

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTERS OF
PARENT ON BEHALF OF STUDENT

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2019040158

AND

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

v.

PARENT ON BEHALF OF STUDENT.
OAH CASE NUMBER 2019010897

DECISION

On January 23, 2019, Santa Monica-Malibu Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, naming Parent, on behalf of Student. The Office of Administrative Hearings will be referred to as OAH. On February 6, 2019, OAH continued the case for good cause.

On April 3, 2019, Parent, on behalf of Student, filed a due process hearing request with OAH, naming Santa Monica-Malibu. On April 5, 2019, OAH consolidated Student's case with Santa-Monica Malibu's case, and named Student's case the primary case. On May 20, 2019, OAH continued the consolidated cases for good cause.

Administrative Law Judge Tara Doss presided over the hearing in the consolidated cases, in Santa Monica, California, on September 4, 5, 10, 11, and 12, 2019. On the first day of hearing, Santa Monica-Malibu withdrew its case. The hearing proceeded with Student's case.

Attorneys Mandy Favaloro and Jane DuBovy represented Student. Mother and Father attended each day of hearing on behalf of Student. Student did not attend the hearing. Attorneys Gabrielle Ortiz and Adam Newman represented Santa Monica-Malibu. Deanna Sinfield, Director of Special Education, attended each day of

hearing on behalf of Santa Monica-Malibu.

At the request of the parties, OAH granted a continuance to October 7, 2019, to file written closing briefs. The parties timely filed written closing briefs. On October 7, 2019, OAH closed the record and submitted the case for decision.

ISSUES

On the first day of hearing, the ALJ clarified the issues as stated in the August 27, 2019 Order Following Prehearing Conference with Student's attorneys. Student withdrew issues 1, 5(b), 6, and 7. The ALJ further reorganized the issues in accordance with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443. No substantive changes were made. Free appropriate public education will be referred to as FAPE. Individualized education program will be referred to as IEP.

The issues addressed in this Decision are as follows:

1. Did Santa Monica-Malibu deny Student a FAPE by failing to conduct an appropriate psychoeducational assessment in October 2018, that assessed Student in all areas of suspected disability, and use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information?
2. Did Santa Monica-Malibu procedurally deny Student a FAPE, from April 2018, through the end of extended school year 2019, including at the October 22, 2018, and February 11, 2019 IEP team meetings, by:
 - a. failing to have an IEP in effect at the start of the 2018-2019 school year;
 - b. infringing upon Parents' right to meaningfully participate in the IEP process;
 - c. failing to consider Parents' concerns and the results of private assessments in determining eligibility and developing a program for Student;
 - d. failing to ensure Parents were members of the team that made decisions regarding Student's program, and predetermining outside of the IEP team meeting that Student was not eligible for special education;

- e. causing a loss of educational benefit when it failed to make Student eligible for special education and related services; and
 - f. failing to provide prior written notice, with all required information, of its refusal to offer Student eligibility for special education and related services?
3. Did Santa Monica-Malibu substantively deny Student a FAPE, from April 2018, through the end of extended school year 2019, including at the October 22, 2018, and February 11, 2019 IEP team meetings, by failing to offer Student:
- a. eligibility for special education and related services; and
 - b. a program that met Student's needs and provided educational benefit?

SUMMARY OF DECISION

Student did not prove Santa Monica-Malibu denied her a FAPE from April 2018, through the extended school year in 2019. Santa Monica-Malibu timely assessed Student and held an IEP team meeting to determine eligibility. Santa Monica-Malibu's October 2018 psychoeducational assessment was appropriately conducted. Parents actively participated in the assessment and IEP process. The IEP teams at the October 22, 2018, and February 11, 2019 meetings, appropriately determined Student did not meet the eligibility criteria for special education and related services. Thus, Student was not deprived of educational benefit. All Student's requests for relief are denied.

FACTUAL FINDINGS

Student was 12 years old and in the sixth grade at the time of the hearing. Student attended Westmark School, a private school in Encino, California. Student lived with her parents and older sister within the boundaries of Santa Monica-Malibu during the time period discussed in this Decision. Student has never been eligible for special education and related services.

BACKGROUND

Parents adopted Student and her older sister in 2017. Student began living with Parents in 2015, after the Department of Children and Family Services removed the sisters from their biological parents and placed them in foster care. Father is a relative of Student's biological father. Student's biological mother exposed Student to alcohol and illegal drugs while pregnant. Student's biological parents exposed Student to illegal drug use, neglectful treatment, and abuse.

Student enrolled in Santa Monica-Malibu towards the end of first grade, during the 2014-2015 school year. Upon enrollment, Parents requested that Santa Monica-Malibu assess Student for special education. Parents were concerned about Student's social and developmental issues related to growing up in an unhealthy home environment.

Santa Monica-Malibu school psychologist, Michael Hoover, conducted an initial psychoeducational assessment of Student and issued a report on June 2, 2015. Student's cognitive ability was in the average range. Student did not exhibit any auditory or visual processing deficits. Student's academic skills were in the average range, with above average writing skills. Student's social skills were age appropriate at school. On June 2, 2015, Santa Monica-Malibu held an IEP team meeting, and determined Student did not meet the criteria for special education eligibility.

2017-2018 SCHOOL YEAR

Student was in the fourth grade at Grant Elementary School within Santa Monica-Malibu during the 2017-2018 school year. During the first reporting period, Student approached mastery of grade level standards in all academic areas, except social science, in which she made progress toward achieving mastery. Student was enthusiastic and participated actively in class. On district-wide assessments, Student

scored better than 95 percent of grade-level peers nationally in reading, and better than 81 percent of peers in math. Santa Monica-Malibu did not issue a report card to Student for the second reporting period because Student disenrolled on or around April 30, 2018.

Hospitalization and Disenrollment from Santa Monica-Malibu

On April 26, 2018, Parents confronted Student after they discovered she stole Father's credit card and made an online purchase. Student called a suicide prevention hotline and expressed having suicidal thoughts. The police responded to the call and hospitalized Student, against her will, at the University of California Los Angeles, commonly referred to as UCLA, Resnick Neuropsychiatric Hospital. Student was hospitalized for two weeks, and released on May 10, 2018.

Upon release from the hospital, Student's care team at UCLA recommended she attend a supportive transitional environment before returning to school. Parents voluntarily enrolled Student in UCLA's Achievement, Behavior, Cognition Partial Hospitalization Program, commonly referred to as the ABC Program. Student attended the ABC Program for approximately eight weeks, from May 16, 2018, through July 3, 2018. Parents enrolled her in the Los Angeles Unified School District because Los Angeles was the responsible local educational agency for providing educational services to participants in the ABC Program. Student showed improvement in the ABC Program. She could better tolerate stress, apply coping skills, avoid external distractions, and follow redirection to maintain appropriate participation.

UCLA Evaluations

While in the ABC Program, various UCLA professionals assessed Student in speech and language, academics, intellectual ability, hearing, and occupational therapy. No one from the UCLA team observed Student in a regular school setting. No one from

the UCLA team reviewed Student's educational records or interviewed Student's teacher at Grant Elementary School.

UCLA psychologist, Dr. Iris Finger, administered the Wechsler Intelligence Scale for Children-Fifth Edition, to measure Student's intellectual ability. Student scored in the average range on all subtests.

UCLA educational consultant and assessment specialist Ilaina Blum, assessed Student's academic abilities using the Woodcock-Johnson IV Test of Achievement. Student frequently needed directions repeated or clarified throughout Ms. Blum's testing. Student scored in the average or above average range in all academic areas. Her lowest scores, which were in the lower end of the average range, were in reading recall and writing samples.

Ms. Blum concluded Student needed educational interventions at school in order to benefit from instruction and access the curriculum. She based this conclusion on Student's scores on the reading comprehension, reading recall, and writing sample subtests. Ms. Blum also concluded Student's difficulties with low mood, anxiety, and executive functioning existed over an extended period of time to a marked degree, and negatively impacted her educational performance.

Ms. Blum made several recommendations, including the need for Student to be evaluated for an IEP. She recommended supports in the school setting, such as checking in with Student, breaking down assignments, extended time, and reduced homework. Ms. Blum also recommended Student continue to receive outpatient therapy.

UCLA speech pathologist, Ilene Umen, assessed Student's hearing, speech, and language abilities. Student initially failed the hearing screening for her right ear. She eventually passed the screening, but the results were inconsistent. Student's speech was within normal limits. Student had mild to severe language deficits in the areas of:

- grammar production;

- grammar comprehension and organization;
- remembering complex verbal information;
- understanding semantic-syntactic relationships; and
- problem solving using language.

