

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016110441

DECISION

On November 2, 2016, Student filed a due process hearing request (complaint), OAH Case No. 2016110441, with the Office of Administrative Hearings, State of California, naming Capistrano Unified School District. On December 14, 2016, OAH granted a joint request to continue the due process hearing. Administrative Law Judge Judith L. Pasewark heard this matter in San Juan Capistrano, California on March 28, 29, and 30, 2017.

Timothy A. Adams and Phillip VanAllsburg, Attorneys at Law, represented Student. Mother and Father attended the hearing each day on behalf of Student. Student did not attend the hearing.

Ernest B. Bell, Attorney at Law, represented District. Sara Young, Executive Director of Special Education, Allison Jacobs, Compliance Specialist, and Kimberly Gaither, Legal Specialist, attended at various times on behalf of District.

At the parties' request, OAH continued the hearing for the parties to file written closing arguments. The record closed on April 17, 2017, upon receipt of closing briefs from the parties.

ISSUES¹

- 1) Did District fail to fulfill its child find obligation for the 2014-2015 and 2015-2016 school years?
- 2) Did District fail to convene an individualized education program team meeting for Student and provide an offer of free appropriate public education for the 2014-2015 and 2015-2016 school years?
- 3) Did District fail to provide an appropriate offer of FAPE at the June 6, 2016 IEP team meeting?

SUMMARY OF DECISION

Student qualified for special education and related services in October 2013. In January 2014, Parents unilaterally removed Student from her District placement and placed her in private schools for the 2014-2015 and 2015-2016 school years. Student contended that after January 2014, District failed in its child find obligations and, or in the alternative, District failed to convene IEP meetings and make Student an offer of FAPE until March 2016. District contended it had no child find obligation to Student due to her placement in private schools outside the jurisdictional boundaries of District. District further contended that, as Parents had unilaterally placed Student in private schools, Student was not entitled to an IEP or an offer of FAPE.

This decision holds that although District has no obligation under child find to search and seek within private schools outside its boundaries, it nevertheless maintained its child find obligation to the residents within its boundaries, regardless of where their

¹ The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issue so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir 2010) 626 F.3d 431, 442-443.)

children attended school. District was aware Student resided within District and had qualified for special education and related services, yet made no attempt to fulfill its child find duties during the statutory period of November 2014 through March 2016, resulting in a denial of educational benefit to Student.

District was not obligated to continue providing special education and related services to Student once she was unilaterally placed in private school; Parents' unilateral placement of Student in private school ended District's obligation to continue to convene IEP team meetings and make offers of FAPE. Further, District cannot have failed to fulfill its child find obligations and failed to convene an IEP team meeting for Student to provide her with an offer of FAPE for the same period of time. As District failed in its child find obligation, further discussion of any obligation to provide Student with an IEP for the 2014-2015 and 2015-2016 school years is moot.²

District convened an IEP team meeting on June 10, 2016 pursuant to Parents' request. Parents did not consent to this IEP, primarily based upon District's offer of placement in District's Bridges program. The IEP fully discussed all aspects of Student's unique needs based upon comprehensive assessments, observations of Student at her private placement, and input from Student's teachers, Parents and assessors. The IEP team crafted goals and accommodations which comported with her unique needs. Placement in Bridges was designed to support Student's significant social/emotional and behavioral needs; all goals could be implemented at Bridges. The June 10, 2016 IEP constituted a FAPE in the least restrictive environment for Student.

² While Student's contentions regarding District's failure to provide prior written notice to Parents pursuant to 34 C.F.R. § 300.503 were well taken, the triggering event occurred in January 2014, prior to the statute of limitations determined in this case.

FACTUAL FINDINGS

BACKGROUND

1. Student was 17 years old at the time of the hearing and resided with her Parents within the boundaries of District. Student attended the Waldorf School, a private school, throughout elementary school. She enrolled in District's Shorecliff Middle School for the 2013-2014 school year.

2. In 2013, District assessed Student and found her eligible for special education and related services under the categories of traumatic brain injury, specific learning disability, and other health impairment.

3. After the first semester at Shorecliff, Student returned to private placement at Waldorf in January 2014. Subsequently, for the 2015-2016 school year, Student enrolled in the New Vista School, also a private school, which she attended at the time of the hearing.

4. Student was adopted by Parents in 2001. Student received a traumatic brain injury due to abuse from her biological parents. As a result of the brain injuries, Student was developmentally behind her peers. As reported by Mother, there was little research and information available regarding traumatic brain injury. A brain injury is different for each person. For Student, the brain injury manifested in cognitive delay, impulse control deficits and an inability to self-soothe.

5. Mother described Student as very verbal, and competent with spoken language. If stressed, however, Student could not express herself. Student was an auditory learner, and learned best if given stories. When stressed, Student immediately went into "fight or flight" mode, and could become violent. Although currently Student was in the 11th grade at the time of the hearing, Student was very immature, approximately on a fourth or fifth grade level.

6. Student also exhibited sensory integration deficits, and experienced sensory overload. She shut down when overwhelmed. Student took multiple medications. She received private cognitive therapy and 15 hours per week of in-home applied behavioral analysis (ABA) therapy from the Regional Center. Despite this additional assistance, Mother reported Student still had maladaptive behaviors every day, and became violent several times each month.

7. Student attended elementary school at Waldorf, where Mother was a teacher. Waldorf presented an alternate education methodology that was play-based. Students remained with the same teacher and same classmates through the eighth grade. Waldorf provided Student with a calm and structured environment, which emphasized directed play. Waldorf was generally a positive experience for Student, but she still had problems; the familiar environment made it easier for her to adjust. By third grade, it was apparent Student was academically behind her peers. By fifth grade, Student was also behind in social relationships.

STATUTE OF LIMITATIONS

8. In August 2013, Student enrolled in District for eighth grade. Mother provided District with significant information about Student, including her medical history and related information. Mother met with District staff and requested an assessment for special education and related services. District provided an assessment plan, dated August 30, 2013. Mother signed the assessment plan.

9. On October 25, 2013, District held Student's initial IEP team meeting and found Student eligible for special education and related services. The IEP team meeting took two days. Father attended both days, while Mother attended only the first day in person. District offered Student placement in a general education classroom with three specialized academic instruction classes per day. Father consented to the IEP. The IEP document indicated District provided Father with a copy of Parental Safeguards, which

Father acknowledged with his initials. At hearing, Father presented as an articulate and smart man. Father, however, did not recall receiving the Parental Safeguards in 2013, and testified that he did not read what he was signing because he did not have his reading glasses. Nevertheless, Father signed and initialed the IEP document as he understood Student could not begin special education services until the IEP was signed.

10. Cory Quinn, District's education specialist and case carrier at Shorecliff, prepared Student's assessment plan in 2013. Mr. Quinn provided the Parental Safeguards to Parents with the assessment plan as part of the usual course of business. Mr. Quinn also attended the October 2013 IEP team meeting, where Father was again provided the Parental Safeguards. Mr. Quinn recalled Parents did not report any errors or disagreements with the IEP. No one pressured Father to sign the IEP. Father signed, and the IEP was implemented.

11. Parents found Student's IEP of little help. As described by Mother, "Student went downhill fast." She became stressed and could not do the school work. She cried, yelled, and acted out. She did not want to go to school. Over time, Student's behaviors got worse, resulting in Student's failure to attend school for days, if not weeks, at a time.³ Student perceived no peer acceptance, and did not want to be "different" as a special education student.

12. Mother expressed little understanding of the special education process. She trusted District personnel as educational experts, and sought help from Heather Richardson, District school psychologist. Mother recalled that she was informed District did not have an appropriate program for Student, and it was suggested Student should

³ Father also provided extensive testimony regarding Student's difficulties attending school at Shorecliff. This testimony has been omitted as Student's attendance in 2013 occurred prior to the relevant statute of limitations as determined in this case.

return to Waldorf. Mother had no recollection of Ms. Richardson discussing the possibility of another IEP team meeting or suggesting an alternate placement for Student. Mother interpreted this discussion with Ms. Richardson as a statement that District, as professionals in special education, had done all they could for Student.

13. Ms. Richardson specifically recalled conferring with Mother prior to Student's removal from Shorecliff. She recalled going over Student's assessment testing and explaining Student's scores to Mother. Mother brought up the subject of returning to Waldorf. Ms. Richardson specifically recalled telling Mother District could convene a new IEP team meeting to discuss Student's difficulties; there were many options to discuss with the IEP team. Ms. Richardson emphatically testified she did not tell Mother to send Student back to Waldorf. Ms. Richardson's testimony was credible and professional.

