, including Ms. Beach, Mr. Lemley, and Mr. Metzger, were familiar with Student's IEPs. None provided any testimony which disputed those offers or the testimony of District's witnesses. Moreover, Student's witnesses failed to describe what District should have been offered to successfully transition back to Canyon Crest.

69. Given the lack of evidence provided during hearing, Student failed to meet her burden to prove by a preponderance of the evidence that she was denied a FAPE because District failed to offer her appropriate transition services.

The IEP Placement

70. Lastly, Student complains that she was denied a FAPE because District did not offer her a residential treatment center in the offers of February 11, 2016, May 27, 2016, and September 6, 2016.

71. Student's last effective IEP provided placement in regular education. With accommodations and supports, Student was able to access and benefit from her educational program in regular education classes. Nonetheless, Student argues that as of February 11, 2016, she required a residential treatment center to receive a FAPE. To move Student from a regular education program to a private residential treatment

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center, as requested by Parents, would remove Student from a mainstream program with typical peers, to a highly restrictive placement with no access to typically developing peers. Applicable statues required District to consider less restrictive environments before offering Student placement in a residential treatment center.

72. Both federal and state law require a school district to provide special education 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); Ed. Code, § 56040.1.) "Least restrictive environment" reflects the preference by Congress that an educational agency educates a child with a disability in a regular classroom with their typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (*Rachel H.*)) This means that a school district must educate a special needs pupil with nondisabled peers "to the maximum extent appropriate," and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii); Ed. Code, § 56040.1.)

73. In deciding how to mainstream to the maximum extent appropriate, an educational agency must consider a continuum of alternative placements which proceed from" instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions." (34 C.F.R. § 300.115(b)(1); see also Ed. Code § 56342, subd. (b).) In addition, an educational agency must attempt to make a placement decision that "is as close as possible to the child's home" and "the school he or she would attend if nondisabled." (34 C.F.R. § 300.116(b)(3), (c); see also Ed. Code, § 56342, subd. (b).) In this regard, case law recognizes that, in meeting the least restrictive environment preference, there is a presumption in favor of placement in

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public schools. (*Evans v.District No. 17* (8th Cir. 1988) 841 F.2d 824, 832; *T.F. v. Special School Dist. St. Louis County* (8th Cir. 2006) 449 F.3d 816, 820.)

74. In light of this preference for the least restrictive environment, and to determine whether a child can be placed outside a general education setting, the Ninth Circuit Court of Appeals adopted a balancing test in *Rachel H.* that requires the consideration of four factors: (1) the educational benefits of placement full time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Rachel H., supra*, 14. F.3d 1398 at p. 1403.)

75. Here, there is no genuine dispute that Student can participate full-time in a general education classroom. Each witness who testified agreed that Student's cognitive and academic skills were average-to-above average and could be accommodated in a general education setting. Student had received passing grades at Canyon Crest, an advanced general education school. Student's most recent testing, the 2015 triennial assessments, revealed that she had average-to-superior academic skills. Moreover, while at Canyon Crest, Student demonstrated only moderate behavior difficulty, which had neither impacted her ability to access her education nor disrupted the education of her peers. Consequently, the evidence presented did not show that Student required a more restrictive placement to receive a FAPE.

76. Given the restrictiveness of a residential treatment center, there are also specific factors that must be considered when determining whether to place a special education student away from her family and peers.

77. 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.) The test for determining whether a residential treatment center placement provides FAPE is whether the placement is necessary to

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provide special education and related services to meet the student's educational needs. (*Ashland School District v. Parents of RJ* (D. Or. 2008) 585 F. Supp.2d 1208, 1231, affirmed, (9th Cir. 2009) 588 F.3d 1004.)The analysis for determining whether a residential treatment center placement is appropriate hinges on whether the placement is necessary for educational purposes. (*Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.3d 635, 643.) The Ninth Circuit Court of Appeals identified three possible tests for determining when a school district is responsible for the cost of a residential placement: (1) when the placement is "supportive" of the child's education; (2) when medical, social or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement primarily aids the student to benefit from special education. (*Ibid.*)By this standard, Student had the burden of proving that a residential treatment center was necessary for educational purposes.

78. Student wholly failed to meet that burden. Student failed to submit testimony or documentary evidence that showed she required a residential placement for educational purposes. She did not offer an educational assessment, psycho-educational report, or testimony from a psychologist or education specialist to support her case. The witnesses she did call, including Mr. Lemley, Ms. Beach and Mr. Metzger, did not testify that Student required a residential treatment center for educational purposes. Mr. Lemley and Ms. Beach were not experienced in the area of education, had not assessed Student, and were not familiar with her educational program. Notably, Ms. Beach, who had not observed Student once in class while at Sedona Sky, opined that Student's mental health problems did not impact her education. Although Mr. Metzger had experience in the area of education, he had not assessed Student; was not familiar with her IEPs or the programs that had been offered by District; and he offered no

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opinion regarding whether Student required a residential treatment center for educational purposes.

79. Mother and Father made clear that their preference for Student was at a locked or secluded residential treatment center. However, starting with *Rowley*, courts have held that an educational agency is not held to a standard of parental preference. (*Rowley*, *supra*, 458 U.S. at p. 197, fn. 21 [the IDEA does not require a potential-maximizing education]; see also *Blackmon v. Spring field R-XII School Dist.* (8th Cir. 1999) 198 F.3d 648, 658.) An appropriate education under the IDEA need not be "the *only* appropriate choice, or the choice of certain selected experts, or the child's parents' *first* choice, or even the best choice." (*G.D. v. Westmoreland School Dist.* (1st Cir. 1999) 930 F.2d 942, 948 (italics in text).) In short,

> (T)he assistance that the IDEA mandates is limited in scope. The Act does not require that States do whatever is necessary to ensure that all students achieve a particular standardized level of ability and knowledge. Rather, it much more modestly calls for the creation of individualized programs reasonably calculated to enable the student to make some progress towards the goals with that program.

(*Thompson R2-J School v. Luke P.* (10th Cir. 2008) 540 F.3d 1143, 1155.)

80. Here, while a comprehensive residential program from a private agency funded by District is undeniably attractive to Parents, the proper focus is on District's offered educational plan. Student failed to show that District's educational plan was not reasonably calculated to confer Student with educational benefit in the least restrictive environment.(*Rowley*, *supra*, 458 U.S. at pp. 206-207.)

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81. Based upon a preponderance of evidence presented at hearing, Student failed to meet her burden of showing that District denied her a FAPE by failing to offer placement at a residential treatment center.

82. Consequently, Student failed to meet her burden of proof for any of her claims.

ORDER

1. District is entitled to reassess Student according to its September 9, 2016 reassessment plan, without Parents' consent.

2. District shall notify Parents, within 10 business days of the date of this Decision, of the dates, times, and places Parents are to present Student for reassessment, and Parents shall reasonably cooperate in presenting her for assessment on those dates, times, and places.

3. Parents shall timely complete and return any documents reasonably requested by District as a part of the reassessments.

4. If Parents do not cooperate with the reassessments as specified above, District will not be obligated to provide special education and related services to Student until such time as Parents comply with this Order.

5. Student's claims 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. District prevailed on each issue that was heard and decided.

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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: April 3, 2017

/s/

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings

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