

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT and SACRAMENTO
COUNTY OFFICE OF EDUCATION,

Respondents.

OAH CASE NO. N 2006030620

DECISION

Richard M. Clark, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this matter from September 18 to 21, 2006, in Elk Grove, California.

Attorney F. Richard Ruderman represented Student. Student's mother (Mother) was present during the hearing.

Attorney Van Vu represented Elk Grove Unified School District (District). Bill Tollestrup, Director of Special Education for the District, and Ken Lewis and Doug Phillips, both program specialists for the District, were present at different times during the hearing.

Attorneys David Girard and Heather Edwards represented Sacramento County Office of Education (SCOE). Robin Pierson, Assistant Superintendent for Special Education at SCOE, was present during the hearing.

Student filed her request for a due process hearing on March 27, 2006. Oral and documentary evidence were received during the hearing and that portion of the hearing was closed on September 21, 2006. The record remained open for the submission of written closing arguments by October 13, 2006, when the record was closed and the matter was submitted for decision.

ISSUES¹

I. Did the District deny Student a free appropriate public education (FAPE) during the 2003-2004, 2004-2005, and 2005-2006 school years, by failing to assess her in all areas of suspected disability, specifically her social-emotional and mental health needs, and by failing to refer her to Sacramento County Mental Health for an assessment and services?

II. Did the District deny Student FAPE during the 2003-2004, 2004-2005, and 2005-2006 school years, by failing to include mental health services, including individual, group and family therapy and medical management, in Student's Individualized Education Programs (IEPs)?

III. Did the District deny Student a FAPE during the 2003-2004, 2004-2005, and 2005-2006 school years, by failing to convene IEP meetings in a timely manner when Student failed to demonstrate anticipated progress when she was depressed, had suicide attempts, had failing grades, was hospitalized, had poor attendance, cut class, and had other conduct leading to suspensions from school?

¹ The issues for hearing were agreed upon during a prehearing conference (PHC) held on September 9, 2006. For clarity of decision writing, the issues have been reordered and combined by the ALJ but are the same issues that were agreed upon at the PHC.

IV. Did the District deny Student a FAPE by failing to ensure that she received appropriate special education services while she was in Juvenile Hall from December 1, 2005, until April 3, 2006?

V. Did SCOE deny Student a FAPE from December 1, 2005, until May 9, 2006, by failing to assess Student in all areas of suspected disability, specifically her social-emotional and mental health needs and by failing to refer her to Sacramento County Mental Health (SCMH) for an assessment and services?

VI. Did SCOE deny Student a FAPE from December 1, 2005, until May 9, 2006, by failing to convene IEP meetings in a timely matter when Student's conduct demonstrated depression; by failing to hold any IEP meetings, including an IEP meeting within 30-days of Student's placement within its jurisdiction; and by failing to obtain Student's academic records as required by law?

VII. Did SCOE deny Student a FAPE from December 1, 2005, until April 3, 2006, by failing to provide Student any regular or special education services?

PROPOSED RESOLUTIONS

Student seeks the following resolutions if the ALJ finds a FAPE denial by the District or SCOE:

I. Reimbursement for the costs of placement at Excelsior Youth Center (Excelsior) from April 3 to May 9, 2006, including tuition, residential, and mental health costs in the amount of \$7,916.76 and transportation expenses in the amount of \$657.97.

II. An IEP meeting to determine appropriate compensatory special education and related services for Student in the areas of social-emotional and mental health.²

² Student also seeks reimbursement to the family for legal costs. This remedy is beyond the ALJ's authority to order.

FACTUAL FINDINGS

1. Student is 17 years old and is currently residentially placed at Family Life Center (FLC) in Petaluma, California, where she is in the twelfth grade at Larry M. Simmons High School located on the FLC grounds. Student has resided at FLC since June 1, 2006. Student's services are funded through the District and SCMH.

2. In 1999, Student was found eligible for special education in the category of speech and language impaired (SLI). In October 2001, her eligibility changed to specific learning disability (SLD). On May 9, 2006, Student's eligibility was changed to Emotionally Disturbed (ED).

3. Student attended Laguna Creek High School (Laguna Creek) located within the District during the 2003-2004, 2004-2005, and 2005-2006 school years, until December 1, 2005, when Student was incarcerated at Sacramento County Juvenile Hall (Juvenile Hall) located within SCOE jurisdiction. Student was released from Juvenile Hall on April 3, 2006, and returned to the District's jurisdiction. Upon her release from Juvenile Hall, Student's parents immediately and unilaterally placed her at Excelsior Youth Center (Excelsior) in Colorado, where she remained until May 31, 2006, when she transferred to FLC.

I. DISTRICT'S FAILURE TO ASSESS ALL AREAS OF SUSPECTED DISABILITY

4. During the 2003-2004, 2004-2005, and 2005-2006 school years, Student was eligible for special education services in the category of SLD. Student contends that the District did not properly assess her unique social-emotional and mental health needs during the 2003-2004, 2004-2005 and 2005-2006 school years. Student further contends that based upon her behavior, academic performance, and attendance, the District should have referred her for further assessments and sent her to SCMH for evaluation and the addition of mental health services to her IEP.

A. 2003-2004 SCHOOL YEAR

5. The District is required to assess Student in all areas related to her suspected disability, including her social-emotional status if appropriate. The District is required to assess Student not more than once a year, and at least every three years or more frequently if the District determines that Student's educational and related service needs warrant a reassessment. Further, the District is required to refer Student to SCMH for evaluation if they suspect that Student is in need of mental health services.

6. Student was last assessed by the District in November 2002. The psychoeducational report found that Student was of average ability and noted some behavior issues at school, including lack of participation in class, difficulty with peer interactions, and tardiness in physical education class on occasion. The report recommended that the IEP team decide the most appropriate program for Student, but suggested that a behavior support plan (BSP) and progress sheets for tracking school work and class participation be considered.

7. On February 12, 2003, the District stated in an IEP that Student "appeared to be sad for at least 2 months" and that she "needs to practice being proactive towards teachers and peers." At Student's January 27, 2004 IEP, the District stated that "[Student] is very quiet and appears to be very sad" and that "[Student] needs to learn how to ask for help when she needs it." The IEP also listed as a health and medical consideration stated that Student takes Effexor XR, 150 milligrams, one time per day for depression. The IEP team noted that Student had "cut" some classes.

