

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

V.

GOLDEN PLAINS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2019040042

DECISION

On April 2, 2019, Student filed a due process hearing request with the Office of Administrative Hearings naming Golden Plains Unified School District. Administrative Law Judge Theresa Ravandi heard this matter in San Joaquin, California, on May 29 and 30, 2019.

Student's Mother represented herself and Student. Lay advocate Alfonso Padron assisted Parent at hearing. Student did not attend.

Dee Anna Hassanpour, Attorney at Law, represented Golden Plains accompanied by Law Clerk Vanessa Miller. Keith Mackey, Coordinator of Special Education, appeared as Golden Plains' representative.

At the conclusion of the hearing, the matter was continued at the parties' request to June 20, 2019, to file written closing briefs. The parties timely filed their briefs. The

record closed, and the matter was submitted for decision. Student's closing brief references information that was not introduced into evidence at hearing, including:

- post-hearing conduct
- citations to Golden Plains' May 2019 Board Meeting agenda
- Golden Plains' 2018-2019 Local Control Accountability Plan, and
- 2010 United States Department of Education statistics.

This information was not considered in this Decision.

PROCEDURAL MATTERS

On May 24, 2019, Golden Plains filed a motion to clarify and limit the time frame for Student's Issues. Golden Plains requested that the issues be limited to April 2, 2019, the date Student filed his request for due process, rather than "the date of hearing" as reflected in the prehearing conference order. At the start of the hearing both parties were heard as to this request. Student did not oppose the motion. The motion to limit issues to the date of filing was granted.

ISSUES

1. During the 2016-2017 school year beginning April 2, 2017, the 2017-2018 school year, and the 2018-2019 school year until April 2, 2019, did Golden Plains deny Student a free appropriate public education, commonly referred to as "FAPE" by:
 - a) failing to conduct an educationally related mental health assessment after Student disclosed suicidal ideation in November 2018;
 - b) failing to conduct a functional behavior assessment and develop a behavior intervention plan after the documented bullying and disclosure of suicidal ideation in November 2018;

- c) failing to offer an appropriate level of psychological and counseling services beginning in April 2017;
- d) failing to conduct an appropriate psycho-educational and social-emotional assessment in April 2018 when Student was not making expected progress;
- e) failing to develop adequate and measurable academic goals, objectives, and baselines beginning April 2017; and
- f) failing to provide Parent with prior written notice of the change in Student's case manager in March 2019?

SUMMARY OF DECISION

Golden Plains' April 2018 multidisciplinary evaluation failed to assess Student's social-emotional and behavioral needs in accordance with its March 2018 assessment plan. The next school year, Golden Plains had a duty to assess Student's mental health needs following his emotional crisis at school on November 7, 2018, and disclosure of suicidal ideation, but failed to do so. In failing to assess Student's social-emotional, behavioral, and mental health needs, Golden Plains deprived Student's individualized education program or "IEP" team of information it required to develop an appropriate IEP. This lack of assessment data denied Parent meaningful participation in the decision-making process and denied Student educational benefit. Starting with the 2018-2019 school year, Golden Plains denied Student a FAPE by failing to offer sufficient psychological and counseling services. Without these services, Student was unable to benefit from his educational program.

Additionally, Golden Plains failed to develop legally compliant reading goals for the April 2017 annual IEP. This denied Student a FAPE until his next IEP in April 2018.

Student did not prove Golden Plains was required to conduct a functional behavior assessment or that he required a behavior intervention plan. He also did not establish that Parent was entitled to prior written notice of his change in case managers.

FACTUAL FINDINGS

JURISDICTION AND BRIEF OVERVIEW

Student is a seventeen-year-old young man who resided with Parent within Golden Plains' school boundaries during the time frame at issue. He was eligible for special education as a student with a specific learning disability. Student was in the 10th grade at Tranquility High School during the 2018-2019 school year. At the time of hearing, he had not attended school since May 9, 2019. Parent did not believe Student was safe at school due to bullying and his emotional state.

Student is well regarded by his teachers and education professionals who testified at hearing. He is a shy, sensitive, well-mannered student who is troubled by disrespectful behaviors displayed by his peers. He withdraws from loud, chaotic environments and finds it difficult to function in large or unstructured classes. Student has never displayed behavioral issues at school. Teachers described him as "trying his best" to catch up.

Student has always struggled academically. He repeated both kindergarten and second grade. Golden Plains found Student eligible for special education and related services in May 2012 when he was in third grade. He has an auditory processing deficit which negatively impacts his ability to read. On California state tests, Student has not met achievement standards in either English language arts or mathematics since the sixth grade. He is on a diploma track and interested in the fields of computers, artistic design, and music. According to Parent, Student wants to go to college.

Student attended Tranquility Elementary School for seventh and eighth grade. Robert Hill, a resource specialist teacher, was Student's special education case manager for part of seventh grade, beginning in February 2016. As case manager, Mr. Hill was responsible for making sure Student's IEP was being implemented, and supporting Student and his general education teachers. Beginning with the 2016-2017 school year, Mr. Hill transferred to Tranquility High School. He once again served as Student's 10th grade case manager during the 2018-2019 school year until approximately March 2019. At the time of hearing Mr. Hill held a 30-day substitute teaching credential and a temporary credential allowing him to serve as a teacher of record for one school year.

STUDENT'S APRIL AND MAY 2017 IEP TEAM MEETINGS

Golden Plains convened Student's annual IEP team meeting on April 25, 2017, when he was in eighth grade. The April 2017 annual IEP was not offered as evidence. On May 17, 2017, Golden Plains convened another IEP team meeting to discuss Student's transition to high school. The May 2017 IEP document was admitted into evidence and included Student's April 2017 annual goals.

The May 2017 IEP included Student's present levels of academic achievement and functional performance. In terms of his social-emotional and behavioral functioning, Student had friends, was sociable, and positively interacted with peers. He did not have any behavioral problems, was polite and cooperative, and followed classroom and campus rules. Student did not bully or tease others and had not reported being subject to teasing or bullying.

In the area of academics, Student was reading at the fifth grade level. With fifth grade level text, he was able to answer comprehension questions with 92 percent accuracy, decode aloud at 96 percent accuracy, and read 63 correct words per minute.

Student was able to write a six sentence paragraph. In math, he could complete five, multi-step word problems, with 80 percent accuracy.

STUDENT'S 2017 ANNUAL GOALS

Student's IEP team identified his areas of need as reading fluency and comprehension, written expression, and math problem solving. The team developed four annual academic goals. The goals themselves did not include information on Student's baseline level of functioning in the areas targeted. However, Student's IEP included this information in the statement of his present academic levels. The goals did not include short-term objectives. These were not required as Student was not taking alternative assessments aligned to alternate achievement standards.

Student's two reading goals called for him to determine the meaning of words and phrases as used in "a text" and to determine the central idea of "a text" in three of five trials, with 70 percent accuracy by April 2018, as measured by work samples, curriculum assessments, or other means. These goals failed to specify the reading level of the text Student was required to read, and therefore, did not provide a basis with which to compare his progress a year later. His 2016 annual reading fluency and comprehension goals had targeted a sixth grade reading level. Student had not achieved these goals. Although the 2016 annual progress reports noted some progress, Student's fifth grade reading levels, as identified in the May 2017 IEP, were identical to those reflected in his 2016 reading baselines.

Student's reading skills had remained static over the prior annual reporting period. Given this lack of progress, identifying the level of text that Student was aspiring to read was important. Without this specificity, the goals were not reasonably related to his fifth grade level reading abilities. As written, the achievability of these goals and whether they were appropriately ambitious could not be determined. The reading goals

did not provide a means for the IEP team, including Parent, to determine if Student was making appropriate progress in light of his abilities.

Additionally, both of the reading goals targeted comprehension. Golden Plains failed to develop a goal that would measure Student's progress in the area of reading fluency, one of his identified areas of need. Although the goals included the use of "oral or written" work samples as a means of measurement, the skill being measured was comprehension of the meaning of words and phrases and of the central idea of a passage. Golden Plains failed to develop a measurable reading fluency goal.

Student's annual writing goal required him to support a claim or claims with clear reasons and relevant evidence, using credible sources and demonstrating an understanding of the topic or text in three of five trials with 70 percent accuracy, as measured by work samples or curriculum assessments. His math goal called for him to demonstrate understanding of fractions when given modeling and scaffolding, at a rate of 70 percent accuracy, in three of five trials as measured by student work samples or teacher reports. The writing and math goals were measurable. Each identified the skill Student needed to demonstrate, how it would be measured and the measurement tools. Student did not contend otherwise.

OFFER OF FAPE

The May 2017 transition IEP offered Student a general education placement with accommodations and related services. The services page offered weekly specialized academic instruction with a listed start date of April 2016 and no end date. Specifically, Golden Plains offered three, 30-minute "pull-out" sessions of both individual and group resource specialist program services. "Pull-out" services were services that occurred outside of Student's regular classroom. The May 2017 IEP also included a prior offer of ten, 30-minute individual counseling sessions per year, with a start date of May 2016

and no end date. The IEP offered monthly college and career awareness and other transition services beginning in August 2017, Student's ninth grade year. Golden Plains did not offer extended school year services. At the May 17, 2017 IEP team meeting, Parent provided written consent to the IEP.

NINTH GRADE, THE 2017-2018 SCHOOL YEAR

Student was nervous about beginning ninth grade at Tranquility High School, but also excited. David Scaife was his ninth grade resource specialist teacher. Mr. Scaife is a credentialed special education teacher and had worked in this capacity with Golden Plains for five years. He provided academic support to students in different core subjects as a "push-in" service, meaning he worked with the students in their classrooms. He was in and out of many different classrooms on campus and also taught his own resource class which Student attended.