14. In late January 2014, Parents disenrolled Student from District. They did not communicate with District or express any disagreement with Student's IEP to which they had previously consented. Nor did Parents send District a written request for tuition and educational reimbursement. At hearing, both parents emphasized they were unaware they could request changes in Student's IEP or that they could seek reimbursement for Student's private placement. Father recalled being desperate for help at that time. He viewed Student's reenrollment at Waldorf as stop-gap; merely a safe place to get Student back in a school setting until Parents could find an appropriate placement for her. Father stressed that had he understood he had other options with District, such as another IEP team meeting or reimbursement, he would have sought them at the time.

PRIVATE PLACEMENT

15. In February 2014, Student returned to Waldorf where she completed the eighth grade. She remained at Waldorf through the 2014-2015 school year. Student also remained a Regional Center consumer and continued to receive home ABA services.

16. During summer 2015, Student transitioned to New Vista for the 2015-2016 school year. Parents did not contact District or request reimbursement for tuition and educational expenses.

17. Juhi Sharma, director of student services at New Vista, described the school. At the time Student enrolled in 2015, New Vista was a private, special education school, primarily serving students with specific learning disabilities and high-functioning autism. As of the time of hearing, New Vista had applied for state certification as a non-public school. With a total population of 69 to 72 students, New Vista maintained small classes, and provided research-based social skills and academic programs, community-based instruction, adult transition programs, and job skills training. Students could work on completing requirements for graduating with a high school diploma, and New Vista offered a high school diploma attainable with additional time after the 12th grade. New Vista handled maladaptive behaviors with behavior support plans, small classrooms, and classroom structure. Classes contained no more than 12 students, with aides in each classroom. New Vista utilized the same educational standards as other local school districts, so students could transition back into public schools.

18. Mother reported Student's transformation at New Vista was amazing. Student went to school every day. She made friends and participated in extracurricular activities. Communication between New Vista staff and Parents, and with Student's ABA provider, was smooth and cooperative. The school day was long, 8:30 a.m. to 3:00 p.m., with after school elective programs until 5:00 p.m. Student was never left alone, and

staff maintained high expectations for Student. Student was working on graduating with a high school diploma.

19. Academically, Student still struggled at New Vista. Ms. Sharma indicated that when Student first attended New Vista, it was like triage, as Student did not participate in class, and had learned nothing at Waldorf. As a result, Student's initial progress was misleading. Student's academics did not increase dramatically, as her initial baselines were so low. Mother contended, however, at the time of the hearing, Student was reading at a ninth grade level (an increase from the fourth grade level when she entered New Vista). On the other hand, Mother acknowledged Student was currently in the tenth grade and still working on the fifth grade curriculum. Further, Student still exhibited maladaptive behaviors when stressed. She had a behavior intervention plan at New Vista, but no other support services, such as ABA or counseling.

20. Despite her difficulties, Student had high expectations for herself. She was determined to graduate from high school with a diploma, and attend college. During the 2015-2016 school year, 10th grade at New Vista, Parents were informed that Student required additional time beyond the 12th grade to obtain a regular high school diploma. Student reported in a letter she adamantly desired to remain at New Vista. To obtain the additional educational time, New Vista staff suggested Parents reinstate Student's special education rights, and obtain an IEP from District. In response, Parents requested an IEP from District. On March 24, 2016, District provided Parents with an assessment plan and a copy of the Parental Safeguards. Parents consented to the assessments, and provided District with Student's updated history, educational records, and private assessments.

ASSESSMENTS

21. David L. Franklin, Psy.D., a neuropsychologist in the Department of Psychiatry and Neuroscience at University of California Riverside School of Medicine, completed a neuropsychological examination of Student and prepared a written report dated June 9, 2015. This examination was completed in anticipation of Student's enrollment in New Vista.

22. Dr. Franklin's examination was comprehensive and included Student's medical, psychiatric, and educational histories, a mental status examination, interviews with Student and Parents, as well as standardized tests of intellectual functioning, memory, attention and processing speed, executive functioning, behavior, and personality assessment. Student's cognitive abilities scored in the average range. Dr. Franklin found Student presented with strengths in both verbal and visual memory. She was cognitively flexible when asked to move from one task to the next or when provided enough time to solve problems. On the other hand, Student exhibited significant weaknesses in processing speeds and skills which involved a visual working memory. Student also had difficulties when asked to sustain her attention and concentration. She tended to make more mistakes when tasks were mundane. When provided time to solve information that required reasoning and planning of complex information, Student demonstrated the skills necessary to solve complex tasks. However, she required more time to complete these tasks. When asked to read aloud quickly and without mistakes, Student scored in the mildly impaired ranges which suggested that her reading rate may have been slower than her peers.

23. Dr. Franklin found Student to have attention deficit/hyperactivity disorder, combined type, however cognitive impairments or deficits due to traumatic brain injury could not be ruled out. Student's impairments in processing speed and sustained attention could have been affected by many illnesses, both psychiatric and medical. A

pervasive developmental disorder could not be ruled out as well as speech which was mildly delayed, and Student continued to have difficulties informing substantial relationships with her peers. In addition to these concerns, Student continued to engage in stereotypic behaviors, for which she was receiving ABA therapy, from which she benefitted. Dr. Franklin noted Student had the cognitive capacity to live independently, as many of her executive functioning skills remain intact. Her behaviors however, remained a concern and would dictate her ability to live independently.

25. Dr. Franklin made no educational recommendations or suggestions based upon personal expertise as an educator. Rather his recommendations noted that "as suggested by Parents," Student would benefit from a very structured environment at home and at school. Dr. Franklin believed New Vista, which was suggested by Parents, was a reasonable school choice as Student would benefit from smaller classroom size and a decrease in stimulation. Student also required structure and standardization of her tasks at home as well as an understanding of expectations from her family. Student required consistent and constant feedback regarding her behaviors as to what is and is not appropriate. Dr. Franklin noted that a standardized routine would benefit Student greatly. Dr. Franklin recommended Student should continue with ABA therapy as "the family has found this therapy to be beneficial."

DISTRICT'S 2016 ASSESSMENTS

26. In spring 2016, at Parents' request, District conducted what was described as a *triennial* assessment. Loren Thurston, the school psychologist who conducted the psycho educational assessment, became aware of Student's 2013 IEP during her records review for the 2016 assessments. She opined that District did not call for an IEP team meeting prior to the 2016 assessments, because Student had an intervening private placement between January 2014 and February 2016. As a result, Dr. Thurston treated the 2016 assessments as an overdue triennial assessment.

27. Dr. Thurston held a Psy.D with an emphasis in school psychology, in addition to an M.A. in education, M.A. in psychology with an emphasis in marriage and family therapy, and a B.A. in psychology. Her work experience included being a school psychologist, and a clinical social worker in the University of California, San Diego and San Diego State University departments of psychiatry. The comprehensive assessment report prepared for the June 2016 IEP team meeting consisted of 57 pages. The assessments included a discussion of eligibility criteria, review of evaluation procedures, background information, Student's developmental/medical history including medications, Student's educational history, Dr. Franklin's 2015 neuropsychological assessment results, 2013 District assessment results, current standardized testing, observation of Student in various settings including New Vista, and a mental health examination. Parents raised no issues regarding the validity of the assessments or the findings of District's assessment team.

Observations of Student

28. Dr. Thurston observed Student in her language arts classroom at New Vista. During group instruction, Student let out loud yawns and sighs. A few minutes after being given individualized instructions, Student put her head down on her desk until prompted to return to task. Student shouted out several times about different questions. She then lay down on the floor until prompted to get up. When frustrated, Student threw her hands in the air and slammed them back down on her desk. After the teacher again returned to her, Student went to the computer station and selected a desk without a chair. She then walked across the room carrying a chair above her head. While working on the computer, Student appeared very fidgety and told an aide "she felt like an idiot."

29. During the achievement testing, Student demonstrated typical conversational proficiency. She was attentive to task, but appeared worried or tense.

Nevertheless, she generally persisted with difficult tasks. Similarly, during the psycho educational testing, Student responded appropriately, and expressed her needs and wants without hesitation. She appeared to understand everything being asked of her, and did not need directions repeated. During the speech and language assessment, Student spontaneously engaged in appropriate, reciprocal conversation. She worked hard, asked for clarification when needed, and was not observed to require additional processing time to complete tasks.