8. Colleen Wiwczar was Student's case manager and resource teacher at Laguna Creek. As case manager, it was her responsibility to keep Student's IEP current and to review the goals and objectives from prior years. During the 2003-2004 school year, she saw Student on average one time every other week. Ms. Wiwczar learned from classroom teachers that Student was in a continued state of sadness, appeared depressed,

unemotional and had a lack of affect while at school. In November 2003, Ms. Wiwczar told Mother that Student was not turning in her classroom work and was not doing well on tests. Student also had significant attendance issues beginning in January 2004 which “probably” affected her grades. Ms. Wiwczar testified unconvincingly that Student did well in school when she attended, in spite of the report cards that reflected contrary. It was Ms. Wiwczar’s belief that Student needed more “extreme behavior” before a referral to mental health or further assessment was warranted even though she acknowledged that she was unfamiliar with the ED criteria. She made no referrals to mental health for any student in the three years she was Student’s case manager.

9. At the start of the 2003-2004 school year, Mother was in contact with Ms. Wiwczar “as needed” and was actively involved in Student’s education. As the year progressed, Mother was in regular contact with Ms. Wiwczar and discussed Student’s behavior at home and her concerns about Student’s performance and issues at school in great detail. Mother told Ms. Wiwczar that Student had learning disabilities and emotional problems, including depression at home and at school. Mother told Ms. Wiwczar before the January 2004 IEP meeting that Student had started running away from home, was cutting school and that her grades were poor. She also told Ms. Wiwczar that Student had been seeing a private therapist who diagnosed her with severe depression. Ms. Wiwczar never asked to discuss Student’s behavior or condition with the private therapist, to see her records, or to refer her for further assessment at school. Mother testified and established that Student was depressed, had a quiet affect, and was overall sad, which concerned her greatly.

10. On October 13, 2003, Student received a “referral” from her PE teacher for using a black marker to deface the school lockers, bench and gymnasium floor. Student was suspended from school on January 26, 2004, after lighting toilet paper on fire in a school restroom. The suspension occurred on the same day as the January IEP meeting,

but later in the day. A behavior support plan (BSP) was developed. Student was suspended a second time in March 2004 after she hit a male student who had been harassing her. These incidents, coupled with Student's poor attendance and failing grades, should have given the District notice that social-emotional and mental health assessments were warranted.

11. The District mailed a Student Attendance Review Board (SARB) warning letter to Mother on February 4, 2004, addressing Student's problematic school attendance issues. From January 2, 2004, to February 4, 2004, Student was late to class on 11 occasions and had unexcused absences from class on six occasions. Mother discussed the SARB letter with Ms. Wiwczar.

12. During the 2003-2004 school year, Student's grades were poor. She received one B-minus grade in General Science, but otherwise received C, D or F grades in her classes. Student's grades demonstrate that she was not making anticipated progress in her educational program. The poor grades, paired with the poor attendance, should have triggered a social-emotional or mental health assessment by the District.

13. Terrance Schlagle was Student's Community Service and Advocacy teacher from September 2003 to May 2004. While in his class, Student was unhappy, angry, irritated and did not wish to participate, so she just sat and stared. She appeared to be depressed. Student had a soft voice and only talked when "forced" to speak, such as in reply to a question that needed a response. The class was pass or fail and Student did not pass the class. Student did not cry, was not in despair and did not appear to have characteristics, such as emotional outbursts, that Mr. Schlagle would normally associate with someone needing a mental health referral or assessment. Mr. Schlagle was aware Student had an IEP but did not recall contact with her case manager and he was not invited to any IEP meetings for Student. Had Mr. Schlagle been consulted by Student's

case manager during the school year, the District would likely have recognized the need for a social-emotional or mental health assessment for Student.

14. In sum, the District had more than sufficient information that Student's behavior was deteriorating and that she was having difficulties with her peers, academics and attendance during the 2003-2004 school year. Her IEPs identified needs in social-emotional areas but as the year progressed, her difficulties became increasingly problematic. The types of difficulties were significant and were thoroughly discussed with Student's case manager. The District had more than sufficient information to warrant a social-emotional or mental health assessment of Student during the 2003-2004 school year.

B. 2004-2005 SCHOOL YEAR

15. During the 2004-2005 school year, Student's behavior and conduct continued to decline and the District had an ongoing obligation to assess Student's social-emotional and mental health needs.

16. On August 4, 2004, Student was admitted to Heritage Oaks Hospital (Heritage Oaks) in Sacramento after a suicide attempt and was discharged on August 11, 2004, right before school began. Mother notified and discussed the hospitalization with Ms. Wiwczar. Based upon the hospitalization, coupled with the attendance issues, poor grades, and behavior issues from the previous school year, the District should have assessed Student's social, emotional and mental health needs at that time.

17. Student's IEP during the 2004-2005 school year reflected the same pattern, that Student was depressed, needed to learn to ask for help, and that she was truant. The February 8, 2005 IEP states that "[Student] is very quiet and at times appears to be sad or depressed" and that "[Student] needs to learn how to ask for help when she needs it." The IEP states that Student's behavior has been good but she has had some "truants." The IEP

notes that Student is taking Prozac and lists "depression" as a health and medical consideration.

18. On February 22, 2005, Student was admitted to Fremont Hospital in Fremont, California, after a suicide attempt and was released on February 28, 2005. Mother notified Ms. Wiwczar about Student's suicide attempt and hospitalization. After Student's second hospitalization, the District should have assessed Student's social- emotional and mental health needs.

19. Mother received another SARB letter from the District regarding Student's poor attendance on March 3 and May 19, 2005. From January 3, 2005, until March 3, 2005, Student was late to class on nine occasions and had unexcused absences from class on eight occasions, and had confirmed cuts from class on 12 occasions. From March 4 to May 19, 2005, Student was late to class on 11 occasions and had unexcused absences on fifteen occasions.

20. During the 2004-2005 school year, Student's grades did improve slightly. She received two As and one B in Study Skills, a B in Biology S, a B-minus in Algebra I Basics, but otherwise received C, D or F grades. Student's poor academic performance and poor attendance, coupled with known depression and suicide attempts, during the 2004-2005 school year provided further corroboration of the District's obligation to provide a social-emotional and mental health assessment for Student and/or a referral to SCMH for an assessment.

