BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT AND PLACER COUNTY CHILDREN'S SYSTEM OF CARE.	OAH CASE NO. 2011061341

DECISION

Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings (OAH), State of California, heard this matter on September 12 through 15, and 20, in Roseville, California.

F. Richard Ruderman, Attorney at Law, of Ruderman & Knox, LLP, represented Student and her parent, Mother. Mother was present during most of the hearing. Grandmother was present for some of the hearing. Student did not attend the hearing.

Heather M. Edwards, Attorney at Law, of Girard Edwards & Hance, represented the Roseville Joint Union High School District (District). District's Director of Special Education Craig Garabedian was present throughout the hearing.

Brett D. Holt, Attorney at Law, of Placer County Counsel's Office, appeared for Placer County Children's System of Care (CSOC). CSOC's Assistant Director Twylla Abrahamson was present for most of the hearing.

Student filed her request for a due process hearing (complaint) on June 29, 2011. On July 26, 2011, OAH granted a continuance. At the hearing, oral, and documentary evidence were received. At the request of the parties, the record remained open until

October 3, 2011, for submission of written closing arguments. On October 3, 2011, the parties filed closing briefs, the record was closed, and the matter was submitted for decision.

ISSUES[1]

Issue 1.[2] During the 2010-2011 school year, did District and CSOC procedurally deny Student a free appropriate public education (FAPE) by failing to make clear written offers of placement and services from August 31, 2010, through March 1, 2011?

Issue 2.[3] During Student's SY 2010-2011 school year in 11th grade, did District deny Student a FAPE by:

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[1] The issues have been reworded and reorganized for clarity and consistency based on the Order Following Prehearing Conference (PHC Order) dated September 2, 2011, discussions during the hearing, and to conform to the evidence and the closing arguments.

[2] Student's claims of predetermination of placement were dismissed in the PHC Order.

[3] Student's complaint alleged that District "*failed to provide*" the services complained of, except that she claimed District "*failed to offer*" *ESY.* In great part, Student's complaint described facts to show that District's IEP *offers* for the 2010-2011 school year were not appropriate, and merely alluded to lack of receipt of a few services. During the hearing, Student produced evidence that District failed to provide IEP components that were not specified in her complaint. However, District's evidence addressed Student's claims about the provision as well as the offers of IEP services. Accordingly, the matter has been reframed as two separate issues (2 and 3).

(a) Failing to offer appropriate educational placements for:

(i) Woodcreek High School (Woodcreek);

(ii) Challenge High School (Challenge);

(iii) Home Hospital Instruction (HHI); and

(iv) Extended School Year (ESY); and

(b) Failing to offer appropriate related mental health services?

Issue 3: During the 2010-2011 school year, did District deny Student a FAPE by failing to provide the following services required by her individualized education programs (IEPs):

(a) Wrap Around (Wrap) mental health and family support services while Student was at Challenge;

(b) Individual mental health therapy to be delivered at school locations;

(c) Sufficient frequency of individual mental health therapy sessions at Woodcreek and Challenge;

(d) Sufficient frequency of individual mental health therapy and Wrap services for the period from January 21, through February 28, 2011; and

(e) Sufficient HHI services for the period from January 21, through February 28, 2011?

Issue 4: During the 2010-2011 school year, did CSOC deny Student a FAPE by:

(a) Failing to offer appropriate mental health services;[4]

(b) Failing to provide appropriate mental health services; and

(c) Failing to conduct an appropriate assessment for a residential treatment placement?

[4] As to Issues 4(a) and 4(b), the reasoning similar to that in Footnote 3 above applies.

REQUESTED REMEDIES

Student requests an order declaring that District and CSOC failed to offer and provide Student with a FAPE, and ordering them to fund her placement at a residential treatment center, or in a nonpublic school (NPS). Student asks for reimbursement of transportation costs associated with Parent's unilateral placement of Student at Summitview Treatment Center (Summitview) in March 2011, and family therapy visits. Student does not request reimbursement for the tuition and residency costs of the placement at Summitview itself. In addition, Student requests compensatory education in the form of individualized mental health counseling and academic instruction, and an order that CSOC fund an independent psychological assessment.

CONTENTIONS OF THE PARTIES

This case involves six IEP offers during Student's 2010-2011 school year in 11th grade. Student asserts that in the fall of 2010, she became emotionally overwhelmed, flunked most of her classes, and "shut down." Student asserts that District and CSOC materially failed to implement components of her IEPs in the fall of 2010, and that District and CSOC should have offered educational placement in a residential treatment center where Student could have received intensive mental health therapy and interventions.

District contends that, at all times during the 2010-2011 school year, it responded promptly and conducted multiple IEP meetings to address Student's needs and offered appropriate assessments, changes in placement, and mental health services. District argues that Student did not require a residential treatment placement in order to obtain a FAPE.

CSOC contends that it did not have any independent obligation to provide to Student with a FAPE and should therefore be dismissed as a party or prevail on that

basis. CSOC argues that its prior statutory obligations as a public mental health agency to provide educationally related mental health services were suspended by action of the Governor. CSOC asserts that, in this case, it should be treated no differently than a private vendor of related services provided under contract to the District. As set forth in Legal Conclusions 5 through 23, CSOC is a proper party to this action.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student was born in January 1994, was 17 years old by the time of the hearing, and resides with Mother within the District's boundaries. Student is eligible for, and receives special education and related services under the primary disability category of Emotional Disturbance, and the secondary category of Other Health Impairment (OHI) due to attention deficit hyperactivity disorder (ADHD).

2. Student was medically diagnosed with ADHD when she was in kindergarten. Student was made eligible for special education in third grade and was exited in her fifth grade year. Student was again made eligible for special education in 7th grade under the category of OHI by the Rocklin Unified School District (Rocklin).

3. Special education law requires that a pupil with a disability receive counseling and guidance services and therapeutic mental health services as related services if they may be necessary for the pupil to benefit from his or her education. At all times involved in this case, Chapter 26.5 of the California Government Code ("Chapter 26.5") set forth a comprehensive system by which a local education agency (LEA) could refer a special education pupil suspected of being in need of mental health treatment to a local county mental health agency designated by the Department of Mental Health.

4. In the spring of 2007, Rocklin referred Student to CSOC to determine if Student was eligible for educationally related mental health services under Chapter 26.5.

Parent withdrew Student from school to attend a home schooling program for the remainder of the school year. When Student returned to a Rocklin school for eighth grade that fall, CSOC assessed Student and determined that she was eligible for Chapter 26.5 services. Rocklin held an IEP team meeting in December 2007, at which Rocklin and CSOC offered individual mental health counseling services twice a month for 50 minutes a session, for a total of 100 minutes per month, and a behavior support plan (BSP). Mother consented to the offer and Student began to receive those services.

5. In August 2008, Student transferred into the District's Woodcreek High School (Woodcreek) for 9th grade. Student continued to receive special education and related services, including Chapter 26.5 mental health services, under the eligibility category of OHI.

6. During middle school and ninth grade, Student lived with Mother, Mother's husband (Stepfather), and the stepfather's son (Stepbrother), who also attended Woodcreek. In December 2008, Student reported that Stepbrother had raped her. Mother notified the District and CSOC's child welfare branch, including Child Protective Services (CPS). Stepbrother was required to move out of the home. During this period, Student's mental health seriously worsened as a result of being raped by Stepbrother, who was subsequently prosecuted criminally.

7. Student began 10th grade at Woodcreek, which Stepbrother still attended. In about December 2009, CPS brought an action against Mother for failing to keep Student away from Stepbrother. CPS and Mother entered into a safety agreement for Student. In mid-December 2009, a court ordered that Student and Stepbrother were not permitted to attend the same school. Accordingly, on January 4, 2010, at the start of the spring semester, Student transferred to Roseville High School (Roseville), another high school in the District.

8. Student did not attend Roseville regularly and was sick a lot. By February 2010, Mother removed Student from public school and enrolled her in a home schooling program under the auspices of Horizon Charter School. Student remained in that program for the remainder of the spring semester.

9. In June 2010, Stepbrother graduated from high school, and was convicted for the crime against Student in July 2010. Shortly thereafter, Mother re-enrolled Student at Woodcreek for the next school year at Student's request.

2010-2011 SCHOOL YEAR IN 11TH GRADE

10. Student contends that, beginning in August 2010, District denied her a FAPE because it failed to offer appropriate educational placements and related mental health services at Woodcreek and Challenge high schools, and in an HHI placement, in light of her deteriorating mental health and emotional problems.

11. A pupil with a disability has the right to a FAPE, including special education and related services, under the federal Individuals with Disabilities in Education Improvement Act (IDEA) and related California law. FAPE is defined as special education and related services that are available to the pupil at no cost to the parent, meet the State educational standards, and conform to the pupil's IEP.

12. When school started at Woodcreek in August 2010, Student's last operative IEP was dated January 26, 2010. On that date, District held an IEP team meeting at which Student's triennial assessment was reviewed. The IEP team agreed with District's school psychologist Kim Wells that Student presented with a general pervasive mood of unhappiness or depression that was present for a long time and to a marked degree. Student demonstrated an inability to build or maintain interpersonal relationships with peers and teachers, inappropriate behaviors or feelings under normal circumstances, and a tendency to develop physical symptoms or fears associated with personal or school problems. Student's emotional problems affected her educational

performance and thus met the relevant definition of Emotional Disturbance. The IEP team, including Mother, agreed to change Student's primary eligibility category from OHI to Emotional Disturbance, and to make OHI a secondary category of eligibility.

13. The January 2010 IEP placed Student in the general education curriculum for 81 percent of the time and special education instruction and services for 19 percent of the time. The IEP provided two annual goals to address Student's unique needs in the areas of self-regulation (identifying and regulating emotions, expressing feelings), and one goal concerning task completion. It provided program accommodations and supports including seating near teachers, at Student's option; extended time to complete assignments; access to an academic lab class for test taking and academic support; checks for understanding; and flexible time and scheduling of tests. In addition, the IEP provided two sessions of counseling and guidance each month, for a minimum of 30 minutes each with a CSOC Chapter 26.5 counselor at the" regular classroom/public day school" location. Mother consented to the IEP.

PLACEMENT AT WOODCREEK

30-Day Transfer Placement

14. At the beginning of the 2010-2011 school year, Student attended Woodcreek for the first two days of school, on August 10 and 11, 2010, without incident. On August 12, 2011, District invited Parent to an IEP team meeting on August 31, 2010, for the purpose of addressing Student's needs upon transfer back into the District.

15. According to Mother, on the evening of August 11, 2010, Student deteriorated emotionally at home and insisted on going to a temporary out-of-home shelter at the Crisis Resolution Center in Loomis (CRC). CRC, operated by Placer County, is a group home facility that provides emergency family intervention for youths, including short-term residency for teenagers and family counseling. Student remained

at CRC until August 24, 2010. During Student's stay at the Center, she missed nine days of school. Student returned to Woodcreek on August 25, 2010.

16. While Student was at the CRC, Robyn Kraus, CSOC's Chapter 26.5 therapist who had treated Student for over a year, visited Mother and Student to provide counseling and guidance. Ms. Kraus obtained a master's degree in social work in 2001, and is licensed and board-certified as an associate in social work. She worked for CSOC for almost five years, including over four years in the Chapter 26.5 program. Ms. Kraus credibly established that Student informed her that Student did not want to live with Mother.

17. Mother testified that Student became upset because pupils at Woodcreek accused her of lying about Stepbrother. Student did not appear or testify during the hearing.[5] Ms. Kraus did not think Student's problems with her mother were related to her school experience at Woodcreek. Based on her experience and relationship with Student, Ms. Kraus established that Student and Mother had a difficult relationship which directly led to the crisis intervention in the home. However, Mother established that Student had a difficult time returning to Woodcreek and was still suffering from the trauma of Stepbrother's assault, which contributed to her emotional state.

18. Prior to Student's discharge from CRC, CSOC's program supervisor Diana Ryan visited Mother and Student there, and offered to provide Wrap Around (Wrap) services to the family. The Wrap program involves intensive in-home services provided to families by CSOC's child welfare branch, under the Mental Health Services Act (not Chapter 26.5), for resources, counseling, and supports when children are at risk of out-

[5] CSOC subpoenaed Student to testify. Dr. Jennifer Lotery, Student's psychologist at Summitview, testified that requiring Student to testify could be harmful to her mental state. Following the testimony of Dr. Lotery, CSOC withdrew the subpoena.

of-home placement or are already placed outside the home. Mother declined CSOC's offer of WRAP services because she wanted WRAP services to be funded through the IEP process instead.

19. From August 25, through August 31, 2010, when District held an IEP meeting, there is no evidence of any significant problems with Student, either at school or at home. Student attended Woodcreek under the January 2010 IEP and attempted to make up for the lost school time. No evidence was presented that Student needed increased mental health services in order to attend school and benefit from her education during that time. Based on the foregoing, there is no evidence that District's educational placement for Student and her related mental health services during the 30-day transfer period were inappropriate or denied her a FAPE. Even if that were the case, District had already scheduled an IEP meeting.

AUGUST 31, 2010 IEP OFFER

20. At the IEP team meeting on August 31, 2010, Mother and Student were present, along with Ms. Kraus and District personnel. The IEP team reviewed Student's levels of academic and functional performance based on the January 2010 IEP, Student's successful passage of the California High School Exit Examination (CAHSEE) in English and Math in March 2010, and her need to make up for school work missed while at the CRC. Student was then ahead of schedule to graduate from high school. District's August 31, 2010 IEP was designated as Student's annual offer of placement and services. It offered Student placement at Woodcreek in the general education curriculum for 82 percent of the time.

21. The August 2010 IEP offered specialized small group instruction in an academic support class for 75 minutes a day and two annual goals in the areas of self-regulation and task completion. It offered the same mental health services as provided

in the January 2010 IEP: continued counseling and guidance services twice a month, for 30 minutes a session at school, with a CSOC Chapter 26.5 mental health therapist.

22. In addition, as part of the August 2010 IEP, CSOC submitted a separate offer for Chapter 26.5 services. At the time of this offer, Chapter 26.5 was still operative and the Governor had not vetoed the funding appropriation for related mental health services. CSOC's offer included two mental health goals for advocacy and self-regulation; and mental health services, including (a) case management services to assist Student and her family in accessing community resources, and for plan development, service coordination, monitoring and review, including at least quarterly contact with teachers, therapists, psychiatrists, Student and Parent; (b) eight sessions per year of individual and family therapy services for 30 minutes a session with the County 26.5 therapist; and (c) collateral services eight times per year for communication and/or consultation with significant support persons. CSOC did not offer Student any Wrap services as part of the IEP offer. The evidence showed that the CSOC's offer was attached to the District's offer without any explanation of the relationship between the two or how to reconcile them as one offer. Mother did not consent to the August 2010 IEP. Thereafter, the January 2010 IEP remained in effect.

Appropriateness of August 31, 2010 IEP Offer

FAILURE TO MAKE A CLEAR WRITTEN OFFER

23. An IEP must meet both the procedural and substantive requirements of the law. For a procedural inadequacy to constitute a denial of FAPE, it must have (a) impeded the child's right to a FAPE, (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE, or (c) caused a deprivation of educational benefits. An IEP offer must be sufficiently clear so that a parent can understand it and make intelligent decisions about it, including whether to accept or reject the offer or negotiate further.

24. The August 2010 IEP offer of mental health services was not clear because Mother could not tell whether the public agencies were offering mental health counseling services twice a month, for a total of 60 minutes per month (or 600 minutes in a ten-month school year) as set forth in District's IEP forms, or only eight times a year, for a total of 240 minutes during the year as set forth in CSOC's separate form added to the IEP document.

