

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF  
STUDENT,

Petitioner,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT  
and LOS ANGELES COUNTY DEPARTMENT  
OF MENTAL HEALTH,

Respondents.

OAH CASE NO. 2009040942

DECISION

Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH) heard this matter in Long Beach, California on October 26 through 29, 2009, and November 9, 2009.

Student (Student) was represented by advocate Donald Ashley. Student's Mother (Mother) and Mother's Partner were also present during the hearing.

Long Beach Unified School District (District) was represented by Adam Newman, Esq. Ms. Phyllis Arkus, Program Administrator attended the hearing on behalf of District.

Los Angeles County Department of Mental Health (DMH) was represented by Zoe Trachtenberg, Licensed Clinical Social Worker (L.C.S.W.), Program Manager, DMH, AB3632 Residential Placement Unit.

On April 27, 2009, Student filed a request for a due process hearing (complaint). The matter was first continued on June 15, 2009. The matter was continued again on August

31, 2009 and September 3, 2009. Sworn testimony and documentary evidence were received at the hearing.<sup>1</sup> The hearing was continued to November 20, 2009, to permit the filing of written closing arguments. The parties timely filed written closing arguments and the record was closed on November 20, 2009.

## ISSUE<sup>2</sup>

Did the November 4, 2008, Individualized Education Program (IEP) offer of placement at Hillsides, a residential treatment facility located in Pasadena, California, provide Student a free appropriate public education (FAPE)?

## PROPOSED REMEDY

Student requests an order requiring District and DMH to fund Student's placement at Chaddock, a non-public school and private residential treatment center located in

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<sup>1</sup> At hearing, Student raised procedural claims not alleged in the complaint. Student asserted, among other things, that Mother was not permitted to participate in the decision making process regarding Student's treatment and educational program at Hillsides and, further, that Mother was not provided with Student's progress reports prepared by Hillsides and submitted to DMH. Title 20 United States Code, section 1415, subsection (f)(3)(B), and Education Code section 56502, subsection (i), provide that a petitioner is not permitted to raise issues at hearing that the party did not raise in the due process petition, unless the other party consents. Neither District nor DMH consented to the inclusion of these procedural issues. Accordingly, this Decision is limited to the sole issue raised in the complaint.

<sup>2</sup> The ALJ has reframed the issue for purposes of clarity consistent with the due process complaint and with the evidence presented at hearing.

Quincy, Illinois.

## FACTUAL FINDINGS

### JURISDICTION

1. Student is 13 years old. She has resided at Hillsides Home for Children (Hillsides), a private residential treatment facility located in Pasadena, California since August 30, 2007. Student is currently in the seventh grade at Hillsides. Mother also resides within District's jurisdictional boundaries.

2. Student is qualified to receive special education and related services as a student with an Emotional Disturbance (ED) and a Specific Learning Disability (SLD) with deficits in auditory and visual memory. Student has also been clinically diagnosed with Bipolar Disorder and Post Traumatic Stress Disorder.

### FACTUAL BACKGROUND

3. Student was one of eight siblings. Student was subjected to physical abuse, abandonment, and neglect by her biological mother from birth. Student's mother had a history of illegal substance abuse. Student's father was a drug dealer. At age two, Student was removed from her birth mother's home and placed in six different foster homes where the cycle of abuse and neglect continued for approximately four years.

4. Student was initially assessed through Los Angeles Unified School District (LAUSD) in July 2000 and found eligible for special education services due to specific learning disability and speech and language impairment. Student transferred to District in 2000 and attended a special day class for the mildly mentally retarded at Barton Elementary School. Student transferred to Longfellow Elementary School as a Kindergarten retainee. She attended Longfellow until her placement at Hillsides.

5. Because of her unfortunate early childhood history of neglect, abuse and exposure to numerous traumatic events, Student was diagnosed by psychiatric

professionals over time beginning in April 2000 with a variety of mental disorders and developmental delays including pervasive developmental disorder not otherwise specified (NOS), attention deficit hyperactivity disorder of the hyperactive-impulsive type, and oppositional defiance disorder for which Student received counseling and therapy services.

6. Student came to live with Mother as a foster child on September 15, 2001, when she was five years of age. She was one of five siblings placed in Mother's home for adoption. Following her placement in Mother's home, Student was molested by her older brother, who was subsequently removed from Mother's home in 2002. Mother and her then partner adopted Student and three of her siblings on December 17, 2003. Visitation with Student's biological mother was discontinued after the adoption was formalized.

7. Mother reported to District that Student was exhibiting increasingly violent and aggressive behaviors toward her family members and siblings over time. These behaviors, occurring over several years, were described as hitting, throwing objects, breaking windows, threatening acts of violence, using a knife, and encounters with law enforcement in which Student had to be restrained. Mother further reported that Student's violent behaviors had resulted in Student's hospitalization on approximately four occasions at College Hospital between August 2004 and October 2006.

8. Fearing for Student's safety and that of the family, Mother requested a referral to DMH for an AB3632 assessment. Thereafter the District made the AB3632 referral to DMH.