C. 2005-2006 SCHOOL YEAR

21. In the Fall 2005, Mother told Ms. Wiwczar that Student was having significant peer pressure problems at Laguna Creek and was experiencing significant stress about her grades and lack of friends. Mother told Ms. Wiwczar in October 2005 that she was very concerned about Student and wanted to get Student help. Mother contacted Child Protective Services to ask for assistance and was advised to inquire about a 26.5 referral

from the District.³ Mother contacted Ms. Wiwczar about the 26.5 referral; Ms. Wiwczar told her that it could not be done.

22. During the same time period, Mother was in weekly contact with Ms. Rosenberg, the school psychologist. Mother told Ms. Rosenberg about Student's depression, promiscuity and her "reputation" at school, and Student's abusive boyfriend. Ms. Rosenberg testified and acknowledged that Mother was very concerned about Student, and that Mother was cooperative and followed through on Ms. Rosenberg's suggestions and strategies regarding Student.

23. On October 31, 2005, Student was hospitalized at Sierra Vista Hospital in Sacramento after she began cutting herself and having suicidal thoughts. She was discharged on November 8, 2005. The discharge summary indicated that Mother should contact the District and ask about "26.5 funding." When Mother told Ms. Wiwczar that Sierra Vista had said to get a 26.5 referral, Ms. Wiwczar referred Mother to school psychologist Rosenberg.

24. Mother spoke to Ms. Rosenberg, who prepared an assessment plan for a referral to SCMH which was given to Mother for signature on or about November 9, 2005. Mother completed and signed the assessment plan and gave it to Student to return to the District, but Student never returned it. Mother talked by telephone regularly to Ms. Rosenberg and Ms. Wiwczar, but neither inquired of Mother about why the plan was not returned. The District should have assessed Student's social, emotional and mental health needs well before October 2005, but based upon the October hospitalization, the District certainly should have assessed Student's social-emotional and mental

³ A "26.5" referral refers to Chapter 26.5 of the Government Code, commencing at section 7570, et al., which generally discusses referrals to community mental health by a school district.

health needs. When the District did not receive a signed consent for the assessment, the District should have followed up with Mother about why she had not returned the consent for assessment.

25. Student was arrested on December 1, 2005, and placed in Juvenile Hall after assaulting her boyfriend with a knife. Mother told Ms. Wiwczar about Student's arrest and incarceration at Juvenile Hall the day after it occurred. Ms. Wiwczar testified that she told Mother to tell Juvenile Hall that Student had an IEP. Mother testified that Ms. Wiwczar never told her to do that, and if she had, she would have notified Juvenile Hall since she routinely followed the District's instructions. To the extent that there is a conflict in the testimony at hearing, the ALJ is persuaded by the testimony of Mother, whose testimony was more credible and was corroborated by other testimony and evidence at the hearing, including testimony from Ms. Wiwczar.

26. Dr. Dennis Devine is a school psychologist working for the District. He conducted a psychological assessment of Student and issued a report dated April 14, 2006, which found Student met the eligibility criteria for ED. The tests administered by Dr. Devine were prospective and did not assess what had happened in the past. Nevertheless, considering Student's documented depression and hospitalization, Dr. Devine testified and established that Student should have been evaluated for social- emotional issues before the 2006 assessments, and should have been referred to SCMH. Dr. Devine did not believe that an evaluation and referral to SCMH were required in the 2003-2004 school year, but he felt that after her hospitalization and other issues at school, both should have occurred during the 2004-2005 school year.

27. The District's obligation to refer Student for a social-emotional and mental health evaluation continued during the 2005-2006 school year and the District had more than sufficient information warranting a referral for a social-emotional and mental health evaluation of Student, including a referral to SCMH, well before the actual assessment in

April 2006. The District attempted to refer to Student to SCMH in November 2005, but never followed through with that referral.

28. The District did not properly assess Student's social-emotional and mental health needs, including a referral to SCMH for services, during the 2003-2004, 2004- 2005, and 2005-2006 school years.

II. DISTRICT'S FAILURE TO INCLUDE MENTAL HEALTH SERVICES IN STUDENT'S IEPs

A. 2003-2004 SCHOOL YEAR

29. Student's IEPs for the 2003-2004 school year did not contain any mental health services for Student. The District had an obligation to assess Student's social-emotional and mental health needs during the 2003-2004 school year. Because the District failed in its duty to assess Student, the District did not have sufficient information to determine if mental health services should have been included in Student's IEPs in order to meet her unique needs. The weight of the testimony established that mental health services would have been required to meet Student's unique needs had the District properly assessed Student.

B. 2004-2005 SCHOOL YEAR

30. The District had an obligation to assess Student's social-emotional and mental health needs and refer her to SCMH for assessment and services during the 2004-2005 school year. Because the District failed in its duty to assess Student, the District did not have sufficient information to determine if mental health services should have been included in Student's IEPs in order to meet her unique needs. The weight of the testimony established that mental health services would have been required to meet Student's unique needs had the District properly assessed Student.

C. 2005-2006 SCHOOL YEAR

31. Student attended Laguna Creek from the start of the 2005-2006 school year until December 1, 2005, when she was incarcerated at Juvenile Hall.⁴ She was released from Juvenile Hall on April 3, 2006. The District referred Student to SCMH for an assessment in March 2006. SCMH evaluated Student and prepared a report that recommended extensive mental health services and the report was incorporated in the May 2006 IEP.

32. At the May 9, 2006 IEP meeting, Student's special education eligibility category was changed to ED. The IEP team had been expanded to include participants from SCMH, SCOE and the District. Student continued her placement at Excelsior where she had been placed upon her release from Juvenile Hall on April 3, 2006. The IEP states that she does not make friends easily, has low self esteem, exhibits a high level of insecurity with peers and has problems sustaining relationships. The IEP also states that Student has difficulty asking for help and notes that she is taking Prozac, 20 milligrams per day. The IEP includes services from both the District and SCMH, including a recommendation for individual, group and family therapy, and medication management.

33. Natalie Conrad is a clinical psychologist working as a therapist at FLC, but is not Student's counselor. Student is doing well in her current placement at FLC. Ms. Conrad was not familiar with Student's academic program at FLC and was not sure if she was on track to graduate in 2007. Ms. Conrad was tentative about whether Student would need continued mental health services after graduation, but thought she "probably" would. She also felt it would be hard to know what services might be appropriate for Student after

⁴ SCOE's responsibility while Student was at Juvenile Hall is discussed later in the decision.

graduation. No persuasive evidence or testimony was offered that any mental health or educationally compensatory services were necessary for Student.