25. Student sustained her burden of proof on this issue. Mother did not provide written consent to the IEP as she had in the past. During the hearing, Mother was asked about the mental health services offer and testified that there was no discussion about increasing the mental health services when she believed Student needed significantly greater mental health supports. There was also no discussion during the IEP meeting about reducing the mental health counseling services below those set forth in the January 2010 IEP. The team understood that Student's triennial mental health assessment was imminent. The difference between District's and CSOC's written versions of the offer for related mental health services was dramatic. CSOC's offer was a significant reduction in mental health services in advance of its mental health assessment. Thus, it was impossible from the evidence to understand what the actual offer was.

26. It is possible for an ambiguous written offer in one portion of an IEP to be explained in other portions of the IEP. It is also possible for such an offer to have been explained orally or in writing to the parent during or after the IEP meeting in such a fashion that the parent had sufficient information to understand the offer in order to respond to it. Such is not the case here. Neither District nor CSOC presented evidence sufficient to reconcile their proposals in a way that timely informed Mother of the true offer. Accordingly, District's and CSOC's offer of related mental health services was

materially ambiguous, was not a clear written offer, and constituted a procedural violation.

27. The procedural violation significantly impeded Mother's right to participate in the IEP decision-making process as she was confused and did not consent to the offer. Absent of a clear written offer for Student's Chapter 26.5 mental health services, the August 2010 IEP was materially defective. Because Mother's right to participate was significantly impeded, the unclear offer of mental health services denied Student a FAPE. Because of this procedural violation, it is not necessary to reach the issue whether the mental health services offered were substantively adequate, as the true offer was unknown.

ADEQUACY OF PLACEMENT OFFER

28. An adequate IEP must be specially designed to address the pupil's unique needs, must include measurable annual goals, and must be reasonably calculated to provide some educational benefit. IEP offers are to be evaluated in light of the information available at the time the offers were made, and are not to be judged in hindsight.

29. Overall, District's August 2010 IEP offer for Student's educational placement at Woodcreek was reasonably calculated to provide her with some educational benefit. At the time the offer was made, the District and CSOC members of the IEP team had learned from Ms. Kraus that Student's emotional crisis in early August primarily involved her relationship with Mother and her desire not to live with Mother. Student attended school without incident upon her return.

30. The main concern of the IEP team was her loss of academic instruction during the time she had been absent from school while at CRC in August. Woodcreek's 11th grade classes were on a "block" schedule of intensified instruction that delivered one-year's worth of instruction in each one-semester class. Consequently, Student's loss

of nine days of instruction at the beginning of the first quarter was significant. The evidence established that Mother could have allowed Student to live at CRC and still attend Woodcreek during the day, but Mother opted to keep Student at CRC. Therefore, Student's absence from school was attributable to Mother's choice, not Student's disabilities.

31. Based on the foregoing, District did not have notice on August 31, 2010, of any significant school-related mental health problems regarding Student's attendance, access to curriculum, or academic and functional performance that would have given rise to a duty to offer a more restrictive educational placement, such as an increase in special education classes, a day treatment, or a residential program. Accordingly, the placement offered in the District's August 2010 IEP did not deny Student a FAPE.

OCTOBER 12, 2010 IEP TEAM MEETING

32. In early October 2010, Mother requested another IEP team meeting due to her concerns regarding Student's lack of academic progress. Student was then failing three out of her four classes at Woodcreek. District held an IEP team meeting on October 12, 2010. Student contends that District and CSOC failed to make any offers at that meeting necessary to provide a FAPE.

33. Mother attended the October 12, 2010 IEP meeting, along with Ms. Kraus from CSOC, and District personnel, including Student's special education academic lab teacher, Robin Risser. Student did not attend most of the meeting but came towards the end. The IEP noted that Student's medications had recently been altered.[6] Mother

[6] Student did not receive medication management services through CSOC's Chapter 26.5 services. She was prescribed medications by a private psychologist whose services were funded through the County Victim Witness program.

established that in the fall of 2010, Student often came home from school, cried, and went to sleep instead of doing her homework.

34. The focus of the October 2010 IEP meeting was an attempt to resolve problems that had arisen between Student and Ms. Risser, due to Student's desire to work on her photography class projects in Ms. Risser's class, instead of her English class assignments. While both courses were graded, passing the academic English class was required for Student to graduate and the primary purpose of Ms. Risser's lab class was to support academic progress.

35. Ms. Risser was a special education teacher with over 16 years of experience. She held a mild/moderate special education teaching credential and was a resource program specialist and caseload manager at Woodcreek. Ms. Risser credibly testified that by the end of the first quarter of 11th grade, she confronted Student regularly to redirect her to work on English instead of photography assignments. Ms. Risser was critical of Mother's apparent lack of support and concluded that Mother did not ensure that there were sufficient consequences for Student's actions, and allowed her to do whatever she wanted.

36. Ms. Kraus testified persuasively that Mother did not provide consistent or effective supervision of Student's homework at home. However, Mother had difficulty getting Student to do homework because Student is very strong willed. Ms. Risser experienced similar problems in class when she pressed Student to be accountable and turn in assignments on time; Student would engage in avoidance behaviors including excuses, tears, blaming, aggressive and defiant behaviors, and somatic symptoms of illness, including headaches.

37. At hearing, Ms. Risser was confident that in the fall of 2010, Student had the ability to succeed in her academic support and general education classes, provided Student had sufficient parental support and supervision at home. However, that opinion

was not persuasive. When questioned, Ms. Risser was unaware that Student's primary disability was Emotional Disturbance, and thought that her disability was OHI, based on ADHD. In addition, Ms. Risser did not recall a variety of things, including that she had been Stepbrother's resource teacher for several years. She also did not know what Student's operative IEP was for the fall of 2010.

38. At the October 2010 IEP meeting, Ms. Risser recommended that Student should emphasize her work on English assignments in the lab class and then be given options for additional projects. It is not clear from the record what the IEP team decided and no other suggestions were recorded in the IEP notes for resolution of the conflict between Ms. Risser and Student.

39. Since the IEP team understood in October 2010 that CSOC was about to conduct Student's triennial mental health assessment to be reviewed at an IEP meeting on November 9, 2010, it took no further action and made no substantive offer regarding Student's program. District's August 2010 IEP offer was still outstanding, so the January 2010 IEP remained in effect.

40. Student's evidence showed that a marked change in her circumstances had occurred; she was about to fail most of her 11th grade courses. District was on notice that it should take some action addressing the new circumstance. However, the evidence did not show that District should have offered in October 2010 to transfer Student to a more restrictive educational placement. Ms. Kraus and Mother were in the early stages of looking at alternative placements, including Challenge. Challenge is a small high school immediately adjacent to Woodcreek that operates an ED program for teens with Emotional Disturbance that is small, structured, and has imbedded support for the pupils' mental health and emotional needs. Proposing increased mental health services or a transfer were premature since the team did not have the opinions of Ms. Kraus and Mother or the mental health assessment. Therefore, District did not deny

Student a FAPE at the October 12, 2010 IEP team meeting by not offering to transfer her into Challenge, an NSP, or a residential treatment center.

GOVERNOR'S VETO OF CHAPTER 26.5 MENTAL HEALTH FUNDING

41. As set forth in Legal Conclusions 5 through 23, on October 8, 2010, California Governor Schwarzenegger vetoed a legislative funding appropriation for Chapter 26.5 mental health services and announced that the mandate to comply with Chapter 25.6 was suspended. An appellate court later held that these actions relieved local county mental health agencies of the obligation to implement Chapter 26.5 services. At the time of the October 12, 2010 IEP meeting, however, there was apparently no discussion of the Governor's recent actions or their impact, if any, on Student's services.

42. During October 2010, Student's relationship with Mother was strained and Student was often angry, depressed, tearful, lonely, and unproductive. Ms. Kraus and Mother spoke frequently during that period and discussed moving Student to Challenge if her performance at Woodcreek did not improve. In addition, Mother asked Ms. Kraus for County Wrap services. On about November 4, 2010, prior to the next IEP meeting, Ms. Kraus informed Mother that CSOC agreed to fund Wrap services for the family and explained that the services would be funded through the Mental Health Services Act.

NOVEMBER 9, 2010 IEP

43. District convened the next IEP meeting on November 9, 2010, to review Student's progress since the October IEP and to review CSOC's triennial mental health assessment. Mother, Student, Ms. Kraus, and District personnel attended.

44. Ms. Kraus provided the CSOC mental health assessment and findings to the IEP team. Even though the Governor had purported to suspend the Chapter 26.5 (AB 3632) mandate, the County's preprinted form used for the report referenced AB 3632,

and was dated November 7, 2010. The report evaluated Student's problems, including a history of self harm, violence, sexual abuse, moderate fire setting, academic difficulties, destruction of property, and family relationship problems. Student had told Ms. Kraus that she experienced high levels of anxiety, was frequently depressed, and struggled with her self esteem. Student's areas of concern were school, her mother, and friends. Ms. Kraus assessed Student's risk factors and determined that she had some generalized suicidal ideation, often appeared to respond in ways which were much younger than her stated age of 16, used inappropriate language, and tended to have poor boundaries with males who could potentially place her in high risk situations. Ms. Kraus recommended that Student continue to receive mental health services "pursuant to Government Code 26.5." The report made two recommendations. First, it recommended continued individual therapy to increase Student's self esteem and establish good personal boundaries. Second, it recommended continued "26.5 services," as designated in Student's IEP, to reduce the anxiety associated with her refusals to attempt or complete academic tasks. There was no finding or recommendation that Student's emotional problems warranted removal from the general education setting to a more restrictive environment, such as a program at Challenge, a therapeutic day school program, NPS, or a residential treatment center.

45. District's November 9, 2010 IEP offered Student three annual goals in self advocacy, self-regulation, and task completion. The goals were similar to those offered by District and CSOC in the August 2010 IEP, although with varying baselines. District also offered Student specialized instruction in small group in an academic support class for 75 minutes a day. District further offered continued counseling and guidance services with a County Chapter 26.5 mental health therapist at school. However, while the offered sessions remained at 30 minutes a session, the frequency was reduced to

only eight times a year, for a total of 240 minutes, instead of the 60 minutes a month (or 600 minutes a year) previously offered. Mother consented to the new IEP.

46. Ms. Kraus informed the November 2010 IEP team that the County would also provide Wrap services to Student and Mother in order to support Mother. The IEP team discussed the workability program and Student's possible placement at Challenge. However, District agreed to change Student's class schedule by dropping one class at Woodcreek and having Student work as a Teacher's Assistant (TA) at Challenge for one period a day helping severely handicapped pupils. Student would receive class credit as a TA, make a contribution to others, and improve her self-esteem. Consideration of a change of placement was therefore postponed until the next IEP meeting to see if these measures worked.

47. In addition, CSOC offered two mental health goals effective November 9, 2011, one in advocacy and one in self-regulation. The goals were the same in content as those CSOC had offered in connection with the August 2010 IEP. CSOC also offered the same reduced amount of Chapter 26.5 mental health services as it had in August. This time CSOC's individual and family therapy was consistent with District's offer, at eight sessions a year for 30 minutes a session. The offer noted, as it had in August, that Student had a private therapist who saw Student and Mother weekly. Mother consented to the November 12, 2010 IEP offer.

Clear Written Offer

48. Student contends that the November 2010 IEP offer was not clear because the CSOC's Wrap services were not specified in either District's IEP or CSOC's FAPE offer. District and CSOC respond that they did not offer educationally based Wrap services in connection with the IEP.

49.County's program supervisor, Ms. Ryan, credibly testified that CSOC offered to provide Wrap services under the umbrella of the child welfare system, not as a service

necessary for Student to receive a FAPE in the school system. Ms. Kraus's assessment report noted that CSOC's Chapter 26.5 program was making a *referral* to the County Wrap program to assist the family. Mother also candidly admitted that while Ms. Kraus informed the IEP team about the Wrap services, she understood the referral was not an IEP team decision. Thus, credible evidence established that the referral for Wrap services was not part of the IEP offer. Accordingly, District and CSOC's November IEP did not fail to contain a clear written offer and did not deny Student a FAPE on that basis.

Substantive FAPE Offer

50. Student contends that District's and CSOC's November 2010 IEP offer denied her a FAPE because the offer reduced her related mental health services to a level well below that which she needed to receive educational benefit. Student also contends that District should have offered her a more restrictive educational placement.

51. As to the offer of mental health services, Student sustained her burden of proof. CSOC's November 7, 2010 mental health assessment of Student contained no data or discussion to support a significant reduction in educationally related mental health services. There is no record of any discussion of reduction of the services in the IEP meeting notes. Student's operative January 2010 IEP provided mental health counseling services at a frequency of twice a month, for 30 minutes a session, for a total of 60 minutes per month. In contrast, District's and CSOC's November 2010 IEP offered therapy only eight times a year for a total of 240 minutes per year, or significantly less than once a month. Given the severity of Student's problems in the fall of 2010, she needed at least as much mental health support as offered in the August 2010 and January 11 IEPs. Thus the material reduction in services in the November 2010 offer was inexplicable. There was no reason for the IEP team to believe that Student's academic and functional performance had improved or that Student was able to perform in the new arrangement, including a TA position at Challenge, with less individual and family

therapy. Based on the foregoing, District's and CSOC's November 2010 offer of related mental health services was inadequate and inappropriate and denied Student a FAPE.

Placement at Woodcreek

52. At the November 2010 IEP, District considered offering Student a more restrictive or modified placement. District proposed a new annual goal in the area of self advocacy, consistent with that offered by CSOC. District also offered to adjust Student's educational placement and curriculum by eliminating one of Student's academic classes at Woodcreek and providing her with a job in the TA position at Challenge. The team decided to see if the changed placement would help Student's academic performance. She was still on track to graduate from high school.

53. Since October 2010, Ms. Kraus had been actively discussing with District and Mother changing Student's placement to Challenge because she believed it would provide daily mental health supports. However, Mother and Student were not receptive to a transfer to Challenge, and Ms. Kraus' mental health assessment did not recommend any change in placement to a more restrictive, structured classroom environment at that time and the IEP team agreed to table the subject for the next IEP meeting.

54. At the time of the November IEP, while Student did not get along with Ms. Risser, she did not otherwise engage in notable misbehavior in the school setting. Accordingly, based on the information before it, the IEP team's offer of placement was reasonably calculated to provide Student with a FAPE by adjusting her placement and goals to improve her academic performance, support her completion of the fall semester at Woodcreek, motivate her with a job, and consider a possible placement at Challenge at a later meeting. There was nothing then known to the IEP team that would have required immediate placement in a more restrictive setting. Therefore, District's November 12, 2010 placement offer was reasonably calculated to offer Student educational benefit and did not deny Student a FAPE.

FAILURE TO IMPLEMENT IEPS IN FALL 2010

55. Student contends that District and CSOC materially failed to implement her IEPs in the fall of 2010 because: (a) they failed to provide Wrap services in accordance with her IEPs, (b) they did not provide the mental health therapy sessions at the school location, and (c) they did not provide all mental health therapy sessions required by the IEPs. A failure to implement a provision of an IEP may amount to a FAPE violation if it is material. A material deviation from an IEP occurs when the program or services provided to the pupil fall significantly short of those required by his or her IEP. A showing of educational harm is not necessary to proving such a violation.

Provision of Wrap Services

56. From August through November 8, 2010, Student's special education program and services was governed by her January 2010 IEP. That IEP provided for related mental health counseling and guidance from a County 26.5 counselor twice a month but never provided Wrap services. The County offered Wrap services to Mother in August 2010, outside of the IEP process, and Mother declined. As found above, the November 2010 IEP did not offer Wrap services as an educationally related mental health service; it simply referred to County's agreement to provide home-based Wrap services at Mother's request. District and CSOC were therefore not obligated to provide Wrap services as a component of Student's IEP and any claim about delivery of those services is not within the jurisdiction of OAH.

Location of Counseling Services

57. As found above, the January and November 2010 IEPs, to which Mother consented, both provided that Student's counseling would take place at school. CSOC's records, however, established that Ms. Kraus primarily provided Student with individual counseling and guidance, primarily at home. Thus, neither CSOC nor District provided

counseling and guidance services in conformance with the January and November 2010 IEPs.