9. In December 2006, Mother also presented District with a letter from Dr. Ellen Adair (Dr. Adair), Student's private therapist at Pacific Resources Psychological Group (Pacific Resources), informing District that Student had been diagnosed with oppositional defiance disorder, post traumatic stress disorder, dysthymic disorder, and reactive attachment disorder, disinhibited type (RAD)<sup>3</sup>. Dr. Adair concluded that Student was

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<sup>3</sup> Reactive attachment disorder (RAD) is described in clinical literature as a severe

severely emotionally disturbed. However, no comprehensive assessment or medical report containing a formal diagnosis by Pacific Resources was produced or presented at hearing and Student did not produce Dr. Adair to testify at hearing.

#### HILLSIDES PLACEMENT AND PROGRESS

10. DMH assessed Student on December 13, 2006, and in June 2007, DMH determined that, due to Student's history of physical aggression toward family members, threats of harm to family members and four psychiatric hospitalizations since 2004, Student met the criteria for mental health services pursuant to AB3632. The DMH assessment concluded that Student could not function in a lower level of care in the home or school setting due to the degree of Student's aggressive and self-injurious behaviors. Student required one-on-one assistance in a non-public school (NPS) setting and without such Student was at risk to herself and others and would likely be re-hospitalized. DMH further determined that Student's needs would most appropriately be met in a 24-hour highly supervised and intensive residential program.

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and relatively uncommon attachment disorder that can affect children. RAD is characterized by markedly disturbed and developmentally inappropriate ways of relating socially in most contexts. It can take the form of a persistent failure to initiate or respond to most social interactions in a developmentally appropriate way—known as the "inhibited" form—or can present itself as indiscriminate sociability, such as excessive familiarity with relative strangers—known as the "disinhibited form". RAD arises from a failure to form normal attachments to primary caregivers in early childhood. Such a failure could result from severe early experiences of neglect, abuse, abrupt separation from caregivers between the ages of six months and three years, frequent change of caregivers, or a lack of caregiver responsiveness to a child's communicative efforts. Not all, or even a majority of such experiences, result in the disorder.

11. DMH recommended Student for a residential treatment program at Hillsides in which Student could be successful in benefiting from her education. The recommended mental health services included individual therapy from 60 to 120 minutes per week; family therapy from 120 minutes to 240 minutes per month; group therapy up to 300 minutes per week; medication support as determined appropriate by an attending psychiatrist; and case management as needed.

12. Hillsides was established in 1901. Hillsides is a multi-service institution, providing group home placements for children placed by the Los Angeles County Department of Children and Family Services and DMH. Hillsides also houses the Hillsides Education Center, an on-site, certified NPS, and a residential treatment program for Children placed by DMH under AB3632.

13. Paul McIver (Mr. McIver) is Chief of DMH. He has more than 40 years of experience in the mental health field and has oversight over the provision and implementation of AB 3632 Mental Health services in Los Angeles County. He is also the lead contract manager for DMH and Hillsides. Mr. McIver testified at hearing as District's expert on Hillsides' qualifications for provision of residential treatment services. Mr. McIver explained that Hillsides is a certified Medi-Cal mental health services provider, whose licensed clinical staff is qualified to provide mental health services to children who are placed there. He further testified that, even following completion of a residential treatment program, mental health clients most always need ongoing mental health services upon release from residential treatment.

14. Zoe Trachtenberg (Ms. Trachtenberg) testified as District's expert witness on the AB3632 program. Ms. Trachtenburg is responsible for the daily operations of the DMH AB3632, residential placement unit. She is also responsible for the development of contracts with out-of-state residential treatment providers. She explained that, in accordance with AB3632 regulations, local programs are first considered. If no local

programs are available, appropriate referrals are made to out-of-state programs. In Student's case, DMH determined that a local residential treatment program was available and appropriate resulting in Student's placement at Hillside. Ms. Trachtenberg further testified that residential treatment facilities must be certified by the California Department of Education (CDE) to provide mental health services pursuant to the AB3632 program.

15. Mother consented to the recommendation for placement at Hillside. Student enrolled at Hillside on August 30, 2007. At the time of enrollment, Student was 11 years old and entering the fifth grade. On her arrival, Student was placed in a coed cottage with nine other children, ranging in age from six to 12 years old.

16. On September 13, 2007, DMH developed a Client Care Coordination Plan (CCCP) establishing Student's functional impairments and treatment goals. The CCCP identified the plan objectives, clinical interventions, and desired outcomes. The objectives focused on Student's participation in the areas of increasing verbal expression of feelings, increasing appropriate social interaction in social skills activities, increasing appropriate verbalization of feelings in skills building activities, increasing appropriate gestures in competitive game activities, and use of medication support to reduce aggressive and self-injurious behaviors. The primary goal of the CCCP expressed by Mother and Student was family reunification. Student and Mother consented to the CCCP on September 13, 2007.

17. District convened an annual IEP on October 25, 2007, to review Student's present levels of performance, progress on goals, and her progress at Hillside. DMH reported that Student had improved in the area of developing positive peer relationships and had exhibited a significant decrease in aggressive behavior. DMH also reported that Student continued to struggle with verbalizing feelings and appropriately expressing her emotions. The IEP team discussed Student's treatment plan, which included a daily behavioral modification program to encourage appropriate behavior, regular mental health services provided at Hillside, and daily monitoring of health and medication needs.