30. During the mental health examination, Student was oriented and alert; her thought process appeared clear, coherent, and goal oriented. The content of her thought was based in reality and on topic. No psychotic features were observed and Student did not present with any disruption in awareness. Her thought pattern was linear, logical, and had organizational flow. Student's speech was clear, spontaneous, and expansive. Her attention and concentration appeared to be intact, however during unstructured time Student was easily distracted by external stimuli even in the one-to-one testing environment. Student did not appear anxious or depressed during the assessment, and indicated she was "doing well." She acknowledged earlier episodes of cutting, which were previously reported to her therapist and Parents.

Results of Testing

31. District administered the Wechsler Adult Intelligence Scale, Fourth Edition, which assessed Student's intelligence, and measured verbal comprehension, perceptual reasoning, working memory and processing speed, to determine a full scale intelligence quotient. While Student's composite score was average, her subtest scores ranged from high average to low average.

32. District administered the Woodcock Johnson IV Tests of Achievement, which measured Student's academic achievement. Both Student's broad reading and

broad math skills were in the low range. Student's broad written language skills were in the very low range.

33. District administered the Test of Informational Processing Skills to measure how well Student processed information presented visually and auditorally. Memory was assessed. Performance on this assessment related to executive function, working memory, auditory and visual processing, and learning, retaining, organizing, and using new information. Student scored in the average range on audio processing and word fluency, above average in visual processing, and well above average on delayed recall. Student exhibited a significant difference between her visual, auditory, and word fluency orally and word fluency written. Overall, Student displayed no impairment in visual or auditory processing.

34. District administered the Developmental Test of Visual-Motor Integration, Sixth Edition, which assessed how well Student integrated or coordinated her visual perceptual and fine motor skills. Student scored within average range for visual motor integration, visual perception, and motor coordination, which included the ability to complete tasks that required finger and hand movements.

35. District administered the Behavior Assessment System for Children-III, which consisted of behavior rating scales, completed by Parents and Student's teachers. Student also self-reported. The scales indicated possibly clinically significant behavioral difficulties and maladjustment. Student rated herself in the clinically significant range on the attention problems and inattention hyperactivity scales. She also rated herself in the at-risk range on the a typicality, social stress, somatization, hyperactivity, interpersonal relations, and self-reliance scales.

36. Mother rated Student as clinically significant in all areas, except on the conduct problems, withdrawal, adaptability, social skills and leadership skills scales, on which she rated Student in the high-risk range.

37. Five of Student's teachers at New Vista completed the ratings scales. On the hyperactivity scales, two teachers rated Student in the average range, three in the high-risk range. On the aggression scale, two teachers rated Student in the at-risk range, three in the clinically significant range. On the conduct problems scale, four teachers rated Student in the at-risk range, one in the average range. On the externalizing problems scale, four teachers rated Student in the high-risk range, and one in the clinically significant range. All five teachers rated Student in the clinically significant range on the depression and behavior symptoms scales. On the somatization scale, two teachers rated Student in the average range, two in the at-risk range, and one in the clinically significant range. On the internalizing problems and attention problem scales, three teachers rated Student in the high-risk range, and two in the clinically significant range. On the learning problems, school problems, and withdrawal scales, three teachers rated Student in the clinically significant range, two in the at-risk range. On the atypicality scale, two teachers rated Student in the at-risk range, two in the clinically significant range, and one in the average range. On the adaptability scale, two teachers rated Student in the clinically significant range, and three in the at-risk range. On the social skills scale, four teachers rated Student in the at-risk range, and one in the clinically significant range. On the leadership scale, four teachers rated Student in the at-risk range, one in the average range. On the study skills and adaptive skills scales, four teachers rated Student in the at-risk range, one in the clinically significant range. On the functional communications skills scale, two teachers rated Student in the at-risk range and three in the average range.

38. District administered the Connors-3, Short Form, which was used to characterize patterns of behavior, taking into account home, social, and school setting. The Connors-3, a ratings scale, was given to Student, her teachers at New Vista, and Parents. Student rated herself in the very elevated range on all scales, except family

relations, which she rated in the average range. Mother rated Student in the very elevated range on all assessment scales, but her responses were viewed with caution due to a negative impression response style. One of Student's teachers rated her in the elevated range on the peer relations scale, and in the very elevated range on all other scales. One of Student's teachers rated her in the average range on all scales, with the exception of a very elevated range score on the learning problems and executive function scales. Three of Student's teachers rated her in the very elevated range on the inattention, learning problems/executive functioning, and defiance/aggression scales. The peer relations scale was in the elevated scale. Another teacher rated Student in the very elevated range on the inattention, learning problems/executive functioning, and defiance/aggression scales, and rated peer relations in the elevated range. This teacher rated all other scales in the average range.

39. District administered the Beck Youth Inventories, Second Edition, a ratings scale given to Student to self-report in the areas of behaviors. Student rated herself in the much lower than average range on self-concept. She rated herself in the mildly elevated range on the anxiety scale, and in the moderately elevated range on the depression, anger, and disruptive behavior scales.

40. District administered the Kovacs' Children's Depression Inventory, Second Edition, to assess possible depressive symptoms. The ratings scales, given to Student, Mother, and Student's teachers, were designed to identify emotional problems, such as moodiness, loneliness, low self-esteem, and functional problems, such as worsening school performance, difficulty interacting with peers, and impaired capacity to be cooperative. Student rated herself in the elevated range. Mother rated Student in the very elevated range on all scales. One of Student's teachers rated her in the elevated range overall, and in the very elevated range on the functional problems scale. Three more of Student's teachers rated her in the very elevated range overall. Two of Student's

teachers rated her in the very elevated range on all scales. Student's total scores indicated a very elevated severity of depressive symptoms.

41. District administered the Reynolds Adolescent Depression Scale, Second Edition, which assessed the severity of Student's depressive symptomatology. For many adolescents, mild to moderate levels of depression may cause significant impaired functioning in school and daily activities.⁴ Student rated herself in the normal range on the dysphoric mood, anhedonia/negative, negative self-evaluation, and depression total scales. She rated herself in the moderate clinical depression range on the somatic complaints scale.

42. District administered the Scales for Assessing Emotional Disturbance, Second Edition, which was designed to assist in understanding the emotional and behavioral disorders of students who may meet the educational criteria for a student with an emotional disturbance disability. Areas rated included problems with school related tasks, difficulties in establishing and maintaining relationships, aggressive and disruptive behaviors, negative moods, and levels of anxiety and physical discomfort. Mother rated Student in the not indicative of emotional disturbance range on the inappropriate behaviors and social maladjustment scales; she rated all other scales in the indicative or highly indicative of emotional disturbance ranges. One of Student's teachers rated Student in the indicative of emotional disturbance range on the inability to learn scale, and rated Student not indicative of emotional disturbance on all other scales. One teacher rated Student in the indicative range on the inability to learn and inappropriate behavior scales, and in the highly indicative range for emotional disturbance on all other scales, except for the unhappiness and social maladjustment

⁴ Kessler & Walters, 1998, Lewinsohn, Hops, et al., as cited in assessment report p. 32.

scales. Another teacher rated Student in the indicative of emotional disturbance range in all scales, except social maladjustment, which was rated not indicative of emotional disturbance.

43. District administered the Autism Spectrum Ratings Scale, which was designed to measure behaviors that are associated with autism spectrum disorders in children and youths. The scales included areas of socialization, communication, unusual behaviors, self-regulation, atypical language, sensory sensitivity, attention, and behavioral rigidity. Mother rated Student in the average range on the social/communication scale. She rated all other areas in the slightly elevated to very elevated range. One of Student's teachers rated her in the average range on social emotional reciprocity, atypical language, and stereotypy; all other areas were rated in the slightly elevated to very elevated range. Another teacher rated Student in the low range on the atypical language scale, average in stereotypy, and in the slightly elevated to elevated range on all other scales. Similarly, another teacher rated Student in the slightly elevated to very elevated range on all scales, except social/emotional reciprocity, atypical language, and stereotypy.