58. However, Student did not sustain her burden to establish that this deviation from the IEPs was material. Ms. Kraus was responsible to help Student therapeutically with one-on-one, private and personal counseling. The evidence did not establish that the location for delivery of the services was a material component of the therapy or merely a convenience. Throughout the fall of 2010, with some exceptions, Student regularly attended school and did not manifest significant emotional and behavioral problems during the school days. Student got along with both male and female peers and had only one disciplinary referral that resulted in a brief suspension from Ms. Risser's class.

59. Student manifested severe emotional problems at home. In the fall of 2010, Student repeatedly informed Ms. Kraus that she was angry at Mother, did not want to live her, was not hopeful of having a good relationship with her, and could not forgive her for perceived injuries and slights. Mother was still married to Stepfather and was committed to having a meaningful relationship with him, even though they were living in separate homes. Student did not like Stepfather. In late October 2010, Stepbrother was released from jail and lived with Stepfather as a condition of his probation, which brought Student into occasional proximity to him and further contributed to her anxieties. In addition, Mother had once placed Student's Sister in a residential treatment center, which Student characterized as having "thrown away" her sister. Student's anger and defiance in the home had, on occasion, resulted in destruction of property. In October 2010, Mother discovered that Student was emailing a man over the age of eighteen and tried to stop the inappropriate contact. Mother admitted to Ms. Kraus that she had difficulty setting limits with Student at home.

60. Based on the foregoing, it was reasonable for Ms. Kraus to primarily conduct both the individual therapy sessions with Student, and the family counseling sessions with Mother and Student, in the home setting. On occasion, Ms. Kraus conducted therapy sessions at school on days when IEP meetings were held. Mother never asked the IEP team to change the meeting location from the home to school and consented to the appointments. Based on the foregoing, District and CSOC did not materially fail to implement the location provision for delivery of the mental health therapy service and therefore did not deny Student a FAPE on that basis.

Frequency of Mental Health Services

61. Ms. Kraus' written progress notes to CSOC did not show that she provided individual counseling to Student during August 2010. However, Student lived at the CRC emergency family intervention center for about two weeks that month, and Ms. Kraus established that she worked with Student at CRC at least once. In addition, County records showed that Ms. Kraus only saw Student once individually in September 2010. In October 2010, Ms. Kraus saw Student multiple times: twice individually, twice with Mother for family therapy, and once with Mother in a park prior to the October 12 IEP meeting. In November 2010, Ms. Kraus met with Student individually at Woodcreek after the November IEP meeting, and met her again the following week at Challenge to help facilitate her adjustment to the TA position at Challenge.

62. Overall, Ms. Kraus testified credibly that she saw Student a minimum of twice a month for anywhere from 20 minutes to an hour each time and Mother believed Ms. Kraus saw Student weekly. However, based on the absence of records, it is possible that Ms. Kraus missed a few sessions. Even if Ms. Kraus missed providing therapy to Student once in August and once in September 2010, she made up for those by providing extra sessions in subsequent months. Student did not establish that these failures were material or constituted a significant deviation from Student's IEP.

Therefore, District's and CSOC's failure to provide two sessions of mental health therapy was not material and did not deny Student a FAPE.

DECEMBER PSYCHIATRIC HOSPITALIZATION

63. In December 2010, during an evening while Mother was absent from the home,[7] Student got into an altercation with Sister and a friend in the family apartment about Sister's use of Student's laptop. Student reportedly threw Sister's laptop across the room in retaliation, then locked herself in a bathroom and cut herself superficially on both wrists. Sister telephoned Mother, who came home and called police. Student was involuntarily transported to Heritage Oaks Hospital, a mental health facility, for a psychiatric hold.

64. On December 7, 2010, CSOC Wrap program representative Bianca Sanchez-MacDonald met with Mother in the home to introduce the County Wrap program. Mother informed Ms. Sanchez-MacDonald of Student's altercation and hospitalization and that she had decided to seek a residential placement for Student. County therefore placed the Wrap program on hold until further notice from Mother and it was not implemented at that time.

65. Student was hospitalized for about two weeks and was discharged on December 13, 2010. During that time, Student missed the last two weeks of the fall semester at Woodcreek and missed critical end-of-semester tests and her grades suffered as a result. Mother requested an emergency IEP meeting in order to seek Student's educational placement in a residential treatment facility.

[7] Mother testified at hearing that she was at a doctor's appointment. However, the evidence showed that the incident occurred during the evening hours. In addition, County records showed that Student reported that Mother had gone out to meet with Stepfather.

DECEMBER 17, 2010 IEP TEAM MEETING

66. On December 17, 2010, District convened an IEP meeting. Mother, Student, Ms. Kraus, District's school psychologist Ms. Wells, and personnel from both Woodcreek and Challenge attended the meeting. The IEP team considered Mother's request for placement in a residential treatment center and also considered placement at Challenge in its ED program, as well as other possible placements in District schools. District's special services coordinator, Ms. Genzlinger, explained the structure of the ED program at Challenge. Mother and Student fully participated in the discussions and asked questions about the programs. Mother informed the IEP team that Student's private therapist recommended residential placement. Ms. Kraus established that Student informed the IEP team that she did not want to go into a residential treatment program and that she wanted to attend school at Challenge.

67. The December 2010 IEP resulting from the meeting offered to place Student in the ED program at Challenge in a combined general and special education curriculum, and, concurrently, to refer her to CSOC for a residential placement assessment based on Mother's request. The IEP offered 75 minutes of specialized academic instruction twice a day, for a total of 150 minutes, in the ED program to address her goals in self-regulation, self-advocacy, and task completion. The Challenge special education classes were identified as English 11 and Economics. In addition, the IEP offered the same level of Chapter 26.5 related mental health services as offered in November: eight 30-minute sessions a year for a total of 240 minutes. The IEP characterized the program as 64 percent general education and 36 percent special education. There was no offer of Wrap services. The parties agreed to defer more discussion of residential placement until after the assessment. Mother consented to the offer.

Appropriateness of December 2010 IEP Offer

CLEAR WRITTEN OFFER

68. Student contends that District's and CSOC's December 2010 IEP offer did not constitute a clear offer because CSOC's Wrap services were not specified in the offer.[8] As found above, the evidence established that CSOC offered to provide Wrap services to Student and Mother under the umbrella of the child welfare system, and not as a service necessary for Student to receive a FAPE in the school system.

NEED FOR RESTRICTIVE ENVIRONMENT

69. Student contends that District's December 2010 IEP denied her a FAPE by failing to offer her an educational placement in a residential treatment center, NPS, or other more restrictive setting. District contends that Student's emotional problems primarily in the home setting did not call for her placement in a more restricted educational program.

70. The IDEA provides that a pupil with a disability must be educated in the least restrictive environment in which she can be satisfactorily educated. This means that a pupil must be educated with nondisabled peers to the maximum extent appropriate, and may not be removed from the regular education environment unless necessary to receive a FAPE due to the nature and severity of the pupil's disability. To determine

[8] In Student's closing argument, she abandoned a claim made during the hearing that the December 2010 IEP did not contain a clear written offer as to District's counseling services imbedded in the ED program. That claim is therefore not at issue. Even if Student meant to retain the claim, the evidence established that Ms. Genzlinger explained the structure of the ED program in sufficient detail during the IEP meeting that Mother understood it.

whether a special education pupil may satisfactorily be educated in a regular education environment, the following factors must be balanced: 1) the educational benefits of placement in a regular class setting; 2) the nonacademic benefits of such placement; 3) the effect the pupil had on the teacher and children in the regular class; and 4) the costs of mainstreaming. Costs were not an issue in this case.

71. Ms. Genzlinger provided clear and compelling testimony regarding the ED program at Challenge. She has been with the District for nine years, holds a master's degree in counseling and a mild/moderate special education teacher credential, and has many years of managerial experience. As District's special services coordinator at Challenge, she oversees the ILS program for severely disabled pupils and the ED program. About 70 percent of the 35 pupils at Challenge are in the ED program. CSOC has worked closely with District to imbed supports for the pupils' mental health and emotional needs in the program. There are three ED program classes for 11th and 12th graders, ranging in class size from six to 13 pupils, with one teacher and at least one paraeducator in each classroom. The ED program uses a behavior leveling system, in which pupils daily earn or lose points and privileges. Supervision is strict and includes walking pupils to and from locked restroom facilities, lunch, and the main Woodcreek campus. Group counseling is provided to all pupils in the program once a week, and focuses on social skills, anger management, moral reasoning, stress reduction, and coping skills. The skills and strategies addressed in the group sessions are supported throughout the school day by the staff in every class. In addition, staff members meet individually with each pupil to review and discuss behavior and behavior rating scores. A full-time, credentialed school counselor is on campus at all times. In addition, pupils have access to a school psychologist or psychology intern at Woodcreek. Challenge school staff are trained in mental health emergencies and knowledgeable about issues related to sexual assault and child abuse.

72. Ms. Kraus worked as a County mental health counselor at Challenge for over four years, provided related mental health therapy services to pupils in the ED program, and attended many IEP team meetings. Approximately 50 percent of her school-related caseload consisted of pupils in the Challenge ED program, and she was at the school two to three days a week during the period in question. Ms. Kraus had been providing therapeutic counseling services to Student since about August 2009 and understood Student's problems. Ms. Kraus testified persuasively at hearing that Student could obtain educational benefit at Challenge and could be successful in the program. During November 2010, Ms. Kraus met with Student several times at Woodcreek and Challenge, observed that her placement was working well and confirmed Student's progress with Ms. Genzlinger. Student had made some friends at Challenge and had peers to walk and talk with. Ms. Kraus had seen Student's confidence and self-esteem improve after she began the TA position at Challenge.

73. Prior to working for the County, Ms. Kraus worked in a high security (level 14) group home or residential facility. In her experience, teens placed residentially outside of their homes generally demonstrated an extreme inability to maintain emotional balance in class, were unable to attain sufficient credits to graduate, required multiple hospitalizations, and were unable to restrain their impulses and not physically harm their parents, siblings, peers or teachers. In addition, as a Chapter 26.5 worker for the County, Ms. Kraus had been involved in the residential placement process and placed children in residential treatment centers. Based on her knowledge of Student's circumstances and her experience, Ms. Kraus persuasively testified that Student would be successful at Challenge, with additional mental health supports, and did not demonstrate sufficiently extreme behaviors to warrant a residential placement.

74. The evidence established that, in mid-December 2010, a combination of general education and specialized instruction classes in the Challenge ED program, with

additional mental health counseling support from CSOC, constituted the least restrictive environment in which Student could obtain educational benefit. Student had not made much academic progress at Woodcreek in the general education classes, and had experienced isolation, lowered self esteem, and frustration from being behind in her assignments. After Student's emotional breakdown at home, the IEP team determined that Student needed a placement that would provide increased emotional support for her during the school day, including learning more coping skills and providing a group counseling opportunity to safely express her feelings and thoughts.

75. The nonacademic benefits of the placement at Challenge included Student's association there with both male and female peers with similar emotional problems, with peers she knew or was getting to know, and where she could safely explore boundaries with constant supervision. As found above, in November 2010, Student made some progress after becoming a TA at Challenge and made friends there. Mother's contention that the pupils were mostly males with whom it was inappropriate for Student to associate was not borne out by the evidence. While over half of the pupils in the ED program were male, District's strict supervision, including escorted trips to and from the restrooms, assured that Student would not be permitted to be alone with a male pupil in a compromising situation, and would have guidance from trained staff on how to maintain appropriate boundaries with males. In the Challenge program Student would still see typically developing peers in the PE class at either Woodcreek or a nearby fitness center. Finally, aside from the tension between Student and Ms. Risser in the academic lab class, there was no evidence that Student's presence had a negative impact on the general education classes she attended.

76. In contrast, placement in a residential treatment center would have resulted in Student's removal from the public school campus and isolation from typically developing peers. In December 2010, the IEP team did not have sufficient information to

determine that Student's school-related behaviors and problems were severe enough to warrant a residential placement. While such a placement would have enforced attendance, Student did not generally have an attendance problem, although she sometimes left school early with somatic complaints. District therefore made an appropriate decision to wait for the results of the residential placement assessment before making such a placement. Based on the foregoing, District's offered placement in the ED program at Challenge was the least restrictive environment in which Student could obtain educational benefit in December 2010. District's offer therefore was reasonably calculated to provide Student with educational benefit and did not deny her a FAPE at that time.

RELATED MENTAL HEALTH SERVICES

77. The December 2010 IEP offer included mental health supports imbedded in the Challenge ED program classes with trained staff and immediate access to the school counselor. In addition, Student would still receive separate related mental health services from CSOC, although not as often. District and CSOC offered to reduce Student's mental health services to the same level as offered in connection with the November 2010 IEP, that is, 240 minutes per year, or only one 30 minute session every 1.25 months. As found in connection with the November 2010 IEP, given the severity of Student's problems in the fall of 2010, the significant reduction in mental health services was not explained or supported. Even though behavioral and mental health supports were built into the ED program, the IEP team's offer of less frequent individual mental health therapy did not make sense. At that time, the evidence established that Ms. Kraus and Student had a good working relationship. Ms. Kraus had worked closely with Student since August 2009, had established a level of trust, and had helped her to positively adjust to the TA position at Challenge.

78. There was no evidence of a therapeutic justification for reducing Ms. Kraus' services during Student's transition to Challenge as a full time pupil in the ED Program. The evidence demonstrated that, even with the additional mental health services at Challenge, Student struggled to maintain emotional balance between her home and school environments and required continued counseling with Ms. Kraus at the same level, at least until she successfully transitioned into the Challenge placement. Therefore, District's and CSOC's December 2010 offer of significantly reduced related mental health services was not reasonably calculated to provide educational benefit at the time the offer was made and denied Student a FAPE.

DECEMBER 2010 COUNTY MENTAL HEALTH SERVICES CONTRACT

79. The evidence established that, after the Governor's October 8, 2010 veto of the funding appropriation for Chapter 26.5 mental health services, Placer County (County) entered into negotiations with the Placer County Office of Education (PCOE) and Placer County Special Education Local Plan Area (SELPA) to make arrangements for the continued provision of educationally related special education mental health services. A written contract was executed between PCOE and County, "a political subdivision of the State of California." The contract was executed by representatives of the County of Placer Board of Supervisors, the Director of the State of California Department of Health and Human Service (formally Department of Mental Health), and the CSOC on December 7, 2010, prior to District's December 17, 2010 IEP meeting regarding Student.

80. District was not a party to the contract. Residential treatment was not included in the services covered by the contract. The term of the contract was from July 1, 2010 through June 30, 2011. In pertinent part, the contract provided that it was the intent of PCOE to contract with CSOC for the purpose of transferring PCOE's allocation of its share of the State's budgeted $76 million, as determined by the State Department

of Mental Health, to CSOC to provide specified mental health services to school districts in the SELPA. It provided that County agreed to provide mental health services listed as day rehabilitative services at two therapeutic day programs, specialty mental health services, and therapy, as defined.[9]

81. As to reimbursement for IDEA-funded mental health services, the contract provided:

> 3.2.1 Upon receipt of designated mental health funds pursuant to SELPA's Individual's with Disabilities Education Act (IDEA) Allocation from State Department of Education, PCOE shall transfer one hundred percent (100%) of funds allocated to it to the Placer County Department of Health and Human Services – CSOC, the designated County children's mental health agency. COUNTY and PCOE have entered into a separate multi-year Memorandum of Understanding specific to IDEA-funded services, attached hereto as Exhibit E and incorporated herein.

82. Exhibit D to the contract contained accountability requirements from the California Department of Education, and provided in part: "$76,000,000 is allocated to support mental health services provided to special education students during the 2010-

[9] Therapy is defined in California Code of Regulations, Title 9, Rehabilitative and Developmental Services, section 1810.250. Section 1810.247 defines specialty mental health services to include mental health, medication, and day treatment services, and crisis and adult residential treatment services, but does not include youth residential treatment services.