34. Had the District conducted proper assessments, including a referral to SCMH, before Student was incarcerated on December 1, 2005, the District would have determined the appropriate level of mental health services that should have been included in Student's IEPs to meet her needs. It is reasonable to infer that the services listed in Student's May 2006 IEP were also required during the 2003-2004, 2004-2005, and start of the 2005-2006 school years because Student was already having significant issues with peer interactions, depression, attendance, and poor grades, and she had been hospitalized on several occasions. Thus, it is reasonable to assume that mental health services would have been required well before they began in May 2006 IEP.

35. In a letter dated March 15, 2006, Student's attorney notified the District and SCOE in writing that Student would be placed unilaterally at Excelsior when she was released from Juvenile Hall. The District and SCOE had not yet completed the assessment process for Student when she was released from Juvenile Hall on April 3, 2006, and the only placement for Student would have been pursuant to her February 8, 2005 IEP, which did not address Student's unique needs and was therefore an inadequate placement. Thus, the District denied Student a FAPE for the period following her release from Juvenile Hall until services were in place after the May 9 IEP because they did not have a program in place that provided Student with a FAPE. Mother paid \$647.91 to transport Student to Excelsior on April 3, 2006. Excelsior has also sent Mother an invoice for the costs of tuition, residential placement, and mental health services from April 3, 2006, to May 8, 2006, totaling \$7,916.76. Mother has not yet paid the invoice nor has the District. The District and SCMH assumed responsibility for payment of Student's placement at Excelsior after the May 9, 2006 IEP meeting.

III. DISTRICT'S FAILURE TO CONVENE IEP MEETINGS IN A TIMELY MANNER

36. In addition to an annual IEP meeting, the District is required to hold IEP meetings when a student demonstrates a lack of expected progress on the annual goals and in the general curriculum, when the District receives information from the parent that another IEP is warranted, or to discuss any other relevant matters.

A. 2003-2004 SCHOOL YEAR

37. As stated in factual finding 11, the District mailed a SARB letter advising Mother about Student's problematic school attendance.

38. As stated in factual finding 12, Student's grades were extremely poor during the 2003-2004 school year, and she was performing well below average and failing many of her classes.

39. As stated in factual finding 10, Student was having problematic behavior problems at school, including a "referral" for defacing school property, suspension for lighting toilet paper on fire in a school restroom, and a second suspension for hitting a student who had been harassing her.

40. In sum, during the 2003-2004 school year, the District had more than sufficient information to conclude that Student's failing grades, poor attendance, and problematic interactions with her peers required additional IEP meetings to discuss Student's needs, lack of anticipated progress, and other issues.

B. 2004-2005 SCHOOL YEAR

41. As stated in factual finding 16, on August 4, 2004, Student was admitted to Heritage Oaks after a suicide attempt. Mother notified Ms. Wiwczar about the hospitalization. An IEP was not held to discuss the hospitalization, but should have been to discuss Student's mental health needs. This was a significant event in Student's educational program and the District should have brought the IEP team together to discuss what, if

any, additional services should be added to Student's IEP. The same is true after Student's hospitalization at Fremont Hospital in February 2005.

42. During the 2004-2005 school year, Student's grades improved slightly, but she still received D or F grades in many classes. Mother also received a SARB letter regarding Student's poor attendance on March 3 and May 19, 2005. Student's grades and poor attendance should have warranted an IEP meeting to discuss what, if any, additional services Student might need to be successful in her academic program.

43. Student had significant events occur during the 2004-2005 school year, including hospitalizations for suicide attempts, poor attendance, poor grades and ongoing depression. The District should have held additional IEP meetings during the 2004-2005 school year to discuss Student's continuing issues and her parent's concerns.

C. 2005-2006 SCHOOL YEAR

44. On October 31, 2005, Student was hospitalized at Sierra Vista Hospital in Sacramento after she began cutting herself and having suicidal thoughts. She was discharged on November 8, 2005. The discharge summary indicates that Mother should contact the District and ask about "26.5 funding." Student's mother notified the District about the hospitalization and request for 26.5 even though she did not know what that was. Based upon the new hospitalization and request by Mother for a 26.5 referral, an IEP team meeting should have been held by the District to discuss the referral and assessment.

45. In addition, during the Fall 2005, Mother told Ms. Wiwczar that Student was having significant peer pressure problems at Laguna Creek and had significant stress about her grades and lack of friends. Mother told Ms. Wiwczar in October 2005 that she was very concerned about Student and wanted to get Student help. This should have triggered an IEP meeting to discuss the parental concerns.

46. Ms. Rosenberg sent an assessment plan to Mother in November 2005, but never received a signed copy back which would have provided parental consent for the

assessment. Ms. Rosenberg did not follow up with Mother about why the assessment plan had not been returned. Because Mother had taken such an active role in Student's education and was in continual contact with District staff, when Mother failed to return the assessment plan, the District should have called an IEP meeting to discuss the need for referral to SCMH.

47. Based upon Student's poor academic progress, poor attendance, suicide attempts, depression and behavior issues, the District should have held additional IEP meetings during the 2003-2004, 2004-2005 and 2005-2006 school years to address and discuss Student's lack of anticipated progress and her needs.

IV. DISTRICT'S DENIAL OF FAPE BY FAILING TO ENSURE SPECIAL EDUCATION SERVICES WHILE STUDENT WAS IN JUVENILE HALL

48. A school district is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries. The local county board of education has the responsibility for providing a FAPE to children placed in a juvenile hall.

49. Once Student left the District, the District's obligation to provide a FAPE ended. Even though the District had actual knowledge that Student was in Juvenile Hall, the District did not have an affirmative obligation to notify SCOE, and did not have an affirmative duty to provide Student a FAPE while she was in Juvenile Hall.

V. SCOE'S FAILURE TO ASSESS ALL AREAS OF SUSPECTED DISABILITY

A. Student's Social-Emotional and Mental Health Needs

50. SCOE is required to maintain a school for students who are incarcerated at Juvenile Hall that also provides special education services to those students in need. The school must have in place a procedure for identifying students who are special education that includes an interview process for students placed in Juvenile Hall to determine if they

are special education. SCOE is also required to assess Student in all areas related to her suspected disability.

