

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL DISTRICT.

OAH Case No. 2018110928

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on November 28, 2018, naming Pasadena Unified School District.¹

Administrative Law Judge Elsa H. Jones heard this matter in Pasadena, California, on April 9, 10, and 11, 2019, and on April 16 and 17, 2019. Mark Woodsmall and Justin Youngs, Attorneys at Law, represented Student. Student's parents attended on all hearing days.

Meredith B. Reynolds, Attorney at Law, represented Pasadena Unified. Cherylin Lew, Director of Special Education for Pasadena Unified, attended on all hearing days.

¹ On December 10, 2019, Pasadena Unified filed a response to the complaint, which allowed the hearing to proceed. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

Sworn testimony and documentary evidence were received at the hearing. A continuance of the hearing was granted on December 21, 2018. The parties requested and were granted a continuance until close of business on May 6, 2019, to file written closing briefs. The parties timely filed their written closing briefs on May 6, 2019, and the issues set forth below were submitted.

ISSUES²

1. Did Pasadena Unified deny Student a free appropriate public education by failing to assess her for special education and related services between September 19, 2017, and January 10, 2018, in violation of its child find duty to assess;

2. Did Pasadena Unified deny Student a FAPE by failing to appropriately assess her in all areas of known or suspected disability, specifically:

(a) By failing to appropriately conduct the psychoeducational assessment dated April 27, 2018;

(b) By failing to conduct a behavior assessment between January 10, 2018, and

² By written notice filed with OAH on April 8, 2019, Student notified OAH and Pasadena Unified that she was dismissing without prejudice the following five issues stated in the April 2, 2019 PHC Order: Issue (2)(e), failing to conduct a social skills assessment between January 10, 2018, and April 27, 2018; Issue (3)(a), failing to accurately and completely state Student's present levels of performance in the areas of social emotional/behavioral, vocational, and adaptive/daily living skills; Issue (3)(b), failing to develop appropriate measureable annual goals in the areas of social emotional and employment; Issue (3)(f), failing to offer one-to-one aide support; and Issue (3)(i), failing to offer social skills support. Those issues were dismissed without prejudice, and the remaining issues have been re-numbered in this Decision.

April 27, 2018;

- (c) By failing to conduct an educationally related mental health services assessment between January 10, 2018 and April 27, 2018;³
- (d) By failing to conduct an occupational therapy assessment between January 10, 2018, and April 27, 2018;
- (e) By failing to conduct a transition assessment between January 10, 2018 and November 27, 2018, the date the complaint was filed;

3. Did Pasadena deny Student a FAPE in the April 27, 2018 individualized education program by:

- (a) Failing to make a clear offer of placement in a specific nonpublic school, thereby significantly impeding parent's opportunity to participate in the decision making process;
- (b) Failing to offer an appropriate placement;
- (c) Failing to offer an appropriate amount of counseling and psychological services;
- (d) Failing to offer occupational therapy services;
- (e) Failing to offer a behavior support plan;
- (f) Failing to offer an appropriate individualized transition plan tailored to meet Student's unique needs with appropriate goals;
- (g) Failing to offer appropriate transition services in the key areas of education/training, employment, and independent living based on Student's

³ Evidence established at hearing that educationally related mental health services assessments are interchangeable with educationally related intensive counseling services and assessments. Pasadena Unified customarily used the latter term for the assessments and services it provided.

strengths, interests, and preferences; and

(h) Failing to offer a program with research-based intervention?

4. Did Pasadena Unified deny Student a FAPE by failing to provide Parent prior written notice regarding Parent's request as to eligibility and school placement made at the April 27, 2018 IEP team meeting?

SUMMARY OF DECISION

This case involves a bright 17-year-old young woman who enrolled in Pasadena High School in August 2017 for 10th grade after a lifetime of enrollment in private schools. During spring of that 2017-2018 school year, Pasadena Unified completed a psychoeducational assessment of Student and, at an IEP team meeting held in April 2017, found her eligible for special education under the category of emotional disturbance. While the psychoeducational assessment was pending, Student withdrew from Pasadena Unified and enrolled in Bridges Academy, a private school, where she remained through the time of the hearing.

Student alleges that Pasadena Unified deprived her of a FAPE in numerous respects: by violating child find, by conducting an inappropriate assessment, by developing a defective IEP, and by failing to offer appropriate services and placement.

This Decision finds that Pasadena Unified did not deprive Student of a FAPE, and that Student is not entitled to any relief.

FINDINGS OF FACT

GENERAL BACKGROUND AND JURISDICTION

1. Student is a 17-year-old young woman, who, at all relevant times resided with her parents within the boundaries of Pasadena Unified. On June 16, 2017, Parents registered Student in Pasadena Unified for the first time. On August 14, 2017, Student enrolled in and began to attend 10th grade in Pasadena High School. Student had an

incident of self-harm during winter break 2017-2018. Therefore, when Student returned to school, Pasadena Unified referred Student for a psychoeducational assessment to determine her eligibility for special education and related services. No public school district had previously assessed student for special education. Pasadena Unified completed its assessment and report in spring 2018. It then convened an IEP team meeting to consider the report and determine Student's eligibility. Parents and their attorney attended the meeting. The IEP team found Student eligible for special education under the eligibility category of emotional disturbance.

2. By that time however, Student no longer attended school in Pasadena Unified. On April 9, 2018, while the assessment report and IEP team meeting were pending, and after providing Pasadena Unified with statutory notice, Student enrolled at Bridges Academy, a local private school. Student attended school there through the time of the hearing.

EDUCATIONAL HISTORY/SCHOOL ATTENDANCE ISSUES

3. Before she enrolled in Pasadena Unified, Student attended only local private schools. When she was young, a psychiatrist diagnosed her with attention deficit hyperactivity disorder and prescribed medication. In approximately seventh or eighth grade, when Student attended La Canada Preparatory school, she developed school anxiety, and began to avoid school and homework and isolated herself in her room. She also began experiencing somatic symptoms, such as migraines and stomach aches, which also impacted her ability to attend school. She had seen a variety of mental health professionals during her school years.

4. Student entered the Webb School, a private boarding school in Claremont, California, for ninth grade in fall 2016. She quickly became overwhelmed by the school environment, anxious, and severely depressed. She eventually stopped doing homework and attending classes and simply stayed isolated in her room at school. In November

2016, Webb asked Student to leave Webb because of her performance and lack of attendance. In December 2016, she began psychotherapy on a twice-weekly basis with Dr. Jody Leach.

5. Student then enrolled in Halstrom Academy, a private school which provided an independent study program, for the spring semester 2017. She again avoided and failed to perform school work, and earned no credits while there.

ENROLLMENT IN PASADENA UNIFIED AND TAYLOR ASSESSMENT

6. On June 16, 2017, when Student was 15 years old and had concluded her ninth grade year, Parent registered Student with Pasadena Unified. On the registration form, he checked the box stating that Student had never had a Section 504 Plan,⁴ or been enrolled in a special education program.

7. Directly after registering Student in Pasadena Unified, and in preparation for Student's transition to attending a Pasadena public school in the upcoming 2017-2018 school year, Parents obtained a psychoeducational assessment from Ashley Taylor, Psy.D, a licensed California clinical psychologist. Dr. Taylor is in private practice, and she has been practicing as a licensed clinical psychologist since 2011. Dr. Taylor was recommended to Parents by Dr. Leach. Dr. Taylor received her bachelor's degrees in psychology and Spanish from the University of Vermont. She obtained her master's degree and her Psy.D., both in clinical psychology, from the Wright Institute. Dr. Taylor had no teaching experience at the elementary or high school level. She had no degree in

⁴ Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) provides for accommodations for students who had not, or not yet, been found eligible for special education but who had, or had a record of having, or was regarded as having, physical or mental impairment that significantly interfered with one of life's major activities.

education, and she never had a teaching credential, but has attended numerous IEP team meetings. She had no formal training in the field of occupational therapy, and was not qualified to assess in that area. However, as part of a multidisciplinary team at the Center for Connection, some patients had occupational therapy issues, and she was trained to recognize "red flags."

8. Dr. Taylor performed a psychoeducational assessment of Student over the course of five days during June and July 2017, starting on June 21, 2017. She wrote a report of her assessment findings, dated August 8, 2017.

9. Parents retained Dr. Taylor for assessment because of Student's history of significant difficulty attending school. Student experienced significant anxiety and had difficulty leaving her bedroom at times. She had difficulty attending to information and persevering on challenging tasks, and had changed schools multiple times over the previous two years.

10. Dr. Taylor used a variety testing instruments during the assessment. She noted Student's background information, previous testing, diagnoses, and services, her developmental and medical history, and her academic history. She recorded that at the time of the assessment, Student was taking several prescription and over-the-counter medications, vitamins, and supplements, including Prozac for anxiety/depression. After the assessment, but before the report was written, Student began to take another medication to improve her attention. She had seen a variety of psychiatrists during her school years.

11. Dr. Taylor also noted Student's sensory/motor history. Student had a history of being sensitive to sensory input since she was a very young child. She was sensitive to bright lights and temperature. Student continued to be a very picky eater and was sensitive to smells and tastes. She chewed on her clothing, but Dr. Taylor did not observe this behavior during the assessment. Dr. Taylor also noted that the family

had lived with significant family stress due to health problems of other family members.

12. Student appeared well-groomed for most testing sessions, and dressed appropriately for the weather. She was alert and oriented to person, place, and time. She exhibited normal perception. She did not display any hallucinations, obsessions, delusions, suicidal ideations or intent. She maintained appropriate eye contact and maintained attention on academic and cognitive tasks during the assessment. She worked hard, put forth her best effort, was eager to participate, and responded well to Dr. Taylor. Student did not demonstrate frustration or become overwhelmed when challenged, and she demonstrated perseverance. She also demonstrated perfectionist qualities that caused her to become stuck on certain tasks.

13. Dr. Taylor administered the Wechsler Intelligence Scale for Children—Fifth Edition, to measure Student’s general intellectual functioning. Student obtained a full scale IQ score of 119 on this test, which placed her in the High Average range. Her General Ability Index score was 123, which fell in the Superior range. Dr. Taylor also reported Student’s subtest index scores. These scores were 132, Very Superior range, on the Visual Spatial Index, which measured Student’s ability evaluate visual details, understand visual spatial relationships, and construct geometric designs from models, and 130, Very Superior range, on the Verbal Comprehension Index, which measured Student’s verbal comprehension and the ability to express herself orally. While Student’s overall score on this index was very high, Dr. Taylor was concerned with the variability among the subtest scores. Her index score was high largely because of Student’s superior vocabulary. Her ability to draw conceptual similarities between pairs of words only fell in the High Average range. This suggested that Student had greater difficulty using abstract knowledge to draw conceptual similarities between pairs of words than she did remembering and using vocabulary words.

14. Student’s lowest index score on the Wechsler Intelligence test was her

Fluid Reasoning Index score of 100, Average range, which measured Student's ability to detect underlying conceptual relationships of visual information and apply reasoning to identify unfamiliar patterns. Dr. Taylor considered Student's Average score on the Fluid Reasoning Index to reflect a significant weakness for Student, as it was significantly lower than her other index scores on the Wechsler Intelligence test. Dr. Taylor was also concerned that Student only scored in the Average range on the Coding subtest in the Processing Speed Index, which required her to use fine motor skills to quickly copy small symbols. Dr. Taylor believed that Student had a deficiency in her fine motor skills that likely slowed her down on this task.

15. Dr. Taylor administered the Wechsler Individualized Achievement Test-3rd Edition, to assess Student's academic skills in reading, mathematics, and written and oral language. She noted that Student had disenrolled from Webb after the first semester of ninth grade, and had not meaningfully attended Halstrom during the remainder of ninth grade. Student's reading and writing scores fell in the Average and High Average ranges and at or above grade expectancy. She showed considerable strength on math tasks that were untimed, with scores in the Superior range, and significantly lower on math tasks that were timed, with scores falling in the Average and Low Average ranges. She concluded that Student qualified for a learning disability in math fluency and academic fluency, because her math fluency scores of 86, Low Average range in addition; 99, Average range, in subtraction, and 89, Low Average Range, in multiplication primarily fell in the low average ranges, and were over two grade levels below expectancy.

16. Dr. Taylor assessed Student's language functioning using selected subtests from the Wechsler Intelligence and Achievement tests described above, as well as the Developmental Neuropsychological Assessment-II. Her scores reflected Student had no difficulty with oral language skills, phonological processing, or the ability to verbally express herself.

17. Dr. Taylor used the Wide Range Assessment of Memory and Learning-Second Edition to assess Student's memory ability, including immediate and delayed recall as well as differentiating between verbal and visual memory deficits. Student's General Memory Index score of 117 fell in the High Average range. Student's Verbal Memory Index and Attention/Concentration Index scores fell in the Superior range. Her Visual Memory Index, General Recognition Index, Verbal Recognition Index, and Visual Recognition Index scores were in the Average range. Dr. Taylor noted that her average scores on the subtests on the Verbal Recognition Index were "significantly lower" than her Verbal Memory Index score, which suggested a loss of verbal learning after a short time delay. The report suggested Student would benefit from learning strategies to enhance her learning and memory patterns. Similarly, Dr. Taylor interpreted Student's average scores on the Visual Recognition Index as suggesting that when information was presented within a context, such as a picture, Student had difficulty remembering, encoding, and recalling all of the details at a later date.

18. Dr. Taylor assessed Student's motor skills and visual motor integration skills by administering the Beery-Buktenica Test of Visual Motor Integration. Student was right-hand dominant for all fine motor tasks. Her graphomotor responses for shapes, numbers, and letters were consistent in signing, spacing, and line orientation. She demonstrated an appropriate pencil grip, posture, and stabilization when writing. Student scored in the Average range overall on the Beery. Dr. Taylor also administered certain subtests from the Neuropsychological Assessment to assess student's visual-motor integration. The scores were consistent with Student's Beery scores, suggesting average overall functioning.

19. Dr. Taylor assessed Student's sensory-motor integration by interviews with Students and Parents, and through the Autism Spectrum Rating Scale questionnaire. Parents' scores on the Rating Scale questionnaire were in the Clinically Significant range.

The assessment results reflected that Student did not like to be touched, and was sensitive to what she eats, smells, hears, and touches. Student did not like to be in close proximity to others, and places that were too noisy or crowded overwhelmed her. Dr. Taylor's report recommended that Student would likely benefit from an occupational therapist consultation to develop sensory strategies.

20. Dr. Taylor assessed Student's attention and executive functioning. Student had previously been diagnosed with attention deficit hyperactivity disorder and received medications to treat her symptoms. The results of the medications were variable, and Parents did not believe the therapy Student received helped significantly. Parents reported to Dr. Taylor that Student had a history of difficulty attending to information, and sustaining effort on difficult cognitive and academic tasks. Student reported that she believed she had attention deficit hyperactivity disorder, and that her medication helped.

21. Dr. Taylor measured Student's attention using the Test of Variables of Attention visual form and the Test of Variables of Attention auditory form. All of Student's scores on these tests were in the normal range, and Dr. Taylor concluded these tests did not suggest Student had an attention deficit disorder.

22. Parents completed the Child Behavior Checklist and the Conners 3-Parent Report Form. On the Child Behavior Checklist, both parents endorsed that Student had difficulty finishing what she started, difficulty concentrating, and difficulty focusing. She often daydreamed, was inattentive, and was sometimes impulsive. Parents reported a Clinically Significant level of attention deficit symptoms on nearly all indices of the Conners-3, suggesting Student was significantly impaired.

23. Student completed the Behavior Rating Inventory of Executive Functioning-2 to assess her executive functioning skills, and the Youth Self-Report Form to assess her attention deficit hyperactivity disorder symptoms. Executive functioning

skills involve the ability to problem solve, plan ahead, stay organized, meet deadlines, start projects on time, and multi-task. The results of the Behavior Rating Inventory reflected Student had difficulty in the Self-Monitoring area, including checking her work for errors, assessing her progress, and managing tasks. She also had difficulty in the Task Completion area, suggesting difficulty with finishing tasks, following through on assignments, and meeting deadlines. On the Youth Self Report, Student did not endorse enough items in the Attention Problems Index to meet the Clinically Significant range. She endorsed multiple symptoms related to attention deficit hyperactivity disorder, including failing to finish tasks, difficulty concentrating, occasional difficulty sitting still, and daydreaming often.

24. Dr. Taylor assessed Student's emotional functioning by using a variety of checklists and questionnaires. She relied on Parents' ratings on the Child Behavior Checklist and the Conners-3. Student completed the Revised Children's Manifest Anxiety Scale-2, the Trauma Symptoms Checklist for Children, the Minnesota Multiphasic Personality Inventory for Adolescents-Revised, and the Youth Self Report. With respect to anxiety/depression, Dr. Taylor concluded Student experienced significant levels of generalized and social anxiety that impacted her ability to leave her house, go to school, interact with peers, complete her work, and function on a daily basis. In addition, Student experienced a high degree of perfectionistic anxiety that impacted her ability to complete tasks quickly and accurately. Dr. Taylor posited that Student felt it was easier not to complete tasks at all, if they could not be done perfectly. Dr. Taylor believed that this, in turn, likely caused her to retreat to her room, withdraw from school and discontinue assignments, and ultimately led to major depressive episodes. Her symptoms did not suggest bipolar disorder. Dr. Taylor also did not believe that Student's responses were related to a specific traumatic life event.

25. Dr. Taylor assessed Student's social perception and development using the

Autism Diagnostic Observation Schedule-Second Edition, Module 4, the Autism Spectrum Rating Scale, the Lifetime Social Communication Questionnaire, and subtests from the Neuropsychological Assessment instrument. These measures assess various aspects of social functioning. Student's scores reflected she had difficulty with transitions and changes in routine, some sensory sensitivity, and difficulty with prolonged social engagement, but Student's scores did not reflect that Student had autism spectrum disorder. Dr. Taylor considered it very likely that Student's social anxiety, perfectionism, and cognitive giftedness with asynchronous development caused her social challenges. Later in her report, Dr. Taylor described asynchronous development. Intellectually gifted individuals such as Student often developed unevenly across skill levels, such that there was a mismatch (asynchronicity) in their cognitive, emotional, and physical levels of development. The report also described Student as twice-exceptional, which meant that she was intellectually gifted but had "another form" of disability. The report explained these students often had significant difficulty functioning in school and required specific accommodations to access their full potential.

26. Dr. Taylor's report concluded that Student' overall intellectual functioning was in the superior range. She functioned in the very superior range in visual-spatial processing and verbal comprehension, in the high average range on processing speed, and in the average range on fluid reasoning and working memory. Her ability to quickly and accurately complete visual tasks, and understand and solve novel visual problems fell "significantly" lower than her visual spatial processing and verbal comprehension abilities. These discrepancies likely caused her "a great deal" of internal frustration when completing academic and cognitive tasks. Dr. Taylor concluded that this cognitive profile was consistent with a nonverbal learning disability.

27. Academically, Dr. Taylor's report concluded that Student's math fluency

scores, which were her lowest academic scores, were due to the fact that it was a timed task. Dr. Taylor contrasted Student's low math fluency score with the fact that her highest academic scores were her untimed math scores, and concluded that this discrepancy qualified Student for a learning disability in math fluency and academic fluency. Dr. Taylor believed that Student's scores suggested Student would have difficulty completing academic tasks fluidly when under a time constraint. She attributed Student's average reading comprehension score to boredom with the reading material on the test. Further, Dr. Taylor believed that deficiencies in Student's memory scores also were consistent with a nonverbal learning disability, because her overall general verbal index score fell in the superior range, which suggested to Dr. Taylor a superior ability to immediately recall and remember verbal information. However, Student's visual memory was "significantly lower," as it was in the average range, and her overall recognition index score fell in the average range. This suggested to Dr. Taylor some loss of verbal learning after a short time delay. Dr. Taylor's report also stated it was "likely" that Student's memory functioning contributed to her difficulty with executive functioning skills. Additionally, she believed that Student likely had difficulty learning new concepts and would require extra time and repetition on her part to solidify new knowledge. Dr. Taylor recommended that visual information should include a spatial component and verbal instructions to help Student learn visual information.

28. Dr. Taylor's report emphasized her opinion that Student met the criteria for a nonverbal learning disability. Typically, the report stated, a nonverbal learning disability was characterized by an individual who demonstrated strength in verbal processing and verbal memory, but significant deficits in visual-spatial skills, visual motor processing, and fluid reasoning. The report acknowledged that Student's visual-spatial skills were one of Student's strengths, and not a weakness, but the report deemed it sufficient to support a diagnosis of nonverbal learning disability as Student

had greater difficulty with other visual processing, visual memory, and visual learning. The report also noted that children with a nonverbal learning disability often showed deficits in reading nonverbal social cues, and understanding nonverbal communication. Dr. Taylor considered it likely that Student was misreading social cues from her peers and teachers, which caused her to feel greater isolation and social withdrawal. The report acknowledged that children with nonverbal learning disabilities were sometimes clumsy, which could also impact their social functioning, but that Student's visual spatial scores were very strong. Rather, Dr. Taylor found that Student had deficits in fluid reasoning, which caused challenges in processing visual information using abstract reasoning and solving novel problems.