2011 fiscal year by county mental health agencies in accordance with the provisions of Ch. 26.5 of Division 7 of the Government Code during the 2010-2011 fiscal year." The contract also contained general indemnification provisions, and accounting provisions that required County to provide billing information by pupil, type of service, and school district. Exhibit E to the contract was a memorandum of understanding (MOU) between CSOC and PCOE, in effect for the fiscal 2010-2011 year, which referred to the State and federal funding of its mental health services as a "federal grant." The MOU had been in effect since 2008, and also required CSOC to submit invoices itemizing the services "to establish a link between the services claimed and the individual student's IEP."

83. The evidence did not establish that, at any time during the December 2010 IEP meeting, District or CSOC ever informed Mother or Student of any changed relationship between them by virtue of the new contract for CSOC's delivery of related mental health services.

TRANSITION TO ED PROGRAM AND WITHDRAWAL FROM SCHOOL

84. Following the December 2010 IEP meeting, on December 20, 2010, during the winter school break, Ms. Sanchez-MacDonald of the County Wrap team met with Student in the home to informally assess the family's Wrap needs.

85. On December 27, 2010, as part of Student's mental health services, Ms. Kraus took Student on a group outing with two pupils from Challenge. Ms. Kraus established that, at that time, Student was looking forward to starting her new placement in the ED Program at Challenge, responded to prompts during the outing, and was cooperative.

86. The next day, December 28, 2010, Mother reported to the Wrap team that Student was "out of control" and needed to be residentially placed. On the same date, Wrap facilitator Ms. Sanchez-MacDonald conducted a two-hour crisis intervention session with the family Wrap team in the home, including Ms. Kraus, Mother, Student,

and a County family advocate. Ms. Sanchez-MacDonald reported in a progress note to the County that an altercation occurred between Mother and Student during the meeting. The County team members physically separated Mother and Student and placed them in separate rooms. They devised a safety plan to get through the meeting.

87. Ms. Kraus testified persuasively about the dynamics at the Wrap meeting on December 28, 2010, in which Student had expressed anger and frustration about Mother. Student told the team that Mother wanted her to meet with Stepfather, even though he had not participated in counseling and there was no CPS reunification plan in place. Student did not trust Stepfather and did not trust that she would be kept safe. In contrast, Mother reported to the team that she could no longer care for Student in her home.[10] During that meeting, the Wrap team discussed the possibility of Student's going into a voluntary child welfare placement in which Mother would retain Student's educational rights but they would live separately. However, Mother opposed that idea. In connection with that meeting, Ms. Sanchez-MacDonald reported to the CSOC Wrap program as follows:

> Mom appears to be utilizing Wrap services as a temporary service until she is able to get funding for residential placement for [Student]. When writer pointed this out, mom agreed. Client [Student] does not appear to understand the long term meaning of what mom's intentions of having her placed are.

[10] On January 6, Ms. Ryan, the supervisor of the Wrap team, filed a Suspected Child Abuse Report (SCAR) with the California Department of Social Services, Child Welfare System, based on Mother's report that she could not care for Student in the home and on the incidents of December 28, 2010.

88. Ms. Sanchez-MacDonald did not testify at the hearing. However, Ms. Kraus testified persuasively that Mother did not cooperate to support alternatives to a residential placement. Mother informed Ms. Kraus at the end of November 2010, even prior to the home altercation incident at the beginning of December 2010, that she intended to place Student in a residential facility and did not want Student to have control of her educational rights when she turned eighteen years of age.

89. On January 4, 2011, Student began attending Challenge in the ED program. A Wrap meeting was held that day, and Student reported that she was pleased that the classrooms were smaller, with fewer pupils, she had friends, and she was excited. For about two weeks thereafter, Student attended school timely and daily, completed many assignments, and participated in her classes, and individual and group counseling. Student had no significant problems in the school environment.

90. On January 12, 2011, Mother's attorneys submitted a letter to District announcing her intent to unilaterally enroll Student in Summitview, an all-girl residential treatment center located in Placerville, California.

91. On January 12, 13, and 14, 2011, Student complained of having migraine headaches or not feeling well, and was sent home from school early. Student never returned to the District's school after January 14, 2011.

92. On January 17, 2011, Mother submitted a request to the District for an HHI placement and services pursuant to a doctor's letter of the same date from Angela Marie Chanter, Psy.D. In the letter, Dr. Chanter diagnosed Student with bipolar disorder, and recommended a residential treatment program, with HHI services until that placement was made.

JANUARY 21, 2011 IEP OFFER

93. District held an IEP team meeting on January 21, 2011, to respond to Mother's notice of unilateral residential placement and request for HHI services. Mother

attended the IEP meeting without Student. District's Director of Special Education, Mr. Garabedian, attended the meeting along at least 11 others, including Ms. Genzlinger, Ms. Wells, Ms. Ryan, Ms. Kraus, and Leslie Roth, the County residential placement assessor. The evidence established that at the January 21, 2011 IEP team meeting, District verbally agreed to provide HHI services based on Dr. Chanter's note, however the amount of services was never established.

94. At the January 21, 2011 meeting, Mother summarized her view of Student's deteriorating academic and functional performance since the beginning of the 2010-2011 school year. Mother informed the team that Student was "feeling stressed" in the Challlenge ED program, partly because she was getting too much attention from male peers and that two private doctors were recommending residential placement.

95. At the IEP meeting, Student's annual goals were reviewed and the team realized that they did not have sufficient information to determine whether Student had made progress on her goals, whether her levels of emotional anxiety and stress interfered with her ability to benefit from her education, as Mother asserted, or whether she needed new or adjusted goals or supports to meet her needs. Accordingly, District offered to conduct a comprehensive assessment of Student's psychoeducational, social, emotional and academic functioning.

96. The January 2011 IEP offer proposed to continue to place Student in the same ED program at Challenge with the same combined general and special education curriculum and, concurrently, to comprehensively assess Student. In addition, in light of Mother's continued concerns and request for a residential placement, District and CSOC offered significantly increased related mental health services consisting of individual mental health counseling for Student twice a month for a minimum of 30 minutes per session, for a total of 60 minutes a month. This time the IEP offer also included intensive Wrap services, offered as educationally related services for four sessions a week, for 60

minutes a session, at home, in the community and/or at school. The Wrap services offered consisted of: (i) a family support counselor to work with Student on targeted behaviors for 60 minutes per week of individual mental health counseling ; (ii) a youth coordinator to work with Student for 60 minutes per week on supporting her in expressing her concerns and communicating her needs; (iii) a team facilitator, to lead weekly Wrap team meetings for 60 minutes a session, and perform other services, including meeting with Student twice a month; and (iv) a family advocate, to offer additional support to Mother and assist her to communicate her concerns, for 60 minutes per week. The evidence established that Mother did not consent to the offer. Although Mother claims she did not reject the addition of family Wrap services as part of the IEP, she never signed consent to the IEP.

Appropriateness of the January 2011 IEP Offer

CLEAR WRITTEN OFFER FOR HHI

97. Student contends that District's January 2011 IEP offer did not constitute a clear written offer because the IEP did not contain any documentation of the HHI services that District offered in connection with the IEP meeting.

98. Home hospital instruction is provided to pupils whose doctors certify that, for medical reasons, they are temporarily unable to attend school. It is generally a short-term course of study, designed to assist the pupil to keep up with the curriculum until the pupil is able to return to the school setting. Special education and related services may be provided in the home or hospital if the IEP team recommends such instruction or services based upon a medical report. To calculate the amount of HHI instruction, the law provides that each clock hour of teaching time devoted to HHI instruction counts as one day of school attendance.

99. Student sustained her burden of proof on this issue. The evidence established that District's offer of FAPE at the January 2011 IEP was continued

placement in the Challenge ED program with significantly enhanced related mental health and Wrap services. District also verbally agreed to provide HHI services in light of Dr. Chanter's medical letter of recommendation, which was inconsistent with the offer of placement at Challenge. However, there was no written offer for HHI placement and services in the IEP.

100. The law required the IEP team to offer HHI in the IEP process in order for Student to receive special education, including related mental health services, while on HHI. On January 25, 2011, after the IEP meeting, Mother submitted District's HHI form signed by a physician, which contained a date of March 16, 2011, for Student to return to school.

101. The IEP also indicated that District planned to conduct a "30-day review" of Student's transfer from Woodcreek to Challenge and had scheduled another IEP meeting for that purpose for the week after the January 21, 2011 IEP meeting. In addition, District was required to hold another IEP team meeting to review CSOC's residential placement assessment. Therefore, at the IEP meeting on January 21, 2011, the team obtained Mother's consent to extend both deadlines. The meeting notes recorded that "...we have agreed to join the 30-day review with the IEP required to review the residential findings report. This IEP will be held by March 3rd, 2011. Parent agrees to extend the 30-day time line for the IEP and hold the two IEP [sic] together in March."

102. At hearing, Mother testified that, after the January 2011 IEP meeting, she was contacted by the HHI teacher from the District, and knew that the teacher came to provide instruction about three times. Mother relied on Student's reports and concluded that her HHI teacher did not continue to provide instruction. Mother's testimony was sufficient to shift the burden of production on this issue to the District. District did not present any testimonial or documentary evidence regarding its delivery of, or attempt to deliver HHI services during the time period at issue.

103. District did not present any witness to testify about the missing HHI services offer in the January 2011 IEP, or whether the extension of time for the next IEP also included an extension of time to memorialize the HHI services in the IEP. When the team reconvened on March 1, 2011, that IEP contained a belated offer of HHI services.

104. Since the January 2011 IEP did not contain a clear offer of HHI services, including the offer of services, or the frequency and duration, District committed a procedural violation. The procedural violation impeded Student's right to a FAPE because there was no written record of what HHI services Student was to receive, or the frequency and duration of the services as required by law. It significantly impeded Mother's ability to participate in the IEP process as Mother had no idea how many hours per week of HHI District offered or was required to provide. Mother took no action to contact the District to insist on regular weekly HHI instruction for her daughter. Mother was working long hours out of town, and was focused on securing a suitable residential placement. As found below, the evidence did not establish that District implemented the services. Accordingly, the violation denied Student a FAPE. District cured the violation by offering the HHI services in the March 2011 IEP.

LEAST RESTRICTIVE ENVIRONMENT

105. As to District's offers for both placement and related mental health services, Student contends the offers were inadequate because she required a more restrictive therapeutic placement in a residential treatment facility. The evidence established that District's January 2011 IEP made an appropriate offer in the least restrictive environment based on an evaluation of the relevant factors. First, Student did not establish that the single episode of altercation and self-harm that had occurred in the home in December, although serious, required a complete removal from District's public schools. There was no objective evidence that Student was in increased danger of self-harm or suicide, or that she engaged in behaviors that negatively impacted the

other pupils or teachers in her classes. Student was passing in the TA position/class, English 11, and PE. Although she only had a 34 percent grade in Economics, her main behaviors in that class included a tendency to be chatty and to avoid assignments. Overall, Challenge staff were impressed with Student's attitudes, participation, and cooperation at school. She attended school daily, participated in class discussions, and was social during the lunch hour. Ms. Genzlinger led the group counseling session, which Student attended once before she was withdrawn from school. Ms. Genzlinger testified persuasively that Student participated in the session in a "mature, attentive and honest" fashion and benefited from it.

106. Second, Student's failure to pass most of her classes in the fall of 2010 did not support residential placement. When Student stayed at the CRC shelter for two weeks in August 2010, Mother did not consent to her attendance at school, did not drive her to school, and only arranged for Student to receive some of her homework during that time, even though Ms. Kraus had warned Mother that missing those first days of school would damage Student's education due to the compressed block system of classes. In December, 2010, Student's outburst and self-harm were serious incidents. However, Student did not require medical treatment, was not suicidal, and needed no more than a standard involuntary psychiatric hold for 72 hours. (See Welf. & Inst. Code § 5150.) Mother kept Student hospitalized for two weeks, and therefore caused Student to miss school for most of the last two weeks of the fall semester by failing to consent to her prompt release from the psychiatric hospital. In addition, the record does not show that Mother attempted to obtain Student's December homework or otherwise helped her participate in her classes.

107. Third, Student's reported experiences of stress at Challenge also did not show that District's offer was inappropriate. Upon change to a new campus, some amount of stress was to be expected. In addition, Student's experience of stress and

anxiety was ongoing and associated with her disabilities, not her experience at Challenge. Mother did not permit Student to remain in the placement at Challenge long enough to learn if she could adjust to the placement.

108. Moreover, the January 2011 IEP team did not have enough information about Student's progress or levels of performance and reasonably offered a comprehensive assessment to determine those matters. District school psychologist Ms. Wells credibly testified that a new assessment was important in order to determine if Mother's reports were accurate and to obtain objective data to see if Student's levels of anxiety required new or different interventions.

109. For the most part, Mother's concerns that Student experienced unmanageable difficulties in connection with school were not corroborated by Student's teachers or counselors at the school. For example, Rachel Stewart, who is a certified mild/moderate special education teacher at Challenge with many years of experience, credibly testified that when Student first came into her English class, she engaged in defiant behaviors to test her limits with Ms. Stewart. Ms. Stewart immediately took Student aside and went over the class rules with her. Thereafter, Student was a successful pupil in her class, completed eight out of 12 assignments, and was receiving a grade of B minus. Ms. Stewart found that Student worked well with other pupils, did not have behavior problems, and interacted appropriately with other pupils. Ms. Kraus, who was frequently on campus and observed Student, corroborated Ms. Stewart's testimony regarding Student's success on campus, including appropriate interactions with peers.

110. Finally, Student historically experienced stress and anxiety in connection with her schoolwork and had developed physical or somatic symptoms and avoidance behaviors to escape completing class work and tests. For example, shortly before Student was withdrawn from school, Ms. Kraus observed Student at Challenge engage in conversation with peers, laughing, and joking. A few days later, at a Wrap team

meeting in the home, Mother reported that, on Friday, January 14, 2011, Student was allowed to go home early based on symptoms of a head or stomach ache, and later cried to Mother, stating that she was overwhelmed and could not handle school. The evidence established that Student had a test in Economics that afternoon which she successfully avoided by going home. County records indicated that the Wrap team identified the test as the probable trigger for the negative behavior and discussed strategies for helping Student and Mother deal with such situations. The incident did not demonstrate that District's placement offer was not appropriate. Rather, it demonstrated that a cohesive team of District and County professionals were collaborating to move Student from negative behaviors to positive choices to support her progress and to help Mother learn the skills to support Student in that process.

111. Based on the foregoing, the evidence established that Student obtained meaningful educational benefit during the time she attended the ED program at Challenge in January 2011, which included continued mental health counseling with Ms. Kraus. District made the offer for continued placement at Challenge knowing that Student had responded positively to the highly structured ED program. Student also responded positively to the supports for her mental health and emotional needs that were imbedded in the program and supplemented by County mental health services. District's January 2011 offer of continued placement at Challenge was therefore reasonably calculated to provide Student with educational benefit.

RELATED MENTAL HEALTH SERVICES

112. Student contends that District and CSOC's January 21, 2011 offer of increased related mental health services was not appropriate and denied her a FAPE because Student had required a residential treatment placement since December 2010. District and CSOC argue that the mental health offer was "robust" and offered adequate services to meet Student's needs.

113. District's January 2011 IEP offer of mental health counseling for Student would have restored her related mental health counseling services to the same level that Student had received in the fall of 2010. The evidence established that, after Mother consented to the reduced level of mental health counseling in the December 2010 IEP, CSOC continued to provide Ms. Kraus' therapy services at least twice a month anyway. By then, CSOC had begun providing Wrap services under the Mental Health Services Act, and the Wrap team had also begun to serve the family. By January 21, 2011, the Wrap team had identified significant family problems that impacted Student's ability to be successful and make progress in the school setting, including Mother's announced intention to place Student in a residential facility. Accordingly, restoring related mental health services to twice a month was insufficient, in and of itself, to offer Student a FAPE in the January 2011 IEP.