Student's language deficits sometimes had a negative impact on her pragmatic language abilities.

On July 11, 2018, UCLA psychiatrists Dr. Katherine Kerr and Dr. Benjamin Schneider, wrote a letter summarizing the results from each evaluation. The letter included Student's diagnosed conditions, medications, and recommendations. Student's diagnoses were:

- attention deficit hyperactivity disorder, combined type;
- unspecified mood disorder;
- trauma-related emotional disorder, possibly post-traumatic stress disorder;
- possible neurobehavioral disorder related to prenatal alcohol exposure;
- possible obsessive-compulsive disorder;
- mixed receptive and expressive language disorder; and
- possible unilateral hearing loss in her right ear.

Student took several different medications to help stabilize her attention deficits and mood disorders.

The UCLA team predicted Student would struggle in school without supports, and recommended the following interventions and supports:

- allowance for verbal information to be repeated without penalty;
- pairing verbal and visual information;
- breaking down tasks into smaller parts or fewer steps;
- individualized contracts with teachers to ensure understanding of concepts;
- praise and encouragement for her efforts;

- speech and language services;
- interventions that target her deficits in executive functioning;
- clear expectations and rules;
- small group or one-on-one activities to address social skills;
- an auditory processing evaluation once hearing loss issue resolved; and
- a small, structured class environment for part of her school day.

The team also recommended Student be evaluated for an IEP in order to obtain appropriate services and programming.

Parent's Request for Assessment

On May 23, 2018, Mother emailed the principal of Grant Elementary School, to provide an update on Student's progress in the ABC Program, and to request a special education assessment. The principal responded the same day, and forwarded Mother's email to Mr. Hoover to begin the IEP process.

On June 4, 2018, Mr. Hoover timely mailed Parents an assessment plan, along with a notice of parent rights and procedural safeguards. The assessment plan proposed to assess Student in academic achievement, health, intellectual development, language/speech communication development, social/emotional, and adaptive/behavior. Mother consented to the assessment plan on August 18, 2018, and Santa Monica-Malibu received the signed assessment plan on August 20, 2018. August 23, 2018, was Santa Monica-Malibu's first day of school for the 2018-2019 school year.

2018-2019 SCHOOL YEAR

Student was in the fifth grade at Grant Elementary School during the 2018-2019 school year. Student received good grades in all subject areas. Throughout the school year, she improved her grades in reading, writing, use of language, listening, and speaking. Student had some difficulty with math, but made progress.

Shelley Smith was Student's fifth grade teacher. Ms. Smith held a master's degree in elementary education, and was a credentialed teacher with over 20 years of experience. She taught Student's older sister and had some familiarity with Student prior to fifth grade. After learning Student missed the end of fourth grade due to emotional challenges, Ms. Smith requested Student be placed in her class. She wanted Student to have a successful fifth grade year.

Ms. Smith provided supports throughout the school year, to address Student's academic, attention, and emotional needs. Student sometimes needed support in math. When a task was difficult, she would sometimes engage in negative self-talk, and say things like "this is too hard," or "I'm stupid." Ms. Smith provided support through small groups, one-to-one instruction, and peer assistance. Ms. Smith also encouraged Student to stay positive. Student was good about asking for help, and would understand new concepts after receiving additional instruction.

To help Student stay on-task, Ms. Smith allowed her to select the type of seat she used, such as a yoga ball or wiggle cushion. Ms. Smith also allowed her to use a fidget toy, such as putty, during class time. These supports were available to all students in the class.

To support Student's emotional needs, Ms. Smith allowed Student to leave the classroom for short periods of time, if she was upset and requested a break. This happened only a few times during the school year. When Student had a hard day, emotionally, it affected her motivation to complete school work. When this happened, Ms. Smith would allow her to complete the work the following school day. Ms. Smith provided similar supports to other students in the classroom, as needed.

Student had some social challenges in the classroom. She had a difficult relationship with a few boys in the class, who would say inappropriate things to her. Ms. Smith counseled her about creating healthy boundaries and making different choices

with friendships. On October 9, 2018, Student reported to Ms. Smith that she found a threatening note with racially and sexually explicit language in her desk. Student reported she did not know who wrote the note. Ms. Smith and Mr. Hoover did an investigation to find out who wrote the note, but the investigation results were inconclusive. The school did not take any further action regarding the note.

Santa Monica-Malibu's Evaluations

In October 2018, Santa Monica-Malibu conducted testing of Student in the areas of, academics, health, speech and language, and psychoeducation.

Santa Monica-Malibu specialized academic instructor, Devyn Norris, conducted an academic assessment of Student over several dates in September and October, 2018. Ms. Norris was a credentialed special education teacher. At the time of the assessment, she managed a caseload of 22 special education students, with mild to moderate disabilities, at Grant Elementary School. Ms. Norris provided specialized academic instruction, conducted assessments, and attended IEPs for these students.

Ms. Norris administered the Kaufman Test of Educational Achievement-Third Edition to Student. She had administered the Kaufman Test at least 40 times. Ms. Norris considered the results of Ms. Blum's academic testing, and included the scores in her written report. The Kaufman Test assessed Student in the areas of reading, oral language, writing, and math. Student scored within normal limits, or in the average range, on all subtests. The results of Ms. Norris's assessment were similar to those from Ms. Blum's assessment.

Ms. Norris made the following recommendations to help improve Student's academic performance:

- repeat directions, as needed;
- check in with Student to ensure understanding;
- prepare Student for changes to the school schedule or routine;

- allow Student time to process answers;
- pair visual and verbal information;
- break down multi-step tasks into small parts;
- use positive praise and feedback; and
- help Student learn to self-advocate when she needs support, including repeated instructions or breaks.

In Ms. Norris's opinion, Student did not require specialized academic instruction, or meet eligibility criteria for special education under any category. Student had the underlying skills to access the general education curriculum.

On October 20, 2019, the Grant Elementary School nurse, Rachel Bressler, conducted a health assessment of Student. Student passed the vision and hearing screenings. Ms. Bressler included information from Parents regarding Student's health history. In third grade, Student frequently came to the health office with complaints of somatic, or physical symptoms, such as stomach pains or headaches. This was no longer an issue in fifth grade.

Santa Monica-Malibu speech pathologist, Carolyn Monsour, conducted a speech and language assessment of Student in September and October 2018, and issued a written report on October 22, 2018. Ms. Monsour received input from Parents and Ms. Smith. Parents were concerned about Student's ability to express her emotions and retain information, and social skills. Ms. Smith did not have any concerns regarding Student's speech or language abilities. Ms. Monsour reviewed Ms. Umen's speech and language evaluation report, and included a summary of the results in her report.

Student did not have any issues with speech, including articulation, fluency, and volume. On standardized testing, Student scored in the average range in receptive and expressive language. These scores were consistent with Student's performance in the average range, on the language subtests of Ms. Norris's academic assessment. Student's

pragmatic language skills were also within age expectations. Ms. Monsour concluded Student did not meet the eligibility criteria for a speech or language impairment.

Mr. Hoover assessed Student over several days in August and September 2018, and issued a psychoeducational report on October 19, 2018. Mr. Hoover held two master's degrees in elementary education and educational psychology. Mr. Hoover held a clear multiple subject teaching credential and a clear pupil personnel services credential in school psychology. He also held a certification in nonviolent crisis intervention, and was a board certified behavior analyst.

Mr. Hoover was a school psychologist at Grant Elementary School for approximately nine years. He regularly conducted psychoeducational assessments, functional behavior assessments, and other evaluations to identify students who required special education services. He also provided counseling services to students with social and emotional needs. Prior to working as a school psychologist, Mr. Hoover spent 10 years as a general education fourth grade teacher in two different school districts.

Mr. Hoover's assessment included interviews, review of Student's educational records and UCLA evaluation reports, review of Santa Monica-Malibu's assessment reports, observations of Student, and standardized test measures. As part of his record review, Mr. Hoover looked at Student's report cards, and her performance on district-wide and statewide assessments. Mr. Hoover also reviewed the results from the June 2015 psychoeducational assessment he conducted of Student.

Mr. Hoover interviewed Student two times. The first interview was at the start of the 2018-2019 school year. Student was excited about fifth grade. She loved her teacher, Ms. Smith, and liked hanging out with friends. She enjoyed reading in a quiet environment but liked to take breaks every 30 minutes. She was worried that her writing was out of practice and expressed having difficulty writing long narratives. She did not

like math.