DMH continued to recommend residential placement and mental health services to include individual therapy at least 60 minutes up to 120 minutes per week, family therapy at least 120 minutes up to 240 minutes per month, group therapy up to 300 minutes per week, medication support monthly or as determined by the attending psychiatrist, and case management as needed. Mother discussed with the IEP team her belief that Student had RAD and presented a treatment plan for consideration by the IEP team. The IEP team concluded it would continue to follow the existing CCCP previously agreed upon by Mother. The IEP team agreed that Student was doing well and could go home for the Thanksgiving and Christmas Holidays.

18. In November 2007, Student was moved to a Hillside's "family home" cottage. She reportedly had little difficulty acclimating to her new living arrangement. Student was reported to be well behaved and helpful to cottage staff.

19. Student's home visit over Thanksgiving of 2007 was uneventful. However, near the end of her home visit at Christmas, Student reverted back to old behaviors of throwing fits, kicking walls and assaulting family members.

20. Despite the reports of Student's episodes of anger and aggression, the family visits continued. In January 2008, Student was visiting with her family at the beach. While there, Student threw a soccer ball at a boy, causing him injury. Student again was allowed to return home in the spring of 2008 for a family trip to Omaha, Nebraska. While on that trip, Student threw tantrums, lost control, and threatened to kill Mother. Student refused to talk to Mother about her behavior and generally refused to speak with her Mother after returning to Hillside's. Mother reported that Student missed the family trip to China for the 2008 summer Olympics because of her repeated violent behavior directed at the family.

21. The last family visit occurred in October 2008, when Mother asked Student to assist her with a children's seminar Mother was presenting. Mother stated that Student



had a tantrum in which she kicked at Mother. Mother hit Student to stop the kicking. Mother and her partner contacted Hillsides and requested assistance to deliver Student back to the facility. The incident also resulted in an investigation by DCFS of possible child abuse. Mother and her partner requested that Hillsides retain Student and not allow family visits for the time being. Mother and Student did not speak for several months and Student has not visited her family at home since October 2008.

22. Some time during the third quarter of 2008, Student moved from the family cottage to the girls satellite home, an off-campus six-bed group home located in a residential neighborhood near the Hillsides main campus. This was Student's third and final move since entering Hillsides. Student was one of six female residents ranging in age from 12 to 18. Student was the youngest resident at age 12. The residents of the satellite home were considered to be higher functioning children. The program at the satellite home focused on independent living skills and emancipation training. The satellite home also offered a family environment and was considered to be the intermediary step between residential placement and family reunification.

23. Pursuant to the AB3632 program, Hillsides issued quarterly progress reports to DMH concerning Student. The progress reports were issued on November 30, 2007, February 9, 2008, May 29, 2008, and August 30, 2008. The reports showed that Student continued to make slow and steady progress in her treatment program.

24. Student's quarterly report cards dated November 14, 2007, February 1, 2008, April 15, 2008, and June 15, 2008, established that Student was receiving grades of A's, B's and a few C's, which tended to show that Student consistently performed well in her academic program.

#### HILLSIDES TREATMENT PROGRAM

25. Dr. Jean Williams (Dr. Williams) has been the Director of Treatment Services at Hillsides for the past 10 years. She is a licensed clinical social worker with 40 years of

experience. She also has a Bachelor's degree in Psychology and a Master's degree in Social Work. She also obtained her Ph.D. in Psychology. She supervises the therapists and directs Hillside's therapeutic program.

26. Dr. Williams credibly testified that Hillside is a level 12 facility, meaning that the target population entering the facility must have a diagnosis of depression, bi-polar disorder, post traumatic stress disorder, or a psychotic disorder. Dr. Williams had some familiarity with RAD. She explained that most, if not all, of the children from foster care or adopted families in residential treatment at Hillside exhibited some form of attachment issues because of their early childhood histories of abandonment, abuse and neglect. Dr. Williams further explained that ED is a form of attachment disorder. According to Dr. Williams, Hillside is qualified to treat several types of ED in adolescents referred to the program. To her knowledge, Student met the criteria for admission to Hillside as a child with ED and the additional diagnosis of bi-polar disorder and post traumatic stress disorder (PTSD). Dr. Williams was familiar with Student's treatment history and explained that Student presented with attachment issues that manifested in her difficulty expressing herself and in the articulation of her feelings. Dr. Williams was also aware that Student had not visited home since October 2008 at Mother's request due to Student's aggression toward her and other family members. Dr. Williams testified that there were issues concerning the family that remained to be resolved and that Hillside continued to work with Student and her family in the monthly family therapy sessions to address the problems occurring in the home.

27. Dr. Williams did not have direct contact with Student but regularly observed her on campus. Dr. Williams was kept apprised of Student's program and progress through weekly treatment team meetings, which included Student's psychiatrist, therapist, and other Hillside staff, and the quarterly progress reports provided by the team to DMH. Dr. Williams explained that based upon her on-campus observations of Student, the treatment

program had met Student's social-emotional needs because she had progressed from being non-expressive and withdrawn to being more expressive, outgoing, and socially interactive with adults and peers. Dr. Williams believed that the treatment program had enabled Student to do the work required to achieve some educational benefit and to enable family reunification. Dr. Williams also believed that the treatment program met Student's social-emotional needs and that Hillside was an appropriate placement.