Witnesses had varying impressions of what bullying looked like and whether it was a problem at Tranquility High. Whether Student was subjected to bullying as legally defined was not at issue in this case. Even so, witness impressions highlighted the varying perceptions and provided context for Student's social-emotional struggles.

Mr. Scaife defined bullying as treating another badly with an intent to hurt. In his experience there was not pervasive bullying on campus during either the 2017-2018 or 2018-2019 school years. He had never seen Student being bullied. Similarly, Gina Bongiorno, Student's ninth grade math teacher, did not witness Student being bullied though she did not testify as to her definition of bullying.

Conversely, it was Mr. Hill's experience that there was pervasive bullying at Tranquility High during the 2017-2018 and 2018-2019 school years. He provided push-in services to several different core classes and witnessed students engaging in verbal horseplay and making fun of each other. He defined bullying as making

someone feel like he is not a good person or does not belong. Mr. Hill never saw Student being bullied, and no teacher reported to him that Student was bullied.

Student's ninth grade agricultural earth science teacher, Martha Marin, testified at hearing. She readily answered each question and explained her responses in an open manner. Ms. Marin acknowledged that her class was large and loud. Students in her class physically pushed each other, used bad language, and engaged in verbal bullying. It was Ms. Marin's experience that there was a climate of pervasive bullying at school, which she defined as different degrees of verbal, physical, and mental attacks on another. Student was not bullied in her class, but she observed that he was not comfortable with the class environment. There was one physical fight in her class during the 2017-2018 school year. Ms. Marin persuasively explained that verbal bullying and cussing were an ongoing problem that administration had not effectively tackled.

Student did well academically his first semester, earning a grade point average of 3.14. He received three A's, two B's, and two C's, one of which was in Ms. Marin's class. Student became more withdrawn in her class as the year progressed. Ms. Marin recognized his need to retreat and allowed him to use his head phones in class while he worked alone on his assignments. She worked with the resource specialists to help Student make up missing assignments and allowed full credit for late completion. Even so, his second semester grade dropped to a D because of missing assignments and low test scores. For his second semester grades, Student received one A, two B's, three C's and one D, bringing his overall grade point average for ninth grade down to a 2.50.

Student's triennial assessment was due in April 2018. Golden Plains prepared an assessment plan dated March 9, 2018. The plan proposed that a resource specialist assess Student in the area of academic achievement and that a school nurse assess him in the area of health. It further proposed that a school psychologist assess Student's intellectual development as well as his social-emotional and behavior needs. The

assessment plan specified that the social-emotional/behavior assessments would measure how Student felt about himself, got along with others, and took care of his personal needs at home, school, and in the community. Parent provided written consent to the assessment plan on March 20, 2018.

GOLDEN PLAINS' APRIL 2018 MULTIDISCIPLINARY ASSESSMENT

Miguel Sanchez, a credentialed school psychologist, and Mr. Scaife assessed Student in April 2018. Mr. Sanchez holds a pupil personnel services credential and had conducted between 50-100 psycho-educational evaluations over his six-year career as a school psychologist. He prepared Student's triennial multidisciplinary assessment report dated April 20, 2018, detailing his findings and incorporating Mr. Scaife's academic assessment results. Mr. Sanchez testified at hearing.

The purpose of the triennial assessment was to determine whether Student continued to meet the eligibility criteria for a specific learning disability. Throughout the assessment, Mr. Sanchez did not suspect any other disabling condition such as an emotional disturbance or other health impairment, including a mental health condition. The purpose of the assessment was to also identify Student's present levels of educational performance and his strengths and weaknesses, and develop recommendations for his educational program. Mr. Sanchez reviewed educational records including Student's 2015 triennial assessment. He conducted interviews and classroom observations, and administered two standardized measures to assess Student's cognitive and processing abilities.

Two teachers completed questionnaires for the assessment. According to Ms. Bongiorno, Student was performing at 25 percent of his full potential in math class. Mr. Scaife reported Student's performance in his resource class to be at 50 percent of his potential. Both noted that he rarely participated in class activities or discussions and

rarely completed homework. Ms. Bongiorno additionally noted that Student was not accepted by his classmates. Parent shared her concerns that Student was very quiet and needed a structured class environment. She informed Mr. Sanchez that Student had complained that some of his classes were too loud and the students were disrespectful. During class observations, Mr. Sanchez noted that Student was able to focus and be productive, but had better success in a structured setting.

Mr. Scaife administered the Wechsler Individual Achievement Test, Third Edition, to assess Student's academic achievement. On this measure, the average range consists of standard scores from 85-115. Student scored in the below average range for each of the four composites of reading, mathematics, written language, and oral language. The assessment did not provide Student's grade level equivalencies.

Student received a standard score of 70 on the Reading Composite, just bordering the low range. The Reading Composite consists of three subtests. Student scored in the average range on the reading comprehension subtests; below average on the word reading subtest; and low on the pseudo-words decoding subtest. Mr. Scaife believed Student's reading scores accurately reflected his ability. Three years prior, Student received a standard score of 68, in the low range, on the Wechsler Reading Composite. Student's reading comprehension was limited due to his lack of phonemic awareness and grade appropriate decoding skills.

Student received a standard score of 73 on the math composite; a 79 on written language; and a score of 81 on the oral language composite. His writing was below grade level, and he struggled with math reasoning skills. At hearing, Student did not contest the accuracy, reliability, or comprehensiveness of the academic assessment.

Mr. Sanchez administered the Kaufman Assessment Battery for Children, Second Edition. This is a standardized measure of intellectual achievement and ability. Student's composite scores ranged from below average to above average. Based on

this measure, Mr. Sanchez determined that Student demonstrated average cognitive abilities. In comparing his cognitive ability with his academic achievement, Mr. Sanchez reasonably concluded that Student had a severe discrepancy in the areas of reading and math. Student did not contend otherwise.

Mr. Sanchez administered the Comprehensive Test of Phonological Processing, Second Edition, a standardized tool that measures processing skills. Student's composite scores for phonological awareness and rapid naming fell in the very poor range. His composite score for phonological memory was average. From this measure, Mr. Sanchez reasonably determined that Student had an auditory processing disorder. Student did not dispute the results of the cognitive and processing measures.

The March 2018 assessment plan required Golden Plains to assess Student's social-emotional and behavioral functioning and needs. The April 2018 multidisciplinary assessment failed to assess Student in these areas. Mr. Sanchez acknowledged at hearing that he did not administer any social-emotional or behavioral measures. He did not consider his interviews or observations to constitute a social-emotional or behavioral assessment of Student. The assessment focused exclusively on whether Student continued to have a specific learning disability.

Despite the lack of social-emotional testing data, Mr. Sanchez determined that Student's learning problems were not primarily the result of an emotional disturbance. He concluded that Student continued to meet the criteria for specific learning disability.

APRIL 20, 2018 IEP TEAM MEETING

Golden Plains convened Student's annual IEP team meeting on April 20, 2018. Although Student had not reported being bullied or teased, Parent informed the team that he was sensitive to and afraid of his classmates' negative behavior. Mr. Sanchez reviewed the multidisciplinary report. The IEP team determined that Student remained

eligible for special education because of a specific learning disability. The IEP notes highlighted Student's significant discrepancy in the area of reading. The team reviewed teacher reports indicating that Student was not completing assignments and that this negatively impacted his grades. Ms. Marin had implemented a new system regarding missing assignments, and Student was working to catch up.

The April 2018 IEP's statement of Student's present levels in the area of social-emotional and behavioral functioning was identical to his May 2017 IEP. Because Golden Plains failed to assess Student in this area, his IEP team did not have updated information on his social-emotional or behavioral functioning. Lacking this information, Student's IEP team could not determine whether he had educational needs in these areas or required additional supports or services. Student's IEP team did not develop any social-emotional goals.

2018 Annual Academic Goals

According to Golden Plains' 2017 annual goal progress reports, Student met his two reading goals of determining the central idea of a text and the meaning of words and phrases used in a text. Student's IEP team identified that he continued to have needs in the areas of reading fluency, reading comprehension, written expression, and math problem solving. The team developed four annual academic goals to target these areas of need. This time, each annual goal included a baseline.

The baseline for Student's reading goal indicated that he was almost reading independently at grade level and progressing toward high school goals. Student's present levels of academic achievement similarly indicated he was able to decode most grade level vocabulary accurately and demonstrated good reading comprehension. The April 2018 IEP did not incorporate the academic assessment data, specifically Student's reading scores on the Wechsler or the summary of his reading challenges.

Building on Student's reported abilities, the reading goal targeted both grade level comprehension and fluency. By April 2019, the reading goal required Student to read a grade level text with 85 percent accuracy for literal and inferential questions, and 90 percent accuracy for pacing, inflection, expression, and decoding, in three of four trials as measured by teacher-made tests. Student's 2018 annual reading goal was measurable and reasonably related to his identified present levels. The goal identified the skills Student needed to demonstrate, how these skills would be measured, and the measurement tools.

Student's reading abilities as identified in the present levels and goal baseline appeared at odds with Mr. Scaife's academic assessment findings that Student lacked grade appropriate decoding skills. Further, the May 2017 IEP had identified Student's reading at the fifth grade level just one year prior. Even so, Student did not question any witness regarding the accuracy of his reported reading levels or introduce any evidence refuting these levels.

The writing goal called for Student to create a multi-paragraph essay with a clear topic, supporting details, and a conclusion, using appropriate grade level language and conventions, with at least 80 percent accuracy in three of five trials, as measured by work samples. The baseline specified that he was able to write a basic, short essay. Of accord, Student's present levels identified his ability to write a grammatically and mechanically correct paragraph, though not at grade level. The academic assessment supported these reported levels. The goal was reasonably related to Student's present levels. Student did not introduce any evidence that the writing goal was not measurable or was otherwise deficient.