29. Dr. Taylor's report noted that Student's assessment results did not reflect that she had an attention deficit disorder, but that a nonverbal learning disability can appear similar to symptoms of attention deficit hyperactivity disorder.

30. Socially, the report disclosed Student's comments that she had a nice group of friends that she enjoyed spending time with, but Student also stated that engaging with others was exhausting. Student's assessment results did not reflect that Student had an autism spectrum disorder, but Dr. Taylor noted that a nonverbal learning disorder can make it exhausting and difficult for Student to participate in social interactions.

31. Emotionally, Student was experiencing significant symptoms of anxiety and depression, including significant levels of generalized and social anxiety and a high degree of perfectionistic anxiety. These anxieties impacted her abilities to leave her room and her house and participate in daily activities. In addition, Student was experiencing significant somatic symptoms, including frequent headaches, migraines, and stomach aches that did not appear to have a medical cause and were likely related to emotional distress. Dr. Taylor considered Student to meet the criteria in the

Diagnostic and Statistical Manual of Mental Disorders, 5th edition for generalized anxiety disorder with agoraphobic features, social anxiety, and major depressive disorder.⁵

32. Dr. Taylor concluded that Student's cognitive, emotional, social, and behavioral profile was best described as someone who was gifted, with asynchronous development. Dr. Taylor listed her diagnostic impressions, with each diagnosis accompanied by a number which was undefined in the report. The diagnostic impressions were F88: Nonverbal Learning Disability due to deficits in visual fluid reasoning and visual memory; F41.1: Generalized Anxiety with Agoraphobic Features, and Perfectionistic Tendencies; F40.10: Social Anxiety Disorder, F32.1 Major Depression Disorder, Moderate, and F81.2: Specific Learning Disability in Math Fluency/Academic Fluency; Rule out Sensory Processing Disorder. The report only specified Generalized Anxiety Disorder with Agoraphobic Features; Social Anxiety Disorder, and Major Depressive Disorder as Diagnostic and Statistical Manual-5 diagnoses. Her report did not specify that Nonverbal Learning Disability was a Diagnostic Manual-5 diagnosis, or specify that the Diagnostic Manual set forth any specific diagnostic criteria for it.

33. Dr. Taylor concluded her report with three pages of recommendations, including educational therapy in specified areas of math, executive functioning, verbal memory, and reading comprehension; psychotherapy, including family therapy, and consultation with an occupational therapist. The report recommended testing and classroom accommodations, including extended time for tests, frequent breaks during

⁵ The Diagnostic and Statistical Manual of Mental Disorders is a reference manual published by the American Psychiatric Association, and used by mental health professionals to assist them in diagnosing and treating psychiatric and psychological disorders.

testing, and a non-distracting test setting. She recommended modified assignments, a modified class schedule, and a shortened school day with fewer classes, then gradually extending the school day and adding classes when Student was ready.

ATTENDANCE AT PASADENA HIGH

34. Pasadena High students are grouped into areas of study called "Academies." Towards the beginning of the school year, when Student's counselor learned that Parents and Student were interested in the Graphic Design Academy, she asked Minh Tran, another counselor at Pasadena High, to call the family. Mr. Tran, the head of the Graphic Design Academy, has been a school counselor at Pasadena High since 2008, and has a master's degree in school counseling. Mr. Tran called Father, and during their discussion Father advised Mr. Tran of Student's history. Based on his discussion with Father, Mr. Tran scheduled and invited Parents to a Section 504 Evaluation meeting, which was held on September 19, 2017. The meeting included Mr. Tran, Parents, Dr. Taylor, Dr. Leach (both of whom appeared at the family's suggestion), and several of Student's teachers, including English teacher Maria Navarro, Spanish teacher Lori Hall, and math teacher Stacy Andrews. Mr. Tran also consulted with the school nurse regarding Student's health. Mr. Tran generated a form document that memorialized the meeting, entitled Section 504 Evaluation Documentation.

35. Dr. Taylor provided only a written summary of her assessment report. The summary Dr. Taylor provided contained her diagnoses and recommendations, and Student's challenges. The Section 504 Evaluation Documentation form noted Dr. Taylor's conclusion that Student had a nonverbal learning disability, with situational onset social anxiety, difficulty expressing learned concepts, a lack of fluid reasoning as it applied to complex problem solving, and a specific learning disorder.

36. Student's teachers reported Student's progress. Ms. Chan, Student's graphic design teacher, reported Student was doing quite well and actively participated

in class. Ms. Andrews reported excellent productivity in Math. Ms. Hall reported Student performed above and beyond expectation. Ms. Navarro reported Student's schoolwork exceeded all standards. Student's class grades at the time of the meeting ranged from A+ to A. Her A+ grades included English and Math.

37. Mr. Tran obtained information about Student's health from the school nurse. Student's health conditions were noted on the 504 form as depression triggered by onset of anxiety and stress due to overwhelming workload or pressure from school. Under Attendance, the form stated Student had been absent 1 day, out of 26 school days.

38. The team determined that Student met criteria for a Section 504 Plan. Specifically, the team determined that Student had a potentially limiting mental or physical disability, in that she had a nonverbal specific learning disability and social anxiety disorder leading to potential avoidance of school and academic assignments. The team determined that Student's impairments substantially limited a major life-activity, pursuant to Section 504, based on Dr. Taylor's assessment. The team determined that Student required a Section 504 Plan, as Student's specific learning disability may result in high stress, and inability to manage and engage in school work. Based upon Student's specific non-verbal learning disorder and social anxiety, the team developed accommodations in the following areas of educational impact: Textbook, Homework, Health, and Testing. Student might need a set of textbooks for home. Further, the rigor or length of homework was to be adjusted as it pertained to Student's ability to handle the workload. As major depression may occur due to overwhelming stress or anxiety, Student was allowed periodic visits with a counselor or psychologist as needed. Finally, 50 percent extra time was allowed for formal and summative assessments, as well as for any specific assignments that were intensively rigorous.⁶

⁶ At hearing, Student contended there were various deficits in the Section 504

39. By letter dated October 24, 2017, Pasadena High notified Parents that Student had a number of excused absences, on September 12, September 19, September 20, September 21, October 9, October 10, and October 11. The attendance clerks sent this type of notice automatically, as the attendance clerk monitored excessive absences. The notice explained the school policy that after 10 excused absences, further absences for illness must be verified by a physician. The letter also gave contact information for Parents to notify the school regarding persistent health problems of which the school should be aware, or if they needed access to support services. There was no evidence at hearing as to why these absences were characterized as excused absences.

40. Also by letter dated October 24, 2017, Pasadena High sent Parents a First Tardy Notification, based on Student being tardy or missing a portion of the school day. The letter referred to five tardies that occurred on August 24, September 25, September 26, September 29, and October 6. The letter contained school and community contact information if Parents needed access to support services.

41. By letter dated October 31, 2017, Pasadena High sent Parents a First Notification of Truancy, which noted that Student had been absent and/or 30 minutes tardy without valid excuse on three days. The attendance clerk sent this type of notice when the attendance clerk noticed that a student has missed three or more school days.

Plan documentation, as the summaries of Student's diagnoses were incomplete, the form incorrectly stated that Student was not on medication at home, and that Student's disability "did not impair a major life activity," and the accommodations were defective. These and other alleged deficiencies are only relevant to this matter to the extent that they relate to Student's child find issue. OAH has no jurisdiction over any claims Student may have for violations of Section 504.

This type of notice, and any additional notices, were attempts to keep open communication between home and school. The letter referred to California's compulsory attendance law, some of the legal repercussions for truancy, and contact numbers so that parents could discuss possible solutions to Students' attendance issues with school personnel.

42. By letter dated December 5, 2017, Pasadena Unified provided Parents with a Second Tardy Notification, stating that Student was tardy or missed a portion of the school day on five dates since the last tardy notification. The letter requested that Parents call the school office to discuss the situation.

43. Also by letter dated December 5, 2017, Pasadena Unified provided Parents with a Second Notification of Truancy, which advised that Student was absent and/or 30 minutes tardy without valid excuse on four additional dates. The letter advised that Student was at risk of being classified as a habitual truant, and requested that Parents call the office to arrange a meeting to discuss how to improve Student's attendance. This second notice customarily triggered a student attendance review board meeting, which would be held every month. They are group meetings, but parents also have the opportunity for a one to-one discussion. At the meeting, parents receive documents concerning plans and recommendations to improve school attendance. Parents did not recall learning of or attending any such meeting.

44. Parents did not respond to Pasadena Unified regarding any of the letters pertaining to tardies and absences. However, at hearing Mother explained that the tardies and absences were due to Student's growing anxiety and depression. Student would become anxious if she had not done her homework or prepared for a test, and that could lead to her being tardy. Eventually, her anxiety led to her missing school, and she became depressed. Her anxiety and depression led to somatic complaints, such as migraine headaches and stomach upsets, which also caused her to miss school. The

more school she missed, the more anxious and depressed she became. Eventually, her anxiety and depression reached a level where she refused to attend school and isolated herself. She refused to leave her room, and failed to take care of her grooming and nutrition needs. Parents were upset to receive the letters regarding the tardies and absences, and, with Dr. Leach's assistance, tried to motivate and encourage Student to attend school. Parents did not give Pasadena Unified any notice of these reasons for Student's absences and tardies during her fall semester at Pasadena High.

45. In general, Student's grades fell and fluctuated somewhat during the semester. Student's second progress report for the fall semester, showed Student receiving an A in Math, a B- in Graphic Design, an A in Chemistry, an A+ in English, an A- in Spanish, and a D- in Dance. Student's third semester grades showed an A+ in Math, a C in Graphic Design, an A in Chemistry, B+ grades in English and Spanish, and a C+ in Dance. Student's final grades for the fall semester, which ended on December 21, 2017, were an A in Math, a B in Graphic Design, an A-in Chemistry, a B- in English, a C- in Spanish, and a B- in Dance. Students' Advisory (homeroom) grades were P's in all grading periods except the third grading period, when she received an F. Her homeroom teacher noted on the report card that Student had excessive absences and lacked participation.

46. Several of Student's teachers at Pasadena High testified at hearing. Ms. Hall observed that Student did "wonderfully" in Spanish class. She attended, she completed her homework, and interacted with her peers. She was absent and missed assignments more during the third and final grading periods, and absent for the final exam. Her failure to take the final exam would have warranted a D+, but Ms. Hall liked Student and therefore raised the grade to a C-.

47. Kimberly Nix was Student's dance teacher during the fall semester 2017. She believed Student started the semester strongly. Student was not present on the day

of the final test for the second progress report. Also, she was not present for the semester final. Students' final grade of B reflected a compilation of the entire semester. Student participated in class, and was engaged. She was interested in choreography, and wanted to learn the steps. She worked well with her classmates. The school put on a dance show in the spring, and Student tried out and was selected to participate in it. Ms. Nix would assign her to write an essay about a topic in class, to make-up work she missed, and Student would do so. Ms. Nix saw no indications that Student had any problems with writing.

48. Ms. Andrews considered Student very articulate and very intelligent. Student loved to participate and seemed to like math. Towards the beginning of the semester, Student helped her classmates with their math work. Student made up the majority of the work she missed during her absences. When in class, Student did all of her work and kept it in her binder. She earned 100 percent on the final examination, so she received an A, despite her absences. She was the highest-performing student in the class. Ms. Andrews was unaware that Student had been diagnosed with a math disorder, and surprised that Student had a 504 Plan, because she did not think Student needed it. However, Ms. Andrews implemented the 504 Plan.

49. None of these teachers testified that they had any specific knowledge as to the reasons for student's absences or tardies. None of these teachers mentioned that Student had any crises when she attended their classes.

50. Dr. Leach testified regarding Student's emotional and mental health while she attended Pasadena High. Dr. Leach is a clinical psychologist in private practice. She has been licensed in the State of California since 2013. Dr. Leach received both her master's degree and her Ph.D. in clinical psychology from Biola University. She has performed research regarding twice-exceptional children.

51. Dr. Leach has been treating Student since December 2016. She provides

individual treatment therapy to Student, and family therapy with and without Student, to help with parenting strategies and how to respond to Student's behavior. She diagnosed Student with generalized anxiety disorder with agoraphobic and perfectionist features; social anxiety disorder, major depressive disorder, recurrent; dermatillomania (skin-picking); nonverbal learning disorder, and math fluency and academic fluency learning disabilities. Her therapy included working on techniques to manage her anxiety about her attending school.

52. Dr. Leach attended the Section 504 meeting, but had no contact with anyone at Pasadena Unified thereafter. Dr. Leach believed Student's emotional health gradually grew worse when she attended Pasadena High. She had moderate anxiety when she first started school. After the first three weeks, her social anxiety became severe, and she was avoiding school. Her generalized anxiety also became severe. Approximately one month to one-and-a-half months after beginning school, Student's depression emerged and then reached a moderate level. The combination of her anxiety and depression resulted in her missing school, or being tardy, and then not completing homework.

WINTER BREAK AND STUDENT'S HOSPITALIZATION

53. Pasadena High was on winter break from December 22, 2017, through January 5, 2018. Students returned to school on January 8, 2018. Student did not do well over winter break. She did not engage much in holiday festivities, and was not comfortable with holiday socializing. She continued to isolate herself in her room, skip meals, and not care for herself. Student's self-esteem appeared to be low, because Student did not feel good about her academic performance at Pasadena High. Student felt unprepared for her final exams. She also felt she did not have any real friends there. She did not feel as though her classmates understood her or could relate to her in a meaningful way. Student expressed feeling hopeless. Additionally, Student's only

grandmother, who was staying at Student's home during the holidays, was declining cognitively. This also had an impact on Student's emotional state.

54. On January 1, 2018, Student became upset during a discussion at the dinner table about a social/political issue. Shortly thereafter, she told Parents she had just tried to cut both of her wrists. Student showed Parents a stash of razor blades in her room. She was taken by ambulance to Huntington Hospital, and then was transported to Alhambra Behavior Health for a statutory 72-hour hold. She was hospitalized until January 5, 2018. Upon her discharge, she received medical wrap-around services, as well as a home safety plan.

SAFETY PLAN MEETING AND ENROLLMENT IN THE CENTER FOR INDEPENDENT STUDY ACADEMY

55. School resumed in Pasadena Unified on January 8, 2018. After Student was hospitalized, Mother spoke to Adam DeVore, a Program Coordinator of Special Education for Pasadena Unified, and notified him of Student's suicide attempt and hospitalization. Mr. DeVore passed the information along to Karina Reyes, the school psychologist. Ms. Brimecombe, Pasadena High's assistant principal, organized a Student Support Team/Safety Plan meeting, which convened on January 10, 2018. The meeting participants included: Parents, Student, Ms. Sawyer, Mr. Tran, Ms. Reyes, and Ms. Brimecombe.

56. The purpose of the meeting was to build a support plan due to Student's incident of risk of self-harm that occurred over winter break. The team developed a safety plan, which was documented by the Individual Student Safety Plan form. The form specified that Student was hospitalized for risk of harm to self during winter break. The form noted Student was 504 eligible, and erroneously noted Student was eligible for special education. The Safety Plan included contact information for Parents, and locations where Student may be located if she was missing during school hours.

57. Student participated in the meeting. She shared her difficulty in being motivated to get up in the morning to come to school. Once at school, she was comfortable most of the time. She experienced anxiety regarding not doing school work, projects, or homework perfectly. She sometimes became anxious when in classes with a large number of students. When she was anxious at school in the past, Student avoided class or left class early to sit in the restroom. The team learned that Student's medication had changed the previous week. Student felt okay on the medication. Student was comfortable being at school from second period through seventh period, and attending the after-school program. Student shared she did not like "teenagers" and sometimes adults.

58. The meeting notes and other information on the Safety Plan form expanded upon Student's comments. Student's school hours were not working for her. Homework and getting to school on time stressed Student. Sometimes she had to leave class when she developed anxiety due to the large amount of people in the room. Once or twice, when she was overwhelmed, she skipped class. She struggled with homework because she had a hard time getting motivated to start, and felt she had to do it perfectly. Once she was at school she felt all right. She was very successful academically.

59. The Safety Plan included strategies staff should employ if Student exhibited anxious behavior. For example, if Student was not in class, or if she remained out of class after asking to step out, school staff was to call Ms. Reyes, Ms. Sawyer, or Ms. Brimecombe. The team also listed warning signs/trigger situations. and decided what actions to take and to avoid for each one. The team determined Student should not be allowed to leave class without permission and with no accountability. Staff needed to know that she was safe and with a staff member at all times, and not alone in the restroom.

60. The team discussed behavior supports to lessen the likelihood of unsafe

behavior. Student was told that if she wanted to remain on track for graduation, and at Pasadena High, she would need to attend classes every day, specifically second through seventh periods. At that time, she was passing all of her classes and on track for graduation.

61. The team reviewed the student attendance review board process. She would do her homework in a tutoring room after school rather than at home. Student experienced anxiety when doing homework at home, and therefore did not do homework, which negatively affected her grades. Ms. Brimecombe was responsible for monitoring the Safety Plan, by checking-in with Student weekly until she felt comfortable. Student and Parent would consult with the Student Support Team, and, in particular, Ms. Brimecombe, regarding any decision to terminate the Safety Plan. The Safety Plan was set for a review on January 24, 2018.

62. Ms. Sawyer reviewed the Center for Independent Study Academy, which was an independent study program of Pasadena Unified. The Independent Study Center was designed to assist students recover missing course credits so that they could graduate. Ms. Sawyer discussed the types of supports, pacing options, and timeline options available there. Ms. Sawyer believed that the Independent Study Center would suit Student. Grades were based on work produced, it had flexible scheduling and provided individualized attention. Student asked about the social interaction and number of students. She would like more social interactions during the school day. Student also shared that she would to stay at Pasadena High but have a later start. Mother expressed reservations about the Independent Study Center, as it seemed similar to Halstrom. However, Parents agreed to investigate it, and Ms. Sawyer walked Parents over to the facility so they could have a tour.

63. The team agreed to assess Student for eligibility for special education and services. At the end of the meeting, Ms. Reyes, the school psychologist, drafted an

assessment plan and explained it to Parents. The assessment plan specified the following areas of evaluation: Academic Achievement, to be performed by a special education specialist, Health, to be performed by the school nurse, Intellectual Development and Social/Emotional, to be performed by the school psychologist, and Educationally Related Intensive Counseling Services, to be performed by an Educationally Related Intensive Counseling Services assessor. The assessment plan described alternative means of assessment by all assessors, such as review of records, interviews, observations, and work samples. The assessment plan specified that the results would be kept confidential, that Parents would be invited to attend IEP team meeting to discuss the results, and that no special education services would be provided to Student without Parents' written consent. Mother signed her consent to the assessment plan that day, January 10, 2018.

64. In discussing the assessment plan, Ms. Reyes explained to Parents that they were to provide Student's records for the assessment, and Mother agreed to do so. The assessment plan was accompanied by a cover letter, which referenced the importance of Parents' information as part of an initial assessment, and enclosed a variety of assessment forms and rating scales for Parents to complete. The letter also enclosed a copy of the procedural safeguards document, and requested Parents forward any current pertinent information about Student, her schooling, and medical/psychological records that Parents believed might help with the assessment. Ultimately Parents provided Ms. Reyes a complete copy of Dr. Taylor's report. They provided no records from Dr. Leach, and they provided no releases of information by which Ms. Reyes could contact either Dr. Taylor or Dr. Leach with respect to the assessment.

65. After the Student Support Team/Safety Plan meeting, Student's attendance continued to be inconsistent. She was absent on three days for medical

reasons, and recorded absent from about 14 class periods.⁷ She was tardy to class five times. Ms. Brimecombe decided that it was important to know when Student was on campus with respect to implementing the Safety Plan. Ms. Brimecombe therefore gave Parents her personal cellphone number, and they agreed to, and did, notify her when Student was at school.

66. Parents ultimately agreed to enroll Student in the Independent Study Center. Student's last day at Pasadena High was January 25, 2018. While at Pasadena High, Student earned 31 course credits. As a result of Student's transfer to the Independent Study Center, Pasadena Unified did not hold a Safety Plan review meeting.