28. Tyler Holcomb (Ms. Holcomb) is a licensed Marriage and Family Therapist (MFT). She has a Bachelor's degree in Communications and Psychology and a Master's degree in Counseling Psychology. She is employed as a therapist at Hillside. She has worked with adolescents at Hillside with ED who have attachment issues. She became Student's therapist in July 2008. At that time, Student manifested some behaviors indicative of adolescents with attachment issues. Those behaviors included: 1) difficulty with trusting others; 2) use of negative behaviors to control her situation; 3) oppositional defiance; and 4) mood instability. Ms. Holcomb also observed that Student had a tendency to manipulate her peers, had difficulty expressing her needs and feelings, and would shut down when she was upset. Ms. Holcomb was also aware of Student's history of violence and aggression toward her family. Ms. Holcomb began providing group therapy to Student at the satellite home. Ms. Holcomb testified that DMH presented a six-month Client Care Coordination Plan (CCCP) which was approved by Student on July 18, 2008, by Mother on July 28, 2008, and by Christine Gonzalez, a therapist at Hillside, on July 14, 2008. The CCCP continued the following objectives: 1) to increase verbal expression of feelings as evidenced by participation in group discussion and interaction with therapist and peers from two to three times per session; 2) to increase use of staff to process feelings in a social skills activity from zero to four times daily; 3) to increase the frequency of following rules in a skills building activity from zero to four times daily; 4) to increase frequency of following rules in a competitive games activity from zero to four times daily,

and 5) medication support goals to reduce symptoms of mood instability and aggression with adults.

29. Consistent with the CCCP, Ms. Holcomb provided Student one hour of individual therapy per week and as needed, one and one-half hours of group therapy per week, and one hour of family therapy per week. Since beginning therapy, Ms. Holcomb observed that Student made progress in her relations with peers. She had become more engaged in the process, improved in her self-advocacy skills, her ability to express her feelings, had the ability to respond in an appropriate manner to feedback and did not get angry and refuse to talk. Student responds to situations appropriately and is well liked by staff and her peers. Student takes initiative in supporting her peers and needs less prompting and redirection from staff. Student also participates fully in recreational activities on campus and is otherwise compliant. Ms. Holcomb provides individual and family therapy in her office on the main campus. Regarding family therapy, Ms. Holcomb explained the primary treatment goal in family therapy focused on strengthening the family relationships to facilitate family reunification. Ms. Holcomb described the interactions with Mother in family therapy as that of a "good working relationship", "consistent", and "good to work with."

30. Dr. Elliot Moon (Dr. Moon) has been Student's treating/consulting psychiatrist since her enrollment at Hillside. Dr. Moon has an M.D. degree and had been a treating psychiatrist with a specialty in treating adolescent disorders. Dr. Moon confirmed Student's diagnosis of bi-polar disorder NOS with possible post traumatic stress disorder. He was familiar with Student's treatment history. Dr. Moon testified that RAD is a severe and rare form of mental disorder. He testified that Student did not present with the symptoms characteristic of a child with RAD and that Student's mood instability was more characteristic of a patient with a bi-polar disorder. Dr. Moon had sessions with Student once a month and monitored Student's treatment in weekly treatment team meetings.

Student had made some progress in her treatment program. Student's mood was generally stable and her interactions with peers had improved. Dr. Moon testified that the Hillsides program had provided the support and structure Student needed to meet her treatment goals. The treatment program was successful because Student had exhibited better mood control and Student had not been hospitalized since her placement at Hillsides. In addition, Dr. Moon explained that treatment was an ongoing process and that there was no cure or fix for mental disorders. Dr. Moon opined that, based upon Student's progress in her treatment program, continued placement at Hillsides was appropriate.

31. Ana Garcia (Ms. Garcia) testified that, as a DMH case manager, she manages cases of clients placed at Hillsides. She monitors client progress, visits clients at the residential treatment facility, consults with therapists, receives progress reports and attends IEPs. Ms. Garcia became Student's case manager in August 2007. She met with Student monthly starting July 2008. Based upon her review of Hillsides' quarterly progress reports, her consultation with Student's therapist, and monthly meetings with Student, she concluded that Student was making slow, steady progress in her treatment program. Ms. Garcia further testified that the residential treatment program does not "fix" or cure clients. Rather, clients require ongoing mental health services upon completing the program. Ms. Garcia testified to her belief that Hillsides is an appropriate placement for Student.

#### THE HILLSIDES ACADEMIC PROGRAM

32. Guadalupe Gonzalez (Ms. Gonzalez) is the Academic Dean at Hillsides. She has a Bachelor's degree in English and a Master's degree in Special Education. She has been employed as Academic Dean for one and one-half years. Prior to her current position, Ms. Gonzalez was a teacher at Hillsides and taught all subjects for the fourth to the eighth grades. Her duties as Academic Dean include developing and monitoring the curriculum, supervising the teacher staff, and preparing and maintaining pupil IEPs. Ms. Gonzalez testified that Hillsides' curriculum is California State Standards-based and is

developed to meet each child's unique needs. Each child's progress is measured based upon an overall evaluation of teaching materials, classroom performance, student's behaviors, and test results. Ms. Gonzalez testified that the STAR test is one of a number of standardized tests used to measure a student's overall academic proficiency. Various factors tend to influence the results, such as a child's mood or state of mind during the administration of the test. Ms. Gonzalez emphasized that test results are not the sole measure of a student's progress and no one test can be used as an indicator of academic proficiency. Ms. Gonzalez also emphasized that Hillsides did not inflate Student's grades.