The second interview was one month into the school year. Student was happy in Ms. Smith's class. Reading and writing were going well, but she still did not like math. She found it hard to focus at times, but sitting on the ball chair and rocking her legs helped her refocus. She mentioned several friends she liked spending time with, and a few male students that bothered her. Student was proud of her recent election to the student council.

Parents completed a parent questionnaire and Mr. Hoover interviewed Father. Mother provided additional information through email. According to Parents, school was a place where Student felt safe and successful. Giving her praise and support were key to her emotional stability. They described her as personable, energetic, and curious. She had a desire to please others. Academically, she had strong reading and spelling skills. She struggled with reading comprehension, especially with understanding conceptual information. Her writing lacked specific details and correct sentence structure. In math, she performed best on single-step problems that required memorization, but struggled on multi-step and word problems.

Parents were worried Student was socially maturing slower than her peers. She allowed friends to push her to make poor decisions, and struggled with setting boundaries for herself. She made up stories when stressed, which pushed friends away. Parents believed Student functioned best with rules and structure. She needed reminders to complete daily tasks because she was not motivated or organized to complete tasks independently.

Mr. Hoover interviewed Ms. Smith approximately six weeks into the school year. Ms. Smith described Student as helpful, sensitive to others, and expressive of her feelings. Student's reading, writing, and math skills were within grade expectations for the beginning of fifth grade. At times, Student struggled to retain information, and Ms.

Smith had to teach her concepts a few times before she fully grasped the skill. Math was her hardest subject. Mr. Hoover did not interview Student's fourth grade teacher because she no longer worked for Santa Monica-Malibu.

Student had positive peer and adult relationships. She had many friends and was well-liked. She could be sensitive or short-tempered when annoyed. She followed class rules and routine. She sometimes engaged in off-task behavior, like talking to friends, staring into space, or tapping on her desk. When Ms. Smith redirected Student, she adjusted her behavior.

Mr. Hoover interviewed Wendy Robinson-Miller and Ms. Blum, from Student's UCLA care team. Ms. Robinson-Miller was a licensed clinical social worker who provided daily group therapy to Student at the ABC Program. According to Ms. Robinson-Miller, Student's strengths were her ability to ask for help, and her interest in peers. Student's challenges included executive functioning, following multistep directions, retaining information, and being overly eager to please others. Ms. Robinson-Miller believed Student would benefit from clear expectations, praise, and frequently checking in on her to ensure understanding. Ms. Blum discussed many of the findings from her assessment of Student. Ms. Blum believed social factors would decrease Student's ability to meet academic expectations. Ms. Blum acknowledged Student was doing well in school at the time, but predicted she would struggle in middle school as material became more complex.

Mr. Hoover interviewed Student's private psychiatrist, Dr. Lori Zukerman, and private psychotherapist, Ashley Graber. Dr. Zukerman confirmed Student's diagnoses, and also indicated Student suffered from anxiety, perfectionism, irritability, and self-injury. Ms. Graber began treating Student in April 2018, and was still treating her at the time of hearing. Ms. Graber described Student as thoughtful, sensitive, and as having a desire to learn. The focus of Ms. Graber's therapy with Student included

emotional regulation and lowering Student's anxiety. Ms. Graber believed Student would benefit from tutoring, classroom support, and involvement with peer groups. Neither Dr. Zukerman, nor Ms. Graber had ever observed Student at school, or talked to Ms. Smith about Student's performance.

Mr. Hoover observed Student once at recess and twice in the classroom. During recess, Student played appropriately with peers and returned to the classroom with the rest of her class, when recess ended. During the first classroom visit, Student appropriately participated in a science lesson. She paid attention to the teacher's instructions, raised her hand during class discussion, and worked on the assignment. Student's engagement in the lesson was similar to her peers. During the second classroom visit, Student was in math class. The teacher praised Student for her progress, and then reviewed the expectations for the assignment that day. Student transitioned to the assignment appropriately, but showed more off-task behavior than her peers.

Mr. Hoover administered the following standardized tests to measure Student's cognitive and processing abilities:

- Differential Ability Scales, Second Edition
- Comprehensive Test of Phonological Processing, Second Edition
- Developmental Test of Visual Perception, Third Edition
- Wide Range Assessment of Memory and Learning, Second Edition

The Differential Ability Scales measures cognitive abilities by assessing verbal ability, nonverbal reasoning, spatial ability, working memory, and processing speed. Student's verbal ability was in the above average range. Student's nonverbal reasoning was in the average range, but was significantly lower than her verbal ability score. Student performed in the average range in all other areas. Student's performance was consistent with her performance on the Weschler Intelligence Scale administered by Dr. Finger at UCLA.

The Comprehensive Test of Phonological Processing measures auditory processing and phonological skills as they relate to learning to read, write, listen, compute, and speak. Student's phonological awareness and phonological memory were in the higher end of the average range. In rapid symbolic naming, which required her to quickly recall letters and numbers, she was in the lower end of the average range. She accurately recalled the letters, but did so at a slow rate.

The Developmental Test of Visual Perception measures visual processing and visual-motor integration skills. Student's visual perception and visual-motor integration skills were in the average range. The Wide Range Assessment of Memory and Learning measures verbal and visual memory, verbal and visual recognition, attention and concentration, and delayed recall. Student performed in the average range, except on the verbal learning recognition and verbal learning recall subtests, which were in the below average range. Student had difficulty recalling information that did not have meaningful context, especially after a delay in time, and participation in other interfering activities.

Mr. Hoover administered the following standardized rating scales to measure Student's social and emotional functioning:

- The Behavior Assessment System for Children, Third Edition
- Conners, Third Edition
- Comprehensive Executive Function Inventory
- Children's Depression Invention, Second Edition
- Multidimensional Anxiety Scale for Children, Second Edition

Mother, Ms. Smith, and Student completed rating scales for the Behavior Assessment System for Children. The test publisher's instructions recommended that a teacher rater know the child at least one month with daily contact, or six to eight weeks with several-days-a-week contact. Ms. Smith completed the rating scale one month into

the school year.

Mother rated Student's behavior in the clinically significant range in the following areas:

- hyperactivity,
- aggression,
- conduct problems,
- depression,
- somatization,
- attention, and
- externalizing and internalizing behavior.

In contrast, Ms. Smith rated Student's behavior in the average range. Ms. Smith rated Student's social skills and adaptive skills in the at-risk range. Ms. Smith's concerns were Student's insecurity in her abilities and caring about what others thought of her. Mr. Hoover interpreted Mother's scores with caution because they showed an excessively negative perception of Student's functioning. Student rated herself as average in all areas.

Mother, Ms. Smith, and Student completed rating scales for the Conners, which measures characteristics related to attention deficit hyperactivity disorder. The test publisher's instructions recommended the teacher rater know the child for at least one month. The rater should only consider behavior from the past month, to ensure the information is on the child's current functioning levels. Ms. Smith completed the rating scale one month into the school year.

Mother and Ms. Smith rated Student's inattention, hyperactivity, and impulsivity in the very elevated range. Mother also rated Student in the very elevated range with respect to executive functioning, defiance and aggression, and peer relations. In contrast, Ms. Smith rated Student in the average range in defiance, aggression, and peer

relations. Ms. Smith rated Student's executive functioning in the elevated range, due to Student frequently forgetting information she previously learned.

Student rated herself in the elevated range in inattention, and the high average range in hyperactivity, impulsivity, and family relations. Student reported feeling restless. Mr. Hoover again interpreted Mother's scores with caution due to a pattern of negative impressions.

The Comprehensive Executive Function Inventory measures behaviors related to executive function, including mental control and self-regulation. Mother and Ms. Smith completed rating scales. Mother's and Ms. Smith's ratings were very different. Mother rated Student's functioning in all areas in the below average or well below average ranges:

- attention,
- emotion regulation,
- flexibility,
- inhibitory control,
- initiation
- organization,
- planning,
- self-monitoring, and
- working memory.

Ms. Smith's ratings in the same areas were all in the average or high average range. Mr. Hoover again interpreted Mother's scores with caution due to the negative pattern of responses. Mother's ratings indicated concerns with Student's executive functioning at home and in the community. Ms. Smith's ratings did not indicate any concerns with Student's executive functioning at school.