67 Student enrolled in the Independent Study Center on January 26, 2018. The Program required students and parents to sign a contract regarding the Center's Rules and Regulations to ensure appropriate behavior. Among other things, the Rules and Regulations Contract provided that students were to complete a minimum of 30 hours of class-related work per week, and at least five classes per semester. Students who were not engaged with a teacher or seminar needed to be in a study hall, or leave for home.

68. Students, parents, and teachers developed an individual learning plan for students in the Independent Study Center, by choosing courses based on a list of courses the school counselor determined student required. The individual learning plan was flexible, and could change over time.

69. Student and Mother signed the Rules and Regulations Contract on January 26, 2018. Pursuant to the individual learning plan, Student was to take the following

⁷ Pasadena Unified's attendance records were maintained by class periods. An absence was not necessarily a full-day absence. The records reflected that some days Student was only absent for one or more class periods.

courses: World History PB, Chemistry PB, Math 2 Intgr B; English 2P B, and Career Planning B. Each course included a contract which explained the objectives of the course and the work student was to complete over the course of the contract, which was usually two weeks.

70. Student's master teacher, or lead teacher, at the Independent Study Center was Philip Quaranta. His role was to assist in the development of the individual learning program, and to serve as a point person for Student regarding her school work and her progress on her contracts. Mr. Quaranta's practice was to start a student with only one course. Mother and Mr. Quaranta discussed Student's background, her history of school refusal, and her recent suicide attempt.

71. On February 27, 2018, Mr. Quaranta sent Parents a notice that Student had not completed her first contract, which was due to be completed on February 2, 2018. If she received three such notices, Student would be in jeopardy of being withdrawn from the Independent Study Center or transferred to another Pasadena Unified school site. Student completed a few assignments while enrolled in the Independent Study Center, but she did not complete a sufficient amount of work during her attendance at the Independent Study Center to obtain any credits.

PASADENA UNIFIED'S PSYCHOEDUCATIONAL ASSESSMENT

72. Pasadena Unified conducted a psychoeducational assessment of Student after Parents signed consent to the assessment. The assessment team consisted of school psychologist Ms. Reyes, school nurse Ms. Sawyer, and special education specialist Courtney Rowan. Ms. Reyes produced a written report of the assessment dated April 27, 2018.

73. Ms. Reyes received her master's degree in counseling, with a specialization in marriage and family therapy from California State University, Northridge. She received her pupil personnel service credential in school psychology in 2010. She served an

internship in both school psychology and marriage and family therapy, and focused on families in crisis.

74. Ms. Reyes has been a school psychologist with Pasadena Unified since the beginning of her career in 2011. She was assigned to Pasadena High and the Independent Study Center. As a school psychologist she conducted numerous psychoeducational assessments, included functional behavior analyses. She was trained to, and conducted, educationally related counseling services assessments. Ms. Reyes provided counseling services to students pursuant to their IEPs, as well as counseling to general education students in need or in crisis. She also has been a member of IEP teams, student support teams, and 504 Plan teams. She provided staff and faculty annual training in crisis intervention every year at Pasadena High and the Independent Study Center. She would be notified if any student was in crisis while on those campuses.

75. The purpose of the assessment was to determine Student's overall academic achievement in reading, writing, and math; to determine whether Student's social-emotional stated interfered with her educational performance to an extreme degree; to determine whether Student met the eligibility criteria to receive special education services; and to determine what recommendations or modifications could be made to address Student's specific educational needs.

76. Ms. Reyes, Ms. Sawyer, and Ms. Rowan were qualified to conduct the assessment. Testing and assessment materials and procedures were selected and administered so as not to be racially, culturally, or sexually discriminatory. Tests and other assessment materials were provided and administered in English, which was Student's primary language, and were validated for the specific purpose for which they were used. The tests and assessment materials included those tailored to assess specific areas of educational need, and were selected and administered to best ensure accurate

test results. No single procedure was used as the sole criteria for determining an appropriate educational program for Student, and persons with knowledge of Student's disabilities conducted the assessment.

77. The assessment results appeared to be a valid measure of Student's functioning at the time of the assessment. Environmental, cultural, linguistic, and socio-economic factors were taken into consideration in the selection, administration, and interpretation of the assessment instruments, and did not appear to significantly impact the testing results.

78. Ms. Reyes obtained family background information by interviewing Parents and Student, as well as by questionnaires, records review, and observations.

79. Ms. Reyes reported on Student's educational history. At the time of the assessment, she was a 10th grade student enrolled in the Independent Study program. Ms. Reyes summarized all schools Student attended from kindergarten through the present. Based upon the grade reports in Student's cumulative school record, Mr. Reyes reported on Student's grades from fifth grade through eighth grade, when Student attended La Canada Prep; from fall semester of ninth grade, when Student attended Webb Academy, from fall semester of 10th grade, when Student attended Pasadena High, and her work in progress while attending the Independent Study Center. Ms. Reyes noted that Student had received no grades or credit from her attendance at Halstrom Academy during the spring semester of ninth grade, and had not obtained any credits at the Independent Study Center. Further, Student's grades from Webb were only for partial credit.

80. Ms. Reyes also reported on Student's attendance records from Webb and Pasadena High. Student's cumulative file showed no attendance record from La Canada Preparatory or Halstrom. The Independent Study Center did not measure school attendance by physical presence, but was instead measured by work completion.

Student did not complete a sufficient amount of work for attendance credit.

81. Ms. Reyes summarized Dr. Taylor's Psychoeducational Evaluation Report, which was provided in its entirety to Ms. Reyes by Parents. Ms. Reyes specifically noted Dr. Taylor's diagnoses, including her diagnosis of nonverbal learning disability. Ms. Reyes summarized the documentation from the Section 504 meeting, and specifically noted the accommodations agreed upon at the meeting.

82. For the assessment process, on February 21, 2018, Ms. Sawyer prepared a Nurse's Assessment Report regarding Student's health and developmental history since birth. Ms. Reyes summarized and referenced Ms. Sawyer's report. Student passed her vision and auditory screening. She had multiple visits to the emergency department for headaches. Student had several hospitalizations in her lifetime, including the January 2018 hospitalization for danger to self. Student had no hospitalizations or emergency department visits for serious accident or illness since the January 2018 hospitalization. Her current health was good. She was taking a variety of medications, including use of an Albuterol inhaler, Prozac for anxiety and depression, Imitrex and sumatriptan to be used as needed for her migraine headaches, which were under control, Prevacid for gastroenteritis, and Zyrtec for environmental allergies. She was prescribed Sertraline and Ritalin for attention deficit hyperactivity disorder. She took melatonin to help her sleep, and vitamin supplements. She had a history of poor school attendance. Student reported it was difficult for her to get up in the morning. Student's health care providers were listed, including Dr. Whang, a psychiatrist who had treated her since January 2018, and Dr. Leach, whom she was seeing twice a week since December 2016.

83. Parents did not provide Ms. Reyes any records pertaining to Student's hospitalization arising out of her suicide attempt in January 2018. At no relevant time did Parents or anyone else advise Pasadena Unified that Student had a home safety plan and received wrap-around medical services in connection with the January 2018

hospitalization.

84. Ms. Reyes summarized behavior observations from home and school. Mother reported that Student was very bright, creative, talented in acting and singing, insightful, and an avid reader. Her greatest concern was Student's dysfunction due to her anxiety and depression. Student's depression and anxiety became prominent in the eighth grade, and Mother felt they "disabled" her. Currently, Mother explained Student chronically refused to attend school, and her school refusal and self-isolation exacerbated her depression and anxiety. Mother attributed Student's suicide attempt in January 2018 to the combination of these difficulties. Mother also reported that Student often lied to avoid doing disfavored tasks. When motivated or with a tutor, Mother reported Student could complete at least three hours' worth of homework.

85. Mr. Quaranta, Student's lead teacher at the Independent Study Center, reported to Ms. Reyes regarding his observations of Student in the program. When Student attended class, she liked to talk to Mr. Quaranta. She never demonstrated behavioral or social difficulties. She was able to appropriately engage with peers. Student only completed two assignments in her World History class and did some work in Chemistry. When Student was in class she was mostly off-task. Ms. Reyes also included observations from Webb, which she found in Student's cumulative record. In general, many of those comments concerned Student's difficulty in staying focused and in completing her assignments on time, but she participated in class.

86. Ms. Reyes and Parents scheduled several dates for Student to appear for assessment, but Student did not appear or Mother would call and cancel. On February 15, 2018, Mother emailed Ms. Reyes to advise that Student had not been on campus for the past few days because she had not turned in any assignments since she started at the Independent Study Center, but Mother hoped Student would be at her testing appointment on February 20. Ultimately, Student attended testing sessions on March 12,

2018 and March 16, 2018. When she appeared for testing, she was typically a few minutes early, and appeared ready to work. She was friendly and pleasant, made appropriate eye contact, and appeared comfortable. She easily established rapport with Ms. Reyes. She was cooperative, answered all questions about herself with ease, and able to listen and follow directions. She demonstrated adequate effort and motivation throughout the assessment. Student's behaviors of rapport, attention, and cooperation reassured Ms. Reyes that the test results were reliable.

87. Ms. Reyes estimated Student's cognition skills by using alternative assessment methods, including a review of records, observations, informal measures, standardized testing instruments, and inter-test discrepancies. She used alternative measures because they were non-discriminatory, and because she then would not be relying only upon a single test score. Moreover, Dr. Taylor's report expressed her concerns with Student's nonverbal skills. Therefore, in Ms. Reyes's professional judgment, an alternative assessment using multiple measures was an appropriate means of assessing Student. Overall, she estimated Student's learning potential to be within the average to high average range.

88. Ms. Reyes administered several instruments to assess Student's cognitive processing. Cognitive processing includes, but is not limited to: auditory processing, visual processing, attention processing, conceptualization, association, and expression. It also may include memory processes. Auditory processing may include auditory memory, auditory sequence, auditory discrimination, phonemic awareness and related phonological processes, and expressive and receptive language processing. Visual processing may include visual perceptions, visual memory, visual sequence, and visual discrimination. Attention processing may include attention difficulties with hyperactivity, attention without hyperactivity, and attention with hyperfocusing.

89. Ms. Reyes administered the Cognitive Assessment System, Second Edition,

to evaluate planning, attention, simultaneous, and successive cognitive processes. Student obtained a full scale score of 100, which was within the Average classification. Her scores on the planning scale, attention scale, and successive scale were within the Average classification, and her simultaneous processing score was within the High Average classification.

90. Ms. Reyes administered the Test of Visual-Perceptual Skills-Third Edition, to measure various aspects of Student's visual-perceptual skills in five areas: visual discrimination, spatial relationships, visual memory, figure ground, and visual closure. Overall, Student's visual-perceptual score fell in the Average range. Her score in the area of spatial relationships was the only Below Average range score she obtained. This score reflected Student had difficulties with awareness of directional differences between visual forms. Ms. Reyes was not concerned with this score, because Student obtained a High Average range score in Verbal-Spatial Relationships subtest on the planning scale on the Cognitive Assessment Scale.

91. Ms. Reyes administered the Beery-Buktenica Developmental Test of Visual-Motor Integration-6th Edition, which provides information about how accurately an individual can copy a series of increasingly complex designs. The test is designed to assess the extent to which individuals can integrate visual and motor ability. Student performed within the Low Average range. Ms. Reyes noted that scores in the Low Average range were still average scores.

92. Ms. Reyes assessed Student's auditory processing skills by administering the Test of Auditory Processing Skills-3rd Edition. The subtests are designed to provide information in four areas: auditory attention, basic phonemic skills, auditory memory, and auditory cohesion (comprehension and reasoning). Student's overall auditory processing score fell in the Average range. Her index scores ranged from High Average in phonological processing, to Average in memory skills and cohesion. Her High

Average score on the phonological processing index reflected Student was well able to discriminate phonemes and manipulate or blend sounds that make up words. Her Average Range score on the auditory memory index reflected average ability in basic memory processes including sequencing. Her Average Range score on the auditory cohesion index reflected average abilities in the higher order linguistic skills that required her to draw information or make inferences regarding spoken information.

93. Ms. Rowan administered the Kaufman Test of Educational Achievement—3rd Edition, to assess Student’s academic achievement in the areas of reading, mathematics, and writing. Student’s subtest scores ranged from Very Superior in reading Comprehension and Written Expression, to Average in in Math Concepts and Applications and Oral Expression. Her composite scores in Oral Language were in the Very Superior range, in Reading and Written Language her scores were in the Superior Range, and in Math Concepts her scores were in the High Average Range. Ms. Reyes attributed student’s high academic scores to the instruction she received during her one semester at Pasadena High, with some pretty consistent attendance. Student had performed very well in math, according to Ms. Andrews, her math teacher.⁸

94. Ms. Reyes evaluated Student’s adaptive behavior skills. Mother reported that Student sometimes struggled with dental hygiene, and also with low motivation to socialize and attend school. Student history demonstrated that she could participate in major life functions such as school, social, and leisure activities. She participated on sports team, worked with children, and sang and acted in leading roles. Although some of her scores on adaptive skills ratings scales were in the “At Risk” or “Clinically Significant” ranges, Ms. Reyes believed her adaptive skills may be rated significantly

⁸ Ms. Ryes did not mention it in her assessment report, but she had an informal conversation about Student with Ms. Andrews while conducting the assessment.

higher if she were not experiencing depressive and anxious feelings.

95. Mr. Reyes assessed Student's social-emotional development using a variety of rating scales. She included background information Mother reported regarding Student's previous diagnosis of attention deficit hyperactivity disorder, and previous psychiatric treatment, and she also reiterated several of Dr. Taylor's diagnoses. Mother reported Student was immature, socially isolated, had low self-esteem, had difficulty accepting criticism, was uncooperative, sometimes did not enjoy group activities, and did not show concern for the feelings and property of others.

96. Ms. Reyes interviewed Student, who reported she got along "o.k." with her family, but they clashed a lot recently because of Student's failure to attend school. She had friends whom she saw at school and occasionally after school. She also had "non-school" friends. Student said she had to sneak around with her friends because otherwise her parents would insist on getting to know them and their parents. Student said she and her friends did not do anything wrong. Student mentioned she would like to take some college courses. Ultimately, she would like to become an actress and study psychology. Student agreed with Mother that she was a good student until about seventh grade. Eighth grade was very difficult. She reported always suffering from migraines, but she also picked her skin when anxious, which led her to avoid school due to the resulting blemishes. Student reported only one suicidal attempt, and besides the skin picking she did not engage in any other self-harming behaviors. Student identified three wishes: (1) to go back five years; (2) no mental illnesses, and (3) she could draw. Ms. Reyes was favorably impressed that Student was aware of her difficulties and was a good reporter of her challenges.

97. Ms. Reyes administered the Parent rating scales of the Behavior Assessment System for Children, 3rd Edition, to Mother, and the Self-Report rating scales to Student. Ms. Reyes did not administer the Behavior Assessment System scales

to Student's teachers at either Pasadena High or the Independent Study Center, due to the limited amount of time that Student was enrolled at those schools. The Behavior Assessment System is a comprehensive assessment of behavior and emotions in children and adolescents. The Behavior Assessment Scale has a validity index, called an *F* Index, which is designed to assess the possibility that a rater depicted the child's behavior in an inordinately negative fashion. An elevated *F* Index score will not invalidate the results of the assessment, rather, it serves as a moderator for the interpretation of the overall results obtained on the assessment. Ms. Reyes found that Mother's ratings produced an *F* Index score that fell within the Caution range. Therefore, Ms. Reyes stated caution should be used when interpreting the scores on this assessment. Ms. Reyes also reported that Mother's scores fell into the Acceptable range of consistency, indicated that she consistently answered items on the rating form.

98. "At Risk" scores on the ratings scales may signify potential problems. "Clinically Significant" scores denote a high level of maladaptive behavior. Mother's ratings placed Student as At Risk on the Externalizing Problems composite scale; Clinically Significant on the Internalizing Problems scale; Clinically Significant on the Behavioral Symptoms Index; and At-Risk on the Adaptive Skills scale. More specifically, Mother ratings placed Student in the Clinically Significant range in hyperactivity, anxiety, depression, somatization, withdrawal, attention problems, and activities of daily living.

99. Student completed the Self-Rating Scales of the Behavior Assessment System, which is designed to evaluate the personality, affect, and self-perceptions of children and young adults. Student's response patterns on this instrument fell within the Acceptable range on all four of the test's reported validity indexes.

100. Student's scores fell in the Clinically Significant range on the Emotional Symptoms Index composite scale, and the Personal Adjustment Composite Scale. Student's scores on the Self-Esteem and Self-Reliance subscales also fell in the Clinically

Significant Range. On the Self-Esteem subscale, Student reported a negative self-image, both in terms of personal and physical attributes. On the Self-Reliance subscale, Student reported a very low confidence level in her ability to make decisions, solve problems, and/or be dependable, compared to others her age.

101. Ms. Reyes administered the Conners Comprehensive Behavior Rating Scale to Mother. The Conners is designed to provide a complete overview of child and adolescent concerns and disorders. It includes, among other things, the Diagnostic Manual, Fourth Edition, symptom scales, empirical and rational scales, as well as other clinical indicators and critical and impairment items. Ms. Reyes felt the Conners was a particularly appropriate instrument, as it measured perfectionism and compulsive behaviors. Both Mother and Dr. Taylor reported that Student had perfectionistic tendencies. Mother's scores were consistent, and indicated a possible negative response style, such that the scores may present a less favorable impression than was warranted. Mother's ratings placed Student in the Very Elevated Range in the areas of Emotional Distress, Upsetting Thoughts, Worrying, Social Problems, Defiant/Aggressive Behaviors, Hyperactivity/Impulsivity, Perfectionistic and Compulsive Behaviors; Violence Potential Indicator, and Physical Symptoms. Mother's ratings placed Student in the High Average range in Academic Difficulties, Math, and Separation Fears. Mother's ratings placed Student in the Average range only in the area of Language.

102. Ms. Reyes administered the Children's Depression Inventory-Second Edition to Mother and to Student. This instrument assesses a variety of areas, including Emotional Problems, Negative Mood/Physical Symptoms, Negative Self-Esteem, Functional Problems, Ineffectiveness, and Interpersonal Problems. Ms. Reyes did not submit the rating forms to Student's teachers at Pasadena High and the Independent Studies program, due to the limited amount of time that Student was enrolled at those schools. Mother's overall ratings placed Student in the Very Elevated range, reflected

that Student may be experiencing an elevated number of depressive symptoms. Mother rated student as in the Very Elevated range in the areas of Emotional Problems, which reflected Mother's assessment of Student's sadness, irritability, sleep problems, loneliness, and low self-esteem. Mother rated Student in the Very Elevated Range in the area of Functional Problems, reflecting Mother's assessment that Student's school problems were becoming worse, she was having difficulty interacting with peers, and she had an impaired capacity to be cooperative and to enjoy activities.

103. Student's overall ratings on the self-report form were in the Very Elevated Range. Her ratings on the component areas ranged from Very Elevated in Functional Problems and Ineffectiveness, to Elevated in Emotional Problems, Negative Mood/Physical Symptoms, and Negative Self-Esteem. Ms. Reyes's report showed that Interpersonal Problems was the only area in which Student's ratings showed no problem.

104. Ms. Reyes administered the Revised Children's Manifest Anxiety Scale to Student, which is designed to assess the level and nature of anxiety in children and adolescents. Student's Total Anxiety score fell in the Moderately Problematic Range, as did her scores on the Worry and Social Anxiety subscales.

105. Ms. Reyes administered the Scale for Assessing Emotional Disturbance to Mother, which is a scale to address the five qualifying characteristics or conditions on which eligibility for special education in the category of emotional disturbance is based. Mother's ratings were Highly Indicative of emotional disturbance with respect to the qualifying characteristics of Unhappiness or Depression and Physical Symptoms of Fear. Mother's ratings were Indicative of Emotional Disturbance in the characteristic of relationship problems.⁹ Again, Ms. Reyes did not administer these rating scales to

⁹ There is a typographical error in Ms. Reyes's report. The introductory portion of her report describing this assessment stated that scores of 13 or lower were not

Student's teachers at Pasadena High and the Independent Study Center, because of the limited amount of time that Student was enrolled at those schools.

106. Ms. Reyes administered the Children's Inventory of Anger, which measures the intensity of anger experienced in response to a variety of potentially anger-arousing situations. Student self-reported on this measure. Her anger reactions were in the Average range.

107. Ms. Reyes assessed Student's executive functioning using the Behavior Rating Inventory of Executive Function, Second Edition, as she knew that Student a history of difficulty with executive functioning, such as completing school work and attending school. Student's Mother completed the rating form. Mother's responses were not overly negative, were reasonably consistent, and did not reflect an atypical pattern. Therefore, Ms. Reyes considered the scores to be valid.