114. However, District and CSOC's January 2011 offer went much further than previous offers and included weekly Wrap services. Most of Student's negative behaviors and emotional outbursts occurred in the home, and the weekly mental health and family support services were reasonably calculated to provide Student with educational benefit in order to keep the family together, support Student's education, and reduce the risk of an out-of-home placement. District and County were committed to enabling Student to stay in the family home and attend Challenge with significant supports.

115. By the time of the January 21, 2011 IEP meeting, however, Mother had obtained private recommendations from professionals that supported her request for a residential placement. Although District had a brief letter from Dr. Chanter, recommending HHI until a residential placement was made, District did not have any written evaluation or report from her setting forth her findings and reasoning at the

time of the January 2011 IEP offer, except for a diagnosis of bipolar disorder.[11] That diagnosis bolstered District's offer of a comprehensive assessment and did not invalidate the placement offer.

116. As discussed below, Student's expert at hearing, Dr. Jennifer Jacobs, did not evaluate Student until the end of July, 2011. Student's other expert, Dr. Jennifer Lotery from Summitview, did not meet Student until March 2011. Therefore, the opinions of Student's experts presented at hearing were not known to, and could not have been considered by the IEP team in making the January 2011 IEP offer.

117. Student contends that two events undermined CSOC's ability to offer her with appropriate mental health services, which occurred at a Wrap meeting on January 18, 2011. First, in connection with that meeting, Mother learned of Ms. Ryan's child abuse report to the State. Second, Ms. Kraus informed Mother, Student, and the Wrap team that she was being reassigned to a new position and would no longer be Student's mental health therapist as of February 1, 2011. However, these events do not affect the quality of the comprehensive offer of mental health services made in January 2011. Student did not establish that the mental health services offer denied her a FAPE. Based on the foregoing, District and CSOC's offer of mental health and family Wrap services was reasonably calculated to provide Student with educational benefit and did not deny her a FAPE.

FAILURE TO IMPLEMENT IEP SERVICES IN 2011

118. Student contends that District and CSOC failed to implement services in her operative IEP between January 21 and February 28, 2011, because they failed to provide any individual mental health therapy for Student and only provided one Wrap

[11] Dr. Chanter did not testify at hearing and Student did not submit any report from her.

session, when they were required to provide both as related services. During that same time period, Student also contends that District failed to provide sufficient HHI services, and at most, only provided three hours of HHI instead of five hours per week.

Failure to Provide Related Mental Health Services

119. As found above, Mother did not consent to the January 21, 2011 IEP, and the mental health counseling service that District and CSOC were obligated to provide was therefore controlled by the December 2010 IEP, to which Mother had consented. That IEP did not offer educationally-related Wrap services and offered Student individual mental health counseling at a reduced rate (calculated as about one session every 1.25 months based on a ten month school year). While the CSOC Wrap program continued to provide services under that program, they were not educationally related services required by Student's operative IEP. Since the Wrap services were not required by Student's operative IEP, no special education violation occurred due to any lack of Wrap services from January 21 to February 28, 2011. To the extent that there may have been failures in the delivery of the Wrap services pursuant to the Mental Health Act, OAH has no jurisdiction over those possible violations.

120. As to individual counseling services pursuant to Student's IEP, Ms. Kraus met Student and Mother at a Wrap meeting in the home on January 25, 2011. Since Ms. Kraus was beginning a new position at the beginning of February 2011, she offered to set up a session to have closure with Student. However, Mother cancelled a tentative meeting for January 27, 2011, and did not permit Ms. Kraus to see Student again.

121. Mother testified that Student refused to speak to any mental health professional except her private psychologist, Dr. Chanter. Beginning in February, the location of Mother's job changed from West Sacramento to Stockton, a drive of over an hour each way. She was therefore not available for most meetings during the work days. In addition, Mother left on a vacation to Mexico at the end of January. There is no

evidence that Mother made arrangements with CSOC for any further individual mental health counseling sessions for Student related to her IEP services.

122. Based on the foregoing, the evidence established that Mother declined to permit either Ms. Kraus or a new individual mental health counselor from CSOC to have any further contact with Student by the end of January 2011. Accordingly, Student did not establish that District and CSOC abandoned delivery of her individual mental health counseling services, and the Wrap services were not IEP related services. Based on the foregoing, District and CSOC did not materially fail to implement mental health services required by Student's operative IEP, and did not deny her a FAPE on that basis.

Failure to Provide HHI Services

123. Student contends that District did not provide requisite amounts of HHI services from January 21, to February 28, 2011, following Mother's removal of her from Challenge. As found above, District's IEP offer of January 21, 2011, failed to contain a clear written offer for the HHI services. Based on the procedural violation, which denied Student a FAPE, no further substantive analysis is necessary.

FEBRUARY 2011 COUNTY RESIDENTIAL PLACEMENT ASSESSMENT

124. Student contends that CSOC denied Student a FAPE by failing to conduct an appropriate assessment of her need for residential treatment. County contends that its assessment was appropriate and complied with the law.

125. At District's December 17, 2010 IEP meeting, CSOC agreed to conduct a residential placement assessment, and thereafter conducted it. CSOC had already entered into a mental health services contract with PCOE on December 7, 2010, for delivery of Chapter 26.5 mental health services to school districts in the SELPA, but the contract did not provide for residential placement services.

126. On February 22, 2011, CSOC issued its residential placement assessment report as a supplement to its triennial mental health assessment dated November 7, 2010. The supplemental assessment was conducted by County employee Leslie Roth and approved by senior staff and supervisors, including Ms. Ryan. Ms. Roth evaluated many factors and concluded that Student did not qualify for an educationally-related residential placement because she could receive educational benefit at Challenge.

127. Student contends that the assessment was inappropriate because Ms. Roth (a) failed to interview Student's grandmother or Ms. Risser; (b) failed to assess the reasons Student missed so much school in the fall of 2010; and (c) failed to accurately describe prior mental health interventions, or the lack thereof. Assuming Chapter 26.5 was operative at the time of County's residential placement assessment, although unfunded or only partially funded, the law did not specifically regulate the form, substance or conduct of such an assessment, except to require that the assessment should be conducted by a qualified person. However, Student did not claim that Ms. Roth was not qualified to conduct the assessment.

128. While Ms. Roth did not testify at hearing, she was present at District's IEP meeting on March 1, 2011, where her assessment results and report were reviewed. Although Ms. Roth's written report did not list the specific documents she reviewed or the persons she interviewed, the content of the report gave some indication of those matters. The record did not establish when Ms. Roth began the assessment or how long it took her to complete it.

129. Ms. Roth interviewed Mother for the assessment but did not interview Student's maternal grandmother as Mother had requested. Mother did not claim that Student was not interviewed. Student's argument that Ms. Roth should have conducted a "clinical interview" of her was not supported by any evidence as to what clinical tools

or methods should have been used. Student's expert witnesses did not address County's residential placement assessment.

130. Student's criticism that Ms. Roth did not interview Ms. Risser, Student's teacher at Woodcreek in the fall of 2010, was not persuasive. Based upon Ms. Risser's testimony, despite Student's defiance in her class, Student's progress and abilities led Ms. Risser to conclude that Student did not require a more restrictive placement. Therefore, the failure to interview Ms. Risser was not significant and did not invalidate the assessment as she would not have supported a residential placement.

131. Ms. Roth's failure to interview Student's grandmother likewise did not invalidate the assessment. While the grandmother was a significant family figure in Student's life, and could have provided some pertinent information, such as Student's January 2011 disclosure of traumatic flashbacks regarding the 2008 sexual assault, Student did not establish that the addition of such information would or should have significantly changed Ms. Roth's results. The evidence also established that there were some factual errors or inaccuracies in the report, but they were minor and likewise did not operate to invalidate the report.

132. CSOC and District retained Dr. Stephen Brock as their expert witness for hearing. Dr. Brock holds a bachelor's and master's degrees in psychology, a licensed credential as a school psychologist, and a Ph.D. degree in education. He has been an educational psychologist since 1987, was a school psychologist for the Lodi Unified School District for over 18 years, and is currently a professor at California State University, Sacramento in the Department of Special Education. He also maintains a private practice including the provision of psychological services and psychoeducational assessments of pupils. In his many years of experience, Dr. Brock conducted hundreds of assessments of emotionally disturbed students and ADHD disabilities. Dr. Brock reviewed Student's school-related records in this case, including Student's IEPs, District's

IEP offers, and District's January 2010 triennial assessment, but did not meet or assess Student.

133. Dr. Brock persuasively testified that the CSOC report's findings were consistent with his opinion that Student did not require a residential placement in order to obtain educational benefit and that such a placement was premature.

134. Finally, Student's criticism that Ms. Roth's report failed to evaluate Student's academic failures and missed school time in the fall of 2010 was not persuasive. Ms. Roth's assessment was a supplement to Ms. Kraus' thorough triennial mental health assessment in November 2010, where Student's academic, emotional and social problems were detailed. While Ms. Roth's report could have gone into more detail, in conjunction with Ms. Kraus' November 2010 assessment it provided sufficient information to form the bases of her conclusions. Ms. Kraus was intimately familiar with Student's academic difficulties and missed school time in the fall of 2010, and Ms. Roth's report indicated that she interviewed Ms. Kraus, and Ms. Sanchez-MacDonald. Additionally, Ms. Roth reported that she, Ms. Kraus, and Ms. Sanchez-MacDonald attempted several times to have Student's private psychologist, Dr. Chanter, contact them to obtain information regarding her recommendations for HHI and residential placement, but Dr. Chanter did not respond.

135. Based on the foregoing, the evidence did not establish that CSOC's residential placement assessment was inappropriate and CSOC did not deny Student a FAPE on that basis.

MARCH 1, 2011 IEP OFFER

136. At the IEP meeting on March 1, 2011, Mother participated by telephone due to the constraints of her job. Student did not attend the meeting. District and County staff participated, including Student's special education teacher, Ms. Stewart, school psychologist Ms. Wells, County assessor Ms. Roth, and others.

137. The IEP team reviewed Ms. Roth's residential placement assessment, which she discussed. Mother, who had already disagreed with the assessment, informed the IEP team that she also disagreed with District's proposed comprehensive assessment of Student and would not sign the assessment plan. In addition, Mother stated that she was unilaterally placing Student in the Summitview residential treatment center for girls that day.

138. As found above, the parties had agreed to an extension of time to hold the IEP meeting for both a 30-day review of Student's placement at Challenge and a unilateral placement. The IEP team, excluding Mother, added an offer for HHI services to Student's IEP as a temporary placement following her withdrawal from Challenge through March 15, 2011, for a total of 240 minutes, or four hours, once a week, as requested by Student's physician. After that date, the IEP offered three daily periods of specialized academic instruction in the ED program at Challenge for 75 minutes per period, for a total of 225 minutes a day, in English, independent living skills, and social studies. Student's fourth class would have been a general education class.

139. In addition, District and County offered comprehensive mental health services, including individual counseling twice a month for 30 minutes per session by a County 26.5 counselor through June 1, 2011; and after that date, by District staff.

140. The offer of mental health services also included the same Wrap services as those contained in the January 2011 IEP offer, at the same frequency and duration (four sessions per week, for 60 minutes per session), including a family support counselor, youth coordinator, team facilitator, and family advocate for Mother. The Wrap services were offered through May 27, 2011.

Appropriateness of March 2011 IEP Offer

141. Student contends that the March 2011 IEP offer denied her a FAPE because it failed to offer her an educationally necessary placement in a residential

treatment center, NPS, or other restrictive placement. On March 1, 2011, District had a recommendation from a mental health assessor who was not an employee of the District that Student did not require a residential placement to access or benefit from her education at Challenge, so long as the additional mental health and Wrap services were in place to support her.

DISTRICT'S EXPERT WITNESS

142. Dr. Brock was a qualified, credible and persuasive witness. His many years as an educational psychologist with experience in the assessment and psychoeducational treatment of pupils with Emotional Disturbance and ADHD disabilities has focused on the needs of those pupils in the school setting. In addition, he has participated in many IEPs, including expanded IEP team meetings with county mental health staff for consideration of residential treatment placement. Dr. Brock was candid and conceded the limitations of his opinions. Overall, his testimony was entitled to great weight.

143. Based on his review of Student's records, Dr. Brock concluded that Student's placement in a residential treatment center in the spring of 2011 would have been premature and would not have constituted a placement in the least restrictive environment because Student's needs could be met at Challenge with appropriate supports. He testified persuasively that Student's academic performance met State standards on the California Standardized Testing and Reporting (STAR) test. Dr. Brock noted that District's January 2010 psychoeducational assessment identified Student's needs in the areas of coping skills, such as self-regulation to identify and express her feelings and emotions, and task completion. In addition, that assessment noted Student's low self esteem, depression, eligibility under the criteria for Emotional Disturbance, and very low attention and short term memory scores. There was no

question in Dr. Brock's mind that Student needed the support services in the January and March 2011 IEP offers.

144. Dr. Brock established that Student's superficial self-cutting incident in early December 2010 did not involve an acutely psychotic and suicidal break on a continuum of suicidal ideation. Dr. Brock reviewed Dr. Chanter's letter of January 17, 2011, in which she recommended a residential treatment program and noticed that Dr. Chanter did not provide any educational rationale for the recommendation in the letter.

STUDENT'S EXPERT WITNESSES

Dr. Jacobs and Private Evaluation

145. Dr. Jennifer Jacobs holds a bachelor's degree in psychology and obtained her Ph.D. degree in clinical child psychology in 2000. Since 2002, she has been in private practice specializing in the assessment and treatment of children and adolescents, primarily in the areas of ADHD and learning disabilities, with emphasis on health issues and chronic conditions. About 90 percent of her practice is psychological therapy and 10 percent is assessment.

146. In July 2011, Dr. Jacobs evaluated Student following her placement at Summitview by Mother on March 1, 2011. Dr. Jacobs did not conduct the assessment at Summitview and did not visit Student there. Dr. Jacobs assessed Student's psychological status using a variety of assessment tools. She submitted a written evaluation dated July 30, 2011, in which she stated that the evaluation question posed to her by Mother was whether placement at Summitview was the "best placement" for Student. Dr. Jacobs understood that either Mother's insurance company or Summitview was concerned that Student's diagnosis was "unclear."

147. Dr. Jacobs concluded that Student appeared to be "quite disturbed" and suggested further inquiry into clinical diagnoses including Dysthymic Disorder, Depressive Disorder Not Otherwise Specified, and/or Adjustment Disorder with

Depressed Mood, all medical conditions in the medical Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM-IV-TR). In addition, Dr. Jacobs thought that Student was at risk for substance abuse and that her symptoms might also indicate an inclination toward a diagnosis of bipolar disorder or Asperger's Syndrome. Dr. Jacobs was alarmed that Student presented with a significantly high level of depression and anxiety in July 2011. She found Student's mental health needs to be severe in comparison to the teens Dr. Jacobs usually saw in her practice. Dr. Jacobs concluded that Student maintained a rigid, negative view of the world and would benefit from a structured program in a residential treatment center.

148. Dr. Jacobs appeared to not question why Student had not made better mental health progress after six months at Summitview. During the hearing, Dr. Jacobs was asked if she was aware that Student had been involuntarily placed at Summitview by Mother, or that Mother was seeking funding from the District for the placement, and Dr. Jacobs testified that she was unaware of those facts.

149. Dr. Jacobs' evaluation lost some persuasive value because she has no training or experience as an educational psychologist and conducted a clinical evaluation. She did not visit Challenge or interview any of Student's teachers or mental health workers in connection with the assessment. She did not observe Student at Summitview, or interview any of Student's school teachers or therapists there. Dr. Jacobs reviewed Student's two prior psychoeducational assessments by the District, in 2007 and 2010, and did not question the results of those assessments or separately test Student's academic functioning. Dr. Jacobs viewed her evaluation as consistent with District's January 2010 assessment.