Mother, Ms. Smith, and Student completed rating scales for the Children's

Depression Inventory. The test publisher's instructions specify the time period for the ratings should be for the past two weeks. Mother's scores indicated she observed functional problems in Student related to feelings of ineffectiveness and interpersonal problems. In contrast, Ms. Smith and Student rated all symptoms of depression in the average range.

Mother and Student completed rating scales for the Multidimensional Anxiety Scale for Children. Mother's ratings indicated slightly elevated levels of anxiety in Student. Mother rated Student's general anxiety, tension, and restlessness in the very elevated range. Mother rated Student's fear of humiliation and rejection, and Student's obsessions and compulsions, in the elevated range. Student rated all symptoms of anxiety in the average or low range.

Mr. Hoover included the results from Ms. Norris's academic assessment and Ms. Monsour's speech and language assessment in his report.

Mr. Hoover's report considered whether Student was eligible for special education under the categories of specific learning disability, other health impairment, emotional disturbance, speech or language impairment, and hearing impairment. The report concluded Student did not meet the criteria for specific learning disability because there was not a significant discrepancy between her ability and achievement. While Student showed a processing deficit in verbal memory related to delayed recall of verbal information without context, Mr. Hoover concluded Student's educational needs could be met in the general education environment.

The report concluded Student did not meet the eligibility criteria for other health impairment because Student's symptoms of attention deficit hyperactivity disorder did not adversely affect Student's educational performance to a degree that she required services outside of the general education environment.

The report concluded Student did not meet the eligibility criteria for emotional

disturbance because she did not exhibit any of the qualifying characteristics over a long period of time, and to a marked degree, that adversely affected Student's educational performance. Ms. Smith and Student did not report any characteristics of emotional disturbance on the Behavior Assessment for Children, Connors, or Children's Depression Inventory. Student was performing well academically. She had positive adult and peer relationships. She followed classroom rules and routines. She actively participated in the school community, including serving on the student council. The report concluded Student did not meet the eligibility criteria for speech or language impairment because Student did not have a significant discrepancy in language or speech. The report concluded Student did not meet the eligibility criteria for hearing impairment because there was no evidence she had hearing loss that adversely affected her educational performance.

Mr. Hoover based the assessment conclusions on the standardized test results, rating scales, interviews, observation, and Student's performance on report cards, and district-wide and statewide assessments. Mr. Hoover recommended several strategies that could help Student improve academically and behaviorally at school and at home. Mr. Hoover recommended providing Student with a checklist and visual reminders to address Student's deficits in delayed recall of verbal information. Mr. Hoover recommended short breaks and giving her contextual information, to support Student's reading comprehension. Mr. Hoover recommended using a verbal or nonverbal cue to prompt Student to pay attention to important information. Mr. Hoover also recommended:

- reinforcing Student's behavior with praise;
- frequent communication between home and school to monitor Student's social and emotional functioning;
- identifying trusted adults at home and school with whom Student felt

- comfortable sharing her thoughts and feelings; and
- decreasing the amount of homework.

October 22, 2018 IEP Team Meeting

On October 22, 2018, Santa Monica-Malibu held an IEP team meeting to review the assessments and determine whether Student met the eligibility criteria for special education. Student was performing within grade level expectations for reading, writing, and math. On district-wide assessments, Student scored better than 99 percent of students nationally in reading. She scored better than 82 percent of students nationally in math. Student was not showing any significant social or emotional concerns at school. She independently navigated the school campus, followed the classroom rules and routine, and could communicate her wants and needs. Student had positive relationships with peers and adults, participated in appropriate activities during recess and lunch, and was elected to the student council. She attended school regularly, and on time. She did not have any absences, and had only two tardies for that school year.

The IEP team included Parents, Mr. Hoover, Ms. Smith, Ms. Norris, Ms. Mansour, and Ms. Bressler. Ms. Robinson-Miller and Ms. Blum participated in the meeting by telephone. Santa Monica-Malibu provided Parents with a copy of the notice of parent rights and procedural safeguards. Mr. Hoover, Ms. Norris, Ms. Mansour, and Ms. Bressler reviewed their assessments with the IEP team. Parents and Ms. Robinson-Miller had the opportunity to review the reports before the meeting. The IEP document contained five detailed pages of meeting notes that accurately reflected the discussions held.

Ms. Robinson-Miller and Ms. Blum shared their opinions that Student required support in all areas of her life, including at school. Specifically, they believed Student required support in academics, language, and social skills. Ms. Robinson-Miller was worried that Student would struggle as demands of her increased later in fifth grade. In her opinion, Student had difficulty with multi-step tasks and needed information

repeated multiple times.

Parents shared Student was not compliant at home. Student often forgot homework assignments, and was resistant to help. Parents believed Student's executive functioning and recall deficits required her to use significant energy and effort to complete tasks. Parents shared their belief that Student wrote the sexually and racially inappropriate note she claimed another student wrote, and felt this was proof she needed help. Student was cutting herself at home.

Ms. Smith reported she could support Student's academic needs in the classroom. Sometimes Student required redirection and re-teaching, and Ms. Smith provided these supports. Ms. Smith also checked in with Student in math to ensure understanding. Student was achieving academically within grade level expectations.

However, Ms. Smith was concerned about Student's social and emotional functioning. This concern was based on the possibility of Student writing the sexually and racially inappropriate note to herself, her difficulty setting boundaries with others, and her poor decision-making abilities. Ms. Smith believed Student needed social and emotional support so that these concerns would not impact her learning.

Mr. Hoover reviewed the eligibility criteria for specific learning disability, other health impairment, and emotional disturbance. He acknowledged Student's deficits in memory and attention, but concluded those deficits did not impact her educational performance to the extent that required special education services. Mr. Hoover did not believe Student met any of the qualifying characteristics of emotional disturbance. In Mr. Hoover's opinion, placement in the general education environment was appropriate for Student.

Ms. Norris believed placement in the general education environment with accommodations was appropriate for Student. Mr. Hoover shared that counseling accommodations and a plan pursuant to section 504 of the Rehabilitation Act of 1973,

called a 504 Plan, were available to further support Student.

After listening to the opinions of the Santa Monica-Malibu IEP team members, and asking questions, Parents expressed their disagreement with the outcome of the Santa Monica-Malibu assessments and the IEP. Parents disagreed Student was performing well at school. Instead, they believed she was masking her difficulties to hide her deficits. In Parents' opinion, Student needed a formalized plan to follow her throughout her educational career.

At Mother's request, Mr. Hoover revised his psychoeducational report to include a full summary of Ms. Bressler's health report, the language from the incident report generated as a result of the sexually and racially inappropriate note, and a conversation Ms. Smith and Mother had during the meeting regarding Mother's belief Student wrote the note to herself. He sent the revised report to Parents in November 2018.

Mr. Hoover also included information he received after the meeting from the family's therapist, Stephanie Small, in his revised report. Ms. Small began working with the family during the adoption process. Once Student was hospitalized at UCLA in April 2018, Ms. Small referred her to Ms. Graber, and discontinued individual therapy with Student. According to Ms. Small, Student's challenges were inattention, being truthful, taking responsibility for her actions, and complaints about physical pain to get attention. Ms. Small was concerned about Student's transition to middle school, where she could become lost and suffer emotionally.

504 Plan

On December 19, 2019, Grant Elementary School convened a meeting to determine whether Student qualified for a 504 Plan. Mr. Hoover, Ms. Smith, Mother, and one of the assistant principals at Grant Elementary School attended the meeting. The 504 meeting team identified Student's impairments as:

- attention deficit hyperactivity disorder,

- mood disorder,
- trauma-related emotional disorder, and
- a learning disability related to executive functioning.

The team determined these impairments substantially impacted Student's ability to learn, concentrate, communicate, and eat. The team determined Student was eligible for a 504 Plan and recommended the following accommodations:

- for eating concerns, the teacher would check-in with Student and report any eating irregularities to Parents;
- for attention and concentration, the teacher would:
 1. set clear expectations and accountability with Student;
 2. allow Student to have modified seating, for example, sitting or standing;
 3. allow Student to have flexible grouping in the classroom, for example, whole group, peer groups, or one-on-one; and
 4. allow Student to use a fidget object in class, such as putty;
- for communicating, Student would check-in with teacher regarding her well-being, as needed, and would check-in weekly with the school psychologist or counselor; and
- for learning, the teacher would provide visual supports, re-teaching, and other strategies when Student did not understand a task or concept.