108. Mother's responses fell in the Clinically Elevated Range on the Behavior Regulation Index and the Cognitive Regulation Index, and in the Potentially Clinically Elevated range on the Emotion Regulation Index. Her Global Executive Composite Score, an overarching summary score, was in the Clinically Elevated Range. Mother rated

indicative of emotional disturbance. A table in the report shows that Student received a score of 13 in the Area of Inability to Learn, and the table also states that her score was Not Indicative of Emotional Disturbance. However, in one portion of the text of the report, Ms. Reyes states that Mother's ratings of Student were Indicative of an Emotional Disturbance in the area of Inability to Learn. Ms. Reyes does not repeat this error in her conclusions at the end of her report, only stating that Mother's ratings were consistent with the presence of emotional disturbance on the scales relationship problems, unhappiness or depression, and physical symptoms of fear. This error does not impact Ms. Reyes's ultimate findings.

Student as in the Normal range on the Task Monitoring subscale. That subscale measured Student's task-oriented monitoring or work-checking habits.

109. Ms. Reyes gave Student a Sentence Completion task, to obtain insight into aspects of her personality. The report listed Student's responses, and at hearing Ms. Reyes pointed out several of the responses she found most interesting. For example, Student completed sentences that revealed she had lots of homework, she wanted to act, it pained her if she lacked the ability to do something, and the Independent Study Program was flexible, maybe excessively so.

110. Ms. Reyes summarized the assessment, repeating much of the information in her report, but also included some additional conclusions. Ms. Reyes noted that her findings as to Student's cognitive ability in the Average to High Average range were similar to those of Dr. Taylor. Ms. Reyes specified that Student demonstrated average range ability in auditory processing, with strength in her phonological ability. Her visual perception skills were in the Average range, but her skills on one spatial-relationships subtest were in the Below Average range. Student demonstrated a weakness in visual-motor integration, in which she demonstrated Low Average range scores.

111. Academically, Student earned Very Superior range scores in reading comprehension and written expression. She demonstrated Superior range scores in letter and word recognition and math computation. Her scores in spelling and listening comprehension were in the High Average range. She performed in the Average range in math concepts and applications and oral expression.

112. Mr. Reyes noted some of Dr. Taylor's diagnoses, including the diagnosis of Nonverbal Learning Disability, due to deficits in visual fluid reasoning and visual memory.

113. Ms. Reyes summarized the assessment results in the social-emotional area. Mother rated Student in the clinically significant range in hyperactivity, anxiety,

depression, somatization, withdrawal, and activities of daily living. On a scale that measured behaviors, Mother reported very elevated concerns in emotional distress, upsetting thoughts, worrying, social problems, defiant/aggressive behaviors, hyperactivity/impulsivity, perfectionistic and compulsive behaviors, violence potential, and physical symptoms. Mother also reported very elevated concerns on a scale that measured depression. On the Emotional Disturbance scale, Mother's scores were consistent with the presence of an emotional disturbance in the relationship problems scale, unhappiness or depression scale, and physical symptoms of fear scale.

114. On self-rating scales, Student reported clinically significant concerns in the areas of self-esteem and self-reliance. She also reported worry and social anxiety were moderately problematic for her. On a scale that measured depression, Student endorsed very elevated difficulties. She reported average range scores on the anger scales.

115. Mother reported clinically elevated scores on the following scales involving executive functioning: inhibit, initiate, working memory, plan/organize, and organization of materials.

116. Ms. Reyes concluded that Student met four of the six independent bases for eligibility as a student with an emotional disturbance. She stated that Student exhibited each of these four eligibility characteristics over a long period of time and to a marked degree. She then listed the four characteristics, and explained how they applied to Student. First, Student had an inability to learn that could not be explained by intellectual, sensory, or health factors. Ms. Reyes reported Student had average to high average cognition, which should lead to academic success, yet Student had not been able to access the general curriculum. Second, Student exhibited inappropriate types of behavior or feelings under normal circumstances. Ms. Reyes reported Student experienced anxiety that prevented her from engaging in an age-appropriate and typical school environment. Third, Student exhibited a general pervasive mood of

unhappiness or depression. Ms. Reyes reported Student had a diagnosis of Major Depressive Disorder, Moderate, and appeared to manifest depressed behaviors in multiple settings, according to Parent and self-reports. Student also had one incident of self-harm which led to a psychiatric hospitalization. Fourth, Student had a tendency to develop physical symptoms or fears associated with personal or school problems. Ms. Reyes noted Student reportedly had a long history of migraines and, more recently, of picking her skin when anxious.

117. Ms. Reyes's report stated the IEP team would decide whether the assessment results demonstrated that Student required special education. The report listed all of the eligibility categories for special education under the California Code of Regulations and Education Code, and, for each eligibility category, stated whether Student met the eligibility criteria, and why. The only eligibility category criteria that Ms. Reyes believed Student met were those for emotional disturbance. In particular, Ms. Reyes reported that Student did not meet eligibility as a student with a specific learning disability, because Student did not present with a processing deficit, such as auditory, visual, visual-motor, or attention, that significantly impacted her academic performance in school. Ms. Reyes elaborated upon this opinion at hearing. Student's cognition was in the High Average to High range, and her academic scores were in the Average to Superior range, so there was no a gap between the two. She had no processing deficits. Rather, testing demonstrated only that Student's performance was relatively weaker in a few areas than in others.

118. At hearing, Ms. Reyes explained that she did not administer ratings scales to Student's teachers. Student was enrolled at the Independent Study Center at the time, and therefore was not always required to be on campus there, and often did not attend school even when she was supposed to be there. Ms. Reyes wanted to give ratings scales to teachers who had sufficient knowledge of a student to know their

patterns, strengths, and weaknesses. In her opinion, Student's teachers at the Independent Study program did not have that knowledge, which would have affected the validity of their ratings. She also considered giving the ratings scales to Student's former teachers at Pasadena High, but she did not believe their ratings would be a true indication of Student's status at the time of the assessment. When Student initially attended Pasadena High, her teachers had no concerns.

119. Ms. Reyes also explained that she would not have recommended a functional behavior assessment to Parents. Student's difficulties impacting her ability to access her education were depression, not coming to school, and anxiety. Those difficulties were social-emotional in nature, not behavioral. Ms. Reyes considered the intensive counseling assessment portion of her assessment to have been complete, and there were no additional assessments she would have conducted if she had administered the intensive counselling services assessment separately and written a separate assessment report. She affirmed that Student would qualify for intensive counseling assessment services based on her report. She also asserted that the assessment plan did not include an occupational therapy assessment, because a need for occupational therapy was not a basis for eligibility for special education. It was a related service to be provided after a student was found eligible for special education. Similarly, the assessment plan did not include a transition assessment, because such an assessment was not conducted, and transition services offered, unless the Student qualified for special education.

120. Dr. Reyes also commented on Dr. Taylor's report. She noted that Dr. Taylor was concerned with Student's math fluency based on her scores on the Wechsler Achievement test. Ms. Reyes noted that school psychologists did not favor the Wechsler Achievement test because of concerns with how it was normed and standardized. Student's overall math scores on that instrument were average, and the lowest subtest

score in math was a low average score in addition. Ms. Reyes did not consider a low average score on one subtest to be a weakness. In addition, Dr. Taylor's assessment was performed in June and July 2017, when Student had not had consistent math instruction, or instruction in other academic areas for about seven months.

121. Ms. Reyes also criticized Dr. Taylor's assessment for failing to include a school observation of Student. Dr. Taylor's assessment occurred during the summer, but she could have waited to complete her assessment until Student enrolled in Pasadena High in August 2017. She could have then observed Student during the fall semester. Ms. Reyes also criticized Dr. Taylor's diagnosis of nonverbal learning disability. Ms. Reyes commented that there was no accepted definition of a such a disability, and it was not a diagnosis contained in the Diagnostic Statistical Manual-5. Dr. Taylor's report did not provide diagnostic criteria that a child with a nonverbal learning disability would have to meet.

122. Dr. Taylor criticized Ms. Reyes's assessment because Ms. Reyes did not include an observation of Student, and did not submit rating scales to Student's teachers or interview them. Moreover, she criticized Ms. Reyes for not consulting with Dr. Taylor or Dr. Leach during the assessment. She did not believe the assessment specifically assessed for fluency, which Dr. Taylor considered the ability to get a test done in a timely manner.

123. Dr. Taylor was not a persuasive witness. First, Dr. Taylor, who stated she had attended numerous IEP meetings, did not demonstrate any grasp of IDEA and California Education Code special education policies, requirements and limitations. She did not refer to the IDEA in her report, and she did not relate her opinions regarding Student's learning disabilities to any IDEA eligibility categories. She diagnosed Student as having learning disabilities, even though Student's scores on all of Student's skills tests were in the Low Average range or above. In particular, on the Wechsler, she

considered Student's score in the Low Average range on the math fluency subtest in addition, and a barely Low Average range score on the math fluency subtest in multiplication, as demonstrating a learning disability in math fluency, when Student's overall math fluency score was in the Average range. In so doing, she overemphasized the impact of those average scores, as she did not rely on a variety of assessment instruments to support her conclusion that Student had a learning disability in mathematics. Her opinion that Student's education and accommodations must address Student's particular characteristics as a twice-exceptional student may reflect her viewpoint as clinical psychologist, but she did not demonstrate that her opinion had any relevance to Pasadena Unified's obligations under the IDEA and the California Education Code.

124. Second, Dr. Taylor faulted Ms. Reyes for not conducting an observation of Student and for not providing rating scales to Student teachers. Yet, Dr. Taylor's assessment did not include an observation of Student in her classroom, or the results of rating scales from Student's teachers. Dr. Taylor defended her failure to observe Student or provide rating scales student's teachers, because her assessment was performed over the summer. She offered no reason as to why she did not perform her assessment when school was in session. She could have waited a few weeks to give Student time to settle in, and then observed her and delivered rating scales to her teachers. Moreover, Dr. Taylor's criticism of Ms. Reyes for failing to observe Student is not entirely accurate. Ms. Reyes did not observe Student in the classroom herself, but Ms. Reyes reported on Mr. Quaranta's observation, as well as the observations of Student's previous teachers at Webb. Further, Ms. Reyes explained that Student's Pasadena High School teachers' scores would not have reflected much negative information because of how well Student performed at Pasadena High School before her January 2018 hospitalization.

125. Third, Dr. Taylor's testimony contradicted her observations of Student

during the assessment. At hearing, Dr. Taylor referred to Student's appearing for some of her testing sessions disheveled and in pajamas. Yet, in the Behavior Observation section of her report, she does not mention that Student ever appeared for a testing sessions disheveled and in her pajamas. Rather, she wrote that Student "appeared well groomed for most testing sessions, and was dressed appropriately for the weather." Similarly, she testified that Student had self-advocacy issues, based on Student's pattern that, when in distress, Student withdrew and started to shut down. Dr. Taylor testified that she noticed this conduct when Student arrived at the testing sessions. It was difficult to initiate contact with Student, so Dr. Taylor would take the time to talk with her until Student appeared to feel safe and regulated. Dr. Taylor did not mention these events in her report. Rather, Dr. Taylor's report reflected that Student appeared at the testing sessions alert and oriented, she did not demonstrate any odd behaviors, and she maintained appropriate eye contact. Student responded well to working one-to-one with Dr. Taylor, and Student was eager to participate and share her interests and thoughts. All of these factors diminished Dr. Taylor's credibility.

126. Dr. Leach criticized Ms. Reyes for not consulting with her during the psychoeducational assessment. She believed she could have provided relevant information to Ms. Reyes. She might have provided different information than Parent provided regarding Student's specific symptoms, their severity, and their impact. Dr. Leach also criticized Ms. Reyes for not including teacher input, in the psychoeducational assessment, because teachers have frontline experience with the student. Moreover, multiple teacher input was important, because children acted differently in different classes.

127. Dr. Leach also believed information about the Student's 72-hour hold and hospitalization would have been relevant to the assessment process. She acknowledged that she knew of no release given regarding information pertaining to the 72-hour hold.

Dr. Leach had a release that pertained to speaking to Mr. Tran, which was signed at about the time of the Section 504 meeting, but she had not received a release that authorized her to give information to Ms. Reyes.

128. Dr. Leach's criticisms of Ms. Reyes's assessment were not persuasive. Dr. Leach cited no specific piece of information she could have provided Ms. Reyes that would have assisted her in the assessment. Dr. Leach overlooked the fact that Ms. Reyes had reported Mr. Quintero's observations, as well as observations of Student's former teachers at Webb. Significantly, Dr. Leach did not state that any of Ms. Reyes's conclusions regarding Student's social emotional status and mental health was incomplete or incorrect.

WITHDRAWAL FROM PASADENA UNIFIED AND PLACEMENT AT BRIDGES

129. On March 23, 2018, while Ms. Reyes was completing her assessment and report, Student's counsel sent a letter to Pasadena Unified, giving notice that Parents were going to enroll Student in Bridges Academy effective April 9, 2018, "as her current educational placement did not provide meaningful access to an appropriate education considering the nature of her unique needs and circumstances." The letter stated that, in addition to placement, Parents were seeking appropriate related services, and that the family would "seek reimbursement from [Pasadena Unified] at the appropriate time."

BRIDGES

130. Bridges is a private school that serves children from fourth grade through high school, and specializes in students who are twice-exceptional. The high school classes meet requirements for state universities in California. Bridges has two learning specialists, one of whom is a special education specialist.

131. Susan Baum, Ph.D., testified as to why Bridges was an appropriate placement for Student. Dr. Baum received her B.S. in special education and elementary

education from Syracuse University; her master's degree from Montclair State College in learning disabilities; and her Ph.D. from the University of Connecticut in special education, Educational Psychology, and Education of the Gifted and Talented. She is currently Director of the 2e Center for Research and Professional Development at Bridges.¹⁰ She works with Bridges teachers regarding curriculum and programs. She has been involved with Bridges since 2005.

132. Dr. Baum does not hold any California teaching certifications. She was a public school teacher in New Jersey and Georgia early in her career, but she has not been a classroom teacher since August 1980.

133. Dr. Baum has studied a variety of educational issues throughout her career, and one area of focus has been studying and publishing her research regarding the special challenges that confront twice-exceptional children. She described twice-exceptional children as children who qualify for special education and also have advanced cognitive abilities, high levels of interests, and a diversity of talents. She believes that their education should address both their needs arising from their high cognitive ability, and their needs arising from their disability. Their education should make sure that their gifts are developed, and that they receive appropriate accommodations and support in an environment in which the student was completely understood. She advocated a strength-based, talent-focused education, focused on and engaging the student's strengths, and relating a student's strengths to the student's weaknesses. For example, if the student was a talented actor, the student could learn to transfer that strength to remedy the student's deficiencies in social skills.

134. In Dr. Baum's opinion, an educational setting for twice-exceptional students should provide the following five elements: (1) a strength-based, talent-

¹⁰ Twice-exceptional students are sometimes referred to as "2e students."

focused education; (2) a psychologically-safe environment, where the student feels they belong, where they are not the only twice-exceptional student, and where they will not be ridiculed; (3) where people understand the asynchrony that characterizes twice-exceptional students, because their intellectual abilities are more developed than their social development and their psycho-motor development; (4) provide the student the ability to develop relationships with individuals to whom they can relate, because they have similar interests or due to some other commonality; (5) flexible timelines, such as a smaller course load, or flexible deadlines to complete school work, to address the work-production issues that twice-exceptional students often have due to deficits in executive functioning and perfectionistic tendencies.

135. In Dr. Baum's opinion, a general education public high school would have difficulty meeting these requirements. However, she believed that Bridges met these requirements.

136. Dr. Baum explained that anxiety can be an independent psychological disorder, or a secondary symptom of the asynchronous development that characterized twice-exceptional students. She described the social-emotional supports available at Bridges to address anxiety and other social emotional challenges of students. The classes were small. The teachers were aware of social-emotional issues, so there was more support, and teachers were trained in how to focus students. The school also provided social emotional support through a consulting clinical psychologist who was there two days per week. Additionally, students' private therapists worked closely with school counseling staff. Dr. Baum did not know what credentials the counseling staff had, or whether there was a regular time when students saw their counselors. Bridges counselors did not use behavior intervention techniques, as the school avoided the use of those techniques.

137. Bridges had classes from fourth grade through high school. The classes

were small, and all of the teachers were aware of the social-emotional status of their students. Teachers were trained in how to focus students. All teachers at Bridges were trained in teaching students with a twice-exceptional profile. Dr. Baum believed this was critical, as these students were unique. The teachers needed to know how to stimulate the students intellectually.

138. Dr. Baum believed that Bridges addressed Student's strengths and challenges. She described Student's strengths as being drama, literacy, screenwriting, and humanities. Her challenges were in work-production, anxiety, and working memory. Bridges addressed these challenges by providing flexible deadlines, support during the school day, and many ways for the student to communicate what the student knows, or how to access information. Approximately fifty percent of the time there were talent development opportunities in the form of electives, which helped students develop better executive functioning skills, especially time management skills.

139. Dr. Leach also testified in support of Student's attendance at Bridges. She described her contacts with Bridges and Student's progress there. When Student first enrolled, Dr. Leach had regular contacts with Student's counselor. At first, she consulted with the counselor at least weekly; eventually those consultations occurred about one time per month. She worked with the counselor on Student's school refusal, social anxiety, and generalized anxiety. At times they worked on Student's depression and her non-verbal learning disability in terms of her difficulty reading social cues. Dr. Leach believed Student significantly improved while at Bridges. She still had issues with getting to school on time, or at all, but she did not display much school refusal. Student's perfectionism was still present, but it did not deter her from attending school. Dr. Leach attributes this to the practice at Bridges of not penalizing Student for not completing work. She noted that Student's counselor had recently helped Student calm her anxiety so she could finish a test.

IEP OF APRIL 27, 2018

140. Pasadena Unified convened an IEP team meeting on April 27, 2018, to discuss the results of its psychoeducational assessment and determine Student's eligibility for special education. The invitation to the IEP team meeting stated that Parents had the right to have other individuals attend who had knowledge or special expertise about Student. In response, Mother checked a box on the invitation stating that she would attend the meeting. She listed Parents' counsel on the invitation as the only additional attendee.

141. The IEP team consisted of Parents, counsel for Student and Parents, a Pasadena Unified administrator, Ms. Reyes, Ms. Rowan, Ms. Sawyer, Mr. Quaranta (Student's general education teacher at the Independent Study Center), Jack Loos (the principal of the Independent Study Center), and Pasadena Unified's counsel. Neither Dr. Taylor nor Dr. Leach were present at the meeting. Partway through the meeting, Parents excused Mr. Quaranta from the meeting in writing. He was replaced by another general education teacher. Parents and their counsel noted that they had not been given advance notice of Mr. Quaranta's need to be excused from the meeting.

142. Parents received a copy of the procedural safeguards and of the psychoeducational assessment report. Parents had no questions about the procedural safeguards.

143. The team noted Student's strengths and Parents concerns, as they appeared in Ms. Reyes's assessment report. In addition to Ms. Reyes's assessment report and the scores from Ms. Rowan's academic assessment, the team considered classroom data, and parent and teacher reports and observations. Student's attorney expressed Parents were concerned with Student's struggles with behavior and peer interactions, which were displayed at Pasadena High, but were not as evident at the Independent Study Center. Mother noted Student liked to hide in restrooms. Parents and teacher

noted that Student struggles with perfectionism that can often stagnate her and keep her from completing school assignments and projects. Parents also mentioned Student's challenges with her executive functioning skills. Student enjoyed dancing, reading, and acting.

144. Ms. Sawyer presented her health report and findings. Ms. Reyes presented the draft psychoeducational assessment report, which was provided to Parents and their counsel prior to the meeting. Student's counsel questioned the scores regard visual memory and spatial-relationships, as Student's previous scores in those areas were in the Superior range, but Ms. Reyes's report reflected significantly lower scores. Ms. Reyes explained that there could be a number of reasons why there was a discrepancy, and that the test could be a bit challenging.

145. Ms. Rowan presented her academic assessment report with respect to her administration of the Kaufman, and the IEP set forth Student's composite scores. Student did well overall. Student's counsel asked whether math fluency was part of the overall math composite score. Ms. Rowan explained that math fluency was not a part of that composite. Student did quite well in the math concepts, math computation, and math fluency areas of the assessment.

146. The team considered student's present levels of performance. Since the Independent Study Center measured attendance based on work completion, Student had not completed a sufficient amount of work to gain attendance credit or earn credits toward graduation. Academically, Student was progressing in math and English language arts, and her written expression skills were very good. Student knew her grade-level math facts, she could calculate mathematical problems that involved percentages, decimals, and square roots. She had excellent phonological processing skills, and read fluently. Her reading comprehension was excellent and she had excellent spelling skills. She was superb at oral expression. Student's written expression skills were

very good. She knew proper punctuation and capitalization. She could construct complete simple and complex sentences and comprehensive paragraphs. Her writing was planned and contained a logical flow, a main idea, and sentences with supportive details. She incorporated sentences that were varied in structure and content.