51. Kahn Chinn has taught school since 1970 and has worked at El Centro Junior/Senior High School (El Centro) located at Juvenile Hall for the last 2.5 years where he was Student's teacher. Mr. Chinn taught Student on the "F-Unit," which is where the female students charged with more serious offenses are housed. Mr. Chinn gave Student a series of evaluations to determine her academic levels before he began to provide instruction to Student. Student regularly attended his class; she was one of the highest functioning students and did well. Student did appear to be depressed, but the depression was situational and she was not any more depressed than the other girls. Mr. Chinn's class was limited to no more than 16 girls in class at any one time, and half of the enrolled students attended in the morning and half in the afternoon. When one half was in the class, the others were having independent study. Mr. Chinn had Student sit near him in class because she was quiet and he could help draw her out. She was very compliant, responded well to re-direction and worked on her assignments independently. He graded all of her assignments and returned them to Student. Mr. Chinn gave Student individual daily instruction and a paraeducator was also available daily for one-to-one assistance. Student gave no outward appearances that she was in special education. Student missed some days of his class for court, illness or visitations, but overall her attendance was good. Mr. Chinn taught Student daily in the subjects of history, math, health, English, and PE. Mental Health services were available to Student at Juvenile Hall; she just had to sign up to see a counselor.

52. Vincent Denny was a resource specialist for SCOE. SCOE learned that Student was a special education student on or about March 17, 2006. Once it was determined that Student was a special education student, Mr. Denny obtained and reviewed Student's IEP from the District and ensured that Student was receiving the services required by her IEP.

Mr. Denny testified and established that Student was receiving more than adequate levels of service from Mr. Chinn and his paraeducator, but he made sure that services were provided to Student pursuant to the District's IEP. Student received special education services for 11 days and general education instruction for 71 days while she was at Juvenile Hall.

53. Student's behavior, conduct and demeanor while she was at Juvenile did not provide any indication that Student was in special education or that any social- emotional assessment was warranted.

B. SCOE'S FAILURE TO REFER STUDENT TO SCMH FOR AN ASSESSMENT AND SERVICES

54. As stated in factual findings 51 through 53, Student's behavior, conduct and demeanor while she was at Juvenile Hall did not provide any indication that Student had any issues that warranted a referral to SCMH for any type of assessment.

VI. SCOE'S FAILURE TO HOLD IEP MEETINGS

55. In addition to an annual IEP meeting, a district is required to hold IEP meetings when a student demonstrates a lack of expected progress on the annual goals and in the general curriculum, when the District receives information from the parent, or to discuss any other relevant matters. Further, when a student with an IEP transfers into a district in the same SELPA, the receiving school must provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

56. SCOE did not have any information that Student was in special education until March 2006. Thus, they had no obligation to hold any IEP meetings. Further, there was nothing about Student's behavior, conduct or demeanor that would have warranted

the holding of an IEP meeting had SCOE known that Student had an IEP prior to March 2006.

57. Student's teacher at Juvenile Hall noted Student was depressed but not any more so than other girls who were recently incarcerated at Juvenile Hall. Thus, there was nothing about Student's depression that triggered any need for an IEP meeting had SCOE known that Student was in special education.

58. In March 2006, when SCOE learned that Student was a special education student with an IEP, SCOE immediately obtained a copy of her most recent IEP from the District and reviewed it to make sure she was receiving the services required by the IEP. When it was reviewed, SCOE determined that Student's last triennial IEP was on February 12, 2003, and was now overdue. SCOE developed an assessment plan for Mother to sign and immediately got the assessment process going, including scheduling an IEP meeting to discuss the assessments. SCOE worked with the District to get the assessments completed and referred Student to SCMh.

59. SCOE was under no obligation to hold any IEP meetings for Student because it was unaware that she was a special education student. When SCOE learned that Student was in special education, they immediately developed an assessment plan and scheduled an IEP meeting.

A. SCOE'S FAILURE TO OBTAIN STUDENT'S RECORDS

60. SCOE is required to maintain a school for students who are incarcerated at Juvenile Hall that also provides special education services to those students in need. The school must also have in place a procedure for identifying students who are special education. Further, SCOE and the District are required to cooperate with each other in exchange of information regarding transfer students. SCOE is also required to have an interview process in place for students placed in Juvenile Hall to determine if they are in special education.

61. SCOE has a system in place to determine if a student at Juvenile Hall is special education and to obtain records for students who have entered Juvenile Hall. Every ten days on a Monday, a list is generated containing the names of the new students placed into Juvenile Hall. That list is checked against the SOLAR system, which is Juvenile Hall's own database of student records. If the new student is not in SOLAR, the list is emailed to the four districts that are part of the local SELPA, which includes the District. The list also contains a request for records for the students named on the list. If one of the students on the list attended a school within the SELPA, that district would FAX the records back to Juvenile Hall. Most districts in the SELPA respond within one day, but the District routinely did not respond to SCOE's request for records. SCOE sent the records request to the District's records office and followed up with a phone call to the District. The District would typically call SCOE to notify them that a list was ready but the District's lists were not prepared in the order of receipt. When the District notified SCOE that a list was available, SCOE sent a secretary to the District to photocopy the records for SCOE. SCOE and the SELPA districts have a monthly meeting. SCOE followed its routine and practice regarding identifying special education students when it requested Student's records from the District.

62. SCOE did not interview Student upon her enrollment at El Centro to determine if she was in special education. Had SCOE done so, it is possible that it would have learned that Student was in special education when she was enrolled. However, in light of factual findings 65 through 67, *infra*, the program at Juvenile Hall more than adequately met Student's unique needs and provided her educational benefit. Therefore, any failure to interview Student was harmless.

63. The last day of school at El Centro before the holiday break was December 16, 2005. SCOE sent a list that included Student's name to the District on January 3, 2006. The District did not respond to the list and the District never telephoned SCOE to tell SCOE

that Student was a special education student. SCOE learned Student was special education on or about March 17, 2006, and immediately provided Mother an assessment plan which she signed on March 27, 2006. SCOE received a copy of Student's most recent IEP and began special education services on March 17, 2006, after calling Laguna Creek directly and asking for the IEP.

64. SCOE made reasonable efforts to determine if Student was in special education and to obtain her records from the District. The process in place by SCOE is reasonably designed to quickly and systematically determine if a student is in special education.