The baseline for Student's math goal specified that he was able to identify whole and half but struggled with other fractions. This goal called for Student to demonstrate an understanding of fractions, given modeling and scaffolding, with at least 65 percent

accuracy in three of five trials, as measured by work samples or teacher records. Student's baseline for a math reasoning goal indicated that he was able to solve two-step equations and graph linear equations at an eighth grade level. When given a mixture of 10 math problems requiring both single and multiple step solutions, this goal called for him to determine when and how to break each problem into simpler parts. It called for at least 80 percent accuracy, in three of five trials as measured by work samples or teacher tests. As identified in his present levels, Student was able to solve multi-step math problems but struggled with multiplication and division. Student's math goal baselines were consistent with his present levels and the academic assessment findings. The math goals were reasonably related to Student's present levels. Student did not introduce any evidence that the math goals were not measurable or were otherwise deficient.

At the April 2018 IEP team meeting, Golden Plains offered Student placement in the general education setting at Tranquility High for 85 percent of the time with four, 30-minute group sessions of specialized academic instruction each week. Proposed accommodations included extended time, alternate testing location, and use of a calculator and dictionary. Golden Plains continued to offer ten, 30-minute individual counseling sessions per year, and monthly college, career, and other transition services during the regular school year. It did not offer extended school year services. Parent provided written consent to the IEP on April 20, 2018.

STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL PRESENTATION

Twice in February and once in May 2018, Student went to the office during his third period physical education class complaining that he was not feeling well. Student had not made such complaints the first semester. Each time he rested in the office and twice he went home early. It was Parent's position that Student did not feel safe at

school. Student was troubled by the aggressive, disruptive, and disrespectful behaviors of other students. He informed Parent of an incident where a peer threw a book at a teacher in class. Student shared that he felt bad for the teacher. In April 2018, Parent informed Tranquility High staff of Student's concerns about his peers' behaviors. In response, they told her that such disruptive behaviors were commonplace on campus. Mr. Hill's and Ms. Marin's testimony corroborated these reports.

Student did not introduce any evidence as to the provision, nature, or extent of his IEP counseling services during the 2017-2018 school year. Leticia Gonzalez was Student's academic site counselor. It was Parent's understanding that Student rarely met with this counselor. School records for the 2018-2019 school year, documenting only three counseling meetings, corroborated her impression. Mr. Hill and Mr. Sanchez were not aware of Student receiving any IEP counseling services. Student did not introduce any evidence as to his need for additional counseling services prior to April 2018.

Mr. Sanchez did not recommend counseling services for Student in his assessment report as this was not the focus of his evaluation. Further, he did not recommend such services at the April 2018 IEP team meeting. However, he did provide Student with individual counseling after he completed the assessment report. These sessions were not pursuant to the IEP's offer of 300 annual minutes which had been carried forward since April 2016. Rather, Mr. Sanchez determined that Student required extra psychological support and stepped in to meet this need.

With regard to Ms. Bongiorno's report that Student was not accepted by his classmates, Mr. Sanchez persuasively opined at hearing that Student's shy and introverted personality opened him up to being ridiculed and picked on by peers. This, in turn, caused Student to shut down, impeding his ability to learn and to complete his assignments. Of accord, Ms. Marin noted Student's tendency to withdraw the prior

school year, and he failed to complete his assignments. Mr. Sanchez did not include any of these impressions in his assessment report nor did he share them with the IEP team. Had Golden Plains assessed Student's social and emotional functioning pursuant to its assessment plan, it would have uncovered these additional educational needs and learning difficulties.

Mr. Sanchez met with Student approximately six to seven times during the seven-week period following his assessment until the end of the school year on June 7, 2018. Student opened up to Mr. Sanchez and shared that he was stressed about his grades but did not want to go to Mr. Scaife's resource class for help. Student informed Mr. Sanchez that he did not feel safe in that class as there was no structure. He reported that the students bullied each other by rough housing and name calling, and they picked on him. Student was afraid they would bully him but did not report that this had happened. Mr. Sanchez had not witnessed any bullying in his six years on campus and observing in classrooms.

Student presented as sad and experienced what Parent and Mr. Sanchez referred to as many "low days." However, Mr. Sanchez did not suspect that Student had an emotional disturbance. Rather, he determined that Student did not have strategies to effectively cope with peers who made him feel uncomfortable and whom Student perceived as aggressive. His testimony explained Student's presentation and was convincing. The purpose of his individual counseling sessions was to teach Student coping strategies. By May 2018, Golden Plains was on notice that Student required these additional counseling services and supports.

Mr. Sanchez opined that if Student was not provided with supports and strategies for handling challenging peer interactions, then those interactions would negatively impact his mental health, cause him to feel lost and alone, and could even lead him to entertain thoughts of suicide. His testimony was persuasive. It was undisputed that

suicidal ideation is a desperate call for help and warrants an immediate risk assessment, if not a mental health assessment. Student did not disclose any suicidal ideation to Mr. Sanchez. At the time of his counseling sessions, Mr. Sanchez did not believe that Student required an educationally related mental health assessment or a functional behavior assessment. However, he concluded that Student required ongoing counseling services and supports targeting his depression, school anxiety, and peer relationship challenges, separate and apart from what Student may have been offered through his IEP; that is why he began to work with him.

TENTH GRADE, THE 2018-2019 SCHOOL YEAR

Golden Plains contracted with Comprehensive Youth Services to provide Student's IEP counseling services during the 2018-2019 school year. Jessica Rios was his counselor. Student attended 12 of 18 scheduled sessions from the start of the school year on August 13, 2018, through March 14, 2019. The sessions, on average, were approximately 40 minutes long. By the end of October 2018, Student had participated in 288 minutes of counseling sessions, scheduled approximately every other week. By March 14, 2019, Student had received 477 total minutes of counseling services. This exceeded the 300 yearly minutes specified in his April 2018 IEP. Student required more than 300 annual minutes of individual counseling services.

For his first academic progress report in October 2018, Student received two A's, one B, three C's, and he failed his English class. Parent testified that Student began to miss a lot of school. Parent often worked out of town and would come home late to find Student awake in his room. Student would be thinking about his negative experiences at school with peers who did not like him and picked on him. He tried to stay away from them, to the extent that he was afraid to use the restroom. Student told Parent that he was afraid of classmates' disruptive and disrespectful behaviors. He did

not sleep well because of these worries and complained of headaches and stomachaches in an attempt to stay home from school. During the fall of 2018, his school medical records showed one complaint of a stomachache in October 2018 for which Student rested in the office.

Parent informed Student's case manager Mr. Hill of Student's concerns and physical manifestations. Mr. Hill had noticed that Student was tired at school. He spent a lot of time with Student during the 2018-2019 school year. He was Student's push-in resource specialist teacher in his general education agricultural biology class, and Student's fifth period study skills teacher. He was a caring and involved teacher who was concerned for Student's well-being and success. Student shared with Mr. Hill that he was afraid to go to his third period art class and his physical education class because the kids did not like him, and he did not feel safe. Student was no longer receiving psychological services from Mr. Sanchez. Golden Plains' failures to assess Student's social-emotional needs and offer specialized counseling services to support him in navigating challenging peer interactions, negatively impacted his ability to access his educational program.

NOVEMBER 7, 2019 EXPRESSION OF SUICIDAL IDEATION

On November 7, 2019, Student arrived at Mr. Hill's class depressed and emotionally dysregulated. His eyes were red, and his beanie was pulled low over his forehead. Student did not greet Mr. Hill, shake his hand, or smile as he usually did. He did not respond when Mr. Hill asked if everything was okay. Mr. Hill told Student that he knew something was wrong and expressed his concern. Student's head was down. He was crying and his shoulders were shaking. He was emotionally distraught and had not presented this way previously. Mr. Hill informed Student that he could complete his

assignments at a later time. He encouraged him to remain in his seat when class ended if he wanted to talk.

When class ended, Student remained seated as his classmates left. He informed Mr. Hill that he was unhappy and felt like he did not belong. He shared that no one loved him, he and his brothers fought, and that friends talked about him behind his back. Mr. Hill told Student that he cared and that Student belonged in his class. He also reminded Student of Parent's love and commitment. Student began to cry and told Mr. Hill that his friends told him that he was "so weird" that he should just kill himself. Student expressed that maybe he should kill himself.

While Mr. Hill was talking to Student, vice principal Ruben Garcia came into the classroom. Mr. Garcia was making routine checks on classes and teachers when he briefly entered Mr. Hill's class. Mr. Hill testified that he believed Mr. Garcia heard Student's disclosure. Mr. Garcia testified he did not hear any of the discussion. A determination of this conflicting testimony is not required to decide the issues. Further, whether Mr. Hill and site administration followed Golden Plains' suicide prevention policy were not at issue in this hearing.

Shortly after Mr. Garcia left, the principal's secretary informed Mr. Hill that he needed to go teach his substitute class. Mr. Hill explained he was with a student in crisis. The secretary suggested that he bring the student with him. Mr. Hill invited Student to come with him, but Student declined. Mr. Hill walked Student to his next class period, and then went to his substitute teaching assignment.

Aftermath

Mr. Hill was concerned that Student might harm himself. When school was out, he called Parent to inform her of Student's emotional state and disclosure. Parent immediately called Student's Grandmother who was home with Student. Grandmother

called Golden Plains' superintendent Ruben Macias to inform him of Student's situation and requested a meeting to discuss Student's safety at school.