33. Ms. Gonzalez was familiar with Student and regularly interacted with her at Hillsides. She taught Student during her first year at Hillsides. During the fall of 2008, Ms. Gonzalez observed Student in the classroom and on the campus. Student was cooperative and helpful to others in the classroom and completed her class work. Student also seemed to get along with peers and staff. Ms. Gonzalez also observed Student in the residential setting and on school outings and found her behavior to be helpful, cooperative, and appropriate.

34. Ms. Gonzalez described Student's classroom as self-contained, which at the time of the November 4, 2008, IEP had 12 children and two adult aides. The typical school day was 8:00 a.m. to 2:30 p.m. Student had a recreational period at the end of regular classes. Student was transported back to her residence at the end of the school day. Student's program also included team sports. Student attended therapy sessions throughout the week. Student told Ms. Gonzalez that she liked living at Hillsides but would like to be living with her family.

#### THE NOVEMBER 4, 2008 IEP

35. District convened an annual IEP team meeting on November 4, 2008. Mother attended the meeting. District team members included Guadalupe Gonzalez, Hillsides Academic Dean; Brandon Davis, Special Education teacher at Hillsides; Shirley Sanders,

District Residential Placement Representative; Kerry Weber, Hillside Education Center Assistant Director; Tyler Holcomb, Student's therapist at Hillside; and Ana Garcia (Ms. Garcia), L.C.S.W. who was the DMH Case Manager, AB3632 Residential Placement Unit, and who appeared by telephone.

36. Ms. Holcomb attended the November 4, 2008, IEP and believed that the level of therapy recommended by DMH was appropriate to meet Student's needs. Ms. Holcomb testified that the IEP offer of continued placement at Hillside was therapeutically appropriate for Student because it provided the structure and support Student needed to benefit from her education. As further evidence of Student's progress, Ms. Holcomb explained that she had established a relationship of trust with Student which is often difficult for children with attachment issues. Ms. Holcomb opined that Student had made slow and steady progress and that, overall, Student had substantially benefited from her treatment program. Further progress was indicated in that Student expressed to Ms. Holcomb the desire to be near her family. Ms. Holcomb stated that moving Student to a different placement would delay the ultimate goal of family reunification.

37. Ms. Garcia attended the November 4, 2008, IEP team. She recommended that Student continue placement at Hillside. She believed that the DMH treatment/mental health service recommendations included in the IEP were appropriate. According to Ms. Garcia, when she first met Student in August 2007, Student was guarded and unable to openly discuss her feelings. However, in October 2008, Ms. Garcia observed that Student had improved in her ability to establish trust relationships and in her ability to express her feelings. Student's therapist reported that Student was appropriate in her interactions with peers and staff.

38. Ms. Gonzalez attended the November 4, 2008, IEP team meeting. She believes the IEP accurately reflected Student's progress toward her academic and social-emotional goals. She testified that the team discussed various options for placement but

the District IEP team members and DMH concluded that continued placement at Hillsides was appropriate. Ms. Gonzalez further testified that, based upon Student's academic progress, the offered placement conferred an educational benefit and was appropriate.

39. Shirley Sanders (Ms. Sanders) was District's NPS Coordinator for the past two years. Prior to her current position, she was employed for 16 years as a District school psychologist. She attended the November 4, 2008 IEP as the District Administrator and member of the IEP team. Ms. Sanders was very familiar with Student's unique needs in academics as well as her social-emotional needs. She believed that the offer of continued placement at Hillsides was calculated to meet Student's unique needs, and provided Student educational benefit.

40. The IEP team reviewed Student's present levels of academic and functional performance in writing, reading and mathematics, and social-emotional development. Student had met her goals in all academic areas. In addition, Student met her social-emotional goals. The IEP noted that Student continued to do well in class, liked to assist students and staff alike, and was currently on one of the highest levels in the class behavioral program. The IEP also noted that Student still required improvement in her social skills regarding her interactions with adults. The IEP team established new goals. The IEP also included accommodations in Student's areas of need in writing and mathematics.

41. The IEP team also reviewed DMH's report. The report noted that, since her initial placement at Hillsides, Student made progress in verbalizing her feelings and needs and Student was actively involved in family therapy. The report further noted that Student continued to struggle in the area of setting limits with older peers, and Student needed to continue working on improving communication skills with her family. DMH recommended continuation of residential placement at Hillsides pursuant to AB3632. DMH further recommended the continuation of the mental health services provided to Student.

42. The IEP team adopted the DMH recommendations. The IEP offer included



continued placement at Hillside for the 2008-2009 school year to provide for Student's academic and mental health needs.