150. When asked whether a residential treatment center was the only environment in which Student could receive an education, Dr. Jacobs admitted that she did not have any knowledge of the District's educational options, but thought that a

residential setting was the "best way" to work with Student's problems. By contrast, District's expert witness, Dr. Brock, was an educational psychologist with extensive training and experience in psychoeducational assessment.

151. Dr. Brock testified persuasively that, although Dr. Jacobs' assessment contained helpful information, it was primarily clinical and did not address Student's educational needs or the law's requirement for education in the least restrictive environment. Dr. Jacobs conceded that analyzing the least restrictive educational environment was not her job. In addition, Dr. Brock pointed out that Dr. Jacobs' report used generalized text to describe typical adolescent findings with respect to each assessment tool. His opinion that the evaluation was not very helpful to educational planning for Student was persuasive. Because of Dr. Jacobs' lack of educational expertise, her opinion about a residential treatment center did not address Student's education, and is therefore not given much weight.

Dr. Lotery and Summitview

152. Since March 1, 2011, Student has been residing and attending school at Summitview. Summitview is a certified nonpublic school and residential treatment center for girls only.

153. Dr. Jennifer Lotery obtained a bachelor's degree in psychology in 1981, a master's degree in 1984, and a Ph.D. in psychology, with a major in clinical psychology in 1987. She is a licensed psychologist. Since 1989, Dr. Lotery has been in private practice in Placerville, and since 1993, she has been the director of day rehabilitation at Summitview. Dr. Lotery spends about two-thirds of her time at Summitview and the remainder in private practice. She is the facility's clinical psychologist and provides family therapy, parent training, and psychological testing to its clients. Dr. Lotery has been involved in residential treatment for over 22 years, and developed Summitview's

program, but concedes she is not an educator. In addition to the day treatment program, Summitview operates a residential facility and an educational NPS.

154. Dr. Lotery met Student when she was admitted to Summitview on March 1, 2011. Dr. Lotery has been Student's therapist's case manager, has followed her progress and meets weekly with the staff who work with Student. Dr. Lotery did not review any of CSOC's mental health assessments of Student. In mid-June 2011, Summitview staff conducted a team treatment review, including Dr. Lotery as Student's therapist, Student's residential supervisor and house leader, and her special education teacher. The review identified Student's current risk factors and rated her behaviors, reviewed her progress on two treatment goals and in her educational setting, summarized her emotional and mental functioning, and provided clinical medical diagnoses and recommendations.

155. Dr. Lotery testified that Summitview's two mental health goals for Student were to reduce her depressive shutting down (withdrawing and isolating or becoming immobile), and oppositional behaviors. However, the June 2011 report indicated that Student's second goal was to initiate positive social interactions with peers. Summitview has a behavioral levels system and Dr. Lotery established that, as of June 2011, Student scored at about in the middle of the behavioral levels in areas including agitation, depression, loss of energy, and poor judgment.

156. Dr. Lotery stated candidly that Student did not like Summitview, but opined that Student's level of emotional maturity was akin to that of a 10-year old, and that Student did not have much insight or self-observation skills. Student was still taking multiple prescription medications. Dr. Lotery established that Student's stability had deteriorated prior to the hearing. Dr. Lotery was not familiar with Student's educational progress and relied on the Summitview special education teacher's report. That report stated that Student had not demonstrated any extreme behaviors at school; occasionally

used somatic complaints in order to get out of school work, but was generally productive; turned in an adequate amount of school work; and occasionally demonstrated depressive symptoms. The June 2011 review team reported that Mother participated in family therapy twice a month but had some scheduling difficulties in arranging Student's home visits. No further updated written review was presented at hearing.

157. Overall, Dr. Lotery testified that Student's placement at Summitview was appropriate to treat her mental health problems, and that it might take Student a year to learn basic coping skills through use of intensive dialectical behavior therapy. When asked if Student could attend the Summitview day treatment program successfully and live at home, Dr. Lotery thought it was possible, depending on transportation. In addition, Dr. Lotery could not provide an opinion about District's educational placements for Student during the 2010-2011 school year, up to March 2011.

158. Dr. Brock was more persuasive than Dr. Lotery in his opinion that Student did not require a residential placement center in order to receive educational benefit. Dr. Lotery's opinions, and Summitview's evaluation of Student, were primarily clinical in nature and did not address Student's educational needs or the law's requirement for education in the least restrictive environment. Dr. Lotery conceded that she was not an educator and gave no opinion about Student's educational placement. Dr. Lotery based her opinion about Student's residential placement on factors other than Student's educational functioning. Dr. Lotery's opinion that a residential treatment center was an "appropriate" setting for Student to receive mental health treatment was therefore not given much weight.

159. Based on the foregoing, District's March 1, 2011 offer for continued placement at Challenge, with additional and intensive mental health services and family

Wrap supports, was reasonably calculated to provide Student some educational benefit, and therefore did not deny her a FAPE.

EXTENDED SCHOOL YEAR SERVICES

160. Student contends that District should have offered her extended school year (ESY) instruction and services for the summer of 2011 in its March 1, 2011 IEP offer. Student contends that if Mother had not placed her in Summitview, where she received intensive mental health services over that summer, District's failure to make the IEP offer for ESY would have caused her to regress, and the violation therefore denied her a FAPE and should be remedied.

161. ESY services must be provided only if the IEP team determines, on an individual basis, that the pupil has a handicap that is likely to continue indefinitely or for a prolonged period, and that interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self sufficiency and independence that would otherwise be expected.

162. Student did not sustain her burden on this issue. None of Student's IEPs and IEP offers in evidence, that predated the January 21, 2011 IEP, offered Student ESY instruction and services. District appeared to have offered ESY for the summer of 2011 in connection with the January 21, 2011 IEP, because the box was checked, but the IEP did not specify any services and was left blank for ESY. The matter was apparently not discussed at that IEP meeting in view of Student's withdrawal from Challenge and request for HHI on January 17, 2011. In the March 1, 2011, IEP, District clearly checked the box indicating that no ESY services were offered.

163. Ms. Kraus established that Mother did not want ESY services for Student. During the 2010-2011 school year, Mother stated that she wanted Student to have a break from school in the summer, and to be able to enjoy herself, travel, and engage in

volunteer work. Following Mother's disclosure that she wanted a residential treatment placement for Student, the IEP documents do not reflect any discussion of ESY or requests for ESY from Mother.

164. Student historically did not have ESY, and there was no evidence of a history or pattern of regression over the summers in order to qualify for ESY. Student's last psychoeducational assessment in January 2010 changed her eligibility for special education to Emotional Disturbance due to a history of emotional and attentional difficulties. Thus, Student's condition met the first part of the criteria for ESY, that her disabilities were likely to continue for a long time. However, Student did not establish that she had limited recoupment capacity that would render it "impossible or unlikely" to attain a level of self-sufficiency and independence that would otherwise be expected. There was no evidence that Student had difficulty retaining knowledge during school breaks.

165. Dr. Jacobs' July 2011 assessment was not available to the District on March 1, 2011. In any event, Dr. Jacobs made no determinations regarding Student's ability to retain learned information over a summer break.

166. Student did not establish that she met the legal criteria for ESY. Therefore, District did not deny her a FAPE by not offering ESY instruction for the summer of 2011.

REMEDIES AND COMPENSATORY EDUCATION

167. An ALJ has broad discretion to remedy a denial of FAPE and may, among other things, order a school district to provide compensatory education or additional services the pupil involved. Any such award must be based on a highly individualized determination.

168. Student did not establish that District's IEP offers from August 2010 to March 1, 2011, denied her a FAPE because of her educational placements at Woodcreek

and Challenge. Accordingly, Student is not entitled to an order for placement at a residential treatment facility, NPS, or day treatment program.

169. However, as found above, District failed to clearly offer and failed to provide Student with adequate HHI placement and services in the spring of 2011. District therefore denied Student a FAPE. Accordingly, Student is entitled to relief on that basis.

170. Student established that there were 25 school days between January 21, and February 28, 2011, prior to the March 1, 2011, IEP, and therefore asks for compensatory individualized instruction from a credentialed special education teacher for 22 hours (subtracting three hours of services). Student calculated her request at the rate of one hour per day of classroom instruction, consistent with the law. District's March 2011 offer of HHI offered instruction once a week for four hours but did not explain the basis of the calculation. Based on the foregoing, Student's requested relief is ordered.

171. As found above, District and CSOC also denied Student a FAPE because they failed to make a clear written offer of related mental health services in the August 2010 IEP; and failed to make adequate offers of mental health services in the November and December 2010 IEPs. Student's January 2010 IEP remained in effect until Mother consented to the December 2010 IEP, but the reduced frequency and duration of mental health services in that IEP denied Student a FAPE as well. It was not until January 21, 2011, that District and CSOC offered sufficient mental health supports by adding Wrap services to their offer to address Student's significant risk for out-of home placement. Accordingly, Student was denied a FAPE for about five months and is entitled to relief.

172. Student requests compensatory mental health services calculated as: (a) 12 sessions of individual mental health therapy that should have been delivered in school settings; and (b) 26 sessions of individual mental health therapy, at 50 minutes per

session, based on missing one individual therapy session per week of school from August 10, 2010 to February 28, 2011.

173. In addition, Student requests 47 sessions of specified Wrap services from November 9, 2010 to February 28, 2011. As found above, Student did not establish that District and CSOC denied her a FAPE by failing to implement Wrap sessions because they were not required by her operative IEPs, and she and is not entitled to relief on that basis.

174. Student's request for compensatory individual mental health counseling services is granted. The evidence established that, beginning in August 2010, District's and CSOC's offers for related mental health services were either not clear, or not sufficient, until the January 21, 2011 IEP. Since Student is entitled to a remedy for denial of FAPE beginning in August, compensatory counseling services should be calculated from that month. There was some evidence that Ms. Kraus, on her own initiative, provided Student's individual therapy at a higher frequency. It was not possible to determine what Student's true therapeutic needs were since Ms. Kraus provided many extra hours of guidance. Student's method of calculating therapy sessions is reasonable. Therefore, District and CSOC shall provide Student with 26 sessions of individual mental health therapy with a qualified therapist.

Transportation Reimbursement

175. Student seeks reimbursement of Mother for the costs of Student's transportation from their home in Roseville to and from the residential placement location at Summitview in Placerville. Since Student did not require a residential placement in order to receive educational benefit, reimbursement for transportation costs associated with that placement is denied.

176. In addition, even if Student required a residential placement, the Order Following Prehearing Conference dated September 2, 2011, expressly ordered that any

party seeking reimbursement of expenditures "shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief." Here, aside from Mother's testimony shat she requested reimbursement for transportation costs, there was no evidence of the expenditures, or even evidence of mileage and frequency introduced into evidence. Thus there is no basis upon which to calculate such an order. Based on the foregoing, the request is denied.

LEGAL CONCLUSIONS

1. Student, as the party requesting relief, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].) The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

FAPE AND RELATED SERVICES

2. A pupil with a disability has the right to a FAPE under the IDEA, consisting of special education and related services. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) FAPE is defined as special education, and related services, that are available to the pupil at no cost to the parent or guardian, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5 § 3001, subd. (o).) 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 H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.) Educational needs also include functional performance. (Ed. Code 56345, subd. (a)(1).)

3. The term "related services" (referred to as designated instruction and services (DIS) in California law) includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from

education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.) Related services must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).) An educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F.3d 1025, 1033.) Related services may include counseling and guidance services, and psychological services other than assessment. (Ed. Code § 56363, subd. (b)(9) and (10).) Therapeutic residential placements may be related services that must be provided if they are necessary for the pupil to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).)

CONTINUUM OF SERVICES

4. Education Code section 56360 requires that the special education local plan area (SELPA) must ensure that a continuum of alternative programs is available to meet the needs of individuals with exceptional needs for special education and related services. (34 C.F.R. § 300.115(a) (2006); Ed. Code, § 56360.) This continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. (34 C.F.R. § 300.115(b)(1) (2006); see also Ed. Code, §§ 56360, 56361.) If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parent of the child. (34 C.F.R. § 300.104.)

PUBLIC AGENCIES

5. Special education due process hearing procedures extend to "the public agency *involved in any decisions regarding a pupil*." (Ed. Code, § 56501, subd. (a); emphasis added.) In California, the determination of which agency is responsible to

provide education to a particular pupil is, in most instances, governed by residency requirements as set forth in sections 48200 and 48204 of the Education Code. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57; *Orange County Dept. of Educ. v. A.S.* (C.D. Cal. 2008) 567 F.Supp.2d 1165, 1167.) An LEA is generally responsible for providing a FAPE to pupils with disabilities who reside within the LEA's jurisdiction. (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.)

6. CSOC contends that it is not a public agency for purposes of special education law and is therefore not a proper party to this proceeding. It argues that OAH consequently does not have jurisdiction over CSOC because the statutory mandate under Chapter 26.5 for CSOC to provide educationally related mental health services was "lifted for the 2010-2011 fiscal year beginning July 1, 2010 . . . ." CSOC asserts that it provided services to Student pursuant to a contract with District, and therefore was no different than a private entity or vendor contracting with a school district to provide related services.

7. California is divided into 58 political county subdivisions. (Cal. Const. Art. 11, § 1(a).) The County of Placer functions, as all counties do, to provide municipal services to its residents, and to act as a delivery channel for state services, such as public health care, child welfare, and foster care. For purposes of special education, Education Code section 56028.5 provides that:

> "Public Agency" means a school district, county office of education, special education local plan area, a nonprofit public charter school ...[as specified]..., or any other public agency under the auspices of the state or any political subdivision of the state *providing special education or related services to individuals with exceptional needs*. For purposes of this part, "public agency," means all of the public

agencies listed in Section 300.33 of Title 34 of the Code of Federal Regulations. [Emphasis added.]

8. Section 300.33 of Title 34 of the United States Code of Regulations provides in part that "public agency" includes "any other political subdivisions of the State that are responsible for providing education to children with disabilities."

Changes in the Laws Applicable to County Mental Health

9. Prior to July 1, 2011, mental health services related to a pupil's education were provided by a local county mental health agency that was jointly responsible with the school district pursuant to Chapter 26.5 of the Government Code.[12] (Gov. Code §7570, et seq., often referred to by its Assembly Bill name, AB 3632 [Chapter 26.5].) A pupil who was determined to be an individual with exceptional needs and was suspected of needing mental health services to benefit from his or her education, could, after the pupil's parent had consented, be referred to a community mental health service, such as CSOC, in accordance with Government Code section 7576. The pupil had to meet the criteria for referral specified in California Code of Regulations, title 2, section 60040; and the school district, in accordance with specific requirements, had to prepare

[12] Government Code section 7570 provides that the Superintendent of Education and the Secretary of the Health and Human Services Agency are jointly responsible to provide related services, including mental health services; and section 7571 provides that the Secretary may designate a State department to assume the responsibilities, and shall also designate "a single agency in each county to coordinate the service responsibilities described in Section 7572." These sections have not been amended or repealed in 2011. However, portions of Section 7572 have been amended effective July 1, 2011, subject to amendment or to repeal on January 1, 2012.

a referral package and provide it to the community mental health service. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 14, § 60040, subd. (a); Gov. Code § 7576 et seq.)

Chapter 26.5, portions of which were not amended or scheduled for repeal in 2011, still provides that:

> All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state *or local agencies* joined as parties. (Gov. Code § 7586, subd. (c).) [Emphasis added.]

October 2010 Veto of Legislative Funding for Legal Mandate

10. As set forth in Factual Findings 41 and 42, on October 8, 2010, the California Legislature sent to the prior Governor, Arnold Schwarzenegger, its 2010-11 Budget Act (Ch. 712, Stats. 2010), which, in item 8885-295-0001, provided full funding for Chapter 26.5 mental health services. The funding was in the form of reimbursement to community mental health agencies which had already performed Chapter 26.5 services. On that same day, the Governor signed the Budget Act after exercising his line-item veto authority. One of the items he vetoed was the appropriation for Chapter 26.5 mental health services by county mental health agencies. In his veto message he stated: "This mandate is suspended." (Sen. Bill 870 [SB 870], 2010-11 (Reg. Sess.) (Chaptered), at p. 12.)