44. District administered the Scales of Independent Behavior-Revised, which measured Student's overall adaptive behavior based on a sampling of four different areas of adaptive functioning: motor skills, social interaction and communication skills, personal living skills, and community living skills. According to Mother's ratings, Student's overall measure of adaptive skills and broad independence was comparable to that of the average individual at eight years, one month of age. She rated Student's functional independence as limited to very limited. Mother's ratings found Student to exhibit her greatest strengths in motor skills, her greatest weaknesses in community living skills. Overall, based upon Mother's scores, Student demonstrated moderately serious problem behaviors, including serious internalized maladaptive behaviors and

moderately serious asocial maladaptive behaviors. Student required frequent support, much more than others her age. One of Student's teacher's found Student's broad independence comparable to that of the average individual at 13 years, one month of age; another at 14 years, one month. Both teachers rated Student's functional independence as limited to age appropriate. Overall, the teachers' scores were similar to Mother's, but indicated Student would need limited support, somewhat more than her peers, primarily due to her problem behaviors, including offensive and uncooperative behaviors, aggression, and disruptive behaviors.

45. District administered the Clinical Evaluation of Language Fundamentals, Fifth Edition, to measure Student's receptive and expressive language abilities. Student scored in the average to high average range on each subtest. Student did not exhibit a language disorder.

JUNE 6, 2016 IEP

46. District held a self-described *triennial*/IEP team meeting for Student on June 3, 2016, to review Student's recent assessments, re-determine Student's eligibility for special education and related services, and develop and provide her IEP. Parents and their attorney attended the IEP team meeting, along with a District education specialist, administrator, speech and language therapist, general education teacher, school psychologist, school nurse, and program specialist. Student's teachers at New Vista attended the IEP team meeting by telephone. All statutorily necessary parties were present.

Determination of Eligibility

47. The IEP team determined Student's primary eligibility for special education and related services was due to her traumatic brain injury, which impaired her in all areas of her functioning, including cognition, language, memory, attention, reasoning,

abstract thinking, judgment, problem-solving, sensory perception, motor abilities, psychosocial behavior, physical functions, information processing, and speech; each of these impaired areas sometimes adversely affected her educational performance. The IEP team also determined secondary areas of eligibility in autism, emotional disturbance, and other health impairment, which were co-morbidly exhibited by components of Student's brain injuries, primarily in the areas of behaviors, peer relationships, major depressive disorder, impulsivity, and inattention. Parents did not contest the IEP team's determination of eligibility.

Present Levels of Performance

48. Student's teachers at New Vista provided input regarding Student's present levels of performance. Ms. Heinawen, reported Student was punctual in her school attendance. Student exhibited good behavior, but extreme moods. She required prompts from aides to finish homework, which was often not done, and worked in another room with the aide to finish assignments. Ms. Heinawen found Student's social skills above those of her New Vista peers, most of whom were on the autism spectrum. In class, Student received supports of 1) a point system; 2) a planner binder; 3) small class size; and 4) mandatory social clubs at breaks and lunch.

49. Ms. Quigley, Student's math teacher, reported Student was working on the fifth grade math curriculum. Student learned quickly when appropriately supported. Student's overall math scores were passing, with a few low test grades when she was having a bad day, or was not paying attention. Ms. Quigley also reported that with respect to Student's mood swings, it was hard to get Student focused on work if she had already shut down. Student exhibited oppositional defiance at times, and required a lot of one-to-one assistance in class. In group lessons, Student got lost and hid under the radar.

50. Mr. Bowman, Student's directed history teacher, reported Student did well on tests and with some critical thinking. Student had a difficult time writing and with multiple-step reading. Mr. Bowman provided lots of support and the assignments were modeled and then geared towards each student. Behaviorally, if Student was having a good day, she interacted well. On a bad day, however, Student stopped working and put her head down. Mr. Bowman also observed oppositional defiance at times.

51. Ms. Glass, Student's science teacher, reported that Student could get an 'A' if she reviewed material right before a test; if she did not have time to study, Student got an 'F'. Student completed one or two homework assignments out of five, and was on task two out of five times per hour if she was interested in an assignment. Student exhibited a hard time paying attention in class. Ms. Glass also observed oppositional defiance from Student. As an example, if Student came to class neutral or happy, she was "okay" for the rest of the class; if Student was upset or unhappy, she remained defiant throughout the class time. Ms. Glass also reported she traditionally had between eight to 10 students in class, with one floating aide.

52. Mr. Timmons, Student's language arts teacher, reported Student was reading at a fourth grade level. Her decoding skills were at a seventh grade level, while her reading comprehension was at a 12th grade level. Student earned a 'D' in his class, primarily based on behavior and lack of attention. Student did not complete her work. She required a lot of prompting and interventions. Student fluctuated between interactions with her peers. She could be very rude and dismissive, and tended to be in a bad mood three to four days a week. She was capable of reaching out to her peers, depending on her mood. Generally, however, she was very disrespectful to teachers and stuck out her tongue, muttered under her breath, and used foul language towards teachers. Student challenged teachers intellectually, and was very tuned into what was going on. However, when encouraged to express her ideas in writing, she shut down.

53. Juhi Sharma, director of student services at New Vista, reported on Student's behavior. On a positive note, Student made connections with two other girls on campus, with whom she interacted both in and out of school. On the other hand, Student was called into the office once to twice a week for flipping students off or calling others bad names. At hearing, Ms. Sharma opined that Student's behaviors were usually connected to her struggles with academics. When the work appeared too hard, Student felt lost, and Student acted out as task avoidance. Student's behaviors continued; at the time of the hearing Student had been suspended twice while at New Vista, and continued to elope when angry.

Development of Goals

54. The IEP team developed 12 goals, based upon assessments, observations, work samples, and information provided by Student's teachers at New Vista.

55. Student scored 77 (low) in broad math on the Woodcock-Johnson IV Tests of Achievement, and she needed to work on mathematical solving procedures. According to Student's teacher, Ms. Quigley, Student experienced increasing success, but still struggled with complex concepts and fractions. Student's math fluency was also very low, and interfered with her math confidence and operational accuracy and efficiency. In response, the IEP team created a fractions goal which sought to have Student add, subtract, multiply, and divide 12 fractions. A systems of equations goal was created to improve Student's ability to solve equations using graphing, substitution, and/or elimination.

56. Although Student had very strong verbal expression abilities, her written expression abilities remained a weakness; her written work was simplistic and incomplete. The IEP team expressed concern that Student would not progress if she continued to refuse to write down her ideas. The IEP team sought to increase Student's written expression by creating a goal intended to improve her broad written language.

The written expression goal was for Student to use descriptors, such as adjectives and adverbs, correct capitalization, spelling, and correct punctuation when completing writing assignments answering a specific prompt in five-to-seven sentences.

57. Student needed to improve her broad reading skills, comprehension, reading fluency, and letter word identification. The IEP team created a reading comprehension goal for Student to read classroom text and answer questions about key details in the text with the support of illustrations. A reading fluency goal was crafted to have Student accurately read unfamiliar classroom passages.

58. Student's teachers and Parents described Student's difficulties remaining focused and completing assignments. The IEP team created a study goal to improve Student's ability to organize her thoughts and studies with decreasing assistance and prompting. The work completion goal was for Student to complete and turn in classwork and homework assignments with decreasing assistance. An attention goal was created to address Student's inattention and need for multiple prompts, and to develop Student's ability to remain on task on directed activities, increasing the time to 45 minutes.

59. Student exhibited task avoidance and refusal to participate by shutting down, or putting her head on her desk. The IEP team developed a behavior goal to decrease Student's avoidance of non-preferred activities. Student also exhibited difficulty interacting with her peers or in group activities. The IEP team developed another behavior goal to assist Student in identifying social behaviors, and to have her think about how she would respond in social situations and compare how her perceptions matched socially appropriate responses.

60. Student was consistently described as excessively moody. The IEP team created a goal to develop coping strategies, designed to assist Student in reducing her anxiety and emotions to a more tolerable level.

61. Student's education specialist maintained responsibility for all of Student's goals; however, Student's behavior goals would also primarily be addressed by District's intervention specialist and school psychologist. Dr. Thurston, who helped draft the organization and behavioral goals, emphasized that these goals would be implemented by the intervention specialist and school psychologist.

62. Kimberly Stanga, District's education specialist, also attended the June 2016 IEP team meeting. Ms. Stanga held a masters of arts in education, as well as a mild/moderate special education teaching credential. Ms. Stanga developed Student's academic goals. She believed the goals, as a whole, met Student's needs. The information provided by Student's teachers at New Vista comported with District's assessment results. Based upon the combined information, Student was expected to meet the goals with support at District's Bridges program.