43. Mother disagreed with the IEP team reports of Student's progress at Hillside. Mother did not believe Student was progressing in her social-emotional treatment goals because Student's behaviors at home during family visits had not improved since her initial placement at Hillside, and the treatment program had failed because Student had not met the primary goal of family reunification. Mother disagreed with the recommendation to continue Student's placement at Hillside.

44. Mother believed Student had RAD and that the Hillside's therapeutic program was not designed to treat Students with RAD. Mother requested that the IEP team agree to place Student at Chaddock, a residential treatment facility located in Quincy, Illinois. Mother preferred Chaddock because, in her opinion, Chaddock was the only residential treatment facility in the United States with a program specifically designed to treat children with RAD. Mother refused to consent to the Hillside placement offer.

45. At hearing, Mother testified that the IEP team reports of Student's academic progress in the November 4, 2008, IEP, were not accurate because she believed that the grade reports were inflated and thus did not accurately reflect Student's academic performance. She believed Student had not progressed academically but had regressed based upon the Standardized Testing and Reporting (STAR) scores, which showed that in spring 2007, Student's performance level in English-Language Arts was basic at a score of 313, and basic at a score of 303 in spring 2008. Student's scores in Mathematics were consistently below basic at 296 in the spring 2007 and 276 in the spring 2008 test results.<sup>4</sup>

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<sup>4</sup> Mother also produced the STAR results for spring 2009; however, these results are not relevant to the issue to be decided in this case as spring 2009 is not within the relevant time frame.

The STAR test results cannot be interpreted to support Mother's belief.

46. The STAR is an annual test administered to children grades two through eleven to measure a child's progress in meeting California State Standards according to grade level. The STAR test instructions provide a caveat that the test is one of several tools used to measure a child's educational progress and that it should be viewed with other available indicators of a child's achievement such as classroom tests, assignments, and grades.

47. Jimmy Fernandez (Mr. Fernandez) is a Special Education teacher at Hillsides. He has been employed as a lead teacher for the past two years and he co-taught Student in the 2007-2008 school year as well as the fall semester of the 2008-2009 school year. Mr. Fernandez testified that Student's scores on the spring 2008 STAR when read alone were not an indication of Student's proficiency in English and Mathematics. Student had a processing deficit, which had to be taken into account. Mr. Fernandez explained that SLD students were one to two grade levels behind other typically performing students. Moreover, Mr. Fernandez explained that the STAR results may not be used in a vacuum to determine Student's academic performance in Language Arts and Mathematics as illustrated by her grades in these subjects.

#### STUDENT'S PREFERRED PLACEMENT

48. Mother's partner testified that Student was a beautiful, gifted, and talented child who deserved a chance to live a full and happy life with her family. She further stated that Student had not improved in her relationships with family and had not been in the family home since October 2008, but that the family wanted her to return home.

49. Mother testified that, while she had 29 years experience in the field of education, she was not qualified to diagnose Student's condition. However, she was informed by Dr. Adair, Student's therapist, that Student had RAD. Mother stated that she was told by mental health professionals at Hillsides, when Student enrolled there, that

Student would be in residential treatment for no more than one year to 18 months. However, she believed that Hillsides was no longer an appropriate placement for Student because Student was not making progress. She testified that, unless Student received the appropriate treatment, the family was still at risk of harm by Student. Mother stated that she preferred Chaddock and its programs and believed Student to have a greater chance of reuniting with the family after entering Chaddock's program. She testified further that she understood that Chaddock was not certified by the CDE to provide residential treatment under the AB3632 program.

50. Mary Lynne White (Ms.White) was offered by Student as her expert regarding her unique social-emotional needs and the appropriateness of Student's placement. Ms. White has a Master of Science degree and a Bachelor of Science degree in Childhood Development and Family and Child Development, respectively. Ms White was employed from May 2006 to October 2007 by Parents as a live-in nanny and parenting specialist. Ms. White taught parenting skills for dealing with children with attachment issues. Ms. White testified to her training and experience in working with children with RAD.

51. Ms. White testified that Hillsides has addressed Student's educational needs but not her social-emotional treatment needs. She opined that the IEP offer did not meet Student's unique needs because Hillsides did not have therapists trained to address Student's attachment issues. Finally, Ms. White opined that, even though she had not observed the programs at either Hillsides or at Chaddock, Chaddock was a more appropriate placement to meet Student's unique social-emotional needs. Ms. White described Chaddock's therapeutic program and testified that the program was reportedly successful in the treatment of children with RAD. She testified that, although Chaddock's program was different than conventional therapy programs, she could not rule out conventional therapeutic methods in the treatment of children with RAD. Though Ms.

White had extensive non-clinical experience in addressing the needs of children with RAD, very little weight can be given to her testimony as an expert on the matters for which she was called to testify. She was neither a mental health professional, a licensed psychotherapist, a psychiatrist, nor did she have a medical license. She was not fully apprised of Student's early childhood history and received her information through Mother's report. She also testified that, though she has worked with children exhibiting symptoms of RAD and has had training through seminars, she was not qualified to render a clinical diagnosis of RAD. In addition, Ms. White did not attend the November 4, 2008 IEP and had no specific knowledge of the IEP offer. Based upon foregoing factors, Ms. White's testimony was not persuasive as to whether the IEP offer failed to meet Student's unique needs or whether the placement offer was appropriate.