Later that afternoon, Mr. Hill emailed special education coordinator Keith Mackey and the site counselor Mrs. Gonzalez to inform them of the situation and to express his concern for Student's emotional state. Mr. Mackey has worked in various capacities with Golden Plains for approximately 15 years and holds a preliminary level one administrative credential. He read Mr. Hill's email later that evening.

The next morning, on November 8, 2018, Mr. Macias called Mr. Mackey to ensure he was aware of Student's suicidal ideation. Mr. Mackey called Parent to check on Student's well-being. Parent reported that Student was not expressing suicidal ideation. However, she voiced her concern that Mr. Hill was not allowed to stay with Student while he was in crisis and try to learn more information about the involved students. Golden Plains did not conduct an immediate risk assessment of Student or develop a safety plan for him. Student's emotional distress and suicidal ideation triggered Golden Plains' duty to assess his mental health needs.

On November 13, 2018, Mr. Macias met with Parent, Grandmother, principal Vince Gonzalez, and Mr. Mackey. Parent again shared her concerns that Golden Plains had not conducted an immediate risk assessment of Student at the time of his disclosure, and allowed him to leave campus without any notice to Parent of his fragile state. Parent informed the meeting participants that Student was being bullied and was afraid to attend school. Student had not revealed the names of any students who were bullying him as he feared retaliation.

Each meeting participant who testified had a different impression of the outcome of the meeting, what follow-up investigation would occur, and who was responsible. Golden Plains did not investigate Student's disclosure. It did not assess if he presented

a risk to himself, or assess his mental state or needs. It did not determine what Student needed to feel safe or if he was equipped to deal with difficult peer interactions.

At Parent's request, a second meeting was held on November 28, 2018. This meeting additionally included Mr. Garcia and Mr. Hill. Parent again shared her frustration that nothing was being done to ensure Student's safety. Mr. Gonzalez indicated he would follow-up on the investigation. There was no investigation. At hearing, Mr. Gonzalez testified that without the name or names of the alleged bullies, there was nothing to be done.

PARENT REQUEST FOR ASSESSMENT

At the November 28, 2018 meeting, Parent asked Golden Plains to assess Student and to provide him with additional mental health services given his school anxiety, depression, and emotional needs. Mr. Mackey interpreted Parent's request as a request for a suicide risk assessment to determine if he was a threat to himself, not a special education assessment. In accordance with Golden Plains' suicide prevention policy, a suicide risk assessment would be conducted by specially trained site administrators at Tranquility High. Golden Plains did not conduct a risk assessment of Student.

On December 6, 2018, Parent participated in a case management phone meeting with Student's counselor Ms. Rios. Parent again voiced her concerns about Student's safety and Golden Plains' failure to respond. She informed the counselor that Student did not feel safe at school because of the behaviors of other students who cussed out the teachers, made threats, and engaged in fights. Mr. Hill and Ms. Marin shared Student's concerns with the rough peer culture at Tranquility High.

In January 2019, there was a gang-related shooting near the campus and reports of likely gang fights at Golden Plains' schools. Many families considered this a credible threat and kept their children home from school for several days, including Parent.

STUDENT'S PRESENTATION FOLLOWING DISCLOSURE

After November 7, 2018, Student's demeanor changed and he appeared depressed at school. He had occasionally spent lunch periods in Mr. Hill's classroom. After his disclosure, Student regularly sought out Mr. Hill at lunch and other periods, finding his classroom a place of refuge.

Prior to the disclosure, Student was passing all his classes. After, his grades spiraled down, and he was at risk of failing. Several of his teachers approached Mr. Hill before winter recess as they were concerned with Student's missing assignments, lack of effort, and failing grades. Student's presentation and educational performance had changed and they wanted to know what was wrong. Mr. Hill informed them of Student's expressed suicidal ideation, depressed demeanor, and peer conflicts.

Similarly, Parent noticed Student was increasingly depressed following the November 7, 2018 disclosure. He was no longer interested in things he used to enjoy like movies or going out to dinner. He spent more time alone in his room and would not watch television or play video games. The morning following his disclosure, Student complained of a stomachache and did so thereafter multiple times per week to avoid school. Parent reported her observations to Mr. Hill. Student's school records documented two dates in February 2019 when Student left school early complaining of a stomachache.

Student's first semester grades were an A+ in Mr. Hill's study hall; two B's; three C's, and one D-. By January 2019, Student was behind on more than 30 different assignments. Mr. Hill spent extra time helping Student with his agricultural science assignments during Student's sixth period physical education class, with that teacher's permission.

In approximately February 2019, a resources specialist aide, provided Student with targeted support to help him catch up on missing assignments. The aide pulled

Student from Mr. Hill's fifth period class and worked with him in the library. Even so, by the time of the third progress report period in March 2019, Student's grades dropped to four F's, two D's, and one C. By the end of March 2019, Mr. Mackey agreed to Parent's request that Student return to Mr. Hill's fifth period class, a place where Student felt safe and supported.

Student's unmet social-emotional and mental health needs negatively impacted his education. He was depressed and withdrawn. Student was no longer able to access his educational program as evidenced by his concurrent and precipitous decline in grades despite more individualized services from Mr. Hill and the resource specialist aide. Golden Plains failed to provide Student the social-emotional supports he required to benefit from his specialized academic instruction.

In approximately March 2019, Mr. Mackey re-adjusted his case managers' caseloads to ensure appropriate support for students and teachers. Many students received new case managers. Mr. Scaife replaced Mr. Hill as Student's case manager by the end of March 2019. Parent was not notified of this change. Student had formed a trusted relationship with Mr. Hill, and this change in case managers came without warning, during a time when Student continued to struggle academically and emotionally. Parent considered Golden Plains' decision to remove Mr. Hill as case manager, and the manner in which it did so, to be further evidence of its disregard for Student's emotional well-being. This personnel change confirmed her belief that Golden Plains did not understand Student's needs and was not able to ensure his safety.

Parent's testimony about Student's ongoing fear and reluctance to attend school was compelling, consistent, and persuasive. Her testimony was afforded great weight in this regard. At times she allowed Student to stay home due to physical complaints, but other times she informed him he had to go to school. Always, she encouraged him to report the names of students who were bothering him. From January 2019 through

April 16, 2019, Student was absent 17 full days and accumulated five partial day absences of three or more periods due to leaving early.

On March 21, 2019, Student informed Parent that a classmate threw a rotten apple across the classroom, hitting him in the face. The students laughed. While he was not physically injured, the ridicule hurt. At Parent's urging and with her promise not to tell, Student told her the name of the peer who threw the apple. Parent did not tell Golden Plains the name of the student for fear her son would be targeted.

In early May 2019, Parent had to encourage Student to get up and get ready for school. Student reluctantly got ready and sat in the car with his head down. He appeared depressed and resigned. Parent implored him to tell her what was happening and why he did not want to go. Student eventually shared that the week prior a classmate was "mad dogging him," looking at him like he was going to kill him. Student refused to tell her the name of the student as he feared retaliation. Parent believed that Student was not safe at school, and that Golden Plains had not demonstrated that it could ensure his safety. As of the time of hearing, Student had not returned to Tranquility High.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES

EDUCATION ACT

Unless otherwise indicated, the legal citations in this introduction are incorporated by reference into the analysis of each issue decided. Further, all references to the Code of Federal Regulations are to the 2006 edition.

This due process 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 et seq. (2006); Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The Individuals with Disabilities Education act is often referred to as the "IDEA." The main purposes of the IDEA are:

- to ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and to prepare them for further education, employment, and independent living; and
- to ensure that the rights of students with disabilities and their parents are protected.

(20 U.S.C. § 1400(d)(1); 34 C.F.R. § 300.1; See Ed. Code, § 56000, subd. (a).)

A FAPE means special education and related services that are available to an eligible student at no charge to the parent, meet state educational standards, and conform to the student'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 student with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed Code, § 56031, subd. (a).)

"Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the student to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. §300.34; Ed. Code, § 56363, subd. (a).)

In general, an IEP is a written statement for each eligible student with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel. An IEP describes the student's needs and academic and functional goals related to those needs. It includes a statement of the special education, related services, and program modifications and accommodations that will be provided for the student to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(a); Ed. Code, §§ 56032, 56345, subd. (a).)

In *Board of Education of Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a student 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 student “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 student receives access to an education that is reasonably calculated to “confer some educational benefit” upon the student. (*Id.* at pp. 200, 203-204.)

The Supreme Court recently clarified its holding in *Rowley*. In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ___ [137 S.Ct. 988, 1000] (*Endrew F.*), it held that a child’s “educational program must be appropriately ambitious in light of his circumstances.” The Court highlighted that “every child should have a chance to meet challenging objectives.” (*Ibid.*)

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 student, or the provision of a FAPE. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At 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] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA due process hearings is preponderance of the evidence].) In this matter, Student bears the burden of proof as to each issue.

ISSUE 1D: GOLDEN PLAINS' 2018 MULTIDISCIPLINARY ASSESSMENT FAILED TO ASSESS STUDENT'S SOCIAL-EMOTIONAL NEEDS

Student alleges Golden Plains failed to conduct an appropriate psycho-educational and social-emotional assessment in April 2018 when he was not making expected progress. His main challenge to Golden Plains' April 2018 multidisciplinary assessment was that it failed to assess his social-emotional needs. Student contends this assessment failure deprived Parent of meaningfully participating in the decision making process and denied him a FAPE.

Golden Plains asserts that qualified assessors appropriately administered sound assessment measures to complete Student's triennial assessment, and it met all legal requirements. It alleges Mr. Sanchez assessed Student's social-emotional and behavioral needs by way of observations and interviews, and Student did not meet his burden of proof.