Parents did not confirm consent to the plan until February 24, 2019. In providing consent to implement the plan, Parents indicated they did not agree it was sufficient to meet all of Student's needs. Ms. Smith and Mr. Hoover were already implementing many of the accommodations in the plan despite Parents' delayed consent.

Dr. Nicholas Thaler's School Observation and Evaluation

In December 2018, Parents contacted psychologist Dr. Nicholas Thaler, to conduct an independent evaluation of Student. On January 14, 2019, Dr. Thaler

observed Student for one hour at Grant Elementary School. Dr. Thaler observed Student during math instruction. He observed Student to be initially attentive, and then fidgety and easily distracted. When working with two other students, they chatted, and Ms. Smith redirected the group. When working independently on a test, Student asked the teacher for help four times, which Dr. Thaler observed as being more often than the other students. Student completed her test, but most of the students finished before her.

In July and August 2019, Dr. Thaler conducted a comprehensive neuropsychological evaluation of Student, and issued a report on August 12, 2019. Dr. Thaler estimated Student's intellectual ability was in the average range, but with moderate to severe deficits in executive functioning. These deficits impacted her emotional, behavioral, and academic performance. Student's reading, writing, and math skills were in the average range. Student struggled with reading comprehension and oral reading. On various standardized rating scales, Student reported elevated mild attention, anxiety, and obsessive/compulsive symptoms. Student did not report being sad or depressed.

In Dr. Thaler's opinion, Student met the eligibility criteria for specific learning disability in reading comprehension; and emotional disturbance due to post-traumatic stress syndrome. Dr. Thaler used the note and knife incidents to support his opinion that Student met the criteria for emotional disturbance. He used the school days she missed at the end of fourth grade to show Student's emotional struggles adversely impacted her educational performance.

Dr. Thaler was an Assistant Clinical Professor at the UCLA Semel Institute for Neuroscience and Human Behavior. He also worked as a neuropsychologist in private practice, where he performed psychoeducational and neuropsychological evaluations for children. He held a doctoral degree in clinical neuropsychology and was a board

certified neuropsychologist. He had performed approximately 200 educationally-related evaluations over the course of his career, and had attended approximately 30 IEP team meetings.

Knife Incident and Second Hospitalization

In December 2018, Mother discovered Student wrote the sexually and racially inappropriate note to herself. When Mother told Student she knew Student wrote the note, Student became upset. At some point that night, Student obtained a knife from the kitchen and used it to cut her forearms. The next day, Student took the knife to school.

At school, Student gave the knife to Grant Elementary School principal, Christian Fuhrer, and told him she cut herself the night before. Student did not cut herself at school or threaten anyone else with the knife. Mr. Hoover and Mr. Fuhrer completed the Santa Monica-Malibu Suicide Risk Assessment Protocol with Student. In their opinion, Student was trying to hurt herself, but not kill herself. However, because Student had a previous hospitalization related to suicidal thoughts, and reported not having a support system at home, they determined her risk for suicide was high. Mr. Fuhrer called the Psychiatric Emergency Team, the Santa Monica Police Department, and Mother. When the police arrived, they decided to transport Student to the hospital, where she was placed on an involuntary psychiatric hold.

Student was in the hospital from January 23, through 29, 2019. The UCLA team believed she was ready to return to school with supports. On January 30, 2019, Grant Elementary School held a re-entry meeting with the family, to support Student's return to school. Mr. Hoover agreed to provide counseling to Student 30 minutes a week, as needed. Ms. Smith agreed to allow breaks and provide small group instruction on the important concepts Student missed while in the hospital, and to check-in with Student every day.

On January 31, 2019, UCLA psychiatrists Dr. Michael Enenbach and Dr. Shannon Ordon, wrote an addendum to Dr. Kerr and Dr. Schneider's July 2018 letter. Student showed improvement while in the hospital, and was not having suicidal feelings when released. She was cooperative and pleasant with peers and staff most of the time.

Dr. Enenbach and Dr. Ordon concluded Student needed more accommodations and supportive interventions at school. Using the July 2018 letter as a guide, they made several recommendations. To address Student's attention and executive functioning challenges, they recommended:

- alternative and flexible seating;
- access to small group teaching to reinforce learned material;
- individualized interactions with the teacher to identify and clarify Student's areas of weakness, promote skill mastery, and ensure appropriate participation; and
- assistance with task planning for school and homework assignments.

To address Student's cognitive challenges with memory, they recommended:

- repetition of learned material;
- breaking down of complex material into simplified and accessible information; and
- verbal and visual reminders, language support from a speech and language pathologist.

To address her emotional regulation, they recommended school counseling, and frequently checking in with Student to offer behavioral support and coaching. To address her challenges with establishing and maintaining appropriate relationships with peers, they recommended Student's participation in group therapy. Finally, they recommended a smaller, more specialized educational setting, with greater access to individualized academic and mental health resources.

Dr. Enenbach and Dr. Ordon had never observed Student in the regular school setting. They also did not review Student's educational history, including report cards, or district-wide and state-wide assessments. Further, they never spoke to Ms. Smith or Mr. Hoover about Student's performance at school.

February 11, 2019 Addendum IEP

On February 11, 2019, Santa Monica-Malibu held an addendum IEP team meeting to discuss new information Parents wanted the IEP team to consider. Parents, Parent's advocate, Mr. Hoover, Mr. Fuhrer, Ms. Mansour, Ms. Norris, Ms. Smith, and Santa Monica-Malibu special education coordinator, Victoria Hurst, attended the meeting. Dr. Thaler, and Student's social worker during her January 2019 hospitalization at UCLA, Katie Paletta, attended by telephone.

Dr. Thaler shared his opinions based on his school observation and review of Student's records from Santa Monica-Malibu and UCLA. Dr. Thaler was concerned that Student asked for help more than the other students during his observation. Ms. Smith acknowledged that Student needed support in math, but indicated she was not among the lowest performing students in the class. Once Ms. Smith provided clarification on a new topic, Student understood what to do.

Ms. Paletta shared her opinion that Student thrived in a structured environment and could benefit from special education services. Specifically, Ms. Paletta believed Student needed direct instructional support for math and executive functioning. She shared Dr. Enenbach and Dr. Ordon's recommendations with the team. Many of the recommendations were included in the IEP meeting notes. Mr. Hoover explained the recommendations, including counseling, were being provided through a 504 Plan.

Ms. Paletta had not observed Student in the regular school setting or reviewed Student's academic records. Ms. Paletta was not familiar with general education interventions, or 504 Plans.

Mr. Hoover reviewed the criteria for special education eligibility with the team. Mr. Hoover's revised psychoeducational report was available for team members to review at the meeting. None of the Santa Monica-Malibu team members believed Student met the eligibility criteria for special education. They believed Student was being successfully supported through the 504 Plan. Mr. Hoover relied on Student's district-wide and statewide testing scores and grades, her election to the student council, and the fact that she had friends, to conclude her diagnosed conditions did not have an adverse impact at school. Ms. Smith was still concerned about Student's social and emotional functioning, but believed Student could receive the emotional support she needed through counseling services with Mr. Hoover.

Parents and Parents' advocate asked questions throughout the meeting to other team members. They shared their opinion that Student's diagnoses did have an adverse impact in school, and that the school district was taking a severe risk by not intervening with special education services. The meeting ended with Parents expressing their disagreement about eligibility. Parents' advocate verbally gave notice of Parents' intention to seek reimbursement from the school district for any private services they obtained for Student.

On February 21, 2019, Ms. Hurst sent a prior written notice letter to Parents to inform them that Santa Monica-Malibu was not willing to pay for, or reimburse, Parents for any private services Parents obtained for Student. In the letter, Ms. Hurst summarized the October 22, 2018, and February 11, 2019 IEP teams' conclusion that Student did not meet the criteria for special education eligibility. The letter further explained why Santa Monica-Malibu did not believe Student was eligible for special education, and the records and other materials they relied upon in making that determination. Finally, the letter included another copy of the notice of parent rights and procedural safeguards, and contact information for agencies Parents could contact

with questions.

On March 20, 2019, Parents' advocate sent Ms. Hurst a letter that included Parents' disagreements with the February 2019 IEP, and notice of Parents' intent to seek reimbursement from Santa Monica-Malibu for any private services they obtain for Student.

LEGAL ANALYSIS AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

In the discussion herein, unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below. Further, all references in this discussion to the Code of Federal Regulations are to the 2006 version.