147. Student's communication and gross-fine motor skills were not areas of concern to the team. In the vocational area, Student demonstrated age-appropriate skills. She was polite, prepared, and followed written and verbal directions.

148. The team's consideration of Student's present levels of performance in the social emotional/behavioral area relied generally on Ms. Reyes's psychoeducational assessment report. Mother reported that Student was diagnosed with attention deficit hyperactivity disorder in grade school. Mother also believed Student was socially isolated, had low self-esteem, had difficulty accepting criticism, could be uncooperative at times, and sometimes did not enjoy group activities. Mother learned through Dr. Leach that, while Student attended the Independent Study Center, she was sneaking away during school hours to go to a friend's house. Student picked at her skin when anxious. When she felt anxious, Student expressed feeling unwell to avoid attending school.

149. In the area of adaptive daily living skills, the team also focused on the information in Ms. Reyes's psychoeducational assessment report. Mother reported that sometimes Student "struggled with her dental hygiene and low motivation to socialize and attend school." Ms. Reyes believed that Student's adaptive skills may be rated significantly higher if she were not experiencing depressive and anxious feelings.

150. The team considered Ms. Sawyer's health report, and recorded much of the report in the IEP as it appeared in Ms. Reyes's psychoeducational assessment report. Student was observed in the health office for the purpose of the health screening. She was cooperative, able to wait her turn, and completed tasks without difficulty. She was

knowledgeable and articulate regarding her health and social histories. She liked to read and to dance.

151. Based on the assessment and the information presented, the team determined that Student was eligible to receive special education services under the primary category of emotional disturbance. Parents and their attorney believed that Student would best qualify under specific learning disability as the primary eligibility category, based upon Dr. Taylor's diagnoses that Student had a nonverbal learning disability due to deficits in visual fluid reasoning and visual memory, and a specific learning disability in math fluency/academic fluency. Ms. Reyes explained the requirements and criteria for a student to qualify under specific learning disability. Father asked where nonverbal learning disability would fit into any of the areas of eligibility. Student's primary eligibility category remained emotional disturbance. Mr. Quaranta left the meeting after the discussion of eligibility.

152. The team developed goals in the areas of need of task completion, social emotional, and transition. Student would take the statewide assessment in science, without support or accommodations. Student did not require assistive technology or low incidence devices or services. Student was not an English learner, and so did not need primary language support. In support of its determinations that Student's behavior impeded her learning or that of others, the team noted Ms. Reyes's conclusion in her report that Student experienced anxiety that prevented her from engaging in an age-appropriate and typical school environment. Student would benefit from positive reinforcements and goals to help motivate her to start and complete tasks and assignments.

153. The team developed four goals. Specialized Academic Instruction Goal 1 addressed task completion. The baseline for the goal was Student's trouble starting, continuing, and completing tasks. Since her enrollment at the Independent Study

Center, Student had not turned in sufficient work to earn any credits. The goal provided that by April 2019, when given a task or assignment, Student would independently complete the assignment/task, and ask for assistance if needed, a specified percentage of the time.

154. Counseling Goal 1 addressed the social emotional area. The baseline was based on Ms. Reyes's psychoeducational assessment, which determined that Student had anxiety which affected her motivation to attend school. Her school attendance at the Independent Study Center was consistent for three weeks and then dropped to zero days until she withdrew from there. The goal provided Student would increase her motivation to attend school, by being able to identify triggers, express her thoughts, and use coping skills without prompts to help manage feelings of anxiety in the school setting a specified percentage of the time.

155. Specialized Academic Instruction Goal 2 was an employment and transition goal. The baseline was Student having mentioned an interest in becoming an actress in the future. The goal provided that by April 2019, Student would work on a resume and be able to identify at least three references. She would also be able to discuss at least three types of first-time jobs, possible places to volunteer, and/or careers of interest. The goal included two short-term objectives. The nonpublic school teacher(s), counselor, and staff were responsible for implementing the goal.

156. Specialized Academic Instruction Goal 3 was also an employment and transition goal, in the area of career exploration. The baseline was the same as Specialized Academic Instruction Goal 2. The Goal provided that, when given access to a computer connected to the internet, Student would complete a career survey. Upon receipt of the results, which would include information about such items as her personal strengths, aptitudes, skills, and possible careers, Student would identify three possible careers and write a two or three paragraph essay explaining the areas of strength she

could apply to each of her path possibilities for two out of three career choices in two out of two reflective writing exercises. She would orally share one of her essays with a teacher or staff. The goal included two short-term objectives. The nonpublic school teachers, counselor, and staff were responsible for implementing the goal.

157. These goals were linked to an Individual Transition Plan, which was included in the IEP document. The transition assessment consisted of an interview with Student, who expressed interest in becoming an actress. This interest became the basis for both Student's post-secondary training/education goal and her post-secondary employment goal. No post-secondary independent living goal was set.

158. Activities to support the training/education goal were: (a) meet with counselor for academic counseling; (b) work towards completing all required modules; (c) actively participate in the IEP process; (d) utilize accommodations; (e) visit a designated website and take an interest inventory; and (f) work on the IEP transition goal. Appropriate community experiences to support the goal were: (a) attend field trips to local community colleges; and (b) interview friends/family/community members about fields of interest.

159. Activities to support the employment goal were: (a) identify skills and talents; (b) determine careers/fields of interest; (c) visit a designated career website to determine careers of interest; (d) investigate the Occupational Outlook Handbook to research the job market and salary range for jobs of interest. Appropriate community experiences to support the goal were: (a) participate in career awareness opportunities; and (b) interview friends/family/community members employed in fields of interest.

160. The transition plan included information regarding Pasadena Unified's graduation requirements. The transition plan listed the subjects and number of credits in each subject that were required for graduation. Student needed to complete a total of 220 credits to graduate with a diploma. As of the time of the IEP, student had completed

50 of the 220 credits.

161. In developing its offer of a FAPE, the team considered general education, resource, therapeutic classroom, and nonpublic school options. The team determined Student required special education support to access and progress in the general education curriculum. The team discussed and determined that program accommodations were not needed in general education classes or other education-related settings. The team also discussed and determined that program modifications were needed in general education classes and other education related settings. The team decided consultation between Student and office staff was needed for 15 minutes daily at the school site.

162. Pasadena Unified first offered as a FAPE option a dual placement at the Independent Study Center and Pasadena High, with 30 minutes per week of counseling, 60 minutes per week of specialized academic instruction, 30 minutes twice yearly of career awareness services, and 30 minutes twice yearly of vocational services, to include assessment, counseling, guidance, and career assessment. Student could be enrolled in a theater class at Pasadena High. Ms. Reyes explained how the Independent Study Center was the least restrictive environment that could meet Student's needs. The Independent Study Center schedule and model were extremely flexible, which would be helpful when Student had bouts of high anxiety and felt unable to attend school. Parents and their attorney expressed concerns with placement at the Independent Study Center, citing that Student needed a more structured school environment and she did not do well with too much flexibility. Father believed Student's consistent school refusal had not been addressed and was not improving, as demonstrated by her performance at Halstrom and the Independent Study Center. He felt that an independent study model and a student with low executive functioning was not the best fit. Mother noted that the assignments and school work at the Independent Study Center were mostly

delivered via a Chromebook, such that Student was distracted from completing her work. Parents rejected placement at the Independent Study Center.

163. The team then discussed the programs at Hillside School and Learning Center and STEM-3 Academy, both nonpublic schools. Adam DeVore, Pasadena Unified's Program Coordinator of special education, was not present at the beginning of the meeting, but was called into the meeting to discuss these programs and related services.

164. Mr. DeVore received his M.Ed. and teaching credential from Pepperdine University. He received his master's degree in administration and administrative services credential from California State University, Northridge. He holds an adapted physical education certificate, an adapted physical education supplemental credential, a multiple subject teacher credential with a math supplemental credential, and a special education mild-moderate credential.

165. Mr. DeVore was a Program Coordinator 3 over special education for Pasadena Unified at the time of the IEP meeting. His responsibilities included overseeing all high schools in Pasadena Unified and he also oversaw nonpublic schools. He had been employed by Pasadena Unified since 2013 in various capacities, starting as a special education teacher. From 2002 to 2012 he was a general education teacher in the Los Angeles Unified School District.

166. Mr. DeVore was familiar with Student's needs, as Mother had called him to advise him of Student's suicide attempt. Through conversation with Ms. Reyes and other school staff, he knew of Student's attendance issues and her high level of anxiety. He also learned about Student during the time he was at the IEP team meeting.

167. Mr. DeVore's job required that he be knowledgeable about nonpublic schools, and he visited them often. The meeting notes reflect that Mr. DeVore explained that a wide range of students attended Hillside. It was a very small school of less than

100 students. It had a flexible schedule in terms of the times that classes were offered, but it was still a very structured placement. Hillside also offered options for student to take courses at Pasadena City College. Pasadena Unified would also provide supplemental services to students that attended Hillside, such as educationally related intensive counseling services. Parents and their counsel questioned whether the school could address Student's giftedness.

168. The meeting notes also reflected that Mr. DeVore described the program offered at STEM-3 Academy and how they accommodated students with special needs. STEM-3 is part of the Help Group collection of nonpublic schools.

169. The meeting notes were only a summary of Mr. DeVore's comments, and at hearing he elaborated upon both schools based upon recent visits he made to them with Student in mind. Hillside serves children with a variety of eligibilities, including emotional disturbance, other health impaired, and specific learning disabilities. He had placed many students there who, like Student, had high levels of anxiety but also high levels of academic functioning. It was a very small school, but it had the (a)-(g) courses required for California state colleges, and its students went on to college.

170. STEM-3 also offered (a)-(g) classes, and its students also went to college. Despite its name, it was not just science-based, but had many other courses, such as creative writing, theatre, and an art elective. There were student activities, such as a film club. It had a therapeutic environment, with a psychologist and a therapist on campus. It also served students with various eligibilities, including other health impaired, specific learning disability, and emotional disturbance.

171. The IEP notes also reflect that Mr. DeVore described Education Support Services which was a program that provided wrap-around services and worked with the family at home for students that had difficulties with transitioning from home to school.

172. At hearing, Mr. DeVore elaborated on the Education Support Services

program. He commented that the summary in the IEP notes did not include everything he described about the program at the meeting. Education Support Services consisted of wrap-around services, provided by a nonpublic agency, designed to help students with issues regarding coming to school and school anxiety. The nonpublic agency staff comes to the Student's home and develop a plan to reduce anxiety and help the student come to school. The nonpublic agency would coordinate with the school, so that the plan would be coordinated with the school's services. The program included a parent counseling component. Parent counseling was important to promote stability and structure at home, which will have an impact at school. The program also included social work services to provide coordination with the therapists, teacher, and the assistant principal. Student also would receive individual counseling at home or school. The program also included behavior intervention services, whereby a licensed clinician would come into the school to work with the student. Additionally, if the student had a therapist, Pasadena Unified would try to obtain a release from the parents so that the therapist could coordinate with program services. The program provided 24-hour services, so that if there were a crisis, there was a number to call and someone would respond.

173. Mr. DeVore explained that the program would be offered for 90 days at first, because that would provide sufficient time to determine whether the program was successful, or needed to be adjusted. The services were very intensive at first, because Mr. DeVore believed providing the highest level of service at first provided the best chance of success. Since the 90-day period in this case extended into the summer, the IEP provided that the services would continue at the same level, regardless of the shorter day typical of extended school year services. The program was a high level of service for children in crisis, so he would not reduce it during the summer simply because it ran through the extended school year. At the end of 90 days, even though it

was summer, the IEP team would meet and determine whether the services were helping, whether they were still needed, or whether they needed to be adjusted.

174. Mr. DeVore's testimony was credible regarding what he explained at the IEP team meeting regarding the nonpublic schools and the Educational Support mental health services, as opposed to the brief summary in the IEP. Mr. DeVore had extensive knowledge about these topics. The evidence was uncontradicted that he was called into the IEP meeting specifically to share that knowledge with Parents and the rest of the team. He comfortably, articulately, and confidently shared this knowledge at hearing, which reflected that he had experience sharing this knowledge on previous occasions, such as IEP team meetings. Under these circumstances, it is unlikely that he would have covered these topics in a superficial manner, when he was specifically called into this IEP team meeting because of his expertise.

175. The IEP team offered placement in a nonpublic school under contract with Pasadena Unified or the Special Education Local Plan Area, with the following services, during the regular school year. All services were to take place at the nonpublic school, and offered on an annual school year basis, unless otherwise stated: (a) Career Awareness, in a group setting, two sessions per year for 30 minutes each session; (b) Vocational Assessment, counseling, guidance, and career assessment, in an individual and group setting, two sessions per year for 30 minutes each session; (c) Specialized Academic Instruction, 360 minutes daily; (d) Psychological services, to be provided by a nonpublic agency, 30 minutes per week; (e) Educational Support Services, to start on 4/27/18 and end on 7/27/18; (f) Curb-to-curb transportation.

176. The Educational Support services would include: (a) Individual counseling, one session per week, for 60 minutes each session; (b) Social work services, on an individual basis, one time per month, for 90 minutes per session; (c) Parent counseling, one time per week, on an individual basis for 60 minutes per session; (d) Behavior

intervention services, on an individual basis, for 1440 minutes per month.

177. The IEP team determined that Student would benefit from extended school year services as she could potentially regress in behaviors during an extended period without services. The IEP team offered the following services during the extended school year period, from June 7, 2018 through July 12, 2018, at a nonpublic school under contract with Pasadena Unified or the Local Plan Area: (a) Psychological services, on an individual basis, one time per week, for 30 minutes per session; (b) Specialized academic instruction, on a group basis, for 240 minutes per day; (c) Educational Support Services, to end on 7/27/18, to consist of the same services and levels as set forth above.

178. The IEP offered placement at a nonpublic school. Student would be on a diploma track, with a projected graduation date of May 29, 2020. Parents would be informed of her progress by a progress report each semester.

179. Mr. DeVore provided his contact information and proposed Parents tour both Hillside Learning Center and STEM-3. Parents were open to touring both schools and then contacting Mr. DeVore.

180. Parents actively participated in the meeting, as did their counsel. They expressed their concerns, they asked questions, they expressed their viewpoints, and the other IEP team members were responsive to them. Parent shared that Student was currently attending Bridges and doing well. In her closing brief, Student contended that the IEP notes of the eligibility discussion did not specify that the team answered Father's question pertaining to which eligibility category encompassed nonverbal learning disability. This is not persuasive evidence that Parents' concerns were not addressed at the IEP team meeting. IEP notes are only a brief summary of conversations, and there was no specific evidence at hearing that any of Father's questions at the IEP team meeting went unanswered.

181. Mother claimed at hearing that she was confused at the IEP meeting by the

discussions of the various proposed placements. She did not understand the offer of Educational Support Services. Father did not testify that he was confused or did not understand the IEP discussions. Parents were with their attorney at the meeting, and the IEP meeting notes reflect that they had every opportunity to ask questions and request clarification. They also had the opportunity to request explanations or ask for clarifications after the IEP team meeting concluded, but they did not. Mother's testimony at hearing regarding the lack of clarity as to what the IEP team discussed, therefore, was not persuasive.

182. During her testimony, Dr. Leach criticized the IEP offer because she had no input into the wrap-around services, and those services should have been discussed with Parents. Dr. Leach's criticisms are not warranted. The specifics of the wrap-around services, such as the plan for Student to relieve her anxiety at home so that she was able to attend school, were not determined by the IEP team at the April 27, 2018 IEP meeting. Rather, they would be developed by the team of personnel providing the wrap-around services, including Parent, and with the appropriate releases, possibly others, including Dr. Leach.

183. Dr. Taylor and Dr. Baum both believed that a science/technology/education/ /math program would not be a good fit for Student. Dr. Baum commented that Student was not interested in technology, or particularly linear or detail-oriented. Dr. Taylor expressed that a math and science program would be very challenging for Student. There was no evidence that either of them had any specific knowledge of the program offered at STEM-3, and therefore their opinions were not persuasive.

184. At hearing, Cherylin Lew, the current Director of Special Education for Pasadena Unified, explained that Pasadena Unified's IEPs commonly offered placement in a nonpublic school without naming a particular nonpublic school. As in this case,

parents often needed to visit the nonpublic schools the IEP team considered. Additionally, students must be accepted at a nonpublic school, and the nonpublic school must have space for the student. Therefore, many times the IEP team was not able to name a specific nonpublic school when it offered a nonpublic school placement, because it could not guarantee that Student would be able to enroll in a particular nonpublic school.

EVENTS FOLLOWING THE APRIL 27, 2018, IEP

185. Parents wrote a letter to Pasadena Unified's counsel on May 14, 2018. In the letter, Parents consented to implementation of the April 27, 2018, IEP, only insofar as the IEP provided for eligibility in the category of emotional disturbance. The letter also stated that Parents toured the proposed placements of STEM-3 and Hillside, and did not believe that either of these programs would be appropriate for Student considering the nature of her unique needs. Parents did not request any independent educational evaluations. Rather, the letter advised Student would continue to attend Bridges, a placement that the Parents considered was appropriate for her and where she was already making great progress. The letter reiterated Parents' intent to seek reimbursement, as stated in their March 23, 2018 letter. Parents also stated that their agreement as to eligibility must not and should not be construed as an agreement that the April 27, 2018 IEP constituted a FAPE. Parents concluded with a request that the letter be attached to and made a permanent part of the April 27, 2018 IEP.

186. Subsequently, Student's counsel wrote Pasadena Unified a letter dated June 19, 2018, regarding Student's attendance at Bridges. Mr. DeVore wrote a letter in response, dated July 3, 2018, declining to pay for Student's attendance at Bridges. Pasadena Unified considered the letter a prior written notice letter, because the denial of Parents' request for reimbursement for tuition and fees at Bridges was equivalent to a denial of Student's request for a change of placement. Mr. DeVore's letter stated that

Pasadena Unified refused to prospectively fund Student's placement at Bridges for the 2018-2019 school year. Pasadena Unified considered the program and services at Bridges could not assure "educational benefit" for Student, as required by special education law. The letter reiterated the offer of FAPE in the April 27, 2018, IEP.

187. The letter noted that, at Pasadena Unified's suggestion, Parents toured both Hillside and STEM-3, and Parents did not believe either of them were appropriate for Student for the 2018-2019 school year. Pasadena Unified recommended that an IEP team meeting be reconvened to discuss additional nonpublic schools and the important special education services each could provide to address her needs, services which would not available at Bridges.

188. Mr. DeVore's letter also addressed whether Pasadena Unified would reimburse Parents for Student's attendance at Bridges during the 2017-2018 school year. Mr. DeVore explained that Pasadena Unified was notified at the end of the April 27, 2018, IEP team meeting that Student was attending Bridges, after Pasadena Unified's FAPE offer. At that meeting, Parents did not request reimbursement for the 2017-2018 tuition. Mr. DeVore's letter also stated that Parents' letter dated May 14, 2018, did not request reimbursement for 2017-2018 tuition or 2018-2019 tuition at Bridges. Mr. DeVore concluded that Parents have not satisfied the requirements of the Code of Federal Regulations for reimbursement. Mr. DeVore also advised that, if Student remained at Bridges, which was a private school within the boundaries of the Los Angeles Unified School District, Parent may request a Private School Service Plan under special education law from Los Angeles Unified.

189. Mr. DeVore addressed Student's request for reimbursement of related services by requesting additional information so as to further evaluate the requests. Mr. DeVore again requested Parents to participate in an addendum IEP to consider additional nonpublic schools that could meet Student's needs. Mr. DeVore explained

that Parents have rights and protections as the parents of a child which a disability, and enclosed a copy of the procedural safeguards document. He also gave the name and address of a person at Pasadena Unified, as well as the address of the California Department of Education, as parties whom Parents could contact to obtain assistance in understanding the procedural safeguards.

190. Student attended Bridges from April 2017 through the time of the hearing. She received passing grades and course credits. Overall, her teachers' comments on her grade reports showed she was making progress.

191. None of Student's teachers at Bridges testified. Except for the grade reports, Student offered no evidence of Student's curriculum or the content of her courses. Student offered no work samples of her classwork at Bridges. Student presented no evidence that Bridges provided any special education, occupational therapy, or behavior services to Student. The evidence reflected that the only mental health care Student received at Bridges was the consultations between Dr. Leach and Student's counselor. This consultation occurred at least weekly when she first enrolled at Bridges. At the time of the hearing, this consultation occurred approximately one time per month.