DUTY TO REASSESS

To meet the continuing duty to develop or maintain an appropriate educational program, the school district must assess and reassess the educational needs of a student with a disability. (20 U.S.C. § 1414(a) & (b); 34 C.F.R § 300.305; Ed. Code, §§ 56320, 56321.) In California, the term "assessment" has the same meaning as the term "evaluation" in the IDEA. (Ed. Code, § 56302.5.) These terms are used interchangeably in this Decision.

For purposes of evaluating special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f) [child must be assessed in all areas related to the suspected disability].) A student's unique educational needs are to be broadly construed to include academic, social, health, emotional, communicative,

physical, and vocational needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1501 (*Seattle*), reversed in part on other grounds by *Schaffer, supra*, 546 U.S. 49, 56-58.) The “educational benefit” to be provided to a student requiring special education is not limited to addressing the student’s academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*.)

After a student has been deemed eligible for special education, a reassessment shall be conducted if the district determines that the educational or related service needs, including functional performance of the student, warrant a reassessment, or if the parent or teacher requests reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) A reassessment shall occur not more frequently than once a year, unless the parent and the district agree otherwise, and shall occur at least once every three years, unless the parent and the district agree, in writing, that a reassessment is unnecessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

REASSESSMENT REQUIREMENTS

All referrals for special education and related services shall initiate the assessment process and shall be documented. (Cal. Code Regs., tit. 5, § 3021, subd. (a).) The school district must provide the student’s parent with a proposed assessment plan along with notice of the parent’s rights within 15 days of the referral for assessment, not counting days between the student’s regular school sessions. (Ed. Code, § 56321, subd. (a).) The assessment must be completed and an IEP team meeting held within 60 days of receiving consent, exclusive of school vacations in excess of five school days and other

specified days. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c); Ed. Code, §§ 56043, subd. (f)(1), 56302.1, subd. (a), & 56344, subd. (a).)

A district must ensure that an evaluation is sufficiently comprehensive to identify all of the student's needs for special education and related services, whether or not commonly linked to the identified disability category. (20 U.S.C. §1414(b)(3); 34 C.F.R. § 300.304(b)(1)(ii) &(c)(6).); *Letter to Baus* (2015 OSEP) 65 IDELR 81 [right to request an independent evaluation in an area district failed to assess].) Given the importance of assessments, the IDEA and accompanying regulations set forth an extensive set of procedural safeguards to ensure that evaluations achieve "a complete result that can be reliably used to create an appropriate and individualized educational plan [sic] tailored to the needs of the child." (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1110, cert. den. (Apr. 17, 2017, No. 16-672) 137 S.Ct. 1578[2017 WL 1366731] (*Timothy O.*))

Once a district is on notice that a student may have a qualifying disability, it must formally assess the student in all areas of the disability "using the thorough and reliable procedures specified in the [IDEA]." (*Timothy O., supra*, 822 F.3d 1105, 1119.) "A school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel this suspicion through informal observation." (*Id.* at p.1121.)

Golden Plains suspected that Student had needs in the area of social-emotional and behavioral functioning as evidenced by its March 9, 2018 assessment plan which proposed to assess Student in these areas. Once Parent provided consent on March 20, 2018, Golden Plains was required to complete its assessment and review the results at an IEP team meeting within 60 days. The April 2018 multidisciplinary assessment failed to assess Student's social and emotional needs. Although Mr. Sanchez informally determined that Student did not have any suspected disability

other than a specific learning disability, Golden Plains was required to conduct a formal evaluation of Student's needs, rather than rely on its assessor's subjective opinion. In fact, following his assessment of Student's intellectual and academic functioning, Mr. Sanchez determined that Student needed psychological support and counseling to develop coping strategies to handle challenging peer interactions.

Student met his burden of proving that Golden Plains' April 2018 psych-educational assessment was legally deficient as it failed to assess his social-emotional and related behavioral needs. This constitutes a procedural violation.

ANALYZING A PROCEDURAL VIOLATION

A district's failure to conduct appropriate assessments or to assess in all areas of suspected disability constitutes a procedural violation that may result in a substantive denial of FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032-1033 (*Park*); *Timothy O., supra*, 822 F.3d 1105, 1118.) The failure to obtain critical assessment information about a student "render[s] the accomplishment of the IDEA's goals – and the achievement of a FAPE – impossible." (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 (*N.B.*) quoting *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 894 (*Amanda J.*).

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

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. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded on other grounds by statute (*Target Range*.)

A procedural error results in a denial of a FAPE only if the violation:

- impeded the student’s right to a FAPE;
- significantly impeded the parent’s opportunity to participate in the decision making process; or
- caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subds. (f)(2) & (j); *Target Range, supra*, at p. 1484; *L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 910.)

The Ninth Circuit has held that a procedural error resulting in a loss of an educational opportunity denies a student a FAPE. (*Doug. C. v. Hawaii Department of Education* (9th Cir. 2013) 720 F.3d 1038, 1047 (*Doug C.*.) “A procedural error results in the denial of an educational opportunity where, absent the error, there is a ‘strong likelihood’ that alternative educational possibilities for the student ‘would have been better considered.’” (*Ibid.*, quoting concurring opinion of Judge Gould in *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 657.)

Special education law places a premium on parental participation in the IEP process. Parents must have the opportunity “to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b); Ed. Code, § 56304; *Doug. C., supra*, 720 F.3d 1038, 1043 [“Parental participation ... is critical to the organization of the IDEA.”].) “Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA.” (*Amanda J., supra*, 267 F.3d 877, 892.)

Golden Plains' failure to assess Student's social-emotional and behavioral functioning pursuant to its March 2018 assessment plan constituted a procedural violation. The second inquiry is whether the violation denied Student a FAPE by either significantly impeding Parent's right to meaningfully participate in the IEP process, denying Student's right to a FAPE, or depriving him of educational benefit.

Golden Plains' April 2018 multidisciplinary assessment failed to assess Student's social-emotional and behavioral needs, thereby depriving the IEP team, including Parent, of full assessment data. As such, Student's IEP team was unable to identify his needs in these areas or determine their impact on his education. The April 20, 2018 IEP copied his prior levels of social-emotional and behavioral functioning from the May 2017 IEP. The team did not have any assessment data to inform its understanding of his then-present levels. This impeded Student's right to a FAPE.

Golden Plains' failure to assess Student's social-emotional and behavioral functioning, a suspected area of need identified in the March 2018 assessment plan, resulted in a loss of educational opportunity under the rationale of *Doug C.* Without critical assessment information as to the impact of Student's social and emotional functioning on his learning, Student's IEP team, including Parent, could not determine his educational needs or consider appropriate services or alternative programming to meet such needs. As such, this assessment failure significantly impeded Parent's informed and meaningful participation at Student's April 2018 annual IEP team meeting. As Student argues in his closing brief, Parent could not know if Golden Plains' proposed April 2018 IEP offered Student adequate services and supports without the benefit of necessary assessment data.

While Mr. Sanchez provided Student additional psychological services, this ended in June 2018. If Golden Plains had assessed Student's social-emotional functioning, the results would have included what Mr. Sanchez informally determined, namely, that

Student required additional support and coping strategies to deal with challenging peers. This information would have enabled the IEP team to develop a social-emotional goal supported by counseling services designed to meet Student's specific needs, rather than simply carry forward a generic offer of 10 counseling sessions. Golden Plains' failure to conduct a social-emotional assessment deprived Student of educational benefit as demonstrated by his steady decline in academic and social-emotional functioning after his disclosure.

Student met his burden of proving that Golden Plains' failure to conduct a social-emotional assessment as part of his April 2018 triennial assessment denied him a FAPE pursuant to all three prongs of the analysis. Student's remedy will be an independent psycho-educational evaluation, including a social-emotional assessment.

ISSUE 1A: GOLDEN PLAINS WAS REQUIRED TO ASSESS STUDENT'S MENTAL HEALTH NEEDS

Student contends his disclosure of suicidal ideation in November 2018 placed Golden Plains on notice that he may have educationally related mental health needs and triggered its duty to conduct a mental health assessment. Student further asserts Golden Plains was required to conduct a mental health assessment pursuant to Parent's request on November 28, 2018. In his closing brief, Student argues that Golden Plains failed to provide its staff with policies on bullying, suicide, and harassment prevention and intervention and failed to timely have such policies in effect. These claims regarding District policies were not at issue and are not adjudicated herein.

Golden Plains argues that there is no legal requirement that it conduct an educationally related mental health assessment or an assessment for mental health services. It further asserts that Student was receiving counseling, and he did not meet his burden of proof on this issue.

WHEN A DISABILITY IS SUSPECTED

Students who may be eligible for special education must be evaluated and assessed for all suspected disabilities. (*Timothy O, supra*, 822 F.3d 1105, 1110.) A disability is “suspected,” and a student must be assessed, when the district is on notice that the student has shown symptoms of that particular disability or disorder. (*Id.* at p. 1119.) Notice may come in the form of concerns expressed by parents about the student’s symptoms, opinions expressed by informed outside experts, or other less formal indicators, such as the student’s behavior. (*Id.* at pp. 1120-1121 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B., supra*, 541 F.3d at 1202.]

On November 7, 2018, Student was emotionally distraught, crying, and in crisis at school. He informed his resource specialist teacher that he felt like no one cared; that he did not belong; and that maybe he should kill himself as his “friends” had encouraged him to do. This disclosure, coupled with Golden Plains’ own psychologist’s conclusion that Student did not have coping strategies to handle peer conflict, was sufficient to place it on notice that Student may have mental health needs warranting assessment. It was required to provide Parent with an assessment plan within 15 days. Golden Plains would have been required to assess Student’s mental health needs and convene an IEP team meeting to discuss the results within 60 days of receiving Parent’s consent, not counting days of winter recess. As of April 2, 2019, Golden Plains had not offered to assess Student in the area of mental health.