VII. REGULAR AND SPECIAL EDUCATION SERVICES WHILE AT JUVENILE HALL

65. As stated in factual finding 51, Mr. Chinn was Student's teacher at Juvenile Hall where she regularly attended his class and was one of the highest functioning students. Mr. Chinn gave Student individual daily instruction and a paraeducator was also available daily for one-to-one assistance. Student missed some days of his class for court, illness or visitations, but overall her attendance was good. Mr. Chinn taught Student daily in the subjects of history, math, health, English, and PE. Student received 71 days of general education while at Juvenile Hall.

66. In March 2006, Mr. Denny, who was a resource specialist for SCOE, obtained and reviewed Student's February 8, 2005 IEP, which was the last IEP prepared for Student while she was in the District. That IEP required the resource specialist program (RSP) for one to two periods per day, totaling 90-180 minutes, and vocational counseling one time per day for 45 minutes. The IEP had two listed goals, one in task completion and the other in basic algebra. The task completion goal asked Student to complete and turn in all teacher given assignments on time by February 2006. The basic algebra goal asked that Student maintain a C grade average in Algebra I, Basics 1 and 2, by February 2006. Mr. Denny testified and established that he worked with Darlene Furtado, a paraeducator in

Student's class, to provide services that worked on the algebra and task completion goals. Mr. Denny also discussed Student with Mr. Chinn to determine if she was struggling or needed additional services. Mr. Chinn told him that Student was doing well in his class. Student received special education services for 11 days.

67. While at Juvenile Hall, SCOE was not aware that Student was a special education Student until March 2006. Upon learning that Student had an IEP from the District, SCOE obtained and implemented the last IEP from the District. Student received educational benefit from the educational services provided to her by SCOE.

APPLICABLE LAW

1. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA), and the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C §1400 et al.; Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1402(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1402(29).)

2. Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).) Similarly, designated instruction and services (DIS), California's term for related services, shall be provided "when the instruction and services are necessary for

the pupil to benefit educationally from his or her instructional program.” (Ed. Code §56363, subd. (a).)

3. A student’s IEP must be reasonably calculated to provide the student with some educational benefit, but school districts are not required to provide special education students with the best education available or to provide instruction or services that maximize a student’s abilities. (*Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 198-200.) School districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student.⁵ (*Id.* at p. 201.)

4. To determine whether the District offered Student a FAPE, the analysis must focus on the adequacy of the district’s proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the school district’s program was designed to address Student’s unique educational needs, was reasonably calculated to provide some educational benefit, and comported with the IEP, then that district provided a FAPE, even if Student’s parents preferred another program and even if his parents’ preferred program would have resulted in greater educational benefit. (*Id.*)

5. Procedural errors in the IEP process do not automatically require a finding of a denial of a FAPE. Procedural violations may constitute a denial of FAPE only if the

⁵ School districts are also required to provide each special education student with a program in the least restrictive environment (LRE), with removal from the regular education environment occurring only when the nature or severity of the student’s disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.550(b); Ed. Code, § 56031.) LRE is not an issue in this hearing.

procedural inadequacies impeded the child's right to a FAPE, caused a deprivation of educational benefits, or significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE. (20 U.S.C. § 1415(f)(3)(E); *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) Procedural errors during the IEP process are subject to a harmless error analysis. (*M.L., et al., v. Federal Way School District* (9th Cir. 2004) 394 F.3d 634, 650, fn. 9 (lead opn. of Alarcon, J.).)

6. The Ninth Circuit Court of Appeal has endorsed the "snapshot" rule, explaining that the actions of the school cannot "be judged exclusively in hindsight...an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. Of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

7. When a district has failed to provide a FAPE, the parents may be entitled to reimbursement for the costs of private placement and services if they are proper under the IDEA and replaced services that the school district failed to provide. (*School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359; *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) The private services and placement do not have to be an exact replacement under the IDEA in order for the parents to receive reimbursement, as long the placement and services met the student's unique needs and provided educational benefit. (*Alamo Heights Independent School District v. State Board of Education* (5th Cir. 1986) 79 F.2d 1153, 1161.)

8. When a school district denies student a FAPE, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. Equitable considerations may be weighed in granting relief, and courts have broad discretion in granting such relief. (*School Committee of the Town of Burlington v. Dept. of Education, supra*, 471 U.S. 358.) Conduct

of the parties is a factor to consider. (*W.G. v. Board of Trustees of Target Range School District No. 23*, *supra*, 960 F.2d 1479, 1486.) There is no obligation to provide day-for-day or hour-for-hour compensation for missed services. "Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Student W. v. Puyallup School District*, *supra*, 31 F.3d 1489, 1496.)

9. Petitioner has the burden of proving the essential elements of her claim at a due process hearing. (*Schaffer v Weast* (2005) 546 U.S. 49.)

10. An IEP is a written statement that must be developed, reviewed, and revised for each student with a disability. (34 C.F.R. § 300.340(a); Ed. Code, § 56345.) The IEP must include: a statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); a statement of the goals and short-term objectives/benchmarks of the special education and related services; a statement of the program modifications or supports that are to be provided to enable the student to be involved in and progress in the general curriculum; and to be educated and participate with disabled and nondisabled peers in extracurricular and other nonacademic activities. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.347; Ed. Code, §§ 56343, 56345.)

11. In the case of an individual with exceptional needs who has an IEP and transfers into a district from a district operating programs under the same SELPA in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved IEP, unless the parent and the LEA agree to develop, adopt, and implement a new IEP that is consistent with federal and state law. (20 U.S.C. § 1414(d)(2)(C); Ed. Code §56325, subd. (a)(2).)

12. To facilitate the transition for an individual with exceptional needs, the new school in which the individual with exceptional needs enrolls shall take reasonable steps to

promptly obtain the pupil's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled. The previous school in which the individual with exceptional needs was enrolled shall take reasonable steps to promptly respond to the request from the new school. (Ed. Code §56325, subd. (b).)

13. An IEP team shall meet whenever any of the following occurs: (a) A pupil has received an initial formal assessment; (b) The pupil demonstrates a lack of anticipated progress; (c) The parent or teacher requests a meeting to develop, review, or revise the IEP; (d) At least annually, to review the pupil's progress, the IEP, including whether the annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions. (Ed. Code §56343.) Further, the IEP team shall review the pupil's IEP periodically to address matters that show any lack of expected progress toward the annual goals and in the general curriculum, when the district receives information about the pupil provided to, or by, the parents or guardians, to discuss the pupil's anticipated needs or to discuss any other relevant matter. (20 U.S.C. § 1414(d)(4)(A); Ed. Code §56341.1, subd. (d).)

14. A child must be assessed by a school district in all areas related to the suspected disability including, if appropriate, social-emotional status. (34 C.F.R. § 300.532(g); Ed. Code, §§ 56320, subd. (f).) A reassessment of a student shall occur if the local educational agency (LEA) determines that the educational or related services needs, including improved academic achievement and functional performance, warrant a reassessment, or if the parents or teacher request a reassessment. (Ed. Code §56381, subd. (a)(1).) A reassessment of a student shall occur not more frequently than once a year, unless the parents and LEA agree otherwise, and shall occur at least once every three years, unless the parents and LEA agree in writing that it is not necessary. (Ed. Code §56381, subd. (a)(2).)

15. A local educational agency (LEA), IEP team, or parent may initiate a referral for assessment of the social and emotional status of a pupil. Based upon the results of assessments, an IEP team may refer a pupil who has been determined to be an individual with exceptional needs who is suspected of needing mental health services to a community mental health service if the pupil meets all of the criteria in paragraphs (1) to (5) of Government Code section 7576, subdivision (b). (Ed. Code §56331; Cal. Code Regs. tit. 2, §60040.) The District need only have reasonable cause to believe that the student was in need of mental health services and was in need of special education in order to refer for assessment. (*Hoffman v. East Troy Community School District* (E.D. Wis. 1999) 38 F.Supp.2d 750, 763-764.)

16. A school district is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries. (34 C.F.R. § 300.220(a); Ed. Code §48200.) Students with disabilities are entitled to a FAPE irrespective of their placement in a juvenile hall. (Ed. Code §56150.) The responsibility for providing the FAPE to children placed in a juvenile hall is the responsibility of the local county board of education. (Ed. Code §48645.2.)

17. The County Board of Education shall provide for the administration and operation of juvenile court schools in conjunction with the chief probation officer, or designee. Minors shall be provided a quality educational program that includes instructional strategies designed to respond to the different learning styles and abilities of students. The course of study shall include, but not be limited to, the following: (A) English/Language Arts; (B) Social Sciences; (C) Physical Education; (D) Science; (E) Health; (F) Mathematics; (G) Fine Arts/Foreign Language; and, (H) Electives (including career education). Minors shall be interviewed after admittance and a written record prepared that documents a minor's educational history, including but not limited to: (A) school progress; (B) Home Language Survey; (C) special needs; and, (D) discipline problems. Not

later than three school days after admission to the facility the minor shall be enrolled in school; and the educational staff shall conduct an assessment to determine the minor's general academic functioning levels to enable placement in core curriculum courses. After admission to the facility, a preliminary education plan shall be developed for each minor within five school days. If a minor is detained, the education staff shall request the minor's transcript and IEP from his/her prior school. (Cal. Code Regs., tit. 15, §1370.)

18. Each LEA shall provide for the identification and assessment of an individual's exceptional needs. (Ed. Code §56302.) Identification procedures shall include systematic methods of utilizing referrals of pupils from teachers, parents, agencies, appropriate professional persons, and from other members of the public. (Id.) All referrals for special education and related services must initiate the assessment process and be documented. (Cal. Code Regs. tit. 5, §3021, subd. (a).)

DETERMINATION OF ISSUES

I. *The District denied Student a FAPE during the 2003-2004, 2004-2005, and 2005-2006 school years, by failing to assess her in all areas of suspected disability, specifically her social-emotional and mental health needs, and by failing to refer her to Sacramento County Mental Health for an assessment and services.*

1. As stated in factual findings 4 through 28, and applicable law sections 1 through 6, 14 and 15, the District knew that Student was having significant behavior issues, poor attendance and poor grades during the school years listed. Further, Student was significantly depressed which was affecting her educational program. The same issues that were apparent during the 2003-2004 school year, intensified during the 2004- 2005 school year when Student was hospitalized twice for mental health related issues. The District should have assessed Student's social-emotional and mental health needs during the 2003-2004, 2004-2005, and 2005-2006 school years.

2. As stated in factual findings 4 through 28, and applicable law sections 1 to 6, 14 and 15, the District had more than sufficient information that Student was having significant mental health issues, including suicide attempts and hospitalizations. The District had more than sufficient knowledge that Student presented with depression and a quiet affect that was directly impacting her educational program, but the District did not make a referral to SCMH for a mental health evaluation. The District also failed to make a mental health evaluation available even when specifically asked by Mother.

3. Because the District did not assess or otherwise address Student's mental health needs, Student's IEPs did not meet her unique educational needs and were not reasonably calculated to provide her educational benefit. Thus, the District denied Student a FAPE by failing to assess Student in all areas of suspected disability, particularly her social-emotional and mental health needs during the 2003-2004, 2004- 2005 and 2005-2006 school years.

4. Further, as stated in factual findings 4 through 28, and applicable law sections 1 to 6, 13 through 15, the District committed procedural violations of the IDEA by failing to assess Student's social-emotional needs and by failing to refer Student to SCMH for an evaluation for mental health services. The procedural violations were not harmless and seriously impeded Student's right to a FAPE and caused a deprivation of educational benefit. Furthermore, the procedural failures by the District significantly impeded Student's parent's right to meaningfully participate in the IEP process.

II. *The District denied Student a FAPE during the 2003-2004, 2004-2005, and 2005-2006 school years, by failing to include mental health services, including individual, group and family therapy and medical management, in Student's Individualized Education Programs (IEPs).*

5. Further, as stated in factual findings 29 through 35, and applicable law sections 1 through 6, 14 and 15, because the District failed to properly assess Student's

mental health needs, it could not properly determine if mental health services were required to be included in Student's IEPs to meet her unique needs. When her needs were properly assessed in May 2006, extensive mental health services, including counseling and medication management, were included in her IEP. Considering Student's significant mental health history of which the District was aware, the District should have assessed Student in order to determine the extent of her mental health needs and to make mental health services available to Student in her IEPs. It is reasonable to infer that those services would have been required during earlier school years. Thus, because those services were not available, the District failed to meet Student's unique needs and denied her a FAPE for the listed school years by failing to include mental health services in her IEPs.