63 The Bridges program was a highly structured therapeutic program for students who had difficulties functioning on a comprehensive campus. It utilized scientifically-based positive reinforcement, standard curriculum and electives, tailored to meet students' unique needs and interests. There were 10-16 students in the program, contained in two classrooms. The classes were taught by two credentialed teachers, one of whom possessed a special education credential. A school psychologist and marriage and family therapist were also on campus. Staff was experienced with traumatic brain injuries. Bridges was designed to assist students become more engaged and academically successful. Most Bridges students were on diploma track. Technology was utilized and embedded in the program. Bridges contained a social skills component with a weekly group session to promote social interaction, facilitated by a District intervention specialist. Community based instruction was also built into the program on a minor level, intended to teach students independent living skills and how to interact in the community.

64. Student had average cognitive abilities, but did not complete work. The therapeutic aspects of Bridges would address the emotional aspects of Student's task avoidance. Having an intervention therapist to assist Student access the curriculum by helping her cope was a huge advantage over other District programs.

65. Mother thought the goals supported all of Student's needs. As described by Mother at hearing, the goals were "wonderful," but "challenging." She wanted to believe the goals were possible for Student to achieve, but was concerned they unrealistically aimed too high.

66. Ms. Sharma testified as an educational expert for Student. Ms. Sharma was an education specialist who held a masters of arts in special education, and a bachelor's of science in education. She was credentialed as both a mild/moderate and moderate/severe special education teacher. She also had experience with intensive behavioral instruction. She reviewed each of the proposed goals. Generally, she found each of the goals to be appropriate, however they could not be implemented without constant prompting and/or aide support. Although Ms. Sharma reviewed the June 2016 IEP, she did not review Student's prior assessments from District or Waldorf. She was unfamiliar with Bridges, its program, supports available there, and staff qualifications for implementing the IEP. For example, Ms. Sharma found fault with the social behavior and expression goals as there appeared to be no social skills class at Bridges. She was unaware that social skills were embedded in the daily classroom structure at Bridges and were overseen by the school psychologist and intervention specialist. Nevertheless, without knowing more, Ms. Sharma thought Bridges was an inappropriate placement for Student. Based upon her observations at New Vista, Student would not do the work without a one-to-one aide, and District had not offered a one-to-one aide in the IEP.

67. Katherine Kalsow testified as an expert witness for Student. Ms. Kalsow was a registered behavior technician and exam eligible for certification as a board

certified behavior analyst. She also held a moderate/severe special education teaching credential. Ms. Kalsow was at the time of the hearing a consulting supervisor for ABEDI, Inc., which provided Student's in-home ABA behavioral services, through the Regional Center. Ms. Kalsow worked with Student since December 2015, and implemented her in-home behavior plan approximately eight hours per week. Ms. Kalsow was a reluctant witness who was uncomfortable answering questions outside her areas of expertise. She acknowledged that her limited environment in the home with Student was different from that of school. Ms. Kalsow did not observe Student in the classroom, was unfamiliar with both New Vista and Bridges, did not attend IEP team meetings, and was unfamiliar with current special education programs.

68. While Ms. Kalsow could not appropriately address the school program, she did present useful information regarding Student's behaviors and brain injury. Student lived in the moment and had difficulty understanding consequences. With traumatic brain injuries generally, things do not come naturally for the person. Student needed to work on the individual steps of doing things. Student required consistency in any program; she needed schedules and expectations set out for each day. Without opining about their educational impact, Ms. Kalsow generally thought the June 2016 IEP behavior-related goals were appropriate, if Student was provided consistency and support. Student could work on any of the goals if implemented with consistency and clear expectations. Ms. Kalsow's reservations were not related to the goals themselves, but rather expressed an uncertainty as to whether Student could attain complete independence. She suggested that support should start as one-to-one and fade as Student became proficient with the expectations of her. Further, Student needed a behavior plan for socially significant behaviors. She still had tantrums and needed support to get to school, even at New Vista. In spite of making progress, Student still needed more work on behaviors, including compliance, verbal aggression and attention

seeking. Ms. Kalsow acknowledged it had been necessary to physically restrain Student six times since 2016.

Accommodations

69. The IEP team created accommodations for Student to support her special needs. These included 1) preferential seating; 2) additional time to turn in assignments; 3) repetition and clarity in directions; 4) provision of class notes; 5) additional time to study prior to tests; 6) additional time for tests; 7) verbal response to testing and assignments; 8) testing in small group setting; 9) morning check in; 10) use of calculator; and 11) breaks as need with designated staff member. Each of the accommodations supported the proposed goals and Student's needs. Parents did not contest the proposed accommodations.

Transition Plan

70. Because Student was 17 years old, the IEP team created the required individualized transition plan for her. Student expressed a desire to attend college. She enjoyed art and wanted a career in computer design. Student also worked in retail as a volunteer at Marshalls. The transition plan noted Student remained on track for a regular high school diploma. The IEP goals supported Student's post-secondary education and employment goals, and transition activities were created to enable Student to obtain her post-secondary goals. Parents did not contest Student's individualized transition plan.

Offer of Placement in the Least Restrictive Environment

71. The IEP team discussed a continuum of possible placements for Student. Initially, the IEP team discussed a general education placement with supports on a comprehensive high school campus. Parents adamantly expressed their concerns that

Student could not function on a large high school campus, and instead required a smaller, more restrictive educational environment. In response to Parents' input, District discussed an alternate placement in a smaller, more restrictive placement at Bridges.

72. Joseph Jones, District's program specialist, described Bridges to the June 2016 IEP team. Mr. Jones was a licensed marriage and family therapist, and held a clear pupil personnel services credential in school psychology, a master's of science in clinical psychology, and a bachelor of arts in psychology. Although Mr. Jones had not met Student, he was familiar with her educational history and assessments. Based upon Parents' concerns regarding placement of Student on a comprehensive high school campus, as well as Parents' input regarding goals and Student's present levels of performance, Mr. Jones thought placement at Bridges was appropriate for Student. Student required additional academic support, which could be provided by qualified staff at Bridges. Student required licensed and professional people to work with her to help create a "tool box" of emotional/behavioral supports. These focused, therapeutic intervention techniques utilized at Bridges were above and beyond those skills generally utilized in a mild/moderate special education program. Mr. Jones did not expect a special education teacher to have the needed expertise required for the counseling and intervention techniques utilized at Bridges. Instead, Student would benefit from working on her goals with the intervention specialist and through counseling with the school psychologist and therapist.

73. While there was no behavior plan in the June IEP, Mr. Jones noted that the proposed behavior goals were the first tier behavior plan for Bridges. Routines and schedules were utilized to assist students in learning to manage their own behavior and academic progress. Social skills development was embedded into the daily structure. Both of the classrooms utilized positive feedback, and each was rich in reinforcement for pro-social behaviors. It was generally opined that Bridges would provide Student with

academic challenges in a nurturing, safe, and supportive environment. Further, as Student gained confidence and progressed, additional electives, such as art classes, were available on the nearby high school campus for Student to utilize when she was ready. As a result, District offered Student placement at Bridges. Parents did not suggest or request any other placements.

74. Dr. Thurston reinforced Mr. Jones's opinion. The goals in the IEP met Student's needs and could be implemented at Bridges where Student would receive therapeutic support, embedded in a small, structured setting which would meet her social/emotional needs. Bridges could have provided Student with a safe place, calming areas, and a go-to person to assist her emotional needs, through a positive behavior intervention support plan (Tier 1), which was in place. As Student progressed, Tier 2 would address group norms, safety, and social skills in a group setting; Tier 3 would address individual needs and individual problems. Dr. Thurston noted that during her observation at New Vista, nothing much was done when Student became frustrated and non-compliant. Staff at Bridges could have immediately addressed Student's emotional needs in class. Further, her social/emotional needs were significant and required a psychologist or interventionist support to allow Student to achieve academically.

75. Ms. Stanga also thought Bridges was the appropriate placement for Student. Bridges would have provided Student peer interaction with other high school-aged Students. Bridges provided schedules and expectations for the entire school day. It provided positive intervention support. Technology was embedded in the program. Bridges addressed independent living skills; community based instruction was embedded. Social skills and interaction with others was a daily part of the classroom program.