52. Annette Finlay (Ms. Finlay), Director of Treatment Services at Chaddock testified that Chaddock is a residential treatment facility located in Quincy, Illinois. Chaddock is a Golden Cross Health and Welfare Ministry of the Illinois Great Rivers Conference of the United Methodist Church. Ms. Finlay explained that Chaddock provides mental health treatment and services to adolescents diagnosed with ED. Chaddock also specializes in and provides a unique therapeutic treatment program to adolescents with reactive attachment disorder (RAD). Chaddock has medical staff, educators, and masters level therapists. Ms. Finlay testified that the average stay at the facility is 18 months to two years but that some children remain in treatment as long as three years. Ms. Finlay also testified that Chaddock "does not fix children or make them all better" rather the objective in treatment is to reduce the intensity of the child's symptoms. Ms. Finlay was aware that Chaddock's application for certification in California was rejected by the CDE in February 2006 and that no new application was pending. Ms. Finlay was not familiar with the programs at Hillsides but she believed that Chaddock is a more appropriate placement for Student because of her belief that Student is a child with RAD.

53. It is undisputed that Chaddock is not certified by the California Department of Education (CDE) to provide special education and related services including mental health services pursuant to AB3632.

## LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of persuasion on the sole issue in this case. (*Schaffer vs. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Student contends that the November 4, 2008, IEP offer of continued placement at Hillsides did not provide Student a FAPE. In her complaint, Student disputes only the appropriateness of the proposed placement. Student makes two main contentions. Student asserts that the Hillsides treatment program was ineffective because Student requires a specialized program for children with RAD. Student further asserts that the placement is not appropriate because Student was not making progress in her treatment goal of family reunification. Student also contends that she has not made academic progress as evidenced by the STAR test scores for 2007 and 2008, and that the program at Hillsides has not provided Student an educational benefit. Student asserts that a more appropriate placement is available at Chaddock which specializes in the treatment of children with RAD

3. District contends that the November 4, 2008, IEP offer of placement at Hillsides provided Student a FAPE. The District and DMH contend that the offer of placement at Hillsides was designed to meet Student's unique needs, comported with the IEP was reasonably calculated to provide Student with some educational benefit. District and DMH further contend that Student has progressed in both her academic program and treatment programs since the initial placement at Hillsides. Moreover, respondents contend that even if the ALJ found Student was not provided a FAPE, DMH is prohibited from placing Student at Parents' preferred placement, Chaddock, because it is not a

program certified by the CDE to provide residential treatment mental health services pursuant to AB3632, and that Student is not entitled to the requested relief<sup>5</sup>.

4. A child with a disability has the right to a FAPE. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 56000.) A FAPE is defined as special education and related services that are provided at public expense and under public supervision, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. §1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability that are needed to assist the child to benefit from instruction. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) Special education related services include developmental, corrective, and supportive services, such as mental health counseling services, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

5. Under *Rowley* and State and federal statutes, the standard for determining whether a district's provision of services provided a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and (4) the program offered must be designed to provide the student

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<sup>5</sup> District in its closing brief argues that, based upon the evidence received at hearing, the focus of the trial was prospectively from November 4, 2008, through the last day of trial. District is incorrect. The only issue to be decided concerns the provision of FAPE in the November 4, 2008, IEP. Under the "snap shot rule", FAPE is determined by looking at what was reasonable at the time, not in hindsight. Accordingly, the only relevant evidence considered in deciding this matter is that evidence in existence at the time of the IEP offer.

with the foregoing in the least restrictive environment. (*Walczak v. Florida Union Free School District* (2nd Cir. 1998) 142 F.3d 119, 130.)

6. To determine whether the District offered Petitioner a FAPE, the analysis must focus on the adequacy of the District's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley*, at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's potential. (*Rowley, supra*, 458 U.S. at pp. 198-200.) Rather, the *Rowley* Court held that school districts must provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the student. (*Id.*, at p. 200.) Hence, if the school district's program met the substantive *Rowley* factors, then that district provided a FAPE, even if petitioner's parents preferred another program, and even if his parents' preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p. 1314.)

7. A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing J.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.) A school district must offer a program that is reasonably calculated to provide more than a trivial or minimal level of progress. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 890, citing *Hall v. Vance County Bd. of Educ.* (4th Cir. 1985) 774 F.2d 629, 636.) A child's progress must be evaluated in light of the child's disabilities. (*Bd. of Educ. v. Rowley, supra*, 458 U.S. at p. 202; *Mrs. B. v. Milford Bd. of Educ.* (2d Cir. 1996) 103 F.3d 1114, 1121.)

8. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992; *Adams v. Oregon, supra*, 195 F.3d at p. 1149, citing *Fuhrmann v. East Hannover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Roland M. v. Concord Sch. Comm., supra*, 910 F.2d at p. 992.)

9. In pertinent part, California Code of Regulations, title 2, section 60100, subdivision (h) provides:

Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated, non-medical, non-detention school certified by the California Department of Education.

10. An ALJ may not render a decision which results in the placement of a student in a non-public, nonsectarian school if the school has not been certified by the California Department of Education under Education Code section 56366.1. (Ed. Code, § 56505.2, subd. (a).)