11. On February 25, 2011, the California Court of Appeal for the Second Appellate District affirmed that the Governor had authority to veto the funding for the statutory mandate. (*Cal. Sch. Bds. Ass'n v. Edmund G. Brown Jr., Gov.* (2011) 192 Cal.App.4th 1507, review denied June 8, 2011) (*CSBA v. Brown).*) In doing so, the court distinguished between a gubernatorial action "suspending" the Chapter 26.5 mandate,

which would have been an unconstitutional substantive change to the law in violation of the single-subject rule, and the Governor's veto to eliminate a funding appropriation. The court held the latter action was constitutional and resulted in freeing the local agencies from the legal duty to implement the statutory mandate. Thus, even though the Governor characterized his action as "suspending" the statutory Chapter 26.5 mandate, the Court of Appeal upheld his action as a veto of the funding appropriation for Chapter 26.5 services, which by operation of law freed CSOC from the legal duty to implement the mandate but did not substantively change the law.

12. As a consequence of the Court's determination that the Governor's exercise of his line-item veto was constitutional, CSOC's obligation to provide mental health services was relieved at least as of October 8, 2010. Therefore, CSOC appears to be a proper party regarding disputes concerning mental health services for Student prior to October 8, 2010.

13. Thereafter, from October 8, 2010, through June 30, 2011, CSOC's *implementation* of the statutory mandate to assess and provide mental health services was not legally required.

14. CSOC argues that the former Governor's veto was retroactive to July 1, 2010, the beginning of that fiscal year. CSOC argues that it was therefore not legally obligated to implement Chapter 26.5 services from that date. While this argument has some appeal, CSOC has not cited any legal authority for it. The Court of Appeal in *CSBA v. Brown* did not discuss the issue of retroactivity as to substantive legal rights, although the issue clearly involved a fiscal year budget that began on July 1, 2010. In any event, CSOC had already implemented the Chapter 26.5 provisions from July 1, through October 8, 2010. CSOC's argument that it cannot be held to legal standards based on that performance is not supported by legal authority. In addition, CSOC thereafter chose

to continue to implement Chapter 26.5 provisions, as shown in its performance after October 8, 2010, and as provided in the December 2010 contract with PCOE.

15. The appellate court itself noted that the Legislature's full reimbursement funding item in the Budget Bill for Chapter 26.5 services was to disburse $76 million dollars in federal IDEA monies already received by the State of California, and that the Governor's veto intended to delete the earmark of those funds for Chapter 26.5 services. However, on October 29, 2010, prior to the court's decision, the California Department of Education "indicated that it would distribute these funds to county mental health agencies in order to pay for continued provision of Chapter 26.5 services. This provided a short-term solution only; the funds were expected to be fully expended by mid-January, 2011." *(CSBA v. Brown, supra.)*. The appellate court stated:

> In addition to their main challenge in this proceeding, petitioners also question the Governor's use of the veto in this instance [to delete the earmark for the IDEA funds]; however, as the funds have ultimately been allocated in accordance with the Legislature's intent as expressed in the provision vetoed by the Governor, the issue is moot.

Thus, the court in *CSBA v. Brown* determined that, despite the Governor's veto of the funding appropriation for local Chapter 26.5 services, the Department of Education elected to, and did disburse $76 million dollars in IDEA funds to local county mental health agencies to continue funding educationally related mental health services through approximately mid-January 2011.

16. As set forth in Factual Findings 79-83, on December 7, 2010, CSOC entered into a contract with PCOE, in which the County agreed to transfer its entire share of its allocation of the public IDEA funds disbursed by the Department of Education to CSOC

to fund educationally related mental health services pursuant to Chapter 26.5. District was not a party to the contract. It is not necessary to this decision to determine whether District was a third party beneficiary of it, as the benefits flowed to all school districts in the SELPA.[13] While the contract term was made retroactive to July 1, 2010, that provision was intended to regulate funding and the budget appropriation of County's share of the State's earmarked $76 million dollars. Presuming the State to have duly performed, CSOC therefore received public funds from the State, earmarked for mental health services, subsequent to the Governor's veto action. While making the contract retroactive made budgetary sense, the public agencies have pointed to no legal authority for the proposition that the Governor's funding veto "unrang the bell" as to substantive legal rights and responsibilities already implemented pursuant to Chapter 26.5 prior to October 8, 2010.

17. Based on the foregoing, CSOC's continued receipt of public monies was consistent with its statutory rights and responsibilities as a public agency. Since it is a public agency, even CSOC's right to contract was governed by statute. (Gov. Code § 23004.) Effective December 7, 2010, PCOE agreed to transfer its entire share of its allocation of the State's IDEA funds to CSOC. The Department of Education disbursed the public funds, despite the Governor's funding veto, to ensure continuation of related mental health services until local counties were able to formulate a new model for delivery of the educationally related services. If it had not been a public agency within the County, CSOC would not have received the County's entire allocation of the public mental health funds. During this time, CSOC did not inform Student or Mother of any change in the legal relationship between the parties for delivery of Student's necessary

[13] See generally Civil Code section1559.

mental health services until January 2011. In these circumstances, County is estopped from denying it was a public agency under the IDEA.

18. Private entities are not subject to direct liability under the IDEA. (20 U.S.C. § 1412(a)(11); *McElroy v. Tracy Unif. Sch. Dist.* (E.D. Cal. Oct. 28, 2008), Civ. No. 2:07-cv-00086-MCE-EFB) 2008 WL 4754831.) Contrary to CSOC's argument, the December 2010 contract with PCOE did not transform CSOC into a private vendor. CSOC was not a private entity in the first instance, and the contract did not change its nature. In addition, CSOC did not contract with District to provide educationally related mental health services but instead contracted with PCOE. There was no evidence that District agreed to be responsible for CSOC's compliance with special education law in delivering related services or to indemnify CSOC for such liability associated with the services. Thus, the evidence did not establish that CSOC entered into a contract with the District for delivery of related mental health services in a manner similar to that of a private vendor of services. CSOC's argument that it did not act as a public agency in providing services to Student after July 1, 2010, after October 8, 2010, or after December 7, 2010, is therefore not persuasive.

June 2011 Suspension of Chapter 26.5, Subject to Repeal

19. On June 30, 2011, California Governor Jerry Brown signed into law a new Budget Bill (SB 87) for the 2011-2012 fiscal year, and a trailer bill affecting educational funding (AB 114). Together the two bills did not repeal Chapter 26.5 of the Government Code in its entirety, but made substantial changes to it and related laws, particularly with respect to mental health services. Sections repealed were suspended effective July 1, 2011, and will be repealed by operation of law on January 1, 2012, unless amended in the meantime. In significant part, the obligation of the State Department of Mental Health, and its county designees, including CSOC, to assess and provide related mental health services to special education pupils has been suspended, and the statutory

responsibilities have been transferred to the LEAs instead. (See Gov. Code § 7573.) Henceforth, as of July 1, 2011, the LEAs, including District in the instant case, have the lead responsibility to provide related mental health care services to its qualifying pupils.

20. The new budget (SB 87) allocates approximately $221.8 million dollars to LEAs to fund mental health services. Significantly, the new budget makes a one-time appropriation from the State general fund of another $80 million dollars to county mental health agencies to partially backfill county mental health expenditures under Chapter 26.5 for the 2010-2011 fiscal year. (*Ibid.*) In addition, another $98.6 million from the Proposition 63 Mental Health Services Act is diverted by the new budget for county mental health agencies to fund nonsupplanting IEP/mental health care services for the 2011-2012 fiscal year. The law provides that an LEA may develop a contract with its county mental health agency setting forth the details of the two agencies' respective responsibilities, in order to access those funds. (SB 87, item 4440-295-3085.)

21. By virtue of the above, beginning on July 1, 2011, Chapter 26.5 has been fundamentally changed and significant statutory provisions for related mental health services have been suspended, subject to repeal. CSOC is no longer statutorily obligated to assess and provide mental health services to qualifying special education pupils under Chapter 26.5, including Student.

22. However, as found above, the June 30, 2011 budget bill for the 2011-2012 fiscal year allocates public monies to reimburse county mental health agencies, including CSOC, for IEP-related mental health services delivered during the 2010-2011 fiscal year, the year at issue in this case. CSOC has not identified any legal authority that would relieve it from liability for past conduct while Chapter 26.5 was operative. CSOC has not provided any legal authority that would prohibit OAH from issuing an order providing an equitable remedy based on such past liability. In addition, the passage of legislation effective July 1, 2011, suspending and repealing CSOC's statutory obligations

regarding the provision of educationally related mental health services is not relevant to CSOC's liability for the time period from August 2009 through March 2011 in this case.

23. Taking into consideration all of the forgoing factors, CSOC was a public agency operating under the auspices of the State and the County of Placer, and was statutorily responsible for providing Student mental health services related to her education pursuant to her IEPs, at all relevant times up to October 8, 2010. In addition, CSOC, a public entity operating by virtue of its authority as a political subdivision of the State and County, was involved in decisions affecting Student's IEP and offered and provided to Student IEP-related mental health services during the remainder of the 2010-2011 school year through March 1, 2011, for which it was legally entitled to public funds for reimbursement.[14] CSOC's December 2010 contract with PCOE did not transform it into a private entity. Based on the foregoing, CSOC is a proper party to this action.

[14] Thus, this case is distinguishable from OAH decisions finding that OAH did not have jurisdiction over county mental health agencies after October 8, 2010, where those decisions were rendered prior to the June 30, 2011 budget bills: (See OAH Case No. 2011020211 (decision issued April 5, 2011); and OAH Case No. 2010110268 (decision issued May 20, 2011).) In addition, in those cases the local county mental health agency issued written notice to the families terminating services pursuant to the Governor's veto of funding to implement the AB 3632 mandate in October 2010, and elected not to continue to implement the services. CSOC makes no claim that it was retroactively relieved of its duties by subdivision (a) of Government Code Section 17581. That provision only addresses the duties of agencies that, unlike CSOC, chose not to deliver Chapter 26.5 services after July 1, 2010.

PROCEDURAL VIOLATIONS

24. There are two parts to the legal analysis of whether a school district offered a pupil a FAPE, whether the LEA has complied with the procedures set forth in the IDEA, and whether the IEP developed through those procedures was substantively appropriate. (*Rowley,* 458 U.S. at pp. 206-207.) Procedural flaws do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

CLEAR WRITTEN OFFER

25. An IEP offer must be sufficiently clear that a parent can understand it and make intelligent decisions based on it. (*Union School Dist. v. Smith*, (9th Cir. 1993) 15 F.3d 1519, 1526.) In *Union,* the Ninth Circuit observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Ibid.* at p. 1526). The requirement of a formal, written offer alerts the parents to the need to consider seriously whether the offered placement was an appropriate placement under the IDEA, so that the parents can decide whether to oppose the offered placement or to accept it with the supplement of

additional education services. (*Ibid.; Glendale Unified School Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp.2d 1093, 1107 (citing *Union, supra,* 15 F.3d at p. 1526).)

HOME HOSPITAL INSTRUCTION

26. As set forth in Legal Conclusion 2 through 4 above, HHI services are part of the continuum of special education placements and programs that each SELPA must make available to pupils who receive special education. (34 C.F.R. § 300.115(b)(1) (2006); see also Ed. Code, §§ 56360, 56361.) Special education and related services may be provided in the home or hospital if the IEP team recommends such instruction or services. (Cal. Code Regs., tit. 5, § 3051.4, subd. (a).) For pupils with disabilities who have a medical condition "such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness," the IEP team must review, and, if appropriate, revise the IEP "whenever there is a significant change in the pupil's current medical condition." (Cal. Code Regs., tit. 5, § 3051.4, subd. (c).) When recommending placement for home instruction, the IEP team must have a "medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement." (Cal. Code Regs., tit. 5, § 3051.4, subd. (d).)

Issue 1: During the 2010-2011 school year, did District and CSOC procedurally deny Student a FAPE by failing to make clear written offers of placement and services in Student's IEPs from August 31, 2010, through March 1, 2011?

27. As set forth in Factual Findings 20 through 27, and Legal Conclusions 24 through 26 above, District's and CSOC's IEP offers for educationally related mental health services, dated August 31, 2010, were so significantly different that Mother could not have understood what the IEP offer for the services was, and did not consent to the offer. District's and CSOC's offers of related mental health services were so different that they did not constitute a clear written offer, and both public agencies therefore committed a procedural violation. The procedural violation significantly impeded Mother's right to participate in the IEP decision-making process and therefore denied Student a FAPE.

28. As set forth in Factual Findings 43 through 96, and Legal Conclusions 24 through 26, above, District and CSOC did not make IEP offers for Student to receive Wrap services from the County Wrap program as educationally related mental health services under County's Chapter 26.5 program. until January 21, 2011. Prior to the November 2010 IEP meeting, County had offered separate Wrap services to support the family in the home and District's November and December 2010 IEPs did not contain any Wrap offers. Mother understood that the referral to County's Wrap program was not an IEP team decision, and the reference of the referral during the November 2010 IEP meeting did not constitute an offer of IEP services. Therefore, there was no procedural violation and no denial of FAPE on that basis.

29. As set forth in Factual Findings 93 through 104, and Legal Conclusions 24 through 26, above, District's IEP offer dated January 21, 2011 did not contain a clear written offer as to HHI services and District therefore committed a procedural violation.

Although District agreed with Mother that it would deliver HHI services for Student, District failed to ensure that the January 2011 IEP included the services as Student's temporary change of placement. The procedural violation impeded Student's right to a FAPE. The violation therefore denied Student a FAPE. District cured the violation by offering the HHI services in the March 2011 IEP.

SUBSTANTIVE FAPE

Least Restrictive Environment

30. Federal and state laws require school districts to provide a program in the least restrictive environment to each special education pupil. (Ed. Code, §§56031; 56033.5; 34 C.F.R. § 300.114.) A special education pupil must be educated with nondisabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2).)

31. To determine whether a special education pupil may be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has required several factors to be evaluated. (Sacramento City Unified School Dist. v. Rachel H. (9th Cir. 1994) 14 F.3d 1398, 1404 (Rachel H.) [adopting factors identified in Daniel R.R. v. State Board of Ed. (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also Clyde K. v. Puyallup School Dist. No. 3 (9th Cir. 1994) 35 F.3d 1396, 1401-1402.) To determine whether a special education pupil could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: 1) the educational benefits of placement full-time in a regular class; 2) the nonacademic benefits of such placement; 3) the effect the pupil had on the teacher and children in the regular class; and 4) the costs of mainstreaming. (Sacramento City Unified School Dist. v. Rachel H., supra, 14 F.3d at p. 1404; see also Clyde K. v. Puyallup School Dist. No. 3,

supra, 35 F.3d at pp. 1401-1402.) If a child cannot be educated in a general education environment, he or she must be mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (Daniel R.R. v. State Board of Ed., supra, 874 F.2d at p. 1050.)

32. As part of Chapter 26.5, Government Code section 7576, subdivision (a) provided in part that a local educational agency was not required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in his or her individualized education program if the mental health services could be appropriately provided in a less restrictive setting. Effective July 1, 2011, section 7576 was statutorily suspended and will be repealed on January 1, 2012. However, this criterion for an educationally related mental health placement in a residential facility was consistent with the on-going requirements of special education law for placement of a pupil with a qualifying disability in the least restrictive environment in which the pupil is reasonably likely to obtain educational benefit.