Parent’s November 28, 2018 request for assessment, in conjunction with her request for mental health services, also triggered Golden Plains’ duty to assess Student’s mental health needs. Special education law requires a district to conduct a reassessment upon parent request. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) Mr. Mackey assumed Parent was requesting a suicide

risk assessment, the responsibility of site administration, as opposed to a special education assessment. Golden Plains assumed the risk of this mistaken belief. It further did not bother to conduct a suicide risk assessment. Student was entitled to the full protections of the reassessment provisions and a comprehensive assessment of his mental health functioning and needs as they related to his education.

Following his disclosure of suicidal ideation, Student's demeanor and educational participation changed. He was depressed at school and at home. Student began to regularly seek refuge in Mr. Hill's resource classroom during lunch and away from the student body. He continued to report being afraid of going to several classes because of the behaviors of other students. By December 2018, Student's teachers expressed concerns that he was falling behind, missing assignments, showing no effort, and failing his classes. Student's grades plummeted. At that point, Golden Plains was on notice not only that Student was exhibiting mental health needs it was legally required to assess, but that he required additional mental health supports and services.

Student proved that Golden Plains was required to assess his mental health needs related to his education following his emotional dysregulation and suicidal disclosure on November 7, 2018. Similarly, it should have assessed Student's mental health needs upon Parent's November 28, 2018 request for assessment and additional mental health services. Golden Plains' failure to assess Student's mental health needs constituted a further procedural violation.

The analysis of Golden Plains' procedural violation of failing to assess Student's educationally related mental health needs is the same analysis as for its failure to assess Student's social-emotional needs. Without an assessment of Student's mental health functioning and its impact on his ability to participate in his educational program, Student's IEP team was unable to develop an appropriate IEP. This denied Student educational benefit and significantly impeded Parent's ability to meaningfully participate

in the decision making process. If Student's IEP team had been provided with assessment information, it could have considered different program options including additional counseling services and psychological supports.

Golden Plains' failure to assess Student in the area of educationally related mental health needs also deprived Parent of her right to disagree with its assessment and request an independent evaluation. The United States Department of Education attaches great importance on accurate, comprehensive evaluations as underscored by its regulation providing that parents who disagree with school districts' evaluations may obtain an independent evaluation at public expense. (34 C.F.R. § 300.502(b).) Student met his burden of proving that Golden Plains' failure to conduct a mental health assessment resulted in a substantive denial of FAPE. This Decision awards Student an independent educational evaluation in the area of mental health.

ISSUE 1B: NO DUTY TO ASSESS BEHAVIORAL NEEDS OR DEVELOP A BEHAVIOR INTERVENTION PLAN

Student claims that Golden Plains was required to conduct a functional behavior assessment and develop a behavior intervention plan following his disclosure of suicidal ideation and bullying. He argues that its failure to do so denied him a FAPE. Golden Plains maintains that Student did not demonstrate any serious behavioral challenges warranting a formal behavior assessment or a behavior plan.

BEHAVIORAL NEEDS

It is the intent of the California Legislature that those students who are eligible for special education and who exhibit serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) When a student's behavior impedes his learning or that of others, the IEP

team must consider strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b); Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behaviors that impede a student's learning denies that student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

In response to comments on the 2006 federal regulations, the United States Department of Education declined to add a requirement that positive behavioral interventions and supports be based on a functional behavioral assessment. The Department highlighted that the IDEA focuses on behavior strategies and interventions, not assessments, while acknowledging, "a functional behavioral assessment typically precedes developing positive behavioral intervention strategies." (*Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed. Reg. 46540, 46683 (Aug.14, 2006) 2006 WL 2332118.)

The IDEA and its implementing regulations do not require, nor preclude, the use of a functional behavioral assessment when initially testing students for suspected disabilities. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 251 (*D.K.*)) The court in *D.K.* noted that the IDEA's only mention of the functional behavioral assessment method is in the disciplinary provisions in title 20 of the United States Code, section 1415(k), which requires this specific assessment when an eligible student continues to exhibit behavioral problems. (20 U.S.C. § 1415(k)(1)(D)(ii).) "As with all evaluations, the component testing mechanisms must be determined on a case-by-case basis depending on the suspected disability and the student's needs." (*D.K., supra*, 696 F.3d 233, at p. 251, fn. 7.) Similarly, the IDEA's disciplinary proceedings specifically require the implementation or modification of a behavior intervention plan in the context of addressing a special education student's behavioral violations. (20 U.S.C. § 1415(k)(1).)

Golden Plains' March 2018 assessment plan proposed to assess Student's behavior as related to social and emotional presentation. These assessment tools would measure how he felt about himself, got along with others, and took care of his personal needs. These types of behavioral rating scales are distinct from a functional behavior assessment which seeks to understand and replace serious behavioral problems.

All witnesses agreed on one thing: Student was a great kid who did not have any behavioral problems. He had no disciplinary referrals. He was cooperative and respectful, and particularly disheartened by disrespectful and disruptive behaviors of other students. Student required psychological and mental health supports such as counseling and strategies to cope with the challenging behaviors of his classmates rather than a behavior assessment or intervention plan to understand and change his own behaviors. His declining grades, lack of effort, somatic complaints, and reluctance to attend school were indicative of emotional, social, and mental health needs, not of a behavioral problem warranting a behavioral intervention plan.

Student did not meet his burden of proving Golden Plains was legally required to conduct a functional behavior assessment or that he required a behavior intervention plan to receive educational benefit. There were no procedural violations in this regard.

ISSUE 1C: GOLDEN PLAINS FAILED TO OFFER ADEQUATE PSYCHOLOGICAL AND COUNSELING SERVICES

Student asserts that Golden Plains' 2017 and 2018 annual IEP's denied him a FAPE by offering only 300 yearly minutes of counseling which was inadequate to meet his social-emotional and mental health needs. Golden Plains maintains that Student received in excess of his IEP required counseling services and that he did not meet his burden of proving a denial of FAPE.

RELATED SERVICES

Related services include psychological services, recreation, including therapeutic recreation, social work services, counseling, including rehabilitation counseling, and medical services for diagnostic and evaluation purposes only, as may be required to assist a student with a disability to benefit from special education. (20 U.S.C. §1401(26)(A); 34 C.F.R. § 300.34(a) [related services also include parent counseling and training].) State law adopts this definition of related services. (Ed. Code, § 56363, subd. (a) & (b).) An educational agency satisfies the FAPE standard by providing adequate related services such that the student can take advantage of educational opportunities and achieve the goals of his IEP. (*Park, supra*, 464 F.3d 1025, 1033.)

EVALUATING THE IEP OFFER

The Ninth Circuit has held that a district's decisions in writing an IEP cannot be judged exclusively in hindsight, since "an IEP is a snapshot, not a retrospective." (*Adams, supra*, 195 F.3d 1141, 1149.) An IEP for a student with a disability is measured as of the time that it was created. (*Ibid*.) This evaluation standard is known as the "snapshot rule." (*Ibid*; *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439 (*J.W.*)) In reviewing the sufficiency of an IEP's offer of FAPE, the snapshot rule looks at what is reasonable given the information available to the team at the time. (*Ibid*; *J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801.)

The IEP must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee* (1st Cir. 1993) 998 F.2d 1083, 1089; See *Seattle, supra*, 82 F.3d 1493, 1500 [includes academic, social, health, emotional, communicative, physical and vocational needs].) A school district is required to provide educational instruction, specially designed to meet the unique needs of a student with a disability, supported by such services as are necessary to permit the

student to benefit from the instruction. (*Rowley, supra*, 458 U.S. 176, 188-189; *San Diego, supra*, 93 F.3d 1458, 1468.)

Golden Plains offered Student 300 yearly minutes of counseling services beginning in April 2016. The May 2017 IEP continued to offer this level of service. Student did well academically in spring 2017, earning a 3.14 grade point average. He became more withdrawn in Ms. Marin's class as the year progressed and did not timely complete his assignments. Even so, Student failed to introduce any evidence as to his need for additional psychological or counseling services from April 2017 through April 2018. As such, he failed to meet his burden of proving that Golden Plains denied him a FAPE by failing to offer an appropriate level of services for that time frame.

Golden Plains' April 2018 multidisciplinary assessment was legally deficient as it failed to evaluate Student's social-emotional functioning. Without a comprehensive assessment, Student's IEP team could not identify his social or emotional needs. Without identifying Student's needs, the team could not determine, with any confidence, the level of psychological or counseling services he required to receive educational benefit. Golden Plains simply carried forward its prior offer of 10 sessions of 30 minutes of individual counseling for the year, without any determination of Student's individual needs, and without any plan as to what this service would address.

Following his multidisciplinary assessment in April 2018, Mr. Sanchez, a credentialed school psychologist, determined that Student needed psychological services to target his inability to cope with aggressive peer interactions and situations where he felt picked on and uncomfortable. To help address this need, he began to provide these services separate and apart from any IEP counseling services, through the remainder of the 2017-2018 school year, a total of approximately six sessions. Student

required these additional services to help develop coping strategies for handling challenging peer interactions. Without such services, Student's difficulty navigating uncomfortable situations and stressful interactions, would negatively impact his mental health and educational performance. Student was displaying signs of depression and school anxiety. By May 2018, Golden Plains was on notice that Student required these additional counseling services and supports being provided by its psychologist.

Golden Plains' April 2018 IEP offer of 10 counseling sessions was not sufficient to meet Student's social-emotional needs and enable him to benefit from his education. An IEP is evaluated in light of the information available to the team at the time of the offer. At the April 2018 IEP team meeting, Mr. Sanchez failed to inform the IEP team of Student's need for psychological services. However, if Golden Plains had assessed Student's social and emotional functioning in accordance with its March 2018 assessment plan, it would have identified his needs in these areas.