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The Individuals with Disabilities Education Act is often referred to as the "IDEA." The main purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
2. to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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. This statement describes the child’s needs, academic and functional goals related to those needs. It also provides 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 nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690], the Supreme Court held “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 the [disabled] child.” *Rowley* expressly rejected an interpretation of the IDEA that would require a school district “to maximize the potential of each [disabled] child commensurate with the opportunity provided [nondisabled] children.” (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988,

1000], the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his [or her] circumstances,” and that “every child should have the chance to meet challenging objectives.” The Court explained the FAPE standard must be more demanding than “merely more than *de minimis* progress from year to year.” (*Id.* at pp. 1000-1001.) Instead, the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Ibid.*)

Endrew F. did not define a new FAPE standard. The Court was “[m]indful that Congress (despite several intervening amendments to the IDEA) ha[d] not materially changed the statutory definition of a FAPE since *Rowley* was decided,” and declined to interpret FAPE in a way that opposed the Court’s analysis in that case. (*Endrew F., supra*, at p. 1001.) The Court noted that when reviewing the appropriateness of an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

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, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, and 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. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Student requested

the hearing in this case. Therefore, Student has the burden of proof on all issues.

ISSUE 1: APPROPRIATENESS OF SANTA MONICA-MALIBU'S OCTOBER 2018 PSYCHOEDUCATIONAL EVALUATION

Student contended Mr. Hoover's October 2018 psychoeducational assessment was inappropriate because Mr. Hoover failed to assess Student in all areas of suspected disability and use a variety of assessment tools, when determining whether Student met the eligibility criteria for emotional disturbance. Student further contended Mr. Hoover's assessment failed to take relevant information into account, including:

1. Student's suicidal feelings and multiple diagnoses from UCLA in Spring of 2018;
2. the results from the Connors, Student's complaints about physical pain, Student's need for frequent therapy, and Student's medication; and
3. input from Student's fourth grade teacher.

Santa Monica-Malibu contended Mr. Hoover's assessment assessed Student in all areas of suspected disability, and used a variety of informal and formal assessment tools. Santa Monica-Malibu further contended Mr. Hoover considered and included in his report, all information he received from UCLA and Student's private providers. Finally, Santa Monica-Malibu contended Student's disagreement with the eligibility results did not make Mr. Hoover's assessment inappropriate.

School district evaluations of students with disabilities under the IDEA serve two purposes:

1. identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and
2. helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.)

School districts must conduct a full and individual evaluation before the initial

provision of special education and related services. (34 C.F.R. § 300.301(a).) A child must be assessed in all areas related to suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).) Assessments must be administered by trained and knowledgeable persons, who are competent to conduct such assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), and 56322.) A credentialed school psychologist must conduct any psychological assessments. (Ed. Code, § 56324.)

In conducting an evaluation, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The school district must not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability, or determining the appropriate educational program for the child. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).) Assessments and other evaluation materials must be administered in accordance with the publisher's instructions and be used for valid and reliable purposes. (20 U.S.C. § 1414(b)(3)(A)(iii) and (v); 34 C.F.R. § 300.304(c)(1)(iii) and (v).)

Student did not prove Mr. Hoover's October 2018 psychoeducational assessment was inappropriate. Mr. Hoover was a trained and credentialed school psychologist, and was qualified to conduct the assessment. He worked as a school psychologist for nine years, and as a fourth grade teacher for 10 years.

Mr. Hoover assessed Student in all areas of suspected disability, and used a variety of assessment tools, when considering whether Student met the eligibility criteria for emotional disturbance. The UCLA team diagnosed Student with attention deficit hyperactivity disorder, unspecified mood disorders, and possible obsessive-compulsive

disorder. Mr. Hoover relied on informal and formal assessment tools to assess whether these diagnoses met the eligibility criteria for emotional disturbance. Specifically, Mr. Hoover used the following tools for his assessment:

- input from Student, Parents, Ms. Smith, and Student's private providers;
- a review of educational records and the 2018 UCLA reports,
- a review of Santa Monica-Malibu's assessment reports;
- observations of Student; and
- standardized test measures.

Mr. Hoover considered all relevant information for his assessment of whether Student met the eligibility criteria for emotional disturbance. Mr. Hoover considered the information he received from UCLA regarding Student's hospitalization, diagnoses, and medication. He also interviewed Student's private providers, including her therapist Ms. Graber, psychiatrist Dr. Zukerman, and Ms. Robinson-Miller and Ms. Blum from UCLA. Mr. Hoover included information from these sources in his report.

Mr. Hoover also analyzed the results from his own assessment, including the results from the Behavior Assessment for Children, Connors, and the Children's Depression Inventory. Ms. Smith and Student's ratings did not indicate any areas of concern, including complaints about physical pain, that met the criteria for emotional disturbance.

Mr. Hoover did not interview Student's fourth grade teacher because she no longer worked for Santa Monica-Malibu. Interviewing Student's fourth grade teacher would not have obtained Student's current functioning levels pursuant to the Connors test instructions, which asks the rater to consider the child's behavior from the past month. Similarly, the test instructions for the Children's Depression Inventory asks the rater to only consider behaviors from the past two weeks. Thus, Student's fourth grade teacher would have not been able to complete the rating scales according to the

publisher's instructions. Ms. Smith had been Student's teacher for a month when she completed the rating scales, which was long enough to give an accurate report of Student's behaviors.

ISSUES 2 AND 3: DENIAL OF FAPE FROM APRIL 2018 THROUGH EXTENDED SCHOOL YEAR 2019

Student contended Santa Monica-Malibu procedurally and substantively denied Student a FAPE beginning in April 2018, and continuing through the extended school year in 2019. Specifically, Student contended Santa Monica-Malibu inappropriately denied eligibility for Student in the areas of emotional disturbance, other health impairment, and specific learning disability. Student contended she met the eligibility criteria in these areas, and required special education and related services to access the curriculum. Student further contended Santa Monica-Malibu impeded Parents' rights to meaningfully participate in the IEP process by failing to consider their concerns regarding Student, and failing to consider input from the UCLA team and other private providers. Finally, Student contended Santa Monica-Malibu failed to provide prior written notice regarding its refusal to find Student eligible for special education and related services.

Santa Monica-Malibu contended Student did not meet the eligibility criteria for special education and related services under any category. Santa Monica-Malibu further contended Student accessed the general education curriculum, performed academically at grade level, had appropriate peer relationships, and participated successfully in the classroom and school environments. Finally, Santa Monica-Malibu contended Student's educational needs were met in the general education program through a 504 Plan.

Procedural flaws do not automatically require a finding of a denial of a FAPE. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,1484, superseded by statute on other grounds by IDEA Amendments of 1997.)

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).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*See Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a student to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must:

1. be designed to meet the student's unique needs;
2. comport with the student's IEP; and
3. be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

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

IEP in Effect at the Start of the 2018-2019 School Year

If a student is eligible to receive special education and related services, school districts must ensure that an IEP is in effect at the beginning of each school year. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).)

Student did not prove Santa Monica-Malibu was required to have an IEP in effect for Student at the start of the 2018-2019 school year. Upon receiving Parents' consent

to assess Student, Santa Monica-Malibu timely assessed Student and timely held an IEP team meeting on October 22, 2018. Student did not present any evidence that proved Santa Monica-Malibu was required to assess Student any sooner than it did. Because Student was not eligible to receive special education and related services, Santa Monica-Malibu was not required to have an IEP in effect for Student at the beginning of the 2018-2019 school year.

Parent Participation and Predetermination

Parents must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools*. (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (See *W.G. v. Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1485, superseded by statute on other grounds by IDEA Amendments of 1997 (citations omitted).)

Predetermination occurs when the school district makes its determination before the IEP team meeting, and enters the meeting with a "take it or leave it" position. (See *Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, superseded by statute on other grounds (citation omitted) ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then

simply presents the IEP to the parent for ratification.”].) Developing an IEP that does not fully conform to a parent’s wishes does not mean the school district engaged in predetermination. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

Student did not prove Santa Monica-Malibu significantly impeded Parents’ opportunity to meaningfully participate in the decision-making process. Student also did not prove Santa Monica-Malibu refused to consider information from Student’s private providers, including the UCLA team or Dr. Thaler. Finally, Student did not prove Santa Monica-Malibu predetermined its conclusion that Student was not eligible for special education and related services.