District's Offer of FAPE

76. Upon completion of the IEP team meeting, District offered Student placement in Bridges, which included a full day of specialized academic instruction in a small classroom of eight to ten students. District offered individual counseling for 45 minutes per week to support Student's emotional and behavioral needs, which would be provided by a school psychologist and intervention specialist. The 12 goals crafted by the IEP team could have been implemented at Bridges. The proposed accommodations supported the 12 goals and Student's unique needs. The required individualized transition plan incorporated the 12 goals, and developed a means for Student to explore her post-secondary desires to attend college and develop a career in computer design. Parents did not consent to placement at Bridges, but agreed to visit the campus. Although Mother testified she was generally pleased with the IEP, except for placement, Parents did not agree to implementation of any portion of the IEP. At the end of the IEP team meeting, Parents' attorney notified District that Parents reserved their rights to privately place Student and seek reimbursement.

77. Parents observed Bridges. Mother found Bridges to be extremely small, consisting of only two classrooms, with four to five students in each class. She viewed the other students as more mature than Student. Academics were being done independently on computers, which she thought was undesirable for an auditory learner like Student. Mother felt the teacher did not understand ABA, and no ABA services were offered in the IEP.⁵ Further, there was no arts program available at Bridges. The crux of Mother's objection to Bridges was her fear she would never be able to get Student to

⁵ While Mother believed New Vista incorporated skills from Student's home ABA program, New Vista did not provide Student ABA services either.

physically attend Bridges. She believed Student would not attend class at Bridges, just as she had not attended class at Shorecliff.

78. Father concurred with Mother's opinion of Bridges. Additionally, he felt District members of the IEP team did not understand Student. To Father, Bridges contained no social skills program, and he was concerned about the maturity level of the other students. Bridges had no art program, nor did the IEP contain art therapy. He also recalled his earlier difficulties getting Student to attend Shorecliff. Most importantly to Father, Student wanted to remain at New Vista where she finally fit in and "was finally able to chase her dreams."

79. On June 8, 2016, Parents' attorney notified District in writing that Parents did not believe the June 6, 2016 IEP offered Student a FAPE, and formally notified District that Parents would privately place Student and seek reimbursement for her placement, services, and costs of transportation.

80. On June 16, 2016, District provided Parents with a prior written notice, which restated its offer as contained in the June 2016 IEP, with some additional description of the Bridges program, as well as corrections to the IEP, including the offer of transportation. The prior written notice also offered another IEP team meeting to further discuss District's offer of placement and services. Instead, Parents again enrolled Student at New Vista for the 2016-2017 school year.

81. Ms. Sharma testified regarding itemized financial costs for attending New Vista. For the 2014-2015 and 2015-2016 school years, New Vista charged an application fee of \$125.00. Tuition for each school year was \$26,000.00. School lunches cost \$6.50 per day. Uniforms cost \$300.00. School event fees, depending upon participation, were between \$100-\$250.00 per year. Summer school for 2016 cost \$1,650.00, and would be the same for 2017. Student did not receive tuition support from New Vista. Parents

provided no proof of payment of any of these expenses. Father transported Student to New Vista, which was a 30 mile round-trip from Student's residence.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁶

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq; 34 C.F.R. §300.1 (2006)⁷ et seq.; Ed. Code, § 56000 et seq.; Cal Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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

⁶ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁷ All subsequent references to the Code of Federal Regulations are to the 2006 version.

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).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

4. In *Endrew F. v. Douglas County School District* (2017) 580 U.S. ___ [137 S.Ct. 988], the Court reconsidered the meaning of the phrase “some educational benefit” for a child not being educated in a general education classroom. The court rejected the contention by the school district that the IDEA was satisfied by a program providing “merely more than *de minimis*” progress, and parents’ contention that school district’s must provide an education that is substantially equal to one afforded to children without disabilities. Instead, “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.*, 580 U.S. ___, 137 S. Ct. at p. 1001.) The Court retained its earlier holding in *Rowley* that any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. While *Endrew F.* does not require an IEP to maximize educational benefit, it does require that “a student’s educational program be appropriately ambitious in light of his

circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” (*Id.*, 580 U.S.____, 137 S. Ct. at p. 1000.) In so clarifying “some educational benefit,” however, the Court stated that it would not attempt to elaborate on what appropriate progress will look like from case to case. “It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Id.*, 580 U.S.____, 137 S. Ct. at p. 1001.) *Andrew* does not create a new legal standard for what constitutes a FAPE, but is a clarification of *Rowley*. (*K.M. v. Tehachapi Unified School Dist.* (E.D. Cal. Apr. 5, 2017, 1:15-cv-001835 LJO JLT) 2017 WL 1348807, **16-18.)

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); 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 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, Student had the burden of proof on the issues they presented.

STATUTE OF LIMITATIONS

6. The statute of limitations for special education due process claims requires a party to file a request for a due process hearing within two years from the date the party knew or had reason to know of the facts underlying the basis for the request. (Ed. Code, § 56505, subd. (f); 20 U.S.C. § 1415(f)(3)(C).) The statute does not apply to claims filed by a parent who was prevented from requesting the due process hearing due to

either of the following: (1) specific misrepresentation by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) withholding of information by the local educational agency from the parent that was required to be provided to the parent. (Ed. Code, § 56505, subd. (I); 20 U.S.C. 1415 (f)(3)(D).)

7. Recently the Ninth Circuit considered the application of the IDEA's statute of limitations as a question of first impression, based upon the "knew or should have known" standard versus the seemingly contradictory language in federal special education statutes describing the two year trigger as either (1) when parent knew or should have known of his claim (20 U.S.C. § 1415 (f)(3)(C)) or (2) two years from the date of the filing of his complaint (20 U.S.C § 1415(f)(3)(A)-(C). The Court concluded that Congress did not intend a strict rule. (*Avila v. Spokane School District 81* (9th Cir. 2017) 852.F. 3d 936.) Nothing in the federal statutes prevents states from adopting their own statutes of limitations,⁸ as did California in adopting Education Code, section 56505(I).⁹ The Ninth Circuit has interpreted California's statute of limitations in *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 859, to be two years from the filing of student's hearing request, unless one of the two tolling provisions apply. As *Avila* did not overturn

⁸ "There is nothing in the Act that would preclude a State from having a time limit for filing a complaint that is shorter or longer than two years. We believe that the Act leaves this decision to the States. . . . However, if a State already has an explicit time limit in statute or regulation, and has met the requirements in § 300.165 and section 612(a)(19) of the Act in establishing that requirement, new public hearings and public comment periods are not required." (Federal Register, Vol. 71, No. 156, p. 46697.)

⁹ Previously, California Education Code section 56505, subdivision (j). (Stats.1998,c. 691 (S.B.1686), § 45.)

Lafayette, prior decisions that interpret California Education Code section 56505, subdivision (j), remain applicable. (*K.P. v. Salinas Union High School Dist.* (N.D. Cal. Apr. 8, 2016, Case No. 5:08-cv-03076-HRL) 2016 WL 1394377, **10-11, preventing student from challenging IEP outside of the two year statute of limitation as no exception shown.)

8. In this matter, statute of limitations was not formally raised as an issue, however both parties presented significant testimony regarding the subject of when did Parents become aware of their special education rights, and when did District give Parents their written Procedural Safeguards. Compliance with the IDEA's procedural safeguards is "essential to ensuring that every eligible child receives and FAPE, and those procedures which provide for meaningful parent participation are particularly important." (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 852 F.3d 840, 846 (*Antelope Valley*), citing *Amanda J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877, 891 (9th Cir. 2001) (*Amanda J.*)) In *Antelope Valley*, the Court recognized the practice of "trial by consent." In those cases where both parties present extensive evidence on an unstated issue, then that issue may be tried by the parties' express or implied consent as if it was raised in the complaint. (*Antelope Valley, supra*, at p. 847.)