By June 2018, Mr. Sanchez's counseling sessions ended, but Student's need for these additional services continued into the 2018-2019 school year. Student began counseling sessions with Comprehensive Youth Services pursuant to his IEP. It is unclear what these services targeted as Student did not have a social-emotional or counseling goal. Prior to his disclosure of suicidal ideation in November 2018, Student had already received 288 minutes of his 300 annual counseling minutes, and clearly required additional counseling as the school year unfolded.

On November 7, 2018, Student was emotionally distraught and in crisis at school. Based on his presentation and his disclosure that other students had encouraged him to kill himself and he was entertaining this idea, Student required more intensive and targeted psychological and counseling services than those offered in his April 2018 IEP.

Student's need for additional counseling services continued through April 2, 2019, the time frame at issue, as evidenced by the following:

- his depressed demeanor
- fear of attending school due to peer behaviors and interactions
- lack of educational participation and effort
- missing assignments, and
- failing grades.

Student met his burden of proof that Golden Plains denied him a FAPE during the 2018-2019 school year until April 2, 2019, by failing to offer an appropriate level of psychological and counseling services. This Decision awards compensatory counseling services to Student as detailed in the remedies section.

Golden Plains' failure to offer appropriate counseling services negatively impacted Student's social-emotional functioning and educational performance during the 2018-2019 school year. Because he was not provided services to learn coping strategies for dealing with peer interactions, Student stayed up late ruminating about the behaviors of his classmates and how he could avoid them. As such, he was afraid to attend school, missed instructional time because he was tired, and expressed physical complaints. Student was unavailable for learning. He is entitled to compensatory academic instruction to remedy this educational loss.

ISSUE 1E: GOLDEN PLAINS FAILED TO DEVELOP LEGALLY COMPLIANT READING GOALS

Student asserts that Golden Plains denied him a FAPE from April 2017 until April 2, 2019, by failing to develop adequate and measurable goals, objectives, and baselines. Golden Plains argues that it was not legally required to provide Student with objectives

or baselines for his annual goals, and that Student did not prove it failed to offer measurable academic goals or that he was denied a FAPE.

ANNUAL GOAL REQUIREMENTS

Federal and California state law specify in detail what an IEP must contain. A school district is not required to include additional information in the student's IEP beyond what is explicitly required under the IDEA and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. §300.320(d); Ed. Code, § 56345, subds. (h) & (i).)

Among other things, the IEP must include a statement of the student's present levels of academic achievement and functional performance, including the manner in which the student's disability affects his involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).) The IEP must contain a statement of measurable annual goals designed to:

- meet the student's needs that result from his disability to enable the student to be involved in and progress in the general education curriculum; and
- meet each of the student's other educational needs that result from his disability.

(20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).)

For students who take alternate assessments aligned with alternate achievement standards, the goals must include a description of benchmarks or short-term objectives. (20 U.S.C. § 1414(d)(1)(A)(i)(I)(cc); 34 C.F.R. § 300.320(a)(2)(ii); Ed. Code, § 56345, subd. (a)(1)(c).)

The IEP team develops measurable annual goals that address the student's areas of need and which the student has a reasonable chance of attaining within a year. (*Letter to Butler* (OSERS Mar. 25, 1988) 213 IDELR 118; U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg. 12406, 12471 (1999 regulations).) The purpose of goals is to assist the IEP team in determining whether the student is making progress in an area of need. As such, the IEP must also contain a statement of how the student's progress towards his goals will be measured and when the parent will receive periodic reports on the student's progress. (20 U.S.C. §1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the offered educational services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

The United States Supreme Court held, "The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." (*Endrew F., supra*, 137 S.Ct. 988, 999.); *Rowley, supra*, 458 U.S. 176, 179.) "[E]very student should have the chance to meet challenging objectives." (*Endrew F., supra*, 137 S.Ct. 988, 1000.)

Student's main challenge to the academic goals was that they lacked short-term objectives and that the 2017 goals failed to include baselines. Special education law does not require that a goal contain a baseline. Further Student's goals were not required to have short-term objectives because these are only mandatory for students who take alternative assessments. There were no procedural violations on these grounds.

However, Student's 2017 reading goals were legally deficient. Given the circumstances of this case, the 2017 reading goals were impermissibly vague in that they failed to identify the level of text that Student would be required to read. In addition, Golden Plains failed to develop a measureable reading fluency goal. Both reading goals

measured comprehension and did not address Student's fluency needs. Golden Plains committed a procedural violation by not providing specific, measureable reading goals, in all areas of need, that Student had a reasonable chance of attaining within a year and which were appropriately ambitious given his present levels.

Student was reading at the fifth grade level in spring 2016. As such, the 2016 annual reading goal aimed for him to demonstrate proficiency in fluently reading and comprehending sixth grade level text. Student did not meet this goal by April 2017. Most concerning, his reading levels remained static, showing no improvement despite the passage of a full school year. In May 2017, he continued to read fifth grade text aloud with 96 percent accuracy, decoding at 63 correct word per minute, and answer comprehension questions with 92 percent accuracy.

Given his lack of progress, it was important that his reading goal identify the level of text that Student would be aspiring to read. Under the analysis of *Doug C.*, the vagueness of this goal denied Student educational opportunity. Had Golden Plains specified that the reading goals would again target sixth grade level text, this would have informed Parent that Student was not progressing. Specifically identifying what this goal would target might have led to a discussion of what additional or alternate programming and services Student required to receive educational benefit.

Because the reading goals did not specify the level of text Student would be required to read, the goals were not reasonably related to his fifth grade reading abilities. Without grade level text specificity, Golden Plains was unable to accurately monitor Student's progress. As written, the achievability of these goals and whether they were appropriately ambitious and aimed for progress could not be determined.

The reading goals did not provide a means for the IEP team, including Parent, to determine if Student was making appropriate progress in light of his fifth grade reading abilities. This significantly impeded Parent's ability to meaningfully participate in

creating an educational program to target Student's reading deficits and advocate for effective goals, supports, and services. Student had a specific learning disability based on a significant discrepancy between his cognitive ability and academic achievement predominantly in the area of reading. His reading deficits impeded his abilities in all of his academic classes and impacted every aspect of his day-to-day functioning.

Golden Plains' failure to develop sufficiently specific and thus measurable reading goals in all areas of need in 2017, made it impossible to create a program to address Student's reading needs. Student met his burden of proving the 2017 reading goals denied him a FAPE for which he is entitled to compensatory academic services.

Golden Plains' April 2018 IEP offered adequate and measurable academic goals in Student's areas of need, reasonably related to his present levels of performance. Despite an apparent discrepancy between his reading abilities in April 2017 and those reported in April 2018, Student did not refute the accuracy of his 2018 present levels or otherwise establish that his 2018 academic goals were legally deficient.

ISSUE 1F: CHANGING STUDENT'S CASE MANAGER DID NOT REQUIRE PRIOR WRITTEN NOTICE

Student argues that Golden Plains was required to provide Parent with prior written notice of its decision to remove Mr. Hill as Student's case manager. In his closing brief, Student also alleges that Golden Plains inappropriately provided him with services from an unqualified aide and that this constituted a change in programming for which it was required to provide prior written notice. This second contention was not identified as an issue for hearing and is not adjudicated herein.

Golden Plains asserts that changing a case manager is a personnel decision within its discretion and that it is not required to notify Parent of this change or obtain her consent.

REQUIREMENTS OF PRIOR WRITTEN NOTICE

A school district must provide written notice to the parents of a student with exceptional needs whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) The notice must contain:

- a description of the action proposed or refused by the agency;
- an explanation for the action or refusal, along with a description of each assessment or report the agency used as a basis for the action or refusal;
- a statement that the parents are entitled to procedural safeguards and how they can obtain a copy;
- sources of assistance for parents to contact;
- a description of other options that the IEP team considered, with the reasons those options were rejected; and
- a description of the factors relevant to the agency's action or refusal.

(20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4, subd. (b).)

A district's failure to provide adequate prior written notice is a procedural violation of the IDEA. The procedures relating to prior written notice "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." (*C.H. v. Cape*

Henlopen School Dist. (3rd Cir. 2010) 606 F.3d 59, 70.) When a violation of such procedures does not actually impair parental knowledge or participation in educational decisions, the violation is not a substantive harm under the IDEA. (*Ibid.*)

SELECTION OF PROVIDERS

An IEP does not need to specify administrative matters such as the identity of service providers or particular teachers. (71 Fed.Reg. 46667 (Aug. 14, 2006); *Letter to Hall* (OSERS1994) 21 IDELR 58.) Therefore, a school district has the discretion to choose which qualified provider will provide specialized academic instruction and case management services to a student, so long as the provider is able to meet the student's needs. (*Letter to William* (OSEP 1994) 21 IDELR 73.) Student did not challenge Mr. Scaife's qualification to serve as Student's case manager.

The IDEA does not empower parents to make unilateral decisions about programs funded by the public. (*Slama v. Independent School Dist. No. 2580* (D. Minn. 2003) 259 F. Supp.2d 880, 885 [refusal to assign service providers of parent's choice does not result in a denial of a FAPE]; *N.R. v. San Ramon Valley Unified School Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323 at p.7 [parents are not entitled to their preferred provider.]) The IDEA does not provide for an "education designed according to the parent's desires." (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139.)

A change in case managers is not a change in the educational placement of a student nor does it impact the provision of a FAPE, so long as the case manager is a qualified provider. Student did not meet his burden of proving that Golden Plains was required to provide prior written notice of its decision to re-adjust the caseloads of its

resource specialists and designate Mr. Scaife, a qualified resource specialist, as Student's new, or more accurately, returning case manager. This was an administrative personnel decision within the sole discretion of Golden Plains. There was no procedural violation in this regard.