Parents were active participants throughout the entire IEP process. Santa Monica-Malibu promptly responded to Mother’s request for assessment in May 2018, when Mr. Hoover timely sent Parents an assessment plan. Once Parents consented to the assessment plan, the assessment team promptly began assessing Student. The assessors obtained input from Parents, which they included in their assessment reports. Mr. Hoover provided the Parents with a copy of the psychoeducational report, which incorporated the findings from the other assessment reports, before the October 22, 2018 IEP team meeting.

The October 22, 2018 IEP included five pages of detailed notes that accurately reflected the discussions held during the meeting. From the notes alone, it is clear that the IEP team, including Parents, had a thorough conversation about the assessment reports, Parents’ concerns, the eligibility criteria for special education, and the reasons Student did not meet the criteria. Parents expressed their disagreement with the team’s conclusions and stated their belief that Student needed a formalized plan to support her in school. In response to Parents’ request for a formalized plan, Mr. Hoover recommended developing a 504 Plan to provide Student with supports through the

general education program.

Further evidence of Parents' meaningful participation was Mr. Hoover revising his psychoeducational assessment report after the October 2018 IEP team meeting, to include additional information regarding Student that Parents requested be included. Mr. Hoover provided Parents with a copy of his revised report in November 2018.

Santa Monica-Malibu also considered information from Student's private providers throughout the assessment process, and at the October 22, 2018 IEP team meeting. The assessors reviewed Student's records from her April 2018 hospitalization at UCLA, and the UCLA evaluation results. Ms. Norris included the results from Ms. Blum's academic assessment in her report. Mr. Hoover included information from the following outside sources in his report:

- Ms. Umen's speech and language assessment;
- Ms. Blum's academic assessment;
- Dr. Kerr and Dr. Schneider's July 2018 letter with comprehensive findings of the UCLA team;
- Dr. Zukerman's October 2018 letter confirming Student's diagnoses; and
- information obtained from Ms. Small during a telephone conversation.

During the October 22, 2018 IEP team meeting, both Ms. Blum and Ms. Robinson-Miller participated in the discussion regarding Student, and shared their impressions of Student and what they believed she needed to be successful in the school environment.

After Student's second hospitalization in January 2019, Santa Monica-Malibu held another IEP team meeting to review new information from the UCLA team, Parents, and Dr. Thaler. During the meeting, Ms. Paletta shared the recommendations from Dr. Enenbach and Dr. Ordon's January 31, 2019 letter. Ms. Paletta also shared her opinion that Student needed special education services. Dr. Thaler shared the results from his

January 2019 school observation of Student, and his opinion of Student's needs after reviewing the UCLA and Santa Monica-Malibu assessment reports. Additionally, Parents and Parents' advocate actively participated in the discussion, and expressed their disagreement with the team's conclusion that Student did not meet the criteria for special education eligibility.

There was no evidence that Santa Monica-Malibu predetermined the results of the October 22, 2018, or February 11, 2019 IEP team meetings. There was no evidence that the Santa Monica-Malibu team members determined the outcome of the IEP before the meetings occurred, or that they presented the IEPs with a "take or leave it" attitude. To the contrary, Santa Monica-Malibu's assessment team considered all relevant information available, including information the Parents provided from UCLA and Student's other private providers, and had a thorough discussion about the information during both IEP team meetings. Parents' disagreement with the IEP outcome does not prove Santa Monica-Malibu predetermined its conclusion that Student was not eligible for special education.

Eligibility Determination

The IEP team is charged with the duty of reviewing assessment results, determining eligibility, determining the contents of an IEP, and making recommendations regarding a student's program and placement. (Ed. Code, § 56342.)

The IEP team must include:

- the parents of the child;
- at least one of the child's general education teachers;
- at least one special education teacher;
- a school district representative who is:
 1. qualified to provide, or supervise the provision of, specially designed instruction to children with disabilities;

2. knowledgeable about the general education curriculum; and
 3. knowledgeable about the availability of the school district's resources;
- an individual who can interpret the instructional implications of assessment results;
 - at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the child; and
 - whenever appropriate, the child. (20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

For a child who is suspected of having a specific learning disability, at least one member of the IEP team must be qualified to conduct individual diagnostic testing of the child, such as a school psychologist, speech and language pathologist, or remedial reading teacher. (Ed. Code, § 56341, subd. (c).) At least one team member must observe the child's academic performance and behavior in the areas of difficulty in the child's learning environment, including in the general education environment. (*Ibid.*)

A child qualifies as an individual with exceptional needs if the results of an assessment demonstrate that the degree of the child's impairment requires special education. (Cal. Code Regs., tit. 5, § 3030, subd. (a).) The IEP team must make the decision as to whether or not the child's impairment requires special education after taking into account all relevant material available on the child. (*Ibid.*) In interpreting evaluation data for the purposes of determining whether a student is eligible for special education, the school district must:

1. draw upon information from a variety of sources, including aptitude and achievement test, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
2. ensure that information obtained from all of these sources is documented and

carefully considered. (34 C.F.R. § 300.306(c)(1).)

A child is eligible for special education under the category of emotional disturbance, if the child exhibits one or more of the following characteristics, over a long period of time, and to a marked degree, that adversely affects the child's educational performance:

- an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; or
- a tendency to develop physical symptoms or fears associated with personal or school problems. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(4).)

A child is eligible for special education under the category of other health impairment, if the child has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

- is due to chronic or acute health problems such as attention deficit hyperactivity disorder, and other conditions; and
- adversely affects a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).)

A child is eligible for special education under the category of specific learning disability, if the child has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) This type of disorder may result in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (*Ibid.*) The basic

psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and the cognitive abilities of association, conceptualization, and expression. (*Ibid.*)

In determining whether a child has a specific learning disability, the school district may consider whether the child has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B).) The decision as to whether or not a severe discrepancy exists shall take into account all relevant material available regarding the child. No single score or product of scores, test, or procedure can be used as the sole criterion for the decisions of the IEP team regarding the child's eligibility for special education. (*Ibid.*)

Student did not prove that Santa Monica-Malibu should have offered Student eligibility for special education and related services under emotional disturbance, other health impairment, or specific learning disability.

Santa Monica-Malibu considered whether Student was eligible for special education at two separate IEP team meetings, held on October 22, 2018, and February 11, 2019. Leading up to the October 22, 2018 IEP team meeting, Santa Monica-Malibu conducted assessments in the areas of health, speech and language, academics, and psychoeducation. Each of the assessors considered all relevant information available regarding Student. The information considered included:

- Student's performance on report cards, and district-wide and statewide assessments;
- Student's records from her April 2018 hospitalization;
- Ms. Blum's academic assessment report;
- Ms. Umen's speech and language assessment report;

- Dr. Kerr and Dr. Schneider’s comprehensive letter and recommendations;
- Santa Monica-Malibu’s various assessment reports;
- input regarding Student’s academic and social functioning levels from Ms. Smith;
- input from Student, Parents, and Student’s private providers; and
- observations of Student.

All required IEP team members attended the meeting. The team reviewed the available assessment data and discussed Student’s current functioning levels. After a thorough discussion, Mr. Hoover reviewed the general criteria for a student to qualify for special education, including the criteria to qualify under the categories of emotional disturbance, other health impairment, and specific learning disability. Based on all the information presented, none of the Santa Monica-Malibu team members believed Student met the criteria for special education and related services. Instead, they believed Student’s needs could be met through general education interventions, such as various teaching strategies and/or accommodations through a 504 Plan.

Student argued she exhibited three of the characteristics of emotional disturbance, including:

- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; and
- a tendency to develop physical symptoms or fears associated with personal or school problems.

To support her argument, Student relied on the hearing testimony of Ms. Small, Ms. Robinson-Miller, Ms. Graber, Ms. Paletta, and Dr. Thaler. The opinions of these individuals were not as persuasive as the opinions of Ms. Smith and Mr. Hoover. None of these individuals reviewed Student’s report cards, district-wide or statewide assessment results, or had any discussions with Ms. Smith regarding Student’s academic and social

performance at school. Moreover, with the exception of Dr. Thaler, none of these individuals observed Student in the regular school setting. Finally, while Dr. Thaler conducted a neuropsychological assessment of Student, the report was not issued until August 2019. Thus, the October 2018 and February 2019 IEP teams could not consider his findings or recommendations.

Student made several arguments to support her claim of eligibility under the category of emotional disturbance. She showed a pattern of inappropriate behaviors or feelings, such as self-harm, suicidal thoughts, anxiety, and negative self-talk. She had pervasive sadness and depression, which led to suicidal thoughts and self-harm. She had a tendency to complain of headaches, stomachaches, and other complaints.