STUDENT'S CLAIMS FOR REIMBURSEMENT

192. Parents paid tuition and fees for Bridges in the amount of \$9,635 for the 2017-2018 school year. Parents paid tuition and fees for Bridges in the amount of 44,779 for the 2018-2019 school year. Parents travelled 420 miles round trip per week (two round trips per day) to and from Bridges from April 9, 2018. Parents provided no specific evidence of the dates the Bridges school year started and ended, the dates of school breaks, or the dates that Student was absent from school.

193. Parents paid a total of 11,743.01 for Dr. Leach's clinical psychologist services in the amount from August 15, 2017, through February 1, 2019, at the rate of

\$160 per session. Student continued to see Dr. Leach through the time of hearing, at the rate of \$160 per session, two or three times per week, and Student was expected to continue to see Dr. Leach at least two times per week indefinitely, year-round, with only a few breaks during the year. Parents travelled approximately 5.8 miles per session, round trip, to and from Dr. Leach's office from August 2017 through February 1, 2019.

194. During summer 2018, Student attended an acting workshop program for three weeks at the Idyllwild Arts Academy summer program. Parents paid tuition in the amount of \$3,910 for that program. Additionally, Student received acting coaching from Billy Cowarth, a private individual, one time per week at a rate of \$100.00 per week for the period from August 22, 2018 through February 27, 2019. Also during this time period, Parents paid Mr. Cowarth an additional sum of \$575.00 for production of a demo reel of Student acting. As of February 27, 2019, the total costs of Mr. Cowarth's services, including the production of the demo reel, were \$1,875. Student continued to receive acting coaching weekly from February 27, 2019, through the time of hearing, and was expected to continue receiving acting coaching from Mr. Cowarth for approximately another six to eight weeks from the time of hearing. Student was also planning to attend the Idyllwild summer program during the summer of 2019. Parents seek reimbursement of all of these costs as transition services.

LEGAL AUTHORITIES, ANALYSIS, AND CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA¹¹

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement the IDEA

¹¹ Introductory paragraphs 1 through 6 are incorporated by this reference into the discussion of every issue in this Decision.

and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.)¹² The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment, independent living and higher education; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel. The IEP describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Ed. of the Hendrick Hudson Central School Dist. v. Rowley*

¹² All references to the Code of Federal Regulations are to the 2006 version, unless otherwise stated.

(1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to [a child with special needs].” *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, the *Rowley* court decided that the FAPE requirement of the IDEA was met when a child received access to an education that was reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the Rowley standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The Supreme Court recently decided the case of *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. [137 S. Ct. 988] (*Endrew F.*) and clarified the *Rowley* standard. *Endrew F.* provides that an IEP must be reasonably calculated to enable “progress appropriate in light of the child’s circumstances.” (137 S.Ct. at 999.) The Court recognized that this required crafting an IEP that required a prospective judgment, and that judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Ibid.*) Additionally, the Court stated, “for a child fully integrated in the regular classroom, an IEP typically should, as

Rowley put it, 'be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.' " (*Id.* at 999 [citing *Rowley, supra*, 458 U.S. at 203-204.]) The Ninth Circuit Court of Appeals has held that *Andrew F.* did not change, but simply clarified *Rowley*. (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535; *K.M. v. Tehachapi Unified School Dist.* (E.D. Cal. Apr. 5, 2017, 1:15-cv-001835 LJO JLT) 2017 WL 1348807, **16-18.)

5. In *County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467, the court specified that educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.

6. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528; 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student is the petitioning party and has the burden of persuasion as to her issues.

ISSUE 1: CHILD FIND BETWEEN SEPTEMBER 19, 2017, AND JANUARY 10, 2018

7. Student contends Pasadena Unified should have assessed Student between September 19, 2017, and January 10, 2018, as Pasadena Unified was aware that Dr. Taylor and/or Dr. Leach had diagnosed Student with depression, anxiety, and a

learning disability. Furthermore, throughout her first semester at Pasadena Unified, student's emotional state declined, which corresponded to declining performance and attendance at school. Pasadena Unified contends that, while Student's attendance declined, Pasadena Unified met its child find duty to student based upon Student's academic performance, the success of the 504 Plan accommodations, and by Parents failure to share their concerns as the fall semester proceeded.

8. A school district is required to actively and systematically seek out, identify, locate, and evaluate all children with disabilities, including homeless children, wards of the state, and children attending private schools, who are in need of special education and related services, regardless of the severity of the disability, including those individuals advancing from grade to grade. (20 U.S.C. § 1412(a)(3)(A); Ed. Code, § 56171, 56301, subds. (a) and (b).) This duty to seek and serve children with disabilities is known as "child find." A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Ed., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (*Cari Rae S.*)) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

9. If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot circumvent that responsibility by way of informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121.) At the same time, a medical or psychological diagnosis pursuant to the Diagnostic Manual is not synonymous with eligibility under the IDEA. (Office of Special Education Programs, *Letter to Coe*, 32 IDELR 204, Sept. 14, 1999.)

10. The school district's duty for child find is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Cari Rae S., supra*, 158 F. Supp. 2d at p. 1194.); (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

11. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) (*Target Range*). Citing *Rowley, supra*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but indicated that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.) Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*) These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

12. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, and that special education services may be necessary to address the 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, (citing *Fuhrmann v. East Hanover Bd. of Ed.* (3rd Cir. 1993) 993 F.2d 1031).) Further, a student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.)

13. Pasadena Unified did not violate its child find obligations and thereby deprive Student of a FAPE. Student's first day at Pasadena High was August 14, 2017, the beginning of the fall semester of the 2017-2018 school year. This marked the first time Student attended a Pasadena Unified school, or any public school. Shortly thereafter, Mr. Tran contacted Father about Student's interest in the Graphic Arts Academy, and learned about some of Student's social-emotional and educational history. This was the first time that anybody at Pasadena Unified was notified of Student's challenges. Based upon this information, Mr. Tran promptly scheduled a Section 504 meeting to determine whether Student should receive accommodations. As of September 19, 2017, the date of the 504 meeting, and more than a month after Student had started at attending Pasadena Unified, Student had received grades ranging from A to A+ in all of her courses. Her school attendance was nearly perfect. Indeed, Ms. Andrews, Student's math teacher, did not consider Student to be a candidate for a 504 Plan.

14. Based upon the information provided by Parents, Dr. Taylor, and Dr. Leach, as well as the summary portions of Dr. Taylor's report, the team found Student eligible for Section 504 accommodations. Given Student's excellent grades and attendance, Pasadena Unified had no reason to suspect at that time that Student had a disability that required special education and related services so that Student could access the curriculum. She was accessing the curriculum at least as well as, if not better than, any of her classmates. Furthermore, diagnoses by a clinical psychologist based on Diagnostic

Manual criteria are not determinative of whether a Student is eligible for special education. Pasadena had no reason to assess Student for special education at the time of the Section 504 meeting.

15. Student's school attendance began to deteriorate at about the time of the Section 504 meeting. Pasadena Unified sent notices to Parents in October and December regarding Student's absences and tardies. Even though each of the school's notices to Parents regarding absences and tardies invited them to call and discuss the situation, Parents did not do so. There was no documentary evidence that Parents contacted anyone at Pasadena Unified to discuss her absences, or the reasons for them, or her academic performance, or her deteriorating social-emotional status and mental state.

16. Student's school attendance declined as the semester proceeded, but Student's grades, although they fluctuated, continued to be largely A's, B's, and C's. When Student attended school, she performed well. She made up her work in math and dance. She missed some assignments in Spanish, but she completed her homework. She received A's in math throughout the semester. At the third progress report Student's homeroom Pass/Fail grade fell to a Fail, because of her poor attendance and failure to participate. None of her other teachers or school personnel reported any negative changes in Student's attitude or behavior during the semester while in class, such as a lack of interest or engagement, or any isolation from her peers.

17. The fall semester ended on December 21, 2017, and Student obtained all passing grades for that semester, including an A in Math and an A- in Chemistry. She did not present on campus during fall 2017 as a Student in a crisis, or with severe social-emotional problems. The law requires that general education interventions be considered and used before a student is referred for special education. Student demonstrated the ability to function well when she was in class with only a 504 Plan.

Pasadena Unified was entitled to wait for a reasonable period of time after the development of the 504 Plan to see whether it worked, and, given what they knew, they did not act unreasonably in relying upon general education interventions for a semester.

18. Student obtained generally passing grades during the semester. Parents did not contact Pasadena Unified in response to letters from the school requesting Parents to contact the school to discuss Student's attendance. Parents provided no information to Pasadena Unified that Student's mental and social-emotional condition had severely deteriorated during the fall semester. In short, Pasadena Unified was unaware of the extent, if any, to which Student's absences and tardies were due to Student's mental health issues that Parents, Dr. Taylor, and Dr. Leach reported at the Section 504 meeting. Parents were concerned about the notices they received regarding Student's absences and tardies, but they did not notify Pasadena Unified that they were concerned. Under these circumstances, Pasadena Unified had no reason to suspect that Student was one with a disability who required special education, and it did not violate its child find duty.

19. When Mother notified Pasadena Unified of Student's suicide attempt, Pasadena's Unified obligation to assess Student arose. Pasadena Unified promptly convened a Student Support Team/Safety Plan meeting and generated an assessment plan to ascertain Student's eligibility for special education. Pasadena Unified responded promptly and appropriately to the information regarding the suicide attempt, in fulfillment of its child find duty.

ISSUE 2(A): FAILURE TO APPROPRIATELY ASSESS--PSYCHOEDUCATIONAL ASSESSMENT

20. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) "The purpose of the child-

find evaluation is to provide access to special education." (*Fitzgerald v. Camdenton R-II School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) Children identified in the child find process are assessed to determine whether the child qualifies as a student with a disability under the IDEA and, if so, to determine the nature and extent of the special education and related services the child needs. (20 U.S.C. § 1414 (a)(1)(C)(i); 34 C.F.R. § 300.15.)

21. A request for an initial evaluation to determine whether a student is a child with a disability in need of special education and services can be made by either the parent or a public agency, such as a school district. (34 C.F.R. § 300.301(b).) Parents must be given proper notice of a district's decision to conduct an initial evaluation of a child, including prior written notice pursuant to 34 Code of Federal Regulations part 300.503. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3), (c)(1); 34 C.F.R. § 300.300(a)(1); Ed. Code, §§ 56321, subd. (a), 56500.4.) The notice to parent also consists of the proposed assessment plan, and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, §§ 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and in the native language of the parent; explain the types of assessments to be conducted; and notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).) After providing such notice, the school district shall obtain informed consent from the parent before conducting the initial evaluation. (20 U.S.C. § 1414(a)(1)D)(i)(I); 34 C.F.R. § 300.300(a)(1)(iii); Ed. Code, § 56321, subd. (c)(1).)

22. With exceptions not applicable here, the school district has 15 days after the referral for assessment to give the parent an assessment plan along with a copy of the procedural safeguards document. The school district must give parent at least 15 days to review, sign consent, and return the assessment plan. The school district has 60 days from the date it receives the signed and consented to assessment plan to complete

the assessment and hold an IEP to discuss the assessment results. (Ed. Code, §§ 56321, subd. (a), (c)(4), 56302.1.)¹³

23. The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the pupil has a disability or whether the pupil's educational program is appropriate. (20 U.S.C. § 1414 (b)(2), (3); Ed. Code, § 56320, subds. (e) & (f).) The assessment must be sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306.)

24. Tests and assessment materials must be administered by trained personnel in conformity with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).) Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).)

¹³ In this case, the IEP meeting did not occur until beyond the 60-day period after the assessment plan was signed. There was no direct evidence as to why the IEP meeting did not occur earlier, but no party raised the issue.

25. In conducting the assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining whether the student is a child with a disability, and the content of the IEP. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).) An assessment to determine whether a child has a specific learning disability must include an observation of the child in the child's learning environment to document the child's academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310 (a).) The observation need not be performed by the assessor, but can be performed by a member of the IEP team if done after parental consent to an assessment. (34 C.F.R. § 300.310 (b)(2).)

26. Assessments must be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d); 34 C.F.R. § 300.304(c)(3).)

27. The assessor must prepare a written report that includes: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) the need for specialized services, materials, and equipment for pupils with low incidence disabilities. (Ed. Code, § 56327.) The report

must be provided to the parent at the IEP team meeting required after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

28. Under both California law and the IDEA, a child is eligible for special education if the child needs special education and related services by reason of the following disabilities: mental retardation, hearing impairments, speech or language impairments, visual impairments, severe emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairment, or specific learning disabilities. (20 U.S.C. §1401 (3)(A)(i) and (ii); Cal. Code Regs., tit. 5, §3030.)

29. Unless a student otherwise meets the criteria in the eligible categories, a student is not disabled if the student's educational needs are due primarily to social maladjustment or environmental, cultural, or economic factors. (Ed. Code § 56026.) Furthermore, not only must the child meet the criteria in the eligible categories, but the child must also, as a result of the child's impairment, require instruction and services that cannot be provided with modification of the regular school program. (Ed. Code, § 56026, subd. (b).)

30. Education Code section 56337, subdivision (a), provides that a specific learning disability, as defined in Section 1401(30) of Title 20 of the United States Code, means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. It does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

31. The IEP team shall meet to review an initial formal assessment, and may

meet to review any subsequent formal assessment. The team shall also meet upon the request of a parent to review, develop, or revise the IEP. (Ed. Code, § 56343, subd. (a), (c).)

32. Student contends that Pasadena Unified's psychoeducational assessment was deficient in a variety of respects. Student contends Ms. Reyes did not (a) contact Dr. Taylor or Dr. Leach in preparing her report; (b) did not provide the rating scales to Student's teachers at Pasadena High or the Independent Study Center; (c) did not include an observation of Student in her educational environment; (d) made only a few vague reference to Student's January hospitalization and did not mention the medical wrap services Student received after the hospitalization; (e) failed to include testing in academic fluency, math fluency, and fluid reasoning; and (f) failed to appropriately consider specific learning disability as an eligibility category.

33. Pasadena Unified contends that the psychoeducational assessment met all legal requirements, and that Ms. Reyes's assessment was appropriate.

34. The assessment and report were appropriate, and Student's criticisms are not meritorious. Ms. Reyes is a credentialed school psychologist, and she was trained in and experienced in administering the test instruments she administered. Ms. Reyes administered the test instruments in accordance with the test producer's instructions, the instruments were valid for the specific purpose for which she used them, they accurately reflected the factors they purported to measure, they were selected and administered so as not to be racially, culturally, or sexually discriminatory, and were administered in English, Student's dominant language.

35. Ms. Reyes's report spanned 44 pages. Her report contained extensive background information on Student, including a summary of her school records since fifth grade, and information regarding her attendance at Pasadena Unified. It included extensive information about her behaviors, based on records review and information

from Student, her Parents, and classroom observations reported by Mr. Quaranta. Mr. Quaranta was a member of the April 27, 2018 IEP team, and was present and available to comment and field questions when Ms. Reyes presented her report. The report also included observations of Student she found in Student's educational records from Student's teachers at Webb. The report also included Ms. Reyes's observations of Student during the assessment process. Ms. Reyes used a variety of testing instruments, and the report recorded the scores, and explained what they meant. At the end of her report, Ms. Reyes quoted the California law regarding the criteria for every eligibility category for special education, and explained why Student did or did not meet the criteria for each eligibility category. She determined that Student met the criteria for an emotional disturbance. Student presented no evidence that Student did not fit the criteria for this eligibility category.

36. Turning to Student's specific criticism of the report, it is important to note that some of the alleged deficiencies are not deficiencies. In any event, Student did not present evidence that the assessment and report were invalid because of the alleged deficiencies, or that the results of the assessment would have been different but for the alleged deficiencies.

37. First, the report amply demonstrates that Ms. Reyes was mindful of Student's January 2018 incident of self-harm, as she mentioned the incident, and/or Student's hospitalization for it, starting in the first paragraph of the first page of her report. Ms. Reyes then referred to the incident, and/or Student's hospitalization, in at least six other places in the report. Second, Student's contention that Ms. Reyes failed to consider the medical wrap-around services Student received after Student's hospitalization is unmeritorious. There was no evidence that Pasadena Unified, and, in particular, Ms. Reyes, had any knowledge that Student received such services. Ms. Reyes emphasized to Parents, both orally and in writing, of the need to provide all records and

information they wanted Ms. Reyes to consider, but there was no evidence Parents provided Pasadena Unified at any time with any documentation regarding Student's January 2018 hospitalization, or information regarding Student's medical wrap-around services.

38. Third, Dr. Taylor had plenty of indirect input into Ms. Reyes's report, since Ms. Reyes included a detailed summary of Dr. Taylor's report. As Ms. Reyes explained at hearing, she selected several test instruments because of information that was included in Dr. Taylor's report.

39. With respect to Dr. Leach, Parents knew that they could present any information to Ms. Reyes that they wanted Ms. Reyes to consider, and they did not present any records from Dr. Leach. Furthermore, any input from Dr. Leach and Dr. Taylor was solely within Parents' control, as Dr. Leach and Dr. Taylor were private providers, and Ms. Reyes could not contact them without Parents' consent. Ms. Reyes did not think she needed Dr. Taylor's or Dr. Leach's input, but Parents could have requested her to consider their input and facilitated its receipt by Ms. Reyes. Student did not demonstrate that Ms. Reyes's assessment results would have been any different had she consulted with Dr. Leach or Dr. Taylor. One might contend, for example, that Dr. Leach may have provided input regarding Student's hospitalization and medical wrap-around services. However, since Parents had plenty of opportunities to provide that information and did not, it would be speculation to assume that Dr. Leach would volunteer it.

40. Fourth, Ms. Reyes did not administer the rating scales to Student's teachers at Pasadena High and the Independent Study Center primarily because, as she noted in her report, Student only attended those schools for a limited period of time. Further, none of Student's teachers thought that Student had any serious emotional or academic issues during her brief time at Pasadena High School. It is noteworthy that Dr.

Taylor also did not administer any ratings scales to Student's teachers during her assessment. At hearing, Ms. Reyes expressed her professional opinion that Student's social-emotional state did not raise concerns among her teachers at Pasadena High, and therefore their input would not be representative of Student's social-emotional state at the time of the assessment. Ms. Reyes was apprehensive that, under the circumstances, ratings from teachers at Pasadena High and the Independent Student Center would not be valid. Ms. Reyes's testimony was credible, as she was an experienced assessor who demonstrated knowledge of her field.

41. Finally, Ms. Reyes appropriately assessed Student for a specific learning disability. Ms. Reyes completed an alternative cognitive assessment, which she used because it did not rely on a single score, was nondiscriminatory, and took into account Dr. Taylor's concerns that Student had a nonverbal learning disability. She concluded that Student's cognition was from average to high average, which was consistent with Dr. Taylor's assessment, and that Student's scores on the Kaufman, which ranged from High Average in Math Concepts, to Superior in Reading and Written Language, and Very Superior in Oral Language, did not show a discrepancy between cognition and academic achievement. Further, Ms. Reyes administered four assessments regarding Student's processing abilities: the Cognitive Assessment System, the Visual Perceptual Skills test, the Visual-Motor Integration test, and the Auditory Processing Skills test. Ms. Reyes therefore concluded that Student did not have any processing disorders. The existence of a processing disorder is one of the prerequisites for finding that a student has specific learning disability. Ms. Reyes's conclusion that Student did not have a specific learning disability was appropriate and supported by the test results.

42. Ms. Reyes discounted Dr. Taylor's diagnosis of a nonverbal learning disability, because Dr. Taylor provided no specific criteria for such a disability. The Diagnostic Manual also did not provide specific diagnostic criteria for such a disability.

43. Ms. Reyes also discounted Dr. Taylor's finding of a math fluency disability. Student's math fluency scores on the Wechsler were in the overall average range. Her lowest score was a low average range score in addition, which Dr. Taylor relied upon to reach her diagnosis that Student had a math fluency disability. In Ms. Reyes's opinion, that low average range score did not signify a math fluency disability. Also, a finding of a specific learning disability cannot be made if a Student has not had appropriate instruction. At the time of Dr. Taylor's assessment in summer of 2017, Student had not had any consistent math instruction since approximately November 2016. Unlike Dr. Taylor, Ms. Reyes had the benefit of Student's math scores while she was at Pasadena Unified, which were all A's, and which provided another data point to support that Student did not have any disability in math.

44. Finally, a specific learning disability does not include a learning problem that is primarily the result of emotional disturbance. Dr. Taylor, whose assessment did not reference Student's eligibility for special education under IDEA or Education Code criteria, did not examine whether Student's alleged learning disabilities were primarily the result of emotional disturbance.