Extended School Year Services

33. In addition to special education instruction and services during the regular school year, ESY services must be provided only if the IEP team determines, on an individual basis, that the services are necessary for a child to receive a FAPE. (34 C.F.R. § 300.106 (2006); Ed. Code, § 56345, subd. (b)(3).) ESY services shall be provided to pupils who have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (Cal. Code Regs., tit. 5, § 3043.) An ESY program shall be included in the IEP when the IEP team determines that an ESY program is needed. (Ibid.)

Issue 2(a): During the 2010-2011 school year in 11th grade, did District deny Student a FAPE by failing to offer appropriate educational placements for Woodcreek and Challenge high schools, HHI services, and ESY for the summer of 2011?

34. *(a) Woodcreek:* As set forth in Factual Findings 10 through 65, and Legal Conclusions 2 through 4, and 30 through 33, above, District's August 2010 IEP offer as to Student's educational placement at Woodcreek was reasonably calculated to provide her with some educational benefit at the time the offer was made. While the IEP team was aware that Student had lost nine days of instruction at the beginning of the semester, they understood that Student's emotional crisis was primarily due to personal issues involving her relationship with Mother. The IEP team members therefore did not have notice of any significant school-related mental health problems regarding Student's attendance, access to curriculum, or academic and functional performance that would have given rise to a duty to offer a more restrictive educational placement on August 31, 2010. Accordingly, District's August 2010 IEP did not deny Student a FAPE by failing to offer placement at Woodcreek.

35. Student's claim that District should have offered to transfer her to a more restrictive placement in connection with the October 12, 2010 IEP was not supported by the evidence. Student was still on track to graduate from high school, the IEP team was considering possible placements, and County's triennial mental health assessment was in progress. Thus, transfer to Challenge or another more sheltered placement would have been premature. The evidence therefore did not support Student's claim that District's failure to offer a more restrictive placement in the October 12, 2010 IEP denied her a FAPE.

36. By the time of the November IEP team meeting, District considered possible changes of placement. District offered reasonable changes to Student's

curriculum, including a position as a TA at Challenge. County's mental health assessment did not recommend any change in placement to a more restrictive, structured classroom environment at that time. Mother and Student were not receptive to a transfer to Challenge in any event. Accordingly, the evidence did not support Student's claim that District's failure to offer a more restrictive placement denied her a FAPE.

37. *(b) Challenge*: As set forth in Factual Findings 66 through 117, and Legal Conclusions 2 through 4, and 30 through 33, by the time of the December IEP team meeting, Mother had requested that District place Student in a residential treatment center. District made an appropriate decision to offer a mental health residential placement assessment before arriving at such a decision and CSOC agreed to conduct the assessment. In addition, District offered to change Student's educational placement to Challenge in its small, structured ED program. Mother consented to the offer for both the residential assessment and the change in placement to Challenge. Based on an evaluation of the factors pertaining to the least restrictive environment, including the academic and nonacademic benefits of Student's placement at Woodcreek or at Challenge, the evidence supported a determination that District's offered placement in the ED program at Challenge was the least restrictive environment in which Student could obtain educational benefit in December 2010. District's offer therefore was reasonably calculated to provide Student with educational benefit and did not deny her a FAPE at that time.

38. The IEP offers and placements for Challenge were reasonably calculated to provide Student with some educational benefit and did not deny her a FAPE. Student did not establish that the single incident of altercation and self-harm that occurred at home called for a complete removal from District's public schools. Student's academic failure also did not call for removal to a residential placement. The evidence showed that Student missed the beginning and ending weeks of the fall semester 2010 primarily

because Mother did not arrange for Student to attend school, obtain her homework, or release her from the hospital, and not because Student's mental condition caused her absences. Student's reported experiences of stress at Challenge also did not mean that District's offer was not in the least restrictive environment or was otherwise inappropriate. The County Wrap team had spent a month working with the family to develop areas of concern, plans and strategies and significant supports were in progress for Mother and Student. However, Mother removed Student from school on January 17, 2011, and did not cooperate with the County team long enough for Student to benefit from those services.

39. Dr. Brock testified persuasively, based on his review of Student's records, that Student did not require a residential placement in the spring of 2011 in order to receive educational benefit and that such a placement would have been premature and not in the least restrictive environment as required by law. Dr. Brock testified convincingly that Dr. Jacobs' assessment was primarily clinical and did not address Student's educational needs or the law's requirement for education in the least restrictive environment.

40. In *Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635, at 643, the Ninth Circuit held that, to determine whether a pupil's residential placement was an educationally related placement that is the responsibility of the school district, the "analysis must focus on whether [the pupil's] placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social or emotional problems that is necessary quite apart from the learning process."

41. In *Ashland School District v. Parents of R.J.* (9th Cir. 2009), 588 F.3d 1004, the Ninth Circuit upheld a district court's reversal of a state hearing officer's decision that the district should reimburse the parents for a unilateral residential placement. In

that case, like this one, a high school pupil receiving special education services for ADHD engaged in inappropriate conduct outside of school, including defiance of her parents, leaving home without permission, and dating a school custodian. She suffered depression, brief suicidal ideation, and self harm, as well as a sexual assault. In addition, the pupil's behaviors negatively impacted her school performance, she refused to turn in selected class assignments and her grades suffered, resulting in failure in three out of five classes. The school district offered additional services including a behavior plan and social skills instruction. Eventually, the parents withdrew the pupil from school and placed her in a residential treatment center. The Ninth Circuit affirmed the finding that the residential placement "stemmed from issues apart from the learning process, which manifested themselves away from school grounds," and was not necessary for her to obtain educational benefit.

42. In the present case, the evidence established that Mother's insistence on placing Student in a residential treatment facility, beginning in November 2010, stemmed from issues apart from Student's learning process, which primarily manifested in the home setting and during intense conflict between Mother and Student. District was not required to provide Student with the "best" education possible, but was required to offer educational placements that were reasonably calculated to provide educational benefit. The evidence established that Student's placement at Challenge was successful in the short time that she attended. Accordingly, District's failure to offer Student a residential placement in the January and March 2011 IEPs did not deny her a FAPE.

43. (c) *HHI*. As set forth in Factual Findings 93 through 104, and 123, and Legal Conclusions 24 through 26, since District committed a procedural violation by failing to make a clear written offer of HHI services, which denied Student a FAPE, the substantive issue is not reached.

44. (d) *ESY*: As set forth in Factual Findings 160 through 166, and Legal Conclusions 24 through 33, Student did not establish that she was eligible for ESY services in connection with the January or March 2011 IEP offers. Accordingly, the evidence did not sustain Student's claim that she was entitled to ESY, and District did not deny her a FAPE by not offering ESY.

Issues 2(b) and 4(a): During Student's 2010-2011 school year in 11th grade, did District and CSOC deny Student a FAPE by failing to offer appropriate related mental health services?

45. As set forth in Factual Findings 1 through 40, and Legal Conclusions 24 through 29, above, District's and CSOC's offer for mental health services in the August 2010 IEP was not a clear written offer and denied Student a FAPE. Student did not contend, and the evidence did not establish that District and CSOC should have offered increased related mental health services at the time of the October 2010 IEP meeting. They were justified in waiting until the November 2010 IEP meeting to review CSOC's mental health assessment.

46. As set forth in Factual Findings 43 through 62, and Legal Conclusions 2 through 45, District and CSOC's November 2010 IEP offer to significantly reduce Student's mental health services to only eight times a year for a total of 240 minutes per year was inexplicable, unjustified, and unsupported by any assessment or other data showing that Student was making sufficient progress to call for such a reduction. The November 2010 offer of related mental health services was therefore inappropriate and denied Student a FAPE.

47. As set forth in Factual Findings 63 through 92, and Legal Conclusions 2 through 46, the December 2010 IEP offered Student a change in placement to District's more sheltered ED program at Challenge, where behavioral and mental health supports were built into the program on a daily and weekly basis. Nevertheless, the evidence

established that District's and CSOC's offer of less frequent related mental health counseling was inadequate because it was based on speculation without any supporting information. District's and CSOC's December 2010 offer of reduced related mental health services was therefore not reasonably calculated to provide educational benefit at the time the offer was made and denied Student a FAPE.

48. As set forth in Factual Findings 93 through 159, and Legal Conclusions 2 through 47, the IEP offers made in the January and March 2011 IEPs contained adequate offers of related mental health services, including individual therapy restored to the previous level of not less than twice a month, and intensive Wrap services for Student and Mother for four hours per week. Student did not establish that these mental health services offers denied her a FAPE. Based on the foregoing, District's and CSOC's offers of mental health and family Wrap services in those IEPs were reasonably calculated to provide her with educational benefit and did not deny her a FAPE. Overall, Student's contention that the mental health therapy offers were inappropriate because she needed a residential treatment center placement was not persuasive.

FAILURE TO IMPLEMENT IEP SERVICES

49. A failure to implement an IEP will constitute a violation of a pupil's right to a FAPE if the failure was material. There is no statutory requirement that a school district or other public agency must perfectly adhere to an IEP, and, therefore, minor implementation failures will not be deemed a denial of FAPE. A material failure to implement an IEP occurs when the services provided to a disabled pupil fall significantly short of the services required by the IEP. (*Van Duyn, et al. v. Baker School District 5J* (9th Cir. 2007) 502 F.3d 811, 822.) A party challenging the implementation of an IEP must show more than a de minimus failure to implement all elements of that IEP, and instead, must demonstrate that the public agency failed to implement substantial and significant

provisions of the IEP. (*Ibid.*) "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*)

Issues 3 and 4(b): During the 2010-2011 school year, did District and CSOC deny Student a FAPE by failing to provide or implement specified services required by her IEPs?

50. (a) *Individual mental health therapy at school locations*: As set forth in Factual Findings 55 through 62, and Legal Conclusion 49, the evidence established that District and CSOC deviated from the requirements of Student's operative IEPs by holding most of her individual mental health counseling or therapy sessions in the family home instead of at her school locations. However, Student did not establish that this deviation constituted a material failure to implement her IEPs as to the mental health services. Student had historically received her mental health therapy in the home, most of the manifestations of Student's emotional difficulties occurred in the home, and the evidence did not establish that the school location was a material component of her personal, one-to-one therapeutic counseling sessions.

51. (b) *Frequency of mental health therapy sessions in 2010:* As set forth in Factual Findings 61 and 62, the evidence demonstrated that Ms. Kraus probably missed providing related mental health therapy to Student once in August and once in September 2010. However, Student did not establish that these failures were material or constituted a significant deviation from Student's operative IEP. Therefore, District and CSOC's failure to implement only two out of multiple sessions of mental health therapy was not material and did not deny Student a FAPE.

52. (c) *Provision of Wrap services in 2010*: As set forth in Factual Findings 20 through 62, the evidence established that Student's operative IEPs in the fall of 2010 never provided for Wrap services as an educationally related mental health or other

related service. Accordingly, there was no violation of law for failure to implement Wrap services.

53. (d) *Frequency of mental health therapy and Wrap services from January 21, through February 28, 2011*: As set forth in Factual Findings 93 through 135, the evidence established that Mother did not consent to the January 2011 IEP that contained the Wrap offer. Since the Wrap service were not required by Student's operative IEP, District and CSOC did not deny Student a FAPE due to any lack of Wrap services from January 21 to February 28, 2011. In addition, the evidence showed that Mother did not permit Ms. Kraus to meet with Student for individual mental health therapy after January 18, 2011, and failed to permit Ms. Kraus or any other counselor to work with Student. Based on the foregoing, District and CSOC did not materially fail to implement mental health therapy or counseling services required by Student's operative IEP, and did not deny her a FAPE on that basis.

54. (e) *HHI services from January 21, through February 28, 2011*: As set forth in Factual Findings 93 through 104, District committed a procedural violation that denied Student a FAPE by not making a clear written offer of HHI serviced in the January 2011 IEP. After that, based on Mother's testimony, District failed to deliver more than three sessions of HHI to Student during that time period, and there was no evidence to the contrary. District's failure to provide HHI services, as required by law, flows from that violation. Therefore, the substantive question whether District materially deviated from the IEP is not reached.

RESIDENTIAL PLACEMENT ASSESSMENT

55. Chapter 26.5 did not set forth any statutory requirements for the conduct of the residential placement assessment, except to require that the assessment should be conducted by someone qualified to make a determination of the child's need in the area assessed. (Gov. Code § 7572, subd. (a); amended effective July 1, 2011.)

Issue 4(c): During the 2010-2011 school year, did CSOC deny Student a FAPE by failing to conduct an appropriate assessment for a residential treatment placement?

56. As set forth in Factual Findings 124 through 135, and Legal Conclusions 1 through 23, and 55, Student did not sustain her burden to establish that CSOC's residential placement assessment was inappropriate in any material aspect that invalidated the assessment. Therefore, CSOC did not deny Student a FAPE on that basis.

REMEDIES

57. When an LEA fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*School Committee of Burlington v. Department of Educ.* (1996) 471 U.S. 359, 369-371; 20 U.S.C. § 1415(i)(2)(C)(3).) Compensatory education is an equitable remedy designed to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup*, *supra,* 31 F.3d at 1497.) The remedy of compensatory education depends on a "fact-specific analysis" of the individual circumstances of the case. (*Puyallup*, *supra*, 31 F3d. at p. 1497.) There is no obligation to provide day-for-day compensation for time missed. (*Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1033.) An award of reimbursement may be reduced if warranted by an analysis of the equities of the case. The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Puyallup*, *supra*, 31 F.3d at pp. 1496-1498.)

58. To calculate HHI instruction, Education Code section 48206.3, subdivision (c)(1) provides that each clock hour of teaching time devoted to HHI instruction shall count as one day of school attendance.

59. As set forth in Factual Findings 93 through 104, and 123, and Legal Conclusions 1 through 29, Student proved that District failed to offer, and failed to provide her with adequate HHI placement services in the spring of 2011. District's

January 2011 offer of HHI was not reduced to writing in the IEP offer and was therefore not a clear written offer of placement. Even though District began delivery of the HHI services at some point after January 21, 2011, the evidence established that District only provided about three sessions of home instruction. Student established that there were 25 school days between January 21, and February 28, 2011. At the rate of one hour of instruction per day of classroom instruction, District shall provide Student with compensatory education in the form of 22 hours of compensatory academic instruction from a qualified and credentialed special education teacher.

60. As set forth in Factual Findings 20 through 96, and Legal Conclusions 1 through 54, District and CSOC denied Student a FAPE by failing to make a clear written offer of mental health services in the August 2010 IEP; and failure to make adequate offers of mental health services in the November and December 2010 IEPs. It was not until January 21, 2011, that District and CSOC offered sufficient mental health supports by adding Wrap services to their offer. Student was therefore denied a FAPE as to these services for about five months. Student's request for 26 sessions of therapy counted the entire month of August and should have started with the August 31, 2010 IEP team meeting. Therefore, four sessions were subtracted. District and CSOC shall provide Student with compensatory education in the form of 22 sessions of individual mental health therapy, counseling, guidance, and/or psychological services, at 50 minutes per session, by a qualified mental health counselor or therapist.

ORDER

1. District shall provide Student with 22 hours of compensatory education in the form of individual academic instruction by a qualified and credentialed special education teacher not later than December 30, 2012, unless the parties agree in writing to extend the deadline.

2. District and CSOC shall provide Student with 22 sessions of compensatory education in the form of individual mental health therapy, counseling, guidance, and/or psychological services, at 50 minutes per session, by a qualified mental health counselor or therapist, not later than December 30, 2012, unless the parties agree in writing to extend the deadline.

3. All of Student's other requests for relief 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. Student prevailed on Issue 1, Issue 2(b), Issue 3(e), and Issue 4(a). District and CSOC prevailed on all other Issues.

NOTICE OF APPEAL RIGHTS

This is a final administrative decision, and all parties are bound by this Decision. The parties are advised that they have the right to appeal this decision to a state court of competent jurisdiction. Appeals must be made within 90 days of receipt of this decision. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505 subd. (k).)

DATED: November 14, 2011

/s/

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DEIDRE L. JOHNSON

Administrative Law Judge

Office of Administrative Hearings