Student argued all three characteristics occurred over a long period of time, and to a marked degree, across school, home, and therapeutic settings. Student further argued these characteristics caused her academic performance to decline during fifth grade. Finally, Student argued her hospitalizations in April 2018 and January 2019, caused her to miss 36 days of school, which impacted her academic performance.

None of Student's arguments in favor of Student's eligibility under the category of emotional disturbance were persuasive. Student did not prove she exhibited the three identified characteristics over a long period of time, and to a marked degree, or that there was an adverse impact on her educational performance. Approximately six months passed between April 26, 2018, when Student was first hospitalized, and the October 22, 2018 IEP team meeting. Student missed approximately three weeks of school during the 2017-2018 school year before starting the ABC Program. Once in the program, Los Angeles provided academic instruction.

Despite her hospitalization and participation in the ABC program, Student was excited about returning to Grant Elementary School for the 2018-2019 school year. Leading up to the October 2018 IEP team meeting, Student was performing within

grade level expectations in reading, writing, and math. Student had positive relationships with peers and adults. Classmates liked Student, and elected her to serve on the school's student council. While Ms. Smith had concerns about Student's poor social boundaries and decision-making abilities, these behaviors were not severe, and did not adversely impact Student's educational performance. Ms. Smith did not indicate any concerns regarding Student exhibiting symptoms of depression, or regularly complaining of physical pain.

Additionally, Santa Monica-Malibu's psychoeducational assessment did not conclude Student was exhibiting inappropriate behaviors or feelings, depression, or significant physical complaints. Mr. Hoover observed Student and administered several standardized test measures to look at Student's social and emotional functioning. While Mother indicated significant concerns regarding Student's social and emotional functioning, Mr. Hoover interpreted her responses with caution because they were drastically more negative than the responses from Ms. Smith and Student. Ms. Smith and Student rated Student's social and emotional functioning within normal limits.

The only significant behavioral incident that occurred prior to the October 2018 IEP team meeting, was the racially and sexually explicit note Student wrote to herself. However, Mother did not discover that Student wrote the note to herself until December 2018. Thus, this was not information the October 2018 IEP team could consider.

Between the October 2018 and February 11, 2019 IEP team meetings, Santa Monica-Malibu developed a 504 Plan that included accommodations, such as check-ins with Ms. Smith and Mr. Hoover, flexible seating and work groups, and re-teaching strategies. Student's behavior did not change drastically at school. Ms. Smith continued to have concerns regarding Student's peer relationships, but there were no incidents at school to cause concern, until Student brought the knife to school on January 23, 2019.

Student cut herself with the knife at home, after Mother confronted her about writing the sexually and racially explicit note to herself. There was no evidence Student used the knife at school to harm herself, or to threaten others.

Student missed approximately one week of school during her second hospitalization at UCLA. Santa Monica-Malibu promptly held a re-entry meeting for Student on January 30, 2019, and added additional supports to her 504 Plan, including counseling with Mr. Hoover for 30 minutes a week, as needed; and daily check-ins with Ms. Smith. Less than two weeks later, Santa Monica-Malibu held the February 11, 2019 IEP team meeting, to review new information from UCLA and Dr. Thaler. Ms. Paletta shared the recommendations from the UCLA team that included academic supports and counseling. Dr. Thaler did not raise any concerns regarding Student's social or emotional functioning during the meeting. After considering the recommendations from Ms. Paletta and Dr. Thaler, the Santa Monica-Malibu team members still did not believe Student met the eligibility criteria for special education. Instead, they believed Student was successfully supported through the 504 Plan.

Even if Student had exhibited one or more of the qualifying characteristics of emotional disturbance, over a long period of time, and to a marked degree, Student still would not be eligible because Student did not prove there was an adverse impact on Student's educational performance. At the end of the first reporting period in fifth grade, Student was approaching grade level mastery in all areas, except listening and speaking, in which she was making progress towards meeting the standards. On district-wide assessments, she scored better than 99 percent of grade-level peers nationally in reading, and better than 82 percent of peers in math.

At the end of the second reporting period, Student mastered grade level standards in all areas of reading, except reading informational text, in which she was approaching mastery. She also mastered the standards in writing, language, and

geometry. She was approaching mastery in listening and speaking, math calculations, social science, and science. She did not have any absences from school. She followed classroom routines and rules. She had positive peer and adult relationships, and was elected to the student council. While Ms. Smith indicated Student sometimes needed redirection and re-teaching, she could support Student's academic needs.

For these reasons, Student did not meet the eligibility criteria for special education under the category of emotional disturbance. Student did not exhibit one or more of the qualifying characteristics, over a long period of time, and to a marked degree; and there was no adverse impact on Student's educational performance.

Student's arguments in favor of eligibility for other health impairment were not persuasive. The Santa Monica-Malibu team members acknowledged Student's attention deficit hyperactivity disorder diagnosis. Ms. Smith also acknowledged Student's need for redirection and re-teaching, which were attributed to Student's attention deficits. However, after considering Student's attention needs, the Santa Monica-Malibu team members did not believe Student's attention deficits adversely impacted Student's educational performance to a degree that she required services outside of the general education environment.

Student's arguments in favor of eligibility under the category of specific learning disability were also not persuasive. According to Mr. Hoover's assessment, Student's cognitive abilities were in the average range, with the exception of verbal memory related to delayed recall of verbal information without context. Mr. Hoover's findings were consistent with Dr. Finger's findings from UCLA. According to Ms. Norris's assessment, Student scored in the average range in all academic areas. According to Ms. Smith, Student was achieving within grade level expectations. While Student sometimes needed re-teaching or other supports in math, Student was not the lowest performing Student, and had the underlying skills to complete the work. Thus, there was no

significant discrepancy between Student's ability and achievement. Additionally, Ms. Smith did not believe Student needed special education because she could support Student's academic needs in the general education classroom through teaching strategies and accommodations.

Loss of Educational Benefit

Because Santa Monica-Malibu did not deny Student a FAPE by failing to find her eligible for special education and related services, Student was not deprived of any educational benefit. To the contrary, Student received educational benefit through the 504 Plan Santa Monica-Malibu developed in December 2018, and revised after Student returned to school after the January 2019 hospitalization. Through the plan, Santa Monica-Malibu provided many of the supports and accommodations the UCLA team recommended for Student, including but not limited to:

- clear expectations;
- daily check-ins with Ms. Smith;
- weekly counseling with Mr. Hoover;
- visual supports;
- re-teaching;
- flexible seating and group pairing; and
- the ability to go to a trusted adult's office to take a break, when needed.

Ms. Smith and Mr. Hoover provided these interventions to Student throughout the 2018-2019 school year. The interventions were available to all students in the general education program.

Prior Written Notice

A parent must be provided written prior notice when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement

of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include:

- a description of the action refused by the school district;
- an explanation of why the school district refuses to take the action;
- a description of each assessment procedure, test, record, or report used as a basis for the refused action;
- a description of any other factors relevant to the school district's refusal;
- a statement that the parents have protection under the procedural safeguards of IDEA; and
- sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

The IEP may serve as the school district's prior written notice as long as it meets all the legal prior written notice requirements. (71 Fed.Reg. 46691 (Aug. 14, 2006).)

Student did not prove Santa Monica-Malibu failed to give Parents prior written notice of their refusal to find Student eligible for special education and related services. The October 22, 2018 IEP meets the prior written notice requirements. The IEP document clearly states Student did not meet the eligibility criteria for special education and the reasons for the IEP team's conclusions. The document also includes a summary of the assessments and other records Santa Monica-Malibu relied upon in reaching its conclusion. Finally, Parents received a copy of the notice of parent rights and procedural safeguards at the meeting.

The February 11, 2019 IEP document was not as detailed because it was an addendum to the October 2018 IEP, and only contained a notes page. The document itself did not meet prior written notice requirements. However, the February 21, 2019 letter Ms. Hurst sent Parents in response to Parents expressing disagreement with the February 11, 2019 IEP, does meet the legal prior written notice requirements. The letter

clearly explains that Santa Monica-Malibu did not find Student eligible for special education during either IEP team meeting, the reasons why, and what they relied upon in coming to that conclusion. Ms. Hurst included a copy of the notice of parent rights and procedural safeguards with the letter, and contact information for agencies Parents could contact with questions.

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Santa Monica-Malibu prevailed on all issues.

RIGHT TO APPEAL

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

DATED: October 29, 2019

/s/

Tara Doss

Administrative Law Judge

Office of Administrative Hearing