6. As stated in factual findings 29 through 35, and applicable law sections 1 to 6, 13 through 15, the District committed procedural violations of the IDEA by failing to include mental health services in her IEPs. The procedural violations were not harmless and seriously impeded Student's right to a FAPE and caused a deprivation of educational benefit. Furthermore, the procedural failures by the District significantly impeded Student's parent's right to meaningfully participate in the IEP process.

7. As stated in factual findings 34 and 35, and applicable law sections 6 through 8, and 10 through 12, the District did not have an adequate placement ready for Student when she was released from Juvenile Hall. The District, in conjunction with SCOE, had not completed the assessments of Student and the next IEP meeting was not scheduled until May 2006. As stated in factual finding 35, because Student's last IEP from the District did not meet Student's unique needs and was not reasonably calculated to provide her educational benefit, Student's parents unilaterally placed her at Excelsior. Thus, Student is entitled to reimbursement for the costs of placement at Excelsior from April 3, 2006, to May 9, 2006.

III. *The District denied Student a FAPE during the 2003-2004, 2004-2005, and 2005-2006 school years, by failing to convene IEP meetings in a timely manner when Student failed to demonstrate anticipated progress when she was depressed, had suicide attempts, had failing grades, was hospitalized, had poor attendance, cut class, and had other conduct leading to suspensions from school.*

8. As stated in factual findings 36 through 47, and applicable law sections 6 and 10 through 13, the District was required to hold additional IEP meetings to address Student's lack of educational progress, including her poor attendance and poor grades. Further, the District should have held IEP meetings to address Student's behavior issues and deteriorating mental health condition. When Mother told the District that she was troubled by Student's lack of academic progress and provided information about Student's school related issues, the District should have held IEP meetings to discuss those issues.

9. Failing to hold additional IEP meetings was a procedural violation of the IDEA. The procedural violations were not harmless and seriously impeded Student's right to a FAPE and caused a deprivation of educational benefit. Furthermore, the procedural failures by the District significantly impeded Student's parent's right to meaningfully participate in the IEP process. Thus, the District denied Student a FAPE for the listed school years by failing to hold additional IEP meetings to discuss Student's educational needs.

IV. *The District did not deny Student a FAPE by failing to ensure that she received appropriate special education services while she was in Juvenile Hall from December 1, 2005, until April 3, 2006.*

10. As stated in factual findings 48 and 49, and applicable law sections 11, 12 and 16, once Student left the District, the District's obligation to provide Student a FAPE ended. The District was not required to ensure that Student received a FAPE while she was in Juvenile Hall.

V. *SCOE did not deny Student a FAPE from December 1, 2005, until May 9, 2006, by failing to assess Student in all areas of suspected disability, specifically her social-emotional and mental health needs and by failing to refer her to Sacramento County Mental Health for an assessment and services.*

11. As listed in factual findings 50 through 54, and applicable law sections 1 through 6, 14 and 15, SCOE did not have reason to believe that Student was a special education student when she entered Juvenile Hall and El Centro. Student did well in her classes, regularly attended school and otherwise gave no indication that she had any social-emotional issues. Further, Student provided no indication that she had any mental health issues and never availed herself of the mental health counselors available at El Centro. Thus, SCOE was not required to conduct any assessments of Student's social-emotional or mental health needs and was not required to make a mental health referral.

VI. *SCOE did not deny Student a FAPE from December 1, 2005, until May 9, 2006, by failing to convene IEP meetings in a timely matter when Student's conduct demonstrated depression; by failing to hold any IEP meetings, including an IEP meeting within 30-days of Student's placement within its jurisdiction; and by failing to obtain Student's academic records as required by law.*

12. As listed in factual findings 55 through 59, and applicable law sections 10 through 13, and 18, SCOE had no notice that Student was a special education student until March 2006. Thus, they were under no obligation to hold any IEP meetings. Regardless, Student did not demonstrate depression to any significant degree that warranted any intervention on the part of SCOE. The persuasive evidence was that Student exhibited the same depressed demeanor as others who had recently been incarcerated at Juvenile Hall.

13. As stated in factual findings 58, and applicable law sections 11 and 12, when SCOE learned that Student was in special education, SCOE immediately obtained Student's

last IEP from the District and ensured that she was receiving the services required by the IEP. SCOE developed an assessment plan and scheduled an IEP meeting.

14. As listed in factual findings 60 through 64, and applicable law sections 11, 12, and 16, SCOE made reasonable efforts to obtain Student's records from the District. The District did not respond to the records request. Further, because SCOE was unaware that Student was a special education student, SCOE had no obligation to hold any IEP meetings for Student.

15. As listed in factual finding 62, and applicable law section 5 and 17, SCOE should have interviewed Student to determine if she was a special education student. However, given the nature of the program at Juvenile Hall, including the one-to-one instruction provided by Mr. Chinn and the paraeducator, Student received the same level of service that was required by the IEP from the District. Thus, any procedural error by failing to interview Student about her prior placement was harmless.

VII. *SCOE did not deny Student a FAPE from December 1, 2005, until April 3, 2006, by failing to provide Student any regular or special education services.*

16. As stated in factual findings 65 and 67, and applicable law sections 16 and 17, Student received GE services within a couple days of her placement at Juvenile Hall. Further, upon learning that Student was a special education student, SCOE immediately provided the educational services required by her last District IEP until the date of her release. Student received general education for 71 days while she was in Juvenile Hall, and special education services for 11 days.

ORDER

1. Student's request for relief against SCOE is denied.
2. Student's request for reimbursement from the District for placement at Excelsior in the amount of \$7,916.76 and \$647.91 is granted. The District is ordered to pay those sums to Student's parents within 45 business days of this decision.

3. Student's requests for compensatory education and compensatory mental health services are denied.

PREVAILING PARTY

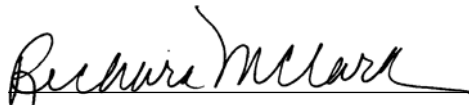
Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided.

1. Student prevailed on Issues one, two and three.
2. SCOE prevailed on Issues five, six and seven.
3. The District prevailed on Issue four.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code §56505, subd. (k).)

DATED: November 6, 2006



RICHARD M. CLARK

Administrative Law Judge

Special Education Division

Office of Administrative Hearings