REMEDIES

Student prevailed as to Issues 1a, 1c, 1d, and 1e. As a remedy, he requests independent psycho-educational, social-emotional, functional behavioral, and mental health evaluations. Student also requests compensatory education including counseling services and academic tutoring. In his closing brief, Student requests that OAH order Golden Plains to provide Student an unspecified non-public or private school placement.

The courts have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Committee of the Town of Burlington, Mass. v. Department of Education of the Commonwealth of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W v. Puyallup School District, No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*)). This broad authority to grant relief extends to the administrative law judges and hearing officers who preside at administrative special education due process proceedings. (*Forest Grove School District v. T.A.* (2009) 557 U.S. 230, 243 fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Puyallup, supra*, 31 F.3d at p. 1496.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d 1489, 1496.) 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.) 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 v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Puyallup, supra*, 31 F.3d 1489, 1497.)

The award must be fact-specific and “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*; *R.P. v. Prescott Unified School District* (9th Cir. 2011) 631 F.3d 1117, 1125.) An independent educational evaluation at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-23.)

The IDEA does not require compensatory education services to be awarded directly to a student, so staff training is an appropriate remedy. (*Park, supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific student involved, or to remedy procedural violations that may benefit other students. (*Ibid.*)

Because Golden Plains’ April 2018 multidisciplinary assessment failed to assess Student’s social-emotional and related behavioral needs, Student is entitled to a publically funded independent psycho-educational evaluation, including a social-emotional assessment. To remedy Golden Plains’ failure to assess his mental health needs, Student is entitled to a publically funded independent educational evaluation in the areas of mental health.

Golden Plains shall convene an IEP team meeting to review the results of these independent evaluations and fund the attendance of the independent assessors. Student did not establish that Golden Plains was required to conduct a functional behavior assessment and is not awarded an independent assessment in this area.

By May 2018, Golden Plains was on notice that Student required psychological and counseling services in excess of that provided pursuant to his April 2018 IEP. Mr. Sanchez provided Student with additional counseling services through the end of the 2017-2018 school year. However, during the 2018-2019 school year, through April 2, 2019, Golden Plains did not provide Student these additional psychological services targeting his needs in the areas school anxiety and peer interactions. By the end of October 2018, Student had virtually completed his IEP allotment of individual counseling minutes – further evidence that he required more services. Student’s need for mental health intervention intensified with his November 7, 2018 emotional crisis at school, and related disclosure of suicidal ideation.

Student did not provide specific evidence of an appropriate award calculation to remedy Golden Plains’ inadequate offer of counseling services. However, as the frequency and intensity of the offered counseling services were insufficient to provide Student with the skills necessary to cope with his increasing school anxiety and depression during the 2018-2019 school year, Student is awarded compensatory counseling services of one hour per week for the 2018-2019 school year through April 2, 2019, a period of 29 academic weeks. This service shall be provided by a non-public agency or licensed mental health provider of Parent’s choice. Golden Plains shall contract directly with Parent’s chosen provider. Student shall be allowed to access these counseling services through the 2020 extended school year.

Golden Plains' legally deficient reading goals for the April 2017 IEP denied Student a FAPE for a one-year period. The April 2017 IEP afforded him weekly specialized academic instruction. However, the failure to develop appropriately specific, ambitious and measurable goals building on his baseline ability, and a goal targeting his reading fluency, compromised the efficacy of this instruction.

Further, Golden Plains' failed to identify Student's social-emotional and mental health needs or offer required counseling services to support his ability to benefit from his specialized academic instruction. This denied him a FAPE during the 2018-2019 school year.

In his closing brief, Student requests "one day per each week of missed opportunity ... consistent with the requested remedies in the complaint." Student's complaint sought 30 hours of academic tutoring. Student did not establish the required type or amount of compensatory academic services that would be necessary to place him in the position he would have occupied but for Golden Plains' FAPE denials. Even so, he is entitled to compensatory academic services.

Pursuant to the April 2017 IEP, Golden Plains offered 90 weekly minutes of group and individual instruction to support the four academic goals it developed. As such, it is determined equitable to award Student 30 minutes per week of compensatory individual academic instruction for the six weeks of the 2016-2017 school year at issue, and the 31 weeks of the 2017-2018 school year until April 20, 2018, a total of 18.5 hours.

Student's April 20, 2018 IEP afforded him four, 30-minute sessions of group specialized academic instruction per week targeting his four academic goals. The ALJ has carefully considered all the admitted evidence in crafting a remedy. Golden Plains failed to assess Student's social and emotional needs when developing his annual 2018 IEP. It further failed to assess his mental health needs following his November 2018

emotional crisis and disclosure of suicidal ideation. Student's social, emotional, and mental health needs adversely impacted his ability to participate in learning. As such, it is determined equitable to award Student one hour per week of individual academic instruction for the seven weeks of the 2017-2018 school year at issue, and the 29 academic weeks of the 2018-2019 school year through April 2, 2019. Student is entitled to 36 hours of individual academic instruction to compensate for this period of time.

To remedy the FAPE denial resulting from his deficient 2017 reading goals and the failure to offer appropriate counseling services to enable him to benefit from his educational program during the 2018-2019 school year, Student's total award of compensatory individual academic instruction is 54.5 hours, calculated as 18.5 hours under the April 2017 IEP and 36 hours under the April 2018 IEP. This service shall be provided by a non-public agency or credentialed special education teacher of Parent's choice. Golden Plains shall contract directly with Parent's chosen provider. The provider and Parent shall determine the appropriate schedule and location for service delivery. Student shall be allowed to access these instructional service hours through the 2021 extended school year.

All compensatory counseling and academic services shall be separate and apart from Student's IEP services. Any cancellations by the service provider shall be made up. Any scheduled absences by Student with at least 24-hour notice or verified medical absence shall also be credited to Student and made up. Golden Plains shall be responsible for transportation costs related to the compensatory academic and counseling services, in the form of mileage reimbursement for one round-trip per session, up to and including a round-trip of 50 miles.

Student did not introduce any evidence that an unspecified non-public or private school would compensate him for the FAPE denials. As such he is not awarded a prospective placement.

This case highlights the need for staff training. Golden Plains shall be required to provide a six-hour training to its special education staff, specifically members of Student's IEP team, Mr. Mackey, and staff members identified as responsible for assessing Student, as well as any other administrators overseeing his education program, regarding:

- the legal requirements of special education assessments;
- developing legally compliant goals; and
- recognizing and addressing the social, emotional, and mental health needs of students, including how to respond to a student's disclosure of suicidal ideation and challenges in coping with peer interactions.

ORDER

1. Golden Plains shall fund an independent psycho-educational evaluation of Student, including a social-emotional assessment, and an independent mental health evaluation to determine his educationally related mental health needs, consistent with its up-to-date Special Education Local Plan Area, or "SELPA," criteria for independent educational evaluations.
2. Within five business days of this Decision, Golden Plains shall provide Student with its SELPA criteria. Student shall select assessors who meets the specified criteria, if any, and provide Golden Plains with their contact information.
3. Within 10 business days of receipt of the contact information for each qualified, chosen assessor, Golden Plains shall send the assessor a contract to perform the assessments. Golden Plains shall cooperate with the reasonable requests of the assessors.

4. Golden Plains shall convene an IEP team meeting(s) to consider the results of the independent educational evaluations within 30 days of submission of each written assessment report. It shall fund the attendance of each assessor at the meeting pertaining to his/her assessment, by telephone or in person, for a total of 3 hours per assessor including travel.
5. Golden Plains shall contract directly with a non-public agency or licensed mental health provider of Parent's choice, to provide Student 29 hours of individual mental health counseling services.
6. Within 10 days of being provided contact information, Golden Plains shall contact the selected mental health provider to initiate the service contract. The provider and Parent shall determine the appropriate schedule and location for service delivery. Student shall be allowed to access these services hours through the 2020 extended school year.
7. Golden Plains shall contract directly with a non-public agency or credentialed special education teacher of Parent's choice to provide Student 54.5 hours of individual academic instruction.
8. Within 10 days of being provided contact information, Golden Plains shall contact the selected academic provider to initiate the service contract. The provider and Parent shall determine the appropriate schedule and location for service delivery. Student shall be allowed to access these services hours through extended school year 2021.
9. All compensatory services hours shall be separate and apart from Student's IEP services. Any cancellations by the service providers shall be made up. Any scheduled absences by Student with at least 24-hour notice or verified medical absence shall also be credited to Student and made up.

Golden Plains shall be responsible for transportation costs related to the compensatory academic and mental health services in the form of mileage reimbursement, for one round-trip per session, up to and including a round-trip of 50 miles.

10. Golden Plains shall provide a six-hour training to its special education staff, specifically members of Student's IEP team, Mr. Mackey, and staff members identified as responsible for assessing Student, as well as any other administrators overseeing his education program regarding the legal requirements of special education assessments; developing legally compliant goals; and recognizing and addressing the mental health needs of students, including how to respond to a student's disclosure of suicidal ideation and challenges in coping with peer interactions.
11. The training shall be provided within 90 days of the start of the 2019-2020 school year by outside special education counsel that does not represent Golden Plains. Within 10 days of the training, Golden Plains shall provide Parent a copy of the training agenda, the instructor's curriculum vitae, training materials, and a written certification that all required staff attended.
12. Student's request for a non-public or private educational placement is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed as to Issues 1a, 1c, 1d, and 1e. Golden Plains prevailed as to Issues 1b and 1f.

RIGHT TO APPEAL

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

DATE: July 8, 2019

/S/

THERESA RAVANDI

Administrative Law Judge

Office of Administrative Hearings