9. Therefore, the statute of limitation is addressed herein. Student's complaint was filed on November 2, 2016, thereby establishing a presumed two-year period statute of limitations commencing November 2, 2014. Parents, however, contend they were not aware of their Procedural Rights and did not understand their legal rights regarding special education until early 2016 when it was suggested by New Vista staff that Parents request an IEP from District. Mother signed a District assessment plan in March 2016, and obtained legal counsel, who accompanied Parents to the June 2016 IEP team meeting. Father indicated that had he understood his right to request reimbursement, he would have done so in 2014. Student's contentions are not

persuasive. Both parents testified at hearing and presented as intelligent and articulate adults. Student was assessed in 2013, and Parents were provided a copy the Parental Safeguards in the usual course of business. An IEP was developed on October 25, 2013. Both parents participated in the IEP team meeting. Parents consented to the IEP. Father signed his consent, and also initialed that he had received a copy of the Parental Safeguards. Whether Father wore his glasses or not, does not negate his signing of the IEP. Once a written copy of Parental Safeguards was presented to Parents in their primary language, District cannot be held responsible for parental failure to read the document or seek assistance to understand it. Nor has Student provided any authority to suggest District had an affirmative obligation to challenge or dissuade a parental decision to withdraw Student from public school. Further, Student had legal counsel as of the June 3, 2016 IEP team meeting, yet waited an additional five months to file her complaint. The statute of limitations on this matter commences November 2, 2014.

ISSUE ONE: DID DISTRICT FAIL IN ITS CHILD FIND DUTIES FOR THE 2014-2015 AND 2015-2016 SCHOOL YEARS?

10. A school district has an affirmative, continuing obligation to identify, locate, and evaluate all children with disabilities residing within its boundaries. (20 U.S.C. § 1412(a)(3).) This duty is commonly known as “child find.” The duty is not dependent on any action or inaction by parents. A school district must actively and systematically seek out all individuals with exceptional needs who reside in the district.(Ed. Code, § 56300.) Child find applies to those children, among others, who are suspected of being a child with a disability and in need of special education and related services, even though they are advancing from grade to grade. (34 C.F.R. 300.111 (a).)

11. The suspicion that a student may have an impairment that is affecting the student’s educational performance, and requires special education, is sufficient to trigger a need to assess. (*Park v. Anaheim Union High School Dist., et. al.* (9th Cir. 2006)

464 F.Supp. 1025, 1032, citing Ed. Code, § 56320.) The threshold for suspecting that a child has a disability is relatively low. A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Dept. of Educ. v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1195.) A failure under child find is a procedural violation of the IDEA.

12. Student qualified for and received special education and related services in 2013. District knew Student qualified for special education and related services as of October 2013. However, District did nothing when Student returned to private placement in January 2014. District contends it had no obligation to hold an IEP team meeting or offer Student a FAPE unless her private placement was within District. (20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. § 300.130 et seq.) Neither Waldorf nor New Vista was within the boundaries of District. District correctly noted that the school district in which a private school is located is responsible for child find of those students in their boundaries. (34 C.F.R. § 300.111 (a)(1).) District's child find obligation to *residents* within their geographical boundaries, however, is not the same as its obligation to search and seek within private schools. This private placement obligation is in addition to, not in place of District's ongoing obligations under child find to search and seek among *residents* within its boundaries. Between January 2014 and March 24, 2016, District made no inquiries pursuant to their statutory child find obligations to search and seek. The obligation under child find is an ongoing obligation of District, not parents. District's failure to follow-up or search and seek, especially when it knew Student qualified for special education and related services in 2013, and knew she resided within District boundaries, constituted a procedural violation of the IDEA.

13. The Supreme Court recognized the importance of adhering to the procedural requirements of the IDEA. The analysis of whether a student has been provide a FAPE is two-fold: (1) the school district must comply with the procedural

requirements of the Act, and (2) the IEP must be reasonably calculated to provide the child with educational benefits. (*Rowley, supra*, 458 U.S. at p. 198.) While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J., supra*, at p. 892.) To constitute a denial of FAPE, procedural violations must result in deprivation of educational benefit or a serious infringement of the parent's opportunity to participate in the IEP process. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1484.) [superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 939].)

14. District's failure to search and seek Student and inquire if Parents desired to pursue special education and related service was more than a technical violation of the IDEA. It resulted in a real and significant denial of Parents' rights to participate in the IEP process, as well as denied Student educational benefit. District merely had to send Parents a search and seek notice acknowledging Student might be a student with a disability entitled to special education and related services. Unfortunately, District did nothing, and this violation continued until March 24, 2016, when Parents contacted District and requested new assessments. This violation resulted in the loss of educational benefit for Student.

ISSUE TWO: DID DISTRICT FAIL TO PROVIDE STUDENT WITH AN OFFER OF FAPE FOR THE 2014-2015 AND 2015-2016 SCHOOL YEARS?

15. No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would have received if enrolled in a public school. (34 C.F.R. § 300.137(a).)

16. A school district must conduct an IEP team meeting for a special education student at least annually "to review the pupil's progress the [IEP], including whether the

annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions.” (Ed. Code, § 56343, subd. (d); 20 U.S.C. § 1414(d)(4)(A)(i).)

17. Parents may revoke consent for the continued provision of special education and related services under the IDEA at any time. (34 C.F.R. § 300.9(c).) If the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency will not be considered in violation of the requirement to make a FAPE available to the child because of the failure to provide the child with further special education and related services and is not required to convene an IEP team meeting or develop and IEP for the child for further provision of special education and related services. (34 C.F.R. § 300.300(b)(4)(iii) & (iv).)

18. Student contends District had an ongoing obligation to offer Student an IEP and offer of FAPE after she withdrew from Shorecliff. Parents did not provide District with written notice of their intent to privately place Student, nor did they provide a written revocation of consent to special education placement and services. The testimony of Parents, Mr. Quinn, and Ms. Richardson support the finding that Parents unilaterally withdrew Student from Shorecliff in January 2014, and did not orally express an intent to contest Student’s IEP or seek reimbursement for Student’s subsequent private placement. District was aware Student was reenrolling in Waldorf, which was outside the jurisdictional boundaries of District and believed it had no further obligation to Student once Parents withdrew her. District’s contention is a misinterpretation of section 300.148(c) of title 34 of the Code of Federal Regulations, which, in pertinent part relates to those instances in which a school district may be required to reimburse a parent for a unilateral private placement. The regulation simply addresses tuition claims, not the timing of IEP team meetings. (*Student v. San Mateo Unified High School Dist. And San Mateo County Mental Health*, OAH Case No. 200710023 (September 24, 2008).)

The crux of the issue in this matter is whether Parents revoked Student's rights to special education and related services; they did not. Rather than sending a letter to Parents to obtain their written revocation of special education and related services, or attempting to convene an IEP team meeting, District did absolutely nothing until March 2016, when Parents contacted District. District's own witness, Dr. Thurston, who headed District's assessment team, only became aware of Student's 2013 IEP during the requisite records review. It was her assumption, as there was no record to the contrary, that the 2016 assessment was a triennial assessment. This further supports a finding that Parents did not revoke their rights to special education and related services for the 2014-2015 and 2015-2016 school years.¹⁰ District's failure to follow-up with Parents to obtain written revocation of special education rights, and/or failure to hold annual IEP team meetings, significantly impeded Parents' right to participate in the IEP process, and deprived Student of educational opportunity.

ISSUE THREE: DID DISTRICT'S JUNE 6, 2016 IEP CONSTITUTE A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

19. An IEP is a written document which details the student's current levels of academic and functional performance, provides a statement of measurable academic

¹⁰ If Student's withdrawal constituted a de facto revocation of consent to special education and related services, then District was obligated to provide Parents with prior written notice it was terminating Student's services and would no longer implement her IEP. (34 C.F.R. § 300.503; 34 C.F.R. § 300.504(b).) District's failure on this level significantly affected Parent's ability to participate in the IEP process, however the triggering time frame for the prior written notice occurred in January 2014, prior to the applicable statute of limitations in this matter. Therefore, Student's claim is not pursued on this basis.

and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with non-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).)

20. When developing an IEP, the team must consider the strengths of the child; the concerns of the parents for enhancing their child's education; information about the child provided by or to the parents; the results of the most recent assessments; the academic, developmental, and functional needs of the child; and any lack of expected progress toward the annual goals. (20 U.S.C. § 1414(d)(3)(A), (d)(4)(A); 34 C.F.R. § 300.324(a), (b); Ed. Code, § 56341.1, subds. (a), (d).) An IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability.

21. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is "a snapshot, not a retrospective." (*Id.* at p. 1149.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

22. District conducted a comprehensive and thorough assessment of Student for the June 2016 IEP team meeting. In addition, the IEP team obtained significant information from Student's teachers at New Vista to assist in determining Student's strengths and weaknesses, and present levels of performance. This Decision contains extensive factual findings about the results of Dr. Thurston's "triennial" assessments, which included the neuropsychological assessment of Dr. Franklin, as well as the results

of a myriad of rating scales completed by Student, Parents and Student's teachers at New Vista. The information obtained from these sources was largely undisputed and provided a detailed picture of Student's unique needs as well as her present levels of performance. As an adolescent with traumatic brain injury, Student displayed clinically significant behavior difficulties and maladjustments, including aggression and defiance. Her teachers at New Vista identified considerable deficits with attention, hyperactivity, moodiness, social interaction, peer relations, and depression. Student rated herself in the mildly elevated range in depression, anger, and disruptive behavior. Student's emotional concerns were significant enough to merit an undisputed secondary eligibility of emotional disturbance. All of these deficits contributed to Student's inability to successfully access her education in a general education setting. Cognitively, Student was in the average range, yet she remained years behind academically, primarily due to her behaviors.

23. The IEP team developed 12 goals which comported to Student's areas of unique need. The goals were crafted with input from Student's teachers at New Vista. Academic goals sought to increase Student's proficiency in math, written expression, and reading. Attention goals were created to address Student's difficulties remaining on task and completing assignments. Behavior goals were created to address task avoidance, coping, and social behaviors. Student's expert, Ms. Sharma, found the goals appropriate, only questioning their effective implementation without prompting or aide support. Ms. Kalsow, Student's ABA therapist, believed Student could work on the goals if implemented with consistency and clear expectations. Mother found the goals supportive of Student's needs, and challenging. The goals were appropriately ambitious. Student was unable to establish that the goals were inappropriate or did not comport to Student's unique needs.

24. Student's primary objection to the June 2016 IEP was District's offer of placement at Bridges. Student wished to remain in her private placement at New Vista. Parents wished for Student to remain at New Vista as well. However, District's offer of placement at Bridges was appropriate, as a highly structured therapeutic program that could provide the small, structured classroom environment and emotional support all of the parties correctly insisted Student required. Bridges could easily implement Student's goals. Bridges had a more peer-oriented student base, and most of its students were on diploma track. Bridges provided social skills training embedded in its daily program. Most importantly Bridges' staff included both a school psychologist and intervention specialist, to provide hands-on implementation of Student's counseling service, and work on her behavioral/emotional goals.

25. Special education classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Ed. Code, § 56040.1, subd. (b).) Therefore, in addition to providing a FAPE, a school district must ensure that "[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled." (20 U.S.C. § 1412(5)(A); see also 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) This "least restrictive environment" provision reflects the preference by Congress that an educational agency educate a child with a disability in a regular classroom with his or her typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (*Rachel H.*))

26. When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced: (1) the educational benefits of full-time placement in a regular classroom; (2) the non-academic benefits of fulltime placement in a regular classroom; (3) the effects the

presence of the child with a disability has on the teacher and children in a regular classroom; and (4) the cost of placing the child with a disability full-time in a regular classroom. (*Rachel H., supra*, 14 F.3d at p. 1404.)

27. Bridges represented the least restrictive environment for Student. It was undisputed that Student could not function on a comprehensive high school campus. Student required a smaller, more structured setting than could be provided in a full-time regular classroom. Further, Student's continuing maladaptive behaviors, such as verbal outbursts and eloping, would negatively impact other students in the regular classroom. Again, of great importance, Bridges provided a therapeutic environment which is not available on a comprehensive high school campus, and provides services by mental health professionals, which were beyond the normal range of even experienced special education teachers.

28. The focus must be on the placement offered by the school district, not the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*) An educational agency need not prepare an IEP that offers a potential maximizing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 197, fn. 21.) Instead, "[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." The law simply requires that "a student's educational program be appropriately ambitious in light of his circumstances." (*Andrew F. supra.*, 580 U.S.____, 137 S. Ct. at p. 1001)

29. The comparison of Bridges to New Vista is not relevant in determining whether Student was offered a FAPE in the June 2016 IEP. Bridges was an appropriate placement for Student. The June 2016 IEP offered Student appropriate and sufficiently

challenging goals, which comported with her unique needs. The goals could be implemented in the placement at Bridges, where Student would receive the added and needed supervision of a small, structured classroom, and mental health professionals to implement behavior and emotional supports. The June 10, 2016 IEP constituted a FAPE in the least restrictive environment.

REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*)). These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524 (*Reid*), citing *Puyallup, supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid, supra*, 401 F.3d at p. 524.)

2. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Burlington v. Department of Ed.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed.2d 385])

(reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE.) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [114 S.Ct. 36, 1126 L.Ed. 284] (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress).)

3. In this matter, District denied Student a FAPE by failing in its child find obligations between the statutory period of November 2, 2014, and March 24, 2016, and failed to hold annual IEP team meeting during the same statutory period. Student demonstrated that she is entitled to an award to compensate her for the loss of educational services which would have accrued from special education and related services provided by District.

4. Parents request reimbursement of Student's tuition and related educational expenses during her placement at Waldorf. Student attended Waldorf from February 2014 to June 2014, a period prior to the operative statute of limitations date of November 2, 2014. Further, Student provided no evidence of actual expenses incurred while at Waldorf. Therefore, Parent's request for reimbursement of tuition and educational expenses incurred at Waldorf is denied.

5. Student attended New Vista from August 2014 through the date of hearing. New Vista was an appropriate placement for Student, as it offered a smaller, more structured educational environment, which provided both appropriate academic curriculum and remediation, as well as social skills and behavior supports. New Vista

appropriately supported Student's unique needs, and provided her with educational benefit.

6. Parents request reimbursement for Student's New Vista tuition and related education expenses for the 2014-2015 and 2015-2016 school years. This request seeks remedies for events prior to the November 2, 2014 statute of limitations. It is further troubling as Parents provided no physical evidence or documents to decipher what educational expenses were actually incurred for Student's placement at New Vista. The only evidence provided came from Ms. Sharma's testimony. As the director of student services at New Vista, Ms. Sharma possessed sufficient knowledge and expertise to accurately describe the general scope of New Vista expenses. She did not, however, indicate when or how much Parents actually paid. Thusly, the evidence provided only an estimate of the annual costs one expects to pay to attend New Vista.

7. Parents are entitled to reimbursement as follows: assuming a ten month school year, the annual tuition at New Vista is \$26,000.00, or \$2,600.00 per month. Student is entitled to reimbursement for the period of November 2, 2014, through June 10, 2016, for a total not to exceed \$41,600.00. Parents shall provide District with evidence of payment, such as cancelled checks, credit card statements, or New Vista invoices indicating cost incurred and date of payment in full. District shall reimburse Parents within 60 days of receipt of proof of payment, and shall only be obligated to pay that portion of the \$41,600.00 for which Parents provide evidence of actual payment. Any unsubstantiated portion of this reimbursement award shall be deemed waived as of December 31, 2017.

8. In addition to reimbursement of tuition, Parents request reimbursement of necessary costs of transportation for Student to attend New Vista. Although Father testified that it was 30 miles round-trip mileage to New Vista, no evidence was

presented to determine how many days Student actually attended school. Parents' request for mileage reimbursement is denied.

9. Student failed to prove: (1) the New Vista application fee was paid after November 2, 2014; (2) lunch expenses were actually incurred; (3) specific costs for uniforms in excess of the normal cost of Student's clothing; (4) the specific costs of school events; and (5) proof of Student's attendance in the 2015 summer school program, and information describing the academic purpose for the summer program. Student's request for reimbursement for these expenses is denied.

ORDER

1. District is ordered to reimburse Parents for Student's tuition at New Vista School for the period of November 2, 2014 through June 10, 2016, for a total not to exceed \$41,600.00. Parents are ordered to provide District with documented evidence of payment, such as cancelled checks, credit card statements, or New Vista invoices indicating the cost incurred and date of payment in full. District is ordered to reimburse Parents within 60 days of receipt of proof of payment. District is obligated to pay only that portion of the \$41,600.00 for which Parents provide documented evidence of actual payment. Any undocumented portion of this \$41,600.00 reimbursement award shall be deemed waived by Parents as of December 31, 2017.

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. In this matter, Student prevailed on Issues One and Two. District prevailed on Issue Three.

RIGHT TO APPEAL DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code § 56505, subd. (h).) The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of this Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b); Ed. Code, § 56505, subd. (k).)

DATE: May 25, 2017

/s/

JUDITH PASEWARK

Administrative Law Judge

Office of Administrative Hearings