45. Under these circumstances, Ms. Reyes was justified in discounting Dr. Taylor's findings that Student had learning disabilities. She was also justified in relying on her own independent determination, made pursuant to the IDEA and California law, that Student did not have a specific learning disability.

46. Pasadena Unified's assessments and Ms. Reyes assessment report were appropriate. Pasadena Unified did not deprive Student of a FAPE on this ground.

ISSUES 2(B) AND 3(E): BEHAVIOR ASSESSMENT AND BEHAVIOR SUPPORT PLAN

47. Student contends that Pasadena Unified should have performed a functional behavior assessment to examine Student's school refusal, class avoidance, and failure to timely complete homework. Pasadena Unified contends that Student's

needs were social-emotional, not behavioral.

48. The IDEA only specifically mandates a functional behavior assessment and implementation of a behavioral intervention plan under one specific circumstance that it not applicable in this case. A functional behavior assessment is part of the set of procedures a school district must follow when suspending or expelling a special education student for a violation of a code of student conduct. (20 U.S.C. § 1415(k)(1)(E).) The IDEA and California law require, however, that an IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address behavior when a student's behaviors impede his learning or that of others. (34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) Under the IDEA, the Department of Education recommends that school districts be proactive and perform a functional behavioral assessment when a child engages in behaviors which interfere with learning. Following the functional behavioral assessment, a school district develops a behavior support plan or a behavioral intervention plan. (Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46721 (August 14, 2006).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028.)

49. Student presented no evidence that a functional behavior assessment was necessary for Student to receive a FAPE, or that it was even possible for Pasadena Unified to perform such an assessment of Student. First, to determine the functions of behavior at school, a functional behavior assessment requires observation and data collection over time when a student is in a classroom environment. Student was attending the Independent Study Center during most of the time Pasadena Unified was conducting its assessment. The Independent Study Center did not require school attendance, and did not offer a typical classroom environment or classroom routine. No

such assessment could have been have arranged when Student enrolled at Bridges during April 2018 either, as the assessment's reliability depends on the student being accustomed to the school environment. Therefore, Pasadena Unified could not, as a practical matter, conduct a functional behavior assessment during winter and spring of 2018.

50. Secondly, as Ms. Reyes testified, Student's behaviors regarding school refusal, class avoidance, and failure to complete schoolwork, were social-emotional issues. Indeed, both Dr. Taylor and Dr. Leach asserted that those behaviors were symptoms of Student's anxiety and depression. Ms. Reyes specifically and appropriately assessed Student's social-emotional and mental health status. She properly examined Student's anxiety and depression and how they related to her ability to access her education.

51. Finally, Student provided no evidence that a functional behavior assessment was necessary to appropriately assess Student in all areas of suspected disability.

52. Turning to the issue of the behavior support plan, the IEP of April 27, 2018, did not contain a behavior support plan. Yet, it did not ignore Student's behavior challenges. The IEP contained two goals which addressed two important aspects of Student's behavior. The first goal addressed task completion, and the second goal addressed Student's anxiety about attending school. As part of the wrap-around mental health services, the IEP also provided 1440 minutes per month of behavior intervention services for a period of 90 days. Those services would be extended by the IEP team if Student needed them beyond 90 days.

53. Student offered no evidence that she required a behavior support plan or any additional behavior services to access her curriculum. Student's IEP was reasonably calculated, at the time it was developed, to provide Student a FAPE.

ISSUE 2(C): EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

54. Student contends that Pasadena Unified failed to conduct a mental health services assessment. Pasadena Unified contends that Ms. Reyes in fact conducted a mental health services assessment, in the form of an educationally related intensive counseling services assessment, as part of the psychoeducational assessment. Pasadena Unified further contends the assessment met all legal requirements, and that, as a result of the assessment, the IEP determined Student qualified for mental health services.

55. Most of Student's contentions that the mental health services assessment was not sufficiently comprehensive were considered above in Issue (2)(a) in the discussion regarding defects in the entire psychoeducational assessment. Those contentions were alleged in Student's complaint, read broadly. However, under this issue, Student inserted in his closing argument new claims that the report contained no "determination of the missing cognitive behavioral pieces of her profile," no explanation of why Student engaged in school refusal or self-harm, and no recommendation for mental health support services. Since those claims were not asserted in Student's complaint, they will not be addressed in this Decision. (Ed. Code § 56502, subd. (i).)

56. Ms. Reyes testified without contradiction that her educationally related intensive counseling services assessment was included in her psychoeducational assessment, but not called out specifically. Her assessment consisted of the Behavior Assessment System, the Conners, the Depression Inventory, the Children's Manifest Anxiety Scale, the Emotional Disturbance Scale, the Inventory of Anger, the Behavior Rating Inventory of Executive Function, Three Wishes, and a Sentence Completion task. None of Student's witnesses named an assessment instrument that would have been a necessary part of a mental health assessment that was not included in Ms. Reyes's assessment. Student offered no evidence that any assessment would have been provided under a mental health assessment that was not included in Ms. Reyes's

assessment. Significantly, Ms. Reyes found Student eligible as a student with emotional disturbance, an eligibility category which was uncontradicted by anyone, and to which Parents agreed. Based upon her assessment, the April 27, 2018 IEP offered Student wrap-around educationally-related mental health services from a nonpublic agency, including round-the clock emergency services, as well as psychological clinical services from a nonpublic agency.

57. Pasadena Unified performed a mental health services assessment, and it met all legal requirements. Student provided no evidence to the contrary, or any evidence that any of the alleged defects in the assessment deprived Student of a FAPE, significantly impaired her ability to access her education, or deprived Parents of a meaningful opportunity to participate in Student's educational planning. Pasadena Unified did not deprive Student of a FAPE on this ground.

ISSUES (2)(D) AND (3)(D): OCCUPATIONAL THERAPY ASSESSMENT AND SERVICES

58. Student contends Pasadena Unified should have assessed Student for occupational therapy, because Dr. Taylor recommended such an assessment and it was a suspected area of need. Pasadena Unified contends that it was not obligated to perform an occupational therapy assessment. Occupational therapy is not a separate eligibility category under the IDEA. Rather, it is a related service, that is only available to a student after an IEP team has found the student eligible for special education, and no IEP team had yet found Student eligible for special education at the time of the assessment. Moreover, Ms. Reyes's assessments did not find any motor skills or visual motor skills deficits that affected Student's ability to access her curriculum so as to warrant an occupational therapy assessment.

59. Pasadena Unified did not deprive Student of a FAPE by failing to assess in the area of occupational therapy. First, Dr. Taylor is not an occupational therapist, and there was no evidence that she had any training in occupational therapy. Her only

connection to the field of occupational therapy was her employment at the Center for Connection, during which she worked on a weekly basis with an interdisciplinary team which included occupational therapists. As such, she learned to recognize “red flags.” Expertise in occupational therapy and a student’s possible need for it so she can access her curriculum does not come so easily. This is especially so because Dr. Taylor did not observe Student in an educational setting, or interview any of her teachers. Student offered no evidence from a properly credentialed and licensed expert in occupational therapy that Student had any suspected occupational therapy deficits that affected her ability to access her educational curriculum.

60. Second, Dr. Taylor based her recommendation on information that Student was uncomfortable in crowds; sensitive to smells, tastes, and noise; and occasionally chewed her clothing and picked her skin when anxious. Student’s skin picking led to blemishes that contributed to her anxiety regarding attending school. Neither Dr. Taylor nor Ms. Reyes observed Student having any sensory issues during their respective assessments of Student. Furthermore, the testimony of Student’s teachers at hearing, and observations of Student’s teachers from Webb and Mr. Quaranta that were included in Ms. Reyes’s assessment, did not establish that Student displayed any sensory issues any time at school. Consequently, there were no signs that would lead Pasadena Unified to reasonably suspect Student had a disability that required occupational therapy so she could access her education. As far as Student’s skin-picking, there was no evidence that this activity was an occupational therapy issue as much as it was an anxiety issue, and Ms. Reyes’s assessment included a recognition of and assessment pertaining to Student’s anxiety issues. Third, there was no evidence that Student had received any occupational therapy services or sensory support since she enrolled at Bridges, and Parents and Student’s other witnesses testified that Student was obtaining some measure of academic benefit at Bridges.

61. Under these circumstances, Pasadena Unified had no reason to suspect that Student had any occupational therapy deficits that would require a special education related service so that she could access the curriculum. Pasadena Unified committed no procedural error in not assessing Student in the area of occupational therapy, let alone a procedural error that impeded Student's right to a FAPE, substantially deprived Parents of the opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits.

62. For the same reasons, Pasadena Unified did not deprive Student of a FAPE by not offering occupational therapy services in the April 27, 2018, IEP.

ISSUES 2(E), (3)(F), AND (3)(G): TRANSITION ASSESSMENT, SERVICES, AND GOALS

63. Student contends Pasadena Unified was required to conduct a formal transition assessment, because Student was 16 years old when Pasadena Unified developed its assessment plan on January 10, 2018. Pasadena Unified contends that, under the IDEA definition of transition services (20 U.S.C. § 1401 (34)), transition services are to be provided to a child with a disability. Therefore, Pasadena Unified was not obligated to conduct a transition assessment until Student was found eligible for special education and related services, and Parents consented to eligibility in the IEP of April 27, 2018.

64. Student contends that the transition plan failed to provide appropriate, measurable goals and lists only vague and boilerplate activities that were not unique to Student. Furthermore, Student asserts that the services offered were vague, insufficient, and not related to Student and her needs. Student further contends that the services were to be provided by a nonpublic school, but no representative of a nonpublic school was present at the IEP team meeting. District contends that, as a general education student at the Independent Study Center, Student was already receiving transition

services.

65. For each student, beginning with the first IEP to be in effect when the student is 16, the IEP must include a statement of the transition service needs of the student. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) The IDEA defines transition services to require a focus “on improving the academic and functional achievement of the disabled child to facilitate the child’s movement from school to post-school activities,” which is based upon the child’s needs, and considers the child’s strengths, preferences, and interests. (20 U.S.C. §1401 (34).) The IDEA also requires that the IEP include a statement of measurable goals based on transition assessments and an outline of services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) The failure of an IEP team to comply with the requirements for transition planning is a procedural violation of the IDEA. (*Virginia S., et al. v. Dept. of Ed., State of Hawaii* (D. Hawaii, January 8, 2007, Civ. No. 06-00128) 2007 WL 80814, *10.) However, the mere absence of a stand-alone transition plan does not constitute procedural error. (*Lessard v. Wilton-Lyndeborough Coop. School Dist.* (1st Cir. 2008) 518 F.3d. 18, 25.) (*Lessard*)

66. There is no requirement that a transition plan must dictate IEP goals. Unlike the IEP, a transition plan is not a strictly academic plan, but relates to several post-secondary skills, including independent living skills and employment. (*K.C. v. Nazareth Area School Dist.* (3rd Cir. 2011) 806 F.Supp.2d 806, 822, citing *High v. Exeter Twp. School Dist.* (E.D. PA Feb, 1, 2010, Civil Action No. 09–2202.) 2010 WL 363832 at *6.) A school district is not required to ensure a Student is successful in fulfilling all desired goals, including transition plan goals. The IDEA is meant to create opportunities for disabled children, not to guarantee a specific result. (*K.C. v. Nazareth Area School Dist., supra, at 822*.) The test in evaluating a transition plan is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits. (*Lessard, supra, 518 F.3d at 30*.)

67. Pasadena Unified offered no case authority to support its statutory interpretation that it was not required to conduct a transition assessment until after Student was found eligible for special education, when the April 27, 2018 IEP team meeting was the first IEP team meeting after Student had turned 16. However, Student's position is also partially unmeritorious. The IDEA generally does not require districts to obtain parental consent before performing a postsecondary transition assessment that is not part of an initial assessment. (Office of Special Education Programs, *Letter to Olex*, 119 LRP 8445 (Feb. 22, 2019).) A transition assessment may be informal, or may not even be required to support a transition plan. For example, in the case of *M.M. v. New York City Dept. of Education* (2d Cir. 2016) 655 Fed.Appx. 868, the court affirmed a District Court decision that a school district did not violate the IDEA by failing to conduct a transition assessment, when the IEP team, known in New York as a Committee for Special Education team, had sufficient information about Student's transition needs to enable the team to develop his IEP.

68. In this case, Ms. Reyes's initial psychoeducational assessment did not include a transition assessment. The individual transition plan included in the April 27, 2018 IEP reflected that the transition assessment was informal, and therefore did not require parental consent. (*Letter to Olex, supra.*) The individual transition plan stated that the transition assessment consisted of a brief interview with Student, who expressed interest in becoming an actress. The form also stated that age-appropriate transition assessments/interviews were used. The interview might have been sufficient as an informal assessment had there been any evidence produced that the interview actually occurred. Neither the individual transition plan form nor the remainder of the IEP document state when the interview occurred, who conducted the interview, or any details about the content of the interview. No evidence was presented at hearing as to these matters. The weight of the evidence therefore demonstrates that there was likely

no informal age-appropriate transition assessment.

69. However, as in *M.M. v. New York City Dept. of Ed., supra*, the failure to conduct an informal transition assessment did not constitute a deprivation of a FAPE, because the content of the transition plan was appropriate. Student did not demonstrate that Pasadena Unified's failure to conduct a transition assessment impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefits to Student.

70. Turning to the content of the transition plan, the April 27, 2018 IEP included several pages under the heading of individual transition planning. In addition to including a summary of the courses and credits Student required to graduate, the transition plan addressed post-secondary goals in the areas of education and employment, which overlapped. It did not include any goals with respect to independent living, as Student did not have deficits in adaptive and living skills, except during bouts of serious depression or anxiety, when she temporarily neglected her grooming.

71. The transition plan referred to Student's desire to be an actress, and listed a variety of activities to support the transition goals. That Student desired to be an actress should have been no surprise to Parents, and she also expressed it to Dr. Taylor and others. Both of the transition goals were measurable. Specialized Goal Number 2 required Student to participate in several activities, and it would not be difficult to measure whether she did or she did not. Specialized Goal Number 3 contained specific parameters that Student was required to research three careers, write two essays, and share one essay. The goals were individualized and tailored to Student's abilities and needs. Moreover, the IEP included, as part of the FAPE offer, two transition services: group career awareness services for 60 minutes per year; and transition services in the

form of 60 minutes per year of individual vocational assessment, counseling, guidance, and career assessment services. These aspects of the IEP demonstrate that the IEP team tried to develop goals and services that met Student's individual needs.

72. Student's career goal of actress is an ambitious one, and only relatively few individuals achieve success. The transition plan encouraged Student to explore a range of careers and interests, which might serve to broaden her career horizons, even if she limited herself to the variety of careers available in the entertainment field. The transition plan had some generic components, but it could still be considered fairly well-tailored to assist Student in transitioning to the challenges and the realities of the post-secondary life to which she aspired.

73. Student's contention that the transition plan was faulty because it was to be implemented at a nonpublic school, but no representative from the nonpublic school was present at the IEP, is not meritorious. As is further explained below, the IEP did not, and was not required to, specify a particular nonpublic school as the location for the IEP services. It follows that a nonpublic school representative was not required to be present at the IEP meeting.

74. Student's transition plan included required content, and appropriate, measureable goals. As stated in *Lessard, supra*, 518 F.3d 18, 25, at p. 30, the test in evaluating a transition plan is whether the IEP, taken in its entirety, was reasonably calculated to enable the particular child to garner educational benefits. The *Lessard* court added, "[w]ere the law otherwise, parents could endlessly parse IEPs into highly particularized components and circumvent the general rule that parents cannot unilaterally dictate the content of their child's IEP [citations]." This Decision finds that Student's April 27, 2018 IEP, taken as a whole, was reasonably calculated to provide Student with meaningful educational benefit. Pasadena Unified did not deprive Student of a FAPE on this ground.

75. Since the transition plan itself was appropriate, the failure of Pasadena Unified to conduct an appropriate transition assessment was a harmless procedural violation of the IDEA.

ISSUE (3)(A): SPECIFIC OFFER OF PLACEMENT

76. Student contends the April 27, 2018 IEP was defective because it failed to identify a specific nonpublic school, but rather proposed two different nonpublic schools, thereby negatively impacting Parents' ability to meaningfully participate in the decision making process. Pasadena Unified contends that the IEP met all legal requirements and did not need to designate a specific nonpublic school, and Parents were not prevented from actively participating in the IEP. Rather, Parents helped shape the ultimate IEP offer.

77. The IDEA requires a school district to make a formal written offer of placement. (*Union School Dist. v. Smith* (9th Cir. 1993) 15 F.3d 1519, 1526.) (*Union*) The *Union* court stated that this formal requirement had important purposes that were not merely technical, and that it should be enforced rigorously. (*Ibid.*) First, a formal written offer of placement created a clear record that would help to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. (*Ibid.*) Second, citing 20 U.S.C. section 1415(b)(1)(E), a formal, specific offer of placement from a school district would greatly assist parents in "present[ing] complaints with respect to any matter relating to the ... educational placement of the child." (*Ibid.*)

78. In *Rachel H. v. Dept. of Ed., State of Hawaii* (9th Cir. 2017) 868 F. 3d 1085 (*Rachel H.*), the Ninth Circuit held that the IDEA did not procedurally require identification of a particular school in every instance. (*Id.* at p. 1093.) The court considered the meaning of the term "location" in the IDEA requirement that an IEP must

contain “the projected date for the beginning of the services and modifications. . .and the anticipated frequency, location, and duration of those services and modifications.” (20 U.S.C. §1414(d)(1)(A)(i)). Noting that the IDEA did not define the term “location,” the court adopted the U.S. Department of Education’s definition of location at 64 Fed. Reg. 12,406, 12,594 (Mar. 12, 1999). In that document, the Department of Education defined “location” in the context of an IEP as referring to the type of environment that is the appropriate place for provision of the service.” (*Ibid.*) The *Rachel H.* court specifically distinguished the term “location” from the term “placement.” Citing *N.D. ex. rel. Parents Acting as Guardians ad litem v. Hawaii Dept. of Ed.* (9th Cir. 2010) 600 F.3d 1104, 1116, the court noted that the term “placement” meant the general educational program of the student, and the term “location” was narrower. (*Rachel H., supra*, 868 F. 3d at p. 1092.) The court also noted that *Union* did not hold that “placement” meant a particular school. (*Rachel H., supra*, 868 F.3d, fn. 3.)

79. The court specified that its holding did not mean that a school district could assign a child to a school where the IEP could not be implemented, or that a student’s disability demanded delivery of special education services at a particular facility. (*Rachel H., supra*, 868 F.3d at p. 1092.) The court also acknowledged that knowledge of a particular school, classroom, or teacher may well be relevant to allowing parents to participate meaningfully in the IEP process, quoting *A.K., etc. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681 [“With the IEP not identifying any particular school (because the IEP team had not discussed the issue), the parents were left to fend for themselves to determine whether any private day school in their area—including the five . . . applied to—would be a satisfactory fit. This is not how the IDEA was designed to work.”] (*Rachel H., supra*, 868 F.3d at p. 1092.) The court also noted that parents may need identification of a specific school, for example, to evaluate whether a proposed IEP satisfies the IDEA because of a particular special education need caused by

a child's disability.

80. In determining the educational placement of a special education student, the IEP team must consider placements along the continuum of alternative placements. (34 C.F.R. §§ 300.114-300.118; Ed. Code, § 56342.) Each special education local plan area shall ensure that a continuum of program options is available for special education students. The continuum of program options shall include all, or any combination, of the following, in descending order of restrictiveness: (a) regular education programs; (b) a resource specialist program; (c) related services; (d) special day classes; (e) nonpublic, nonsectarian school services; (f) state special schools; (g) instruction in nonclassroom settings; (h) itinerant instruction; (i) instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115; Ed. Code §§ 56360, 56361.)

81. The April 27, 2018 IEP refers to placement at a nonpublic school, and it contains a single, final formal offer of a FAPE on the Offer of FAPE-Service pages, with the location of the services designated as a nonpublic day school. The IEP Notes describe the offer of a nonpublic school as "[t]he Final Offer of FAPE. . ." During the April 27, 2018 IEP meeting, the IEP team appropriately considered two placement options along the continuum of placement options, as they were required to do under the IDEA and the Education Code. The note taker labelled these placement options as "offers of FAPE," when, in fact, they were not formal offers of FAPE when they were discussed. The first option considered was dual enrollment at the Center and Pasadena Unified, with specialized academic instruction for 60 minutes, one time per week, and career awareness and vocational assessment, counseling, and guidance services in specified amounts. During the team discussion of the Independent Study Center, Parents expressed their disagreement. Father sensibly commented that an independent study model and a student with low executive functioning was not the best fit.