11. Student's contention that the November 4, 2008, IEP offer failed to meet



Student's unique treatment needs as a child with RAD is not supported by the evidence. Student did not produce a qualified witness or relevant documentary evidence to establish that Student had RAD or that Hillside was incapable of treating a child with RAD or other attachment issues. District witnesses Dr. Williams, Ms. Holcomb, and Ms. Garcia all credibly testified that virtually all of the children at Hillside were ED and all who had been in foster placement or had adoptive histories had attachment issues, including Student. The attachment issues were addressed in Student's treatment program in the IEP. In addition, Dr. Moon testified that RAD is an extreme and uncommon disorder. In his observations of Student and based upon his experience in treating psychiatric disorders in adolescents, he did not believe that the attachment issues with which she presented rose to the level of RAD. He determined for a number of reasons that Student's behaviors were more characteristic of bi-polar disorder with the possibility of post traumatic stress disorder (PTSD). The evidence established that the therapists at Hillside recognized Student's attachment issues and incorporated the necessary therapies in Student's program to address them. The testimony of Dr. Williams, Ms. Holcomb, and Ms. Garcia establishes that the offered placement at Hillside met Student's unique needs.

12. Student's contention that the placement was not appropriate because Student failed to make progress and failed to benefit from her program is equally unsupported in the evidence. Mother's testimony that Student had not progressed because family reunification had not yet taken place, and that the family remained at risk of harm from Student's behaviors is unsupported in the record and is unpersuasive. The evidence established that Student substantially improved in the development of her social-emotional skills. The testimony of District witnesses Dr. Williams, Ms. Holcomb, Ms. Gonzalez, and Ms. Garcia demonstrates that Student blossomed from a withdrawn, defiant individual to being expressive, confident, and engaging and a strong self-advocate. More significantly, Student had not been hospitalized since her placement at Hillside. In

addition, Student was in the last phase of her treatment program and was being prepared in the girls satellite home for family reunification. Dr. Williams and Dr. Moon testified that there were issues within the family home that remained to be resolved. They also testified that with continued family therapy the goal of family reunification will be achieved. Moreover, Paul McIver testified that there was no expectation that Student would be cured of mental illness and that ongoing treatment was and would be needed. This view was also supported by Annette Finlay, who testified that the goal at Chaddock was to help ameliorate the problem but not to cure or “fix” the child’s mental health issues.

13. With respect to Student’s academic progress, the evidence established that Hillside has provided an appropriate environment in which Student has been allowed to thrive. Mr. McIver testified that Hillside is a certified Medi-Cal mental health services provider, whose licensed clinical staff is qualified to provide mental health services to children placed at Hillside. The same holds true for Hillside’s academic program. Contrary to Mother’s beliefs, the evidence also established that, overall, Student performed well in her academic program and received consistently good grades.<sup>6</sup> The evidence showed that Hillside provided the structure and stability needed by Student to access her education. The credible testimony of Mr. Fernandez and Ms. Gonzalez that STAR test results are not the sole indicators of academic performance is supported by Student’s overall academic improvement and progress at Hillside. The evidence supports a finding that Student’s placement at Hillside has provided Student with a small structured classroom setting

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<sup>6</sup> At trial, Student introduced exhibit 33, a Linda Mood-Bell Assessment Summary dated 12/9/2005, which was too remote in time and was not presented to the IEP team in connection with the November 4, 2008, IEP and exhibit 20, a student work sample dated 4/20/09, which post dated the IEP. These exhibits were not considered by the ALJ in the factual findings, based upon the “snap shot rule”.

which meets Student's academic needs. The evidence supports a finding that Student was making academic progress at the time of the IEP, and that the IEP offer of continued placement at Hillsides was reasonably calculated to provide some educational benefit to Student.

14. Finally, it is also apparent that Student's family loves her and wants her to return home, and they believe that a change in placement is necessary to accomplish that end. Accordingly, Mother contends that placement at Chaddock is more appropriate because its treatment programs for children with RAD meets Students unique needs. However, the appropriateness of District's placement offer is not determined by Parents' preferred program. The focus is on the adequacy of the proposed program. Here, because the offered placement constituted a FAPE, the evidence concerning Chaddock is not relevant. Even if Hillsides were not an appropriate placement, Student could not be placed at Chaddock with public funding because it is not certified by the CDE to provide AB3632 services and Student did not present evidence of or a proposal for an alternative placement.

15. Based upon the evidence, the IEP provided Student with an appropriate placement at Hillsides that was designed to meet Student's unique needs and that was reasonably calculated to provide Student with some educational benefit. Therefore, the November 4, 2008, IEP placement offer provided Student a FAPE.

16. Student has failed to meet the burden of proof that the November 4, 2008, IEP denied a FAPE. (Factual Findings 4 through 54; and Legal Conclusions 1 through 10.)

## ORDER

Student's claim and request for relief are denied.

## PREVAILING PARTY

Education Code section 56507, subdivision (d), requires this decision to indicate the

extent to which each party prevailed on each issue heard and decided. District and DMH prevailed on the sole issue.

## 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 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: December 8, 2009

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STELLA L. OWENS-MURRELL

Administrative Law Judge

Office of Administrative Hearings