82. Therefore, the team considered a more restrictive placement in a nonpublic school, and Pasadena Unified offered two nonpublic schools for consideration: STEM-3 and Hillside. Mr. DeVore described them, and the team, including Parents, discussed them. Mr. DeVore gave Parents the contact information for both schools and suggested Parents tour them. Parents were open to this suggestion, and to contacting Mr. DeVore after they toured the schools.

83. The April 27, 2018 IEP comports with the IDEA. It contains a single, final, formal offer of a FAPE, as required by *Union, supra*. The IEP did not specify the particular school at which the services will be rendered, but, as in *Rachel H., supra*, it need not so specify. There was no issue in this case that the IEP would not be able to be implemented at either STEM-3 or Hillside, or that Pasadena Unified would place Student in a nonpublic school which could not implement the IEP. Unlike in *A.K., supra*, Mr. DeVore, who was familiar with both schools, described them at the IEP meeting, and Parents provided their input. Mr. DeVore also provided the contact information so Parents could tour the schools, and Mother did so.

84. Parents decided to keep Student at Bridges, but they meaningfully participated in the IEP discussion of the nonpublic schools, and they knew which nonpublic schools Pasadena Unified suggested. In this regard, Hillside, one of the nonpublic schools had a similar name to a different local nonpublic school, but there was no evidence that Parents were materially confused as to which particular nonpublic schools were discussed at the IEP team meeting. Moreover, Mr. DeVore gave them contact information regarding the schools. Mother testified at hearing that she was confused by the discussion of both STEM-3 and Hillside, but her testimony on this issue was not persuasive. There was no evidence that Father was confused by the discussion. Parents were present at the IEP team meeting with their attorney, and there was no evidence that Pasadena Unified was unwilling to provide any explanations or

information about the schools that Parents or their attorney requested. Finally, in his July 3, 2018 letter to Parents, Mr. DeVore twice mentioned Pasadena's willingness to convene another IEP meeting to discuss other nonpublic schools and to assist Parents in finding a nonpublic school that met Student's needs. Indeed, under these circumstances, if Pasadena Unified had named a specific nonpublic school in the IEP, Parents could more convincingly contend that Pasadena Unified had deprived them of meaningful participation.

85. Further, the evidence demonstrated that it is often unrealistic for an initial IEP team such as the one in this case, which is determining the fundamental question of eligibility for special education and services, to designate a specific nonpublic school versus the type of nonpublic school a student needs to receive a FAPE. Parents generally wish to visit a nonpublic school, and students must be accepted at one. The nonpublic school must also have space for the student. Under these circumstances, Pasadena Unified could not guarantee that Student would be able to enroll in a specific nonpublic school, and it would therefore be unreasonable to require it to specify one in the IEP. In contrast, sometimes an IEP team is conducting an annual IEP for a student who had already been found eligible for special education, and the student was successfully attending a nonpublic school at which the school district had previously placed the student. Under that circumstance, it would likely be more reasonable for a school district to specify the name of the nonpublic school which the student was attending.

86. The IEP contained a specific, formal offer of placement at a nonpublic school, in conformity with applicable law. Student did not demonstrate that the nonpublic schools discussed at the IEP meeting could not implement Student's IEP, or that Student's disability demanded delivery of special education services at a particular facility, such that identification of a particular nonpublic school was required pursuant to *Rachel H., supra*. Student did not meet her burden of proof that Pasadena Unified

deprived Student of a FAPE on this ground.

ISSUES (3)(B) AND (3)(C): APPROPRIATE PLACEMENT AND PSYCHOLOGICAL SERVICES

87. Student contends that the April 27, 2018 IEP did not offer an appropriate placement, because Student required an educational placement that addressed her unique needs as a twice-exceptional learner with a nonverbal learning disability, math learning disorder, social anxiety disorder, generalized anxiety disorder, and major depression disorder. Student contends that the offers of the Independent Study Center, and the nonpublic school offer proposing placement at STEM-3 or Hillside, would not have addressed her needs. Student also contends that the April 27, 2018 IEP offered an inadequate amount of counseling and psychological services, because the IEP offered only 30 minutes weekly of individual counseling services per week if Student attended the Independent Study Center. If Student attended a nonpublic school, the IEP only offered 90 days of wrap-around services. Further, Student contends the wrap-around services were offered without input from Dr. Leach, and without explanation to Parents.

88. Pasadena Unified contends that the placement offer and the services offered were appropriate, as they were reasonably calculated to provide educational benefit to Student.

89. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon, supra*, at 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Ed., supra*, 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) Additionally, to determine whether a school district offered a student a FAPE, the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the

student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

90. In determining the educational placement of a child with a disability, the child's placement should conform to the IEP and the child should be placed in the least restrictive environment. (34 C.F.R. §300.116(a), (b).) The child should be educated in the school the child would attend if the child were not disabled, unless the IEP otherwise requires. (34 C.F.R. §300.116(c).)

91. In *Letter to Anonymous*, 55 IDELR 172, (January 13, 2010). the Office of Special Education Programs cogently explained the contours of a school district's obligation to twice-exceptional students, stating:

The IDEA is silent regarding "twice exceptional" or "gifted" students. It remains the Department's position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations. Under 34 C.F.R. §300.8, a child must meet a two-prong test to be considered an eligible child with a disability: (1) have one of the specified impairments (disabilities); and (2) because of the impairment, need special education and related services. For example, a child with high cognition and ADHD could be considered to have an 'other health impairment,' and could need special education and related services to address the lack of organizational skills, homework completion and classroom behavior, if appropriate."

92. Pasadena Unified's final, formal offer of a FAPE was placement at a nonpublic school, not the Independent Study Center. Therefore, the offer of a FAPE as it pertains to nonpublic school is the only offer to which Issues (3)(b) and (3)(c) are relevant.

93. The offer of placement at a nonpublic school did not deprive Student of a FAPE. As *Letter to Anonymous, supra*, explains, twice-exceptional students, such as Student, are not eligible under the IDEA for special education placement and services because of their status as gifted, or because of their status as twice-exceptional, because those are not eligibility categories under the IDEA. Nor are they eligibility categories under California law, which echoes the IDEA's eligibility categories. (Cal. Code Regs., tit. 5, §3030.) Rather, a gifted or twice-exceptional Student in California is eligible for, and entitled to receive, special education placement and services only because the student has a disability that is specified in the IDEA and California law, and that disability causes a student to require special education and related services. Therefore, Student's needs as a Student with emotional disturbance are the focus of the special education and services Pasadena Unified must provide to Student, not Student's needs as a result of fitting into a particular learning profile, such as twice-exceptional, that is not mentioned in the IDEA. Significantly, Student cites no legal authority to the contrary.

94. The IEP team considered placement in Pasadena Unified at first. However, with Parents' input, Pasadena Unified realized that the most likely candidate, the Independent Study Center, would not be appropriate for Student. Therefore, the team considered nonpublic schools as the next step on the placement continuum.

95. Mr. DeVore suggested two nonpublic schools, STEM-3 and Hillside, that he believed would be suitable placements for Student, based upon his knowledge of Student, and his knowledge of local nonpublic schools. He explained the features of the schools, and answered Parents' questions. After the IEP team meeting, Mother toured

the schools and Parents expressed their dissatisfaction with them in their May 14, 2018, letter to Mr. DeVore. Mr. DeVore responded, in writing, and requested Parents attend another IEP meeting, to discuss additional nonpublic schools.

96. Student contends that STEM-3 is inappropriate because of student's math disability and her inability to perform the detailed tasks required in science and math. These contentions only reflect the results of Dr. Taylor's assessments. Ms. Reyes's assessment, which was an appropriate assessment, and more educationally-focused than that of Dr. Taylor, reflected that Student had no learning disability, and no deficiency in math. It should also be noted that Student had high math and chemistry grades while at Pasadena High. Moreover, STEM-3 has an artistic component, with theatre and art classes, and student groups, such as film club., which Mr. DeVore believed would be suitable for Student.

97. Mr. DeVore also considered Hillside appropriate, because of its small size and that it had students who had disabilities but also had high cognition. Parents expressed dissatisfaction with Hillside because it involved six classes, but Student's course load at Bridges during the 2017-2018 school year involved six classes, and Parents believed Student performed well at Bridges.

98. Parents preferred to keep Student at Bridges, which they believed was the best school for her. They asked for an order that Pasadena Unified reimburse them for tuition and fees at Bridges. Parents' and Student's preferences, however, do not determine whether placement at STEM-3 or Hillside offered a FAPE. Moreover, whether Bridges offers a better program than either STEM-3 or Hillside or any other nonpublic school Pasadena Unified could offer is not relevant. Rather, the focus must be on Pasadena Unified's offer as it pertained to STEM-3 or Hillside.

99. Pasadena Unified was not required to offer Student a placement that met her learning style as a twice-exceptional student to offer a FAPE. Parents' preference for

Bridges does not govern whether STEM-3 or Hillside comported with Student's IEP and were reasonably calculated to provide Student with a meaningful educational benefit. That STEM-3 and Hillside might not be perfect placements for Student in Parents' opinion does not govern whether STEM-3 or Hillside could provide Student with a FAPE. Student did not meet her burden to demonstrate that Student's placement at either STEM-3 or Hillside would not comport with her IEP, or was not reasonably calculated to provide her with a meaningful educational benefit. Under these circumstances, Pasadena Unified did not deprive Student of a FAPE on this ground.

100. Turning to the adequacy of the psychological and counseling services, Student's IEP offered Student 30 minutes per week of psychological services, to be provided by a nonpublic agency at a nonpublic school, plus intensive mental health wrap-around services for 90 days, including round the clock access to support in case of a crisis. Significantly, these services were to be provided for 90 days regardless of whether school was in session, such that, in Student's case, they would continue into the summer. The evidence was undisputed that these services were highly specialized and intensive services that were to be provided for 90 days *at first*, and an IEP team meeting would then be held to determine whether the services were effective, whether they should continue, and whether they should be adjusted. Mr. DeVore testified that such services were typically offered for an initial period of 90 days. Student contends that the 90-day period was not individualized to Student, but this contention was unpersuasive to show that the offer of these services was defective. Student presented no evidence as to why, given the information Pasadena Unified had at the time, Student would require any other period of time for such services. In the absence of a crystal ball, Pasadena Unified chose the 90-day period because of its prior experience with providing such services. Pasadena Unified could not possibly predict how effective the services would be, and apparently neither could Student. As the court noted in *Andrew F., supra*, 137

S.Ct. at p. 999, crafting an IEP requires a prospective judgment, and judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether it is regarded as ideal.

101. At the April 27, 2018 IEP team meeting, Mr. DeVore explained the wrap-around mental health services to Parents, which was his practice when IEP teams were considering offering those services. At hearing, Mr. DeVore confirmed that he explained the services to Parents, as he always explained the services when the team was considering them at IEP team meetings. There was no evidence that Parents and their attorney were barred from asking any questions they desired about the wrap-around mental health services, whether at the IEP team meeting or afterwards. The IEP document, and in particular the IEP team meeting notes, reflected that Parents and their attorney specifically participated many times during the meeting, by discussing their educational concerns, questioning some of the assessment scores, discussing Student's sneaking away from classes at the Independent Study Center, discussing Student's anxiety, discussing the eligibility categories, discussing possible placements at the Independent Study Center, and at Hillside and STEM-3. Under these circumstances, Parents' contention that they did not understand the offer of wrap-around services was not persuasive, and not sufficient to find that the offer of mental health services was inappropriate.

102. Parents may have felt that the offer of psychological and counseling services should have taken into account the medical wrap-around services Student received outside of school, but there was no specific evidence that Parents ever advised Pasadena Unified that Student received medical wrap-around services after her hospitalization. Indeed, the fact that Parents were obviously familiar with the concept of wrap-around services also diminishes somewhat the persuasiveness of Parents' contention that they did not understand Pasadena Unified's offer of wrap-around

services.

103. Finally, Student's contention that the offer of services was defective because Dr. Leach was not present at the April 27, 2018 IEP team meeting is not meritorious. Student cites no legal authority that Pasadena Unified had any obligation to invite Dr. Leach, Student's private psychiatrist, to the IEP team meeting. The IEP invitation specifically advised Parents that they could invite other people to the meeting. Parents knew that the purpose of the IEP team meeting was to discuss Ms. Reyes' assessment. It was no secret that Student's eligibility for special education and her psychological issues would be discussed at the meeting. Nobody at Pasadena Unified advised Parents that Pasadena Unified would invite Dr. Leach to the meeting, such that Parents need not do so. Yet, Parents only invited their attorney; they did not invite Dr. Leach. If Parents wanted Dr. Leach to attend the meeting, they could have invited her to the meeting.

104. The IEP team appropriately based its offer of placement and services on the information that it had at the time of the IEP team meeting, including information by Parents and other IEP team members, and upon Ms. Reyes' assessment and report. The offer of placement and the intensive psychological and counseling services were reasonably calculated to provide Student a meaningful educational benefit, and would have permitted her to make appropriate progress in light of her circumstances. Student did not meet her burden of proof that the offer was not reasonably calculated to provide Student a meaningful educational benefit or permit her to make appropriate progress. Pasadena Unified's offer of placement and services did not deprive Student of a FAPE.

ISSUE 3(H): RESEARCH-BASED INTERVENTION

105. Student contends that the IEP of April 27, 2018, was defective because the law requires school districts to offer research-based intervention. Student contends that

the IEP did not offer research-based intervention for Student, because it lacked any research-based interventions which took into account her educational needs as a twice-exceptional student. Pasadena Unified contends that the IEP offered a program based on research-based intervention to the extent practicable, as required by the IDEA and the Education Code. Pasadena Unified further contends that twice-exceptional children are only eligible for special education under the IDEA if they have a qualifying disability, and the IDEA only requires their special education services that relate to their area or areas of the qualifying disability to be research-based, to the extent practicable.

106. Title 34 Code of Federal Regulations part 300.320(a)(4) provides that the special education and related services offered in an IEP should be based upon peer-reviewed research to the extent practicable. Peer reviewed research refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published." (71 Fed. Reg. 46,664 (August 14, 2006).)

107. In *Letter to Anonymous*, 55 IDELR 172, January 13, 2010, *supra*, the Office of Special Education Programs explained that student's special education services are only required to address her needs relating to her IDEA disability category of emotional disturbance, and not her needs related to her status as a twice-exceptional student.

108. In this case, Student's disability is emotional disturbance, which is an eligibility category recognized in both the IDEA and the Education Code. Because of that disability, she needs special education and related services. The special education and related services she receives as a result of her disability of emotional disturbance must comply with special education law, and be based upon peer-reviewed research, to the extent practicable.

109. Under these authorities, Pasadena Unified had no obligation to offer research-based intervention to Student except as to the special education and related

services it offered in the April 27, 2018, IEP. Even then, it was only obligated to offer research-based intervention to Student to the extent it was practicable to do so. Student's status as a twice-exceptional child may present learning challenges for her, and may give her a different learning profile than certain other children. Nevertheless, the IDEA does not require Pasadena Unified to address those issues with research-based interventions, because the IDEA does not recognize twice-exceptionality as a category that renders children eligible for special education and related services.

110. Student offered no evidence that the special education instruction and services offered by Pasadena Unified to address Student's needs as a Student with an emotional disturbance were not research-based. On the contrary, the fact that the nonpublic school placements identified by the April 27, 2018 IEP were certified by the State of California to provide special education and related services attests to the fact that the instruction and services they provide are research-based to the extent practicable. (34 C.F.R § 300.146 (a) [states must ensure that a child with a disability who is placed in or referred to a nonpublic school or agency is provided special education and related services in conformance with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.325.]) Similarly, the fact that the nonpublic agencies referred to in the April 27, 2018 IEP as the providers of mental health services to Student were certified by the State of California attests that the services they provide are research-based to the extent practicable. (*Id.*)

111. Pasadena Unified offered Student special education and related services that were research-based to the extent practicable. It did not deprive Student of a free appropriate public education on this ground.

ISSUE 4: DEPRIVATION OF FAPE BY REASON OF DEFECTIVE PRIOR WRITTEN NOTICE.

112. Student contends that Pasadena Unified did not provide appropriate prior written notice regarding its eligibility determination and its refusal to offer Bridges as a

placement. Pasadena Unified contends that Mr. DeVore's letter of July 3, 2018, constituted appropriate prior written notice.

113. The IDEA requires an educational agency to provide "prior written notice" whenever the agency proposes or refuses to initiate or change "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education." (20 U.S.C. § 1415(b)(3); see also 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).)

114. 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.* (3d Cir. 2010) 606 F.3d 59, 70.) (*C.H.*) Prior written notice must be sent "a reasonable time" before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child. (34 C.F.R. § 300.503(a)(1); Ed. Code, § 56500.4, subd. (a).) This is to ensure that parents have a reasonable time to fully consider the change of placement and respond to the action before it is implemented. (See Office of Special Education Programs, *Letter to Chandler*, 59 IDELR 110 (OSEP April 26, 2012).)

115. A prior written notice must include: (1) a description of the action proposed or refused by the agency; (2) an explanation for the action; (3) a description of each evaluation procedure, assessment, record, or report which is the basis of the action; (4) a statement that the parents of an individual with exceptional needs have protection under the procedural safeguards, and the means by which a copy of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance; (6) a description of the other options the IEP considered and the reasons why those options were rejected; and (7) a description of other factors relevant to the proposal or refusal of the agency. (20 U.S.C. § 1415(b)(3) and (c)(1); 34 C.F.R. § 300.503(a) and (b); Ed. Code, §

56500.4, subd. (a) and (b).)

116. An IEP document can serve as prior written notice as long as the IEP contains the required content of appropriate notice. (71 Fed.Reg. 46691 (August 14, 2006).)

117. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) 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, subd. (f)(2) and (j); *Target Range, supra*, 960 F. 2d. 1479 at 1484.)

118. When a violation of such notification procedures does not actually impair parental knowledge of or participation in educational decisions, the violation is not a substantive harm under the IDEA. (*C.H., supra*, 606 F.3d at p. 70.)

119. The reasons Pasadena Unified refused to make Student eligible for special education under the eligibility category of specific learning disability were discussed at the IEP team meeting of April 27, 2018. Parents acknowledged at the IEP team meeting, in writing, that they had a copy of Ms. Reyes' assessment report, and Parents had a copy of the procedural rights document. Therefore, the IEP document itself contained all of the elements of prior written notice: a description of the decision regarding prior written notice; an explanation for the decision; a description of each document which was the basis of the action; a reference to the procedural safeguards, sources for parents to obtain assistance; a description of the other eligibility options considered by the IEP team and reasons why they were rejected; and a description of other factors relevant to the decision. In view of Parents' ultimate consent to the eligibility determination of emotional disturbance, it is not clear that Pasadena Unified was required to give any prior written notice. However, Pasadena Unified gave it.

120. Mr. DeVore's letter of July 3, 2018, substantially complied with the

requirements for prior written notice. The letter explained that Pasadena considered Bridges unsuitable for Student, and referred to the IEP as the reason, which incorporated the assessment report and a discussion of the assessment, and explained why the nonpublic schools were appropriate, and also expressed openness to further discussion. The only document referred to in the letter was the IEP, which itself discussed and referenced the assessment report, and both of those documents provided a substantial basis as to why Pasadena Unified refused to reimburse for Student's placement at Bridges. Mr. DeVore had reviewed some unspecified documents in preparing the prior written notice letter, and he conceded he did not list them in the letter. However, the IEP document itself was the foundation that supported Pasadena Unified's denial of Parent's request for reimbursement.

121. Even if one concluded that Pasadena Unified's prior written notices were technically deficient, Pasadena Unified's conduct comported with the policy behind the prior written notice requirement: 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. Parents, who were represented by counsel at all relevant times during the IEP process, were notified of the decisions pertaining to their child's eligibility category, and of Pasadena Unified's decision to offer Student a nonpublic school placement as opposed to reimbursing them for Bridges. Parents had the opportunity to object to these decisions, and they did so.

122. In any event, the failure to provide appropriate prior written notice is a procedural violation. Procedural violations are only actionable if they impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or caused a deprivation of educational benefits. Any defects in the prior written notices in this matter did not impede Student's right to a FAPE, deprive her of an educational benefit,

or significantly impede Parents' opportunity to participate in the decision making process regarding the provision of a FAPE. Parents and their legal counsel fully participated in the IEP team meeting of April 27, 2018, and Pasadena requested Parents participate in another IEP meeting to discuss other nonpublic school placements. Further, Parents had predetermined that the only acceptable placement offer was Bridges. Under these circumstances, Pasadena Unified did not deprive Student of a FAPE on this ground.

ORDER

All of the relief sought by Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Pasadena Unified prevailed on all issues heard and decided.

RIGHT TO APPEAL

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

DATED: June 17, 2019

/s/ _____

ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings