

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011060359

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on November 28, 2011, December 13, 2011, and January 11, 2012, in Encinitas, California.

Justin R. Shinnfield, Attorney at Law, represented the San Dieguito Union High School District (District). District representative, Dr. Eric Beam, Director of Special Education, attended all three days of hearing.

Student's father (Father) represented Student, and attended all days of hearing. A family friend also attended each day of hearing.

District filed its request for due process hearing (complaint) on June 8, 2011. On June 29, 2011, for good cause shown, OAH granted the parties' joint request to continue the due process hearing. On September 12, 2011, and again on October 5, 2011, OAH granted, for good cause shown, District's request for continuance. On December 14, 2011, OAH continued the final day of hearing from December 14, 2011 to December 16, 2011, due to illness on the part of the ALJ. On December 16, 2011, for good cause shown, OAH granted Student's request to continue the final day of hearing to January 11, 2012. On January 11, 2012, at the close of the hearing, the parties were granted

permission to file written closing arguments by January 27, 2012. After the parties' timely filed their closing briefs, the record was closed and the matter was submitted.

## ISSUE<sup>1</sup>

Did District's offer of placement and services in Student's Individualized Education Program (IEP) dated October 27, 2010, completed on December 9, 2010, and amended on April 25, 2011, constitute a free appropriate public education (FAPE) in the least restrictive environment (LRE)?

## FACTUAL FINDINGS

### JURISDICTIONAL AND BACKGROUND INFORMATION

1. Student is a 17-year-old young lady who at all relevant times resided within the boundaries of District. Student is eligible for special education and related services under the primary eligibility category of other health impairment (OHI), as a result of her attention deficit hyperactivity disorder (ADHD). Student is also eligible under the secondary eligibility category of specific learning disability (SLD).

2. Student initially qualified for special education services in 2000, when she was six-years-old. She attended school in several other school districts, where she had a significant history of multiple school changes, before attending school in District beginning in August 2010. Specifically, Student attended 10 different schools. Father, who provided testimony at hearing, explained that Student had multiple school placements because of problems stemming from her ADHD, as well as her oppositional defiant disorder (ODD). Special education placements had not worked for Student in the

---

<sup>1</sup> The ALJ has rephrased the issue for clarity, consistent with the allegations set forth in the complaint, and with the undisputed facts established at hearing.

past, because the classes, in his opinion, were not designed for students who had ADHD, but rather for students with autism or an intellectual disability.

3. In the prior districts, Student received services that ranged from general education placement with instructional aide support to resource program pull-out services, to contained special day classes, to non-public school placements. In 2000, her primary eligibility category was SLD, which was later changed to OHI. In 2001, Student's eligibility category was changed to emotional disturbance (ED). In 2005, Student's primary eligibility category was changed back to OHI, and she no longer met the criteria for ED.

4. On July 15, 2009, Student's private psychiatrist, Dr. Ariel De Llanos, who had seen Student as a patient since November 2008, wrote a one-page letter, pursuant to Father's request, addressed to "To Whom It May Concern." Dr. De Llanos advised in the letter that she had diagnosed Student with ODD, and ADHD with mood dysregulation and chronic irritability. Student, in her opinion, had been resistant to treatment, had a profound disrespect for Mother, had medication noncompliance, and a prominent rejection to authority. Despite eight months of treatment, which included mood regulators, weekly psychotherapy sessions, and family therapy, Student rejected all forms of treatment. Dr. De Llanos advised in the letter that Student felt "normal" and did not need "all those stupid doctors." Due to Student's constant rejection of any treatment modality, Dr. De Llanos advised that she could no longer treat Student, and felt it best for Student to find another physician for her psychiatry care. Dr. De Llanos also stated in the letter that she gave Mother a very strong suggestion that what Student ultimately needed was long-term residential care, as Dr. De Llanos felt it would be the most effective treatment for Student. Father provided the letter to the school district that Student had attended at that time. Dr. De Llanos did not testify at hearing.

5. Beginning in August 2010, when Student was in 10th grade, Student began attending District's La Costa Canyon High School (LCCHS), which was a comprehensive high school that had approximately 2,700 students, and located on a sprawling campus. LCCHS had a two-hour rolling block class schedule, where the students received the equivalent of two class sessions for each subject. Student initially enrolled in mostly general education classes.

#### SEPTEMBER 10, 2010 IEP

6. On September 10, 2010, the IEP team met for the purpose of establishing Student's 30-day administrative placement. The attendees included Father and Student's mother (Mother) (collectively, Parents), Kelly Borders, who was an education specialist, Lisa Krassny, who was a speech pathologist, Kristin Singh<sup>2</sup>, who was a school psychologist, and the District Program Specialist, Meredith Wadley. District provided Parents with a notice of procedural safeguards. At the time of the IEP meeting, District had not received all of Student's records from her previous school districts. The team reviewed Student's most recent IEP from her previous school district developed in September 2009, as well as a transcript Parents provided from the Fusion Learning Center, which was a placement paid by her previous district.

7. Father explained to the team that Student had not performed well in special education classes, because Student disliked them, as she constantly worried about a perceived stigma associated with attending special education classes. In addition, Father explained that Student often felt as though she was mentally impaired because she had to attend special education classes, and she often worried about others treating her as if she was stupid.

---

<sup>2</sup> At the time of the IEP, Kristin Singh used her maiden name, Kristin Yoshimoto.

8. In order to get a better idea of where Student currently performed academically, behaviorally, socially, and emotionally, the IEP team agreed to begin Student's triennial assessments early, which were initially due in 2012, and move up her triennial review. District members agreed to develop a triennial assessment plan, and mail it home to Parents by September 29, 2010.

9. As her 30-day administrative placement, the team made an offer of placement and services consistent with the placement and services she had received from her most recent school district. Specifically, District offered Student 2,300 minutes of special education support per month in LCCHS's Learning Center, and 60 minutes of workability consultation services per month.

10. Parents agreed to District's offer. Parents did not raise any discussion about residential treatment facilities, and did not provide the team with a copy of the July 15, 2009 letter from Dr. De Llanos.

#### OCTOBER 1, 2010 IEP

11. On October 1, 2010, the IEP team met for the purpose of reviewing Student's credits and progress, and to change her placement. The attendees included Father, Ms. Borders, Ms. Wadley, and general education teacher, Catherine Close. Mother did not attend the IEP meeting, as Parents had recently divorced, and she had moved out of state. Although Parents had joint custody of Student, Father had primary physical custody of Student.

12. District provided Father with a notice of procedural safeguards. The general education teacher then reported to the team that Student had struggled with on-task behavior. Student also required significant prompting to complete her class work, and often engaged in avoidant behaviors, which had become disruptive, and impeded her learning and the learning of others. The team agreed to consult with the

school psychologist to conduct classroom observations and assist in developing a behavior support plan (BSP) to address Student's inattention in class.

13. In addition, District members offered to make a referral for the County of San Diego Department of Mental Health (CMH) to conduct a mental health assessment. District provided Father with a packet for him to complete in order for District to begin the mental health services referral. However, Father declined a mental health assessment for Student, as Student had a private behavior specialist from whom she received therapy.

14. The team discussed Student's class credits based on several boxes of records District received from the previous school districts after the September 10, 2010 IEP meeting. The documents did not include a copy of the July 15, 2009 letter from Dr. De Llanos. The team noted that Student was 25 credits deficient. Consequently, District enrolled Student in a credit recovery program. The team agreed to reconvene on or before November 15, 2010 to review the proposed BSP. Father consented to the IEP. Father neither raised any discussion about residential treatment facilities, nor provided the team with a copy of the July 15, 2009 letter from Dr. De Llanos.

15. In mid-October 2010, Father provided District with a release to speak with Student's private psychologist, Dr. Margot Kopley.

#### SPEECH AND LANGUAGE ASSESSMENT

16. District's speech pathologist, Lisa Krassny, conducted a speech and language assessment of Student for her triennial review, and prepared a report dated October 21, 2010. Ms. Krassny, who provided testimony at hearing, has been employed with District as a speech and language pathologist for 25 years, and was assigned to LCCHS during the time in which Student attended the school. She received her bachelor's degree in speech pathology and audiology in 1982 from the University of Seattle, and received her master's degree in speech pathology from Ohio University in

1984. She holds a clinical rehabilitation credential, and a state license for private practice work. She attends about 130 IEP's in a given school year, and assesses 65 students, on average, in a given school year.

17. Ms. Krassny administered the Listening Comprehension Test Adolescent (LCTA), the Clinical Evaluation of Language Fundamental – 4 (CELF-4), and the Test of Auditory Processing Skills – 3 (TAPS-3). Ms. Krassny explained that the assessments were valid, because she followed the assessment rules set forth by the publisher, and there were no disruptions in the testing. Ms. Krassny noted that Student was polite, cooperative, and appeared to try her best during the testing process, but found that Student had significant difficulty focusing and maintaining concentration.

18. On the LCTA, Student scored in the 58th percentile on the main idea subtest, in the first percentile in the details subtest, in the 21st percentile on the reasoning subtest, in the 14th percentile on the vocabulary and semantics subtest, and in the 8th percentile on the understanding messages subset. Her total test score was in the 10th percentile.

19. On the CELF-4, Student scored in the 50th percentile on the recalling sentences subtest, in the 25th percentile on the formulated sentences and word-classes receptive subtests, in the 37th percentile on the word-classes expressive subtest, in the 91st percentile on the word definitions subtest, and in the fifth percentile in the understanding spoken paragraphs and semantic relationships subtests. Student's overall receptive language score fell in the fifth percentile, and her expressive language score fell in the 37th percentile.

20. On the TAPS-3, Student scored in the 50th percentile on the word discrimination and phonological segmentation subtests, and in the 84th percentile on the phonological blending subtest. Her phonological cluster score was in the 63rd percentile. Student scored in the 75th percentile on the number memory forward

subtest, in the 25th percentile on the number memory reversed and sentence memory subtests, and in the first percentile on the word memory subtest. Her memory cluster score was in the 23rd percentile. Student scored in the 25th percentile on the auditory comprehension subtest, and in the 37th percentile in the auditory reasoning subtest. Her cohesion cluster score was in the 32nd percentile.

21. When examining the results of the LCTA, CELF-4, and the TAPS-3, Ms. Krassny found, in the area of receptive language and memory skills, Student scored in the below average range, given her significant below average performance on the CELF-4, particularly on the understanding spoken paragraphs and semantic relationships subtests. However, on the TAPS-3, which tested Student's auditory skills, Student scored in the average range on the phonological, memory, and cohesion clusters. She also scored in the average range on the LCTA on questions in the categories of identifying main ideas, reasoning, vocabulary, and semantics, but scored in the below average range in her ability to answer questions relating to details presented in stories and messages. Ms. Krassny concluded that, although Student had a scatter of scores in the area of auditory memory and comprehension, this area appeared to be a weakness for Student. She also concluded that Student's auditory memory and comprehension skills were heavily impacted by Student's limited ability to maintain focus and concentration.

22. In the area of vocabulary skills, Student scored in the above-average to low-average range. Specifically, Student scored in the average range in her ability to explain the association between pairs of words, and in the above-average to define words. She scored in the low-average in the area of vocabulary and semantics.

23. In the area of grammar skills, Student scored in the average range for her age in the ability to orally produce grammatically complete and correct simple and complex sentences. However, Ms. Krassny noted that Student lacked general organization of expressive language for sequencing thoughts and events in

conversational speech. In addition, although Ms. Krassny did not formally assess Student in the area of pragmatic skills, she noted that Student had appropriate social skills for the testing environment, responded appropriately when meeting and greeting Ms. Krassny, initiated and maintained conversation with appropriate eye contact, and asked appropriate questions. Ms. Krassny also noted no irregularities in Student's articulation, voice, or fluency skills.

24. Ms. Krassny concluded that Student demonstrated weaknesses in receptive language and in the organization of her expressive language skills. As such, Ms. Krassny concluded that Student could qualify for an IEP under the handicapping condition of speech-language impaired (SLI), according to California's criterion.

#### OCTOBER 27, 2010 TRIENNIAL IEP

25. On October 27, 2010, the IEP team convened for the purpose of reviewing behavioral concerns about Student and to begin Student's triennial IEP. The attendees included Father, Ms. Borders, Sarah Chi, who was a general education teacher and education specialist, Bjorn Paige, who was an assistant principal, Ms. Singh, and Ms. Wadley. District provided Father with a notice of procedural safeguards. The IEP identified Student's areas of need as receptive language, problem solving, reading comprehension, math computation, math fluency, work completion, written expression, self-initiation, on-task behavior, and attendance.

26. The IEP team discussed Student's behavior and noted that Student had been referred to the assistant principal's office seven times since school began. Based on these incidents, the school psychologist, Ms. Singh, developed a BSP, which Ms. Singh presented at the IEP meeting. The BSP noted that Student engaged in behavior that impeded learning. Specifically, Student engaged in off-task, avoidant behavior in the classroom setting, including talking to friends, fidgeting, coming to class unprepared, passive refusal to do work, noncompliance to teacher requests, and coming

to class tardy. The behaviors occurred daily in all class settings. In addition, Student required direct teacher prompting to complete tasks, and completed very little work independently. During Ms. Singh's observation of Student in small group instruction (i.e., five students), she noted that Student required direct instruction from the teacher 18 of 20 minutes.

27. Ms. Singh concluded that Student's off-task and avoidant behaviors were the result of multiple factors, including the level of difficulty of Student's curriculum, a means of avoiding undesired tasks, and difficulty with sustained attention related to her diagnosis of ADHD. Student's off-task and avoidant behaviors impeded her learning and the learning of others, as the behaviors had become disruptive in class. Ms. Singh recommended in the BSP that Student should sit near the source of instruction and away from distracting peers; receive frequent teacher checks for understanding and on-task behavior; receive visual prompts such as graphic organizers, sentence starters, and "to-do" lists; have access to a quiet environment for tests and assignments; receive a visual key from teachers that outlined the points/grades Student could earn based on the amount of work completed; receive instruction on self-monitoring and self-evaluations; and receive short (i.e., one to two minutes) sensory breaks to refocus after 15 minutes of continuous on-task behavior.

28. Ms. Singh also advised the team that Student was very resistant to special education supports and services. The team agreed to provide Student with 30 minutes of school-based counseling per week, and agreed for Ms. Singh to work with Student to develop a counseling goal. The team also agreed to implement the BSP.

29. The team reviewed Student's academic progress, and noted that it appeared impacted by her significant attention issues. As such, the team agreed to utilize additional resources through the North Coastal Consortium of Special Education (NCCSE) to conduct observations and provide recommendations for support services,

and placement options for Student. The team agreed to reconvene on December 3, 2010 to review the observations and recommendations, as well as to review the triennial assessments results. In addition, the team agreed to adjust Student's class schedule to provide additional math support with special education support. Father consented to the implementation of the BSP, the addition of counseling, and the addition of fundamental mathematics. Father did not discuss residential treatment facilities, or provide the team with a copy of the July 15, 2009 letter from Dr. De Llanos.

30. On October 27, 2010, District staff found Student in possession of marijuana on campus. Consequently, District required Student to participate in the Recovery, Education, and Alcohol & Drug Intervention Program (READI), in lieu of suspension, which included instructional days, community service, Alcoholics Anonymous and Narcotics Anonymous meeting attendance, and weekly group attendance. Father requested an IEP team meeting as a result of Student's marijuana incident.

#### NOVEMBER 5, 2010 IEP

31. On November 5, 2010, the IEP team convened to discuss Father's concerns about Student's safety on campus, specifically as it related to Student's access to marijuana at school, the negative influences of other students, and Student's questionable judgment during passing periods. The attendees included Father, Ms. Borders, Ryan Gold, who was a general education and Learning Center specialist, Mr. Paige, and Ms. Wadley. District provided Father with a copy of procedural safeguards. At the meeting, Father requested that Student have a staff member assigned to her throughout the school day.

32. District offered Student 100 percent placement in the LCCHS's Learning Center with instructional support, as well as a staff member to escort Student from the parent drop-off area at the beginning of the school day, as well as to the parent pick-up

area at the end of the school day. The team also decided that, based Student's excessive tardies, Student would remain in the Learning Center during breaks and lunch to minimize her tardies and time out of class. The team also agreed to drop Student's general education English and enroll Student in fundamental English, to be provided in the Learning Center. The team agreed that the placement at the Learning Center was temporary, and not a stay put placement, and they agreed to review the placement at the triennial IEP scheduled for December 3, 2010.

33. At the meeting, Father requested an audiology assessment. The team agreed to discuss the request at the December 3, 2010 IEP.

34. Father consented to the IEP. Father neither raised any discussion about residential treatment facilities, nor provided the team with a copy of the July 15, 2009 letter from Dr. De Llanos.

35. Ten days later, on November 15, 2010, the IEP team convened, pursuant to Father's request. Father advised the team that Student's safety on campus was no longer his primary concern. Rather, Student's social-emotional well-being was of greater concern, because Student felt stigmatized by the presence of the escort. She also felt disgraced by having to receive all of her instruction in the Learning Center. In addition, Student began acting out at home as a result of her resentment for having to have an escort and attend the Learning Center for 100 percent of her school day. She also expressed unwillingness to complete work in the Learning Center. Consequently, Father requested that District cease all escort services, and requested that Student be allowed to return to her previous placement and courses. The team agreed to amend the October 27, 2010 IEP to eliminate escort services, and return Student to her regular class schedule, which included 67 percent (2,300 minutes) of her school day in special education in the Learning Center, because they wanted Student to willingly participate in her education.

36. Father consented to the amendment. Father neither raised any discussion about residential treatment facilities, nor provided the team with a copy of the July 15, 2009 letter from Dr. De Llanos.

#### PSYCHOEDUCATIONAL ASSESSMENT

37. On November 9 and 16, 2010, Ms. Singh, who provided testimony at hearing, conducted a psychoeducational assessment of Student as part of Student's triennial review. Ms. Singh has worked for District for the past six years as a school psychologist. Prior, she worked for two years as a school psychologist for the San Diego Unified School District. She received her bachelor's degree in psychology from University of California at Irvine in 2000, and her master's degree in psychology from Humboldt State University in 2003. She holds a PPS credential in school psychology, which she received in 2004. Her duties as a school psychologist include conducting psychoeducational assessments, participating in IEP meetings, and providing counseling to students. In her career as a school psychologist, she has conducted approximately 800 psychoeducational assessments, and has attended up to 1,200 IEP meetings. Ms. Singh first became aware of Student in September 2010, after Student's enrollment in LCCHS.

38. In preparation for her assessment, Ms. Singh reviewed Student's school records that District had received from Student's other school districts. Ms. Singh also attempted, on two occasions, to interview Student's private therapist, Dr. Kopley, but Dr. Kopley never returned Ms. Singh's telephone calls.

39. Ms. Singh's records review showed that Student's teachers noted significant difficulty in her ability to maintain attention and focus, as well as difficulty with motivation and independent work completion. The teachers also noted behavioral concerns, such as off-task behavior, avoidant behaviors, and defiance. Previous IEP notes

and goals showed that Student made the most academic and social progress when she received individual or very small group instruction.

40. Ms. Singh noted that in her current placement, Student continued to struggle with off-task behavior, avoidance, significant distractibility, and poor behavioral choices. Student required a very high degree of prompting to stay on task, and a high degree of individual attention in her classes in order to complete any work. In addition, Student engaged in defiant and disruptive behaviors, resulting in 11 discipline entries since the start of the school year. Ms. Singh also noted Student's possession of marijuana and the resultant enrollment in the READI program. In addition, Ms. Singh reviewed Student's attendance records, and found that Student had nine period trancies, and 19 period tardies since the start of the school year.

41. Ms. Singh reviewed previous Student's assessments. She noted that in 2005, Student's cognitive abilities were in the average range overall, and her nonverbal reasoning was in the low average range. Student had psychological processing deficits in the areas of attention and sensory motor skills. In 2008, Student's cognitive ability was in the borderline range overall, with strengths in the area of working memory. In addition, Student's verbal comprehension and perceptual reasoning were in the low average range, and her processing speed was significantly below average. Student's visual-motor integration skills were low, and she scored below average overall on tests of auditory processing. Ms. Singh also noted that Student's audiology reports conducted in 2005 and 2006 confirmed central auditory processing disorder.

42. Ms. Singh used the following assessment tools: (1) Cognitive Assessment System (CAS); (2) Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI); (3) Behavior Rating Inventory of Executive Function (BRIEF); (4) Woodcock-Johnson III (WJ-III); and (5) Behavior Assessment System for Children (BASC). Ms. Singh considered Student's racial, ethnic, and linguistic backgrounds prior to the selection and

interpretation of assessment procedures and measures. Ms. Singh administered the assessment tools according to standard procedures and for the specific purposes recommended by the publishers. Although Ms. Singh considered the tests to be fairly reliable estimates of Student's cognitive functioning and expected levels of academic achievement, she noted that the results of the assessment should be interpreted with extreme caution, as it was difficult to ascertain the extent to which Student's attentional and motivational difficulties impacted her performance. Specifically, at times, Student appeared to rush through items, responding without much thought or without looking at all of the response options.

43. Ms. Singh administered the CAS to measure Student's processing and cognitive abilities. Overall, Student's performance on the CAS ranged from very low to high average, with significant scatter noted between all subtests. Student's quotient score in the area of planning fell in the below average range overall, with a standard score of 77, which represented the eighth percentile. Her quotient score in the area of simultaneous processing fell into the very low range, with a standard score of 73, which represented the fourth percentile. In the area of attention, Student's quotient score fell in the average range, with a standard score of 91, which represented the 27th percentile. Student's quotient score in the area of successive processing fell in the average range, with a standard score of 108, which represented the 70th percentile.

44. Ms. Singh administered the VMI to assess Student's perceptual skills, fine motor coordination, and her ability to integrate both processes. Student scored in the very low range on the Beery VMI subtest, with a standard score of 69, representing the second percentile. In the visual perception subtest, Student scored in the below average range, with a standard score of 83, representing the 13th percentile. In the motor coordination subtest, Student scored in the below average range, with a standard score of 79, representing the eighth percentile.

45. Ms. Singh distributed the BRIEF, which was a questionnaire for parents and teachers, to assess executive function behaviors in the home and school environments. Specifically, Ms. Singh gave the BRIEF questionnaire to Father, and three of Student's LCCHS teachers. Student's scores on the behavioral regulation index, which included the inhibit, shift, emotional control, and self-monitor scales, were primarily in the significant range overall. Specifically, on the inhibit scale, which assessed inhibitory control and impulsivity, Student scores were highly elevated compared to her peers. This suggested that Student had difficulty resisting impulses and considering consequences before acting. On the shift scale, which assessed the ability to move freely from one situation, activity, or aspect of a problem to another, Student's score was significantly elevated compared to her like-aged peers. This suggested that Student had marked difficulties with behavioral shifting, attentional shifting, and/or cognitive shifting, which could compromise problem-solving abilities. On the emotional control scale, which measured the impact of executive function problems on emotional expression and assessed the ability to modulate or control emotional responses, Student's score was significantly elevated. This suggested that Student was likely to overreact to events and likely demonstrated sudden outbursts, sudden and/or frequent mood changes, and excessive periods of emotional upset.

46. Student's scores on the metacognitive index of the BRIEF, which included the working memory, planning and organization, organization of materials, and task completion scales, were consistently within the significant range. Specifically, on the initiate scales, which measured Student's ability to begin a task or activity and to independently generate ideas, responses, or problem-solving strategies, Student's score was significantly elevated compared with like-aged peers. This suggested that Student had marked difficulty beginning, starting, or "getting going" on tasks, activities, and problem-solving approaches. On the working memory scale, which measured the

capacity to hold information in mind for the purpose of completing a task, encoding information, or generating goals, plans, and sequential steps to achieving goals, Student's scores were significantly elevated. This suggested that Student had substantial difficulty holding an appropriate amount of information in mind or in active memory for further processing, encoding, and/or mental preparation. Her scores also suggested difficulties sustaining working memory, which had a negative impact on her ability to remain attentive and focused for appropriate lengths of time.

47. On the plan and organization scale, which measured Student's ability to manage current and future-oriented task demands, Student score was significantly elevated, which suggested that Student had marked difficulty with planning and organizing information which had a negative impact on her approach to problem solving. On the organization of materials scale, which measured the orderliness of Student's work, play, and storage spaces, Student's score ranged from average to significant, depending on the rater. This suggested that Student, in some circumstances, could keep her personal belongings organized. On the monitor scales, which assessed task-oriented monitoring or work-checking habits and self-monitoring or interpersonal awareness, Student's score was significantly elevated. This suggested substantial difficulty with monitoring, and a tendency to be less cautious in her approach to tasks or assignments.

48. Student also completed a BRIEF questionnaire. On the inhibit scale, Student viewed herself as typically able to resist impulses and to consider consequences before acting. On the shift scale, Student's score was significantly elevated, which suggested that Student experienced difficulty with both behavioral and cognitive flexibility. On the emotional control scale, Student scored in the average range as compared to like-aged peers, which suggested that Student experienced herself as having appropriate ability to modulate or regulate emotions overall. On the monitor

scale, Student's score was mildly elevated, suggesting some difficulty with monitoring her own behavior in social settings. On the working memory scale, Student's score was mildly elevated, which suggested that Student experienced some difficulty holding an appropriate amount of information in mind or in active memory. On the plan and organization scale, Student's score was within the expected range, which suggested that Student perceived herself as able to plan and organize her approach to problem solving appropriately, and was able to grasp the overall structure or framework of novel information that facilitated learning and later recall. On the organization of materials scale, Student's score fell in the average range relative to like-aged peers. Student described herself as able to keep materials and belongings reasonably organized. On the task completion scale, Student's score fell in the mildly elevated range, which suggested that Student had difficulty finishing homework or other projects in a timely fashion.

49. Education specialist, Kelly Border, administered the WJ-III to assess Student's academic achievement, which Ms. Singh incorporated into her psychoeducational assessment report. Student's academic skills ranged from very low in the areas of math and written expression, to average in basic reading. Specifically, Student's broad math score was in the very low range in math reasoning and math calculation, and in the below average range in math fluency for basic addition, subtraction, and multiplication. Student's broad reading score was in the average range overall, with average scores in reading, decoding, and fluency, and below average scores in reading comprehension. Student's broad written language was in the below average range overall, as her writing samples were in the very low range. However, she demonstrated average spelling and writing fluency. Student's oral language cluster score was in the below average range overall. She scored in the low average range for

auditory short-term recall and working memory, and in the very low range for long-term memory.

50. Ms. Singh assessed Student's social-emotional functioning and self-perceptions by issuing BASC rating scales to Student, Father, and Student's teachers. The BASC rating scales examined Student's behaviors in the areas of internalizing problems, externalizing problems, school problems, adaptive skills, and behavior symptoms. Student completed the BASC self-report of personality, and scored in the average range overall on the school problems composite. Specifically, she reported a generally positive attitude toward school, but a slightly negative attitude toward teachers. She did not report any tendencies toward risk-taking or thrill-seeking behaviors. On the internalizing problems composite, Student scored in the average range overall, and did not report any thoughts or feelings associated with social stress, anxiety, depressed mood, or somatic complaints. Her scores on the inattention/hyperactivity composite were in the average range overall, with a slightly elevated score on the attention problems scale. She did not report any feelings of hyperactivity or restlessness. Student's scores on the personal adjustment composite were in the average range overall. She reported slightly strained relationships with her parents at times, but positive relationships with her peers. She also reported having positive self-esteem, and a strong sense of self-reliance.

51. The BASC rating scales completed by Father and Student's teachers showed that Student scores on the externalizing problems composite were in the significant range for three raters, and in the average range for one. They reported that Student demonstrated a high degree of hyperactivity, impulsivity, and conduct problems, including defiance, lying, and rule breaking, in the home and school environments. Scores on the internalizing problems composite were in the average range for all raters, however, Father rated her in the at-risk range for depressive

symptoms. Scores on the school problems composite ranged from at-risk to significant for all teacher ratings. Student's teachers reported a high degree of attention problems and learning problems, which was consistent with Father's rating of significant on the attention problems scale. Scores on the adaptive skills composite ranged from at-risk to significant. The raters indicated difficulties with adaptability, social skills, study skills, and functional communication. Results of the content scales reflected concerns with anger control, bullying behaviors, poor social skills, communication with others, and poor executive functioning. Mild concerns were noted with negative emotionality and lack of resiliency. Based on the parent and teacher ratings, Ms. Singh noted diagnostic indicators for ADHD and conduct disorder, which were consistent with Student's previous diagnoses.

52. Based on the results of the assessments, Ms. Singh concluded that Student continued to meet the eligibility criteria for OHI, due to significant attention and executive functioning deficits associated with a diagnosis of ADHD, which impacted Student's academic performance. She also concluded that Student met the eligibility criteria for SLD, due to discrepancies between Student's cognitive ability and academic achievement in the areas of reading comprehension, math calculation and reasoning, and written expression, coupled by deficits in visual-motor integration, visual processing, and auditory processing. Ms. Singh, who was aware of Student's previous eligibility of ED in 2001, considered ED, but found that Student did not meet the criteria for ED. At hearing, Ms. Singh advised that her assessment did not uncover signs of depression, anxiety, or OCD. Ms. Singh recommended that the IEP team review the results of her assessment in conjunction with additional assessment reports, school records, teacher feedback, and parental input in determining the most appropriate level of service and accommodations to meet Student's individual needs.

## CONTINUED TRIENNIAL IEP MEETING OF DECEMBER 9, 2010

53. Student's triennial IEP meeting was scheduled to convene on December 3, 2010, however Father was unable to attend on that day. Consequently, the IEP team convened for Student's triennial review on December 9, 2010. The attendees included Father, Ms. Borders, Mr. Gold, Ms. Wadley, Ms. Krassny, Ms. Singh, and Student's advocate, Andrea Frimmer, M.Ed. District provided Father with a copy of procedural safeguards.

54. Ms. Krassny presented her speech and language assessment results to the team, and recommended speech and language services of 60 minutes per week in two 30 minute sessions. The team noted that Student's previous school district had discontinued speech services, and noted that Student had a previous diagnosis of auditory processing deficits. Consequently, the team agreed to fund an auditory processing assessment conducted by a District contracted assessor. Ms. Singh reviewed her psychoeducational assessment results, and Ms. Borders presented the results of the WJ-III. Based on these results, the team concluded that Student continued to meet the eligibility criteria for special education services under the primary disability category of OHI, due to her ADHD, and the secondary disability category of SLD.

55. The team reviewed, and the IEP document included, Student's present levels of performance based on the results of the academic, speech and language, and psychoeducational assessments, and determined that Student's areas of need were receptive language, problem solving, reading comprehension, math computation, math fluency, work completion, written expression, self-initiation, on-task behavior, and attendance. The team then discussed and developed 10 measurable goals in those areas of need. At hearing, Ms. Singh expressed that the goals developed by the team were appropriate for Student, as they were designed to address her unique needs as identified in her assessment reports.

56. The IEP also included a statement of how Student's disability affected her involvement and progress in the general education curriculum. Specifically, the IEP stated that Student's "ADHD impacted her ability to access the general education curriculum, and necessitated special education support."

57. At the meeting, Father requested a residential treatment center placement for Student, but neither Father nor Student's advocate provided any reports or documents suggesting that a residential treatment center was appropriate, including the July 15, 2009 letter from Dr. De Llanos. District members of the team explained that they were not prepared to make a residential placement, as a mental health assessment had previously been declined by Father. Father then agreed to accept the offer of a mental health assessment, and agreed to complete the mental health assessment referral packet and return it to District. District members agreed to process the mental health assessment referral within three business days of their receipt of the packet from Father.

58. District made the following offer of placement and services: non-public school (NPS) placement at Arch Academy (Arch), including related services of speech and language services of 60 minutes per week (two 30 minute sessions), school-based counseling services 30 minutes per week, workability consultation services of 60 minutes per month, and curb-to-curb transportation services. District also agreed to provide accommodations and modifications that included sensory breaks to help Student refocus, chunk instruction and assignments into manageable pieces, provide visual support for auditory instruction, consult with general education teachers, check Student for understanding, provide preferential seating, provide the use of a calculator or multiplication chart for math assignments and assessments, provide a graphic organizer for written assignments, provide access to a word processor for written assignments, provide access to support staff (e.g., school psychologist, counselor, case manager) when needed, assist with organization of tasks and assignments, and provide the use of

a calculator for the California High School Exit Examination (CAHSEE). The IEP also included an Individualized Transition Plan (ITP), which the team reviewed and discussed, that included post secondary goals, transition services, and activities.

59. Father, who had once visited Arch several years prior when another school district considered it as a placement for Student, agreed to visit Arch again before making a decision whether to accept the placement. He consented to the audiology assessment, the mental health assessment, and speech and language services. The team agreed to reconvene to review the offer of placement and services following Father's observation of Arch.

60. Meredith Wadley, District Program Specialist, who attended every IEP meeting concerning Student since she enrolled in District, provided testimony at hearing. Ms. Wadley has been District Program Specialist for seven years. In that capacity, she serves as an administrative designee in IEP meetings, where she attends approximately 400 IEP meetings per year. Prior to becoming District Program Specialist, Ms. Wadley was a general education teacher for six years with District, for grades nine through twelve. In addition, she served as a guidance counselor for District for 13 years. She received her bachelor's degree in social studies from the University of Redlands in 1985, and her master's degree in school counseling and guidance from Point Loma Nazarene University in 1994. Ms. Wadley has a PPS credential and a preliminary administrative credential. At hearing, Ms. Wadley explained that the team believed that Student needed a smaller environment than that of a comprehensive campus to meet her behavioral needs, off-task behavior, class-to-class and free time transitional issues, and her social, emotional, behavioral, and academic issues. In addition, Ms. Wadley felt that LCCHS's two-hour block schedule was difficult for Student due to her inattention issues. Ms. Wadley had observed Arch, which was a small NPS self-contained program that also provided related services. Arch contained 25 students in its entire program, for

grades seven through twelve, and had a therapeutic component embedded in its program. Ms. Wadley spoke to Arch's director and principal about Student's needs, and provided Arch with a packet that including Student's IEP's. The director and principal advised that Arch could implement the goals set forth in the IEP, and could meet Student's unique needs. Ms. Wadley felt the program at Arch was appropriate for Student, as it minimized transitions, provided a smaller and more structured environment, provided the related services Student required, and provided a therapeutic environment on the campus. Ms. Wadley explained that she and the other District members of the IEP team felt that they had exhausted all resources to help Student access her curriculum prior to offering a NPS, such as a BSP, school counseling, an escort, and the Learning Center.

61. Ms. Borders testified at hearing. Ms. Borders was Student's Learning Center teacher and case manager and had attended all of Student's IEP team meetings. Ms. Borders has been a special education teacher for ten years. Prior, she was a teacher at a private high school, and an adjunct professor at Azusa Pacific University, where she taught aspiring special education teachers for four years. She received her bachelor's degree in physical therapy from San Francisco State University in 1996, earned her credential in 2002, and received her master's degree from National University in special education in 2003. In her capacity as Student's case manager, she attended Student's IEP's and ensured that Student's teachers were aware of Student's goals, objectives, accommodations, and modifications. In her capacity as Student's teacher, she provided Student with academic support, tackled organizational issues, reviewed homework given by other teachers, and assisted with basic skill remediation. As Student's teacher, Ms. Borders observed that Student had executive functioning, academic, social-emotional, and motivational needs. Ms. Borders opined that Student needed a smaller environment, as Student required less distractions and more structure than that offered

in a large comprehensive environment. Ms. Borders felt that Arch was an appropriate placement for Student, because of the substantially smaller environment, and because Arch, which had a year-round program, offered classes one at a time, as opposed to requiring students to take six classes at a time. As such, Student would have a better chance of accessing her curriculum given her attention needs and social-emotional needs. This was especially important because Student seemed overwhelmed by the six classes she was required to take at LCCHS.

62. At hearing, Ms. Singh also persuasively opined that Student required a higher level of service than what District could provide at LCCHS and that Arch was appropriate. Specifically, Ms. Singh believed that Student required a more contained environment, a smaller teacher to student ratio, a program that provided counseling, and a program that limited her transition from class to class, given her history of transitioning problems. Ms. Singh felt that Arch could meet those needs.

63. Ms. Krassny implemented speech and language services after the December 9, 2010 IEP meeting. Specifically, she met with Student once for a 30 minute session. When she tried to convene more sessions, Student was listed as truant. Thereafter, District closed for winter break.

64. Father visited Arch in December 2010. At hearing, Father explained that his overall impression of Arch was that it would not be able to address Student's psychological and behavioral issues, because it was a very pronounced special education environment, with approximately 50 percent of the students appearing to be low functioning, and intellectually disabled. Consequently, Father felt that Student would not thrive in that environment, and that she would shut down. Furthermore, given Student's unsuccessful history in special education classes, and the extent of Student's behavioral, emotional, and academic challenges, Father opined that Student would not show substantial improvement unless she was in a therapeutic environment 24 hours a day,

seven days a week. He also felt that Student was running out of time because her high school years were almost over, yet she had not made the academic, behavioral, and social-emotional progress he felt she should have made. As such, Father concluded that neither Arch, nor any other non-residential placement, would be appropriate for Student. He decided at that time that he would not consent to anything less than a residential placement for Student.

65. Thereafter, Father discovered that Student had communicated on the family computer to arrange to receive drugs at school from peers. Father also discovered that Student had begun cutting herself. At hearing, Father explained that he felt a sense of urgency to get Student in a residential placement, because of her drug use, and because he felt Student was out of control and shutting down.

66. On December 13, 2010, Student's private psychologist, Dr. Kopley, provided Father with a one page, handwritten letter to support Father's request for residential treatment for Student. Dr. Kopley's letter advised that she had been treating Student since October 2010, and felt that it was evident that Student required a comprehensive, 24 hours a day, seven days a week, program to address Student's social, emotional, behavioral, and academic functional impairments. She further stated that Student needed to attend a setting that would have the components of behavioral programming, social-emotional support and education, and educational assistance. Dr. Kopley also stated that a special education environment would likely alienate Student. Dr. Kopley's letter included no reference to any assessment results that formed the basis of her recommendation. Father provided District with a copy of Dr. Kopley's letter at around the time he received the letter, which was near the time school closed for winter break. Dr. Kopley did not testify at hearing.

67. On January 4, 2011, after winter break, Father unilaterally placed Student in an out-of-state residential facility, pursuant to the recommendation of Dr. Kopley.

Specifically, Father placed Student at Aspen Ranch Academy (Aspen Ranch) in Utah, which was a therapeutic boarding school for adolescents experiencing emotional, behavioral, and mental health issues. On the same day, Father notified District via email that he placed Student at Aspen Ranch, and would be seeking reimbursement for the residential placement. Father obtained a 30 year loan to pay for Student's placement at Aspen Ranch, and paid Aspen Ranch \$6,000 per month. At the time, Father had not returned the mental health assessment referral packet to District.

68. On or about January 5, 2011, Ms. Singh learned about Dr. Kopley's December 13, 2011 letter, after returning from winter break.

#### JANUARY 12, 2011 IEP

69. On January 12, 2011, the IEP convened for the purpose of reviewing the offer of placement and services. The attendees included Father, Ms. Borders, Mr. Gold, Ms. Wadley, Ms. Krassny, Ms. Singh, Dr. Eric Beam, who was the Director of Special Education, a family friend, and educational attorney, Mara Allard. District provided Father with a copy of procedural safeguards.

70. The team first discussed Student's discipline record, which showed that Student had 14 documented incidents in her record, with attendance and tardies comprising the majority of entries. Specifically, the team noted that as of December 9, 2010, Student had 32 period tardies and nine period truanancies, and attended school 58 out of 64 days of enrollment. The team then discussed the graduation process, noted that Student was approximately a semester behind schedule, and advised that given Student's unilateral placement at Aspen Ranch, she would not receive normal semester grades from District, but would rather receive transfer grades for her class work that Student had completed at the time of the unilateral placement.

71. Father advised the team that he had visited Arch and believed Arch was inappropriate, because most of the students appeared to have needs primarily related

to autism, and that Arch would not have met Student's special and emotional needs. Rather, Father believed Aspen Ranch would best meet Student needs, because it offered a multitude of services for her social and emotional needs, such as equine therapy, peers with similar needs, one-on-one academic instruction as needed, therapeutic services, and supervision 24 hours a day, seven days a week.

72. District members advised that they believed a placement in a residential, out-of-state facility was unnecessarily restrictive for Student to access educational benefit in the least restrictive environment. Specifically, District members felt the clinical need for acute or crisis intervention did not drive educational placement decisions, especially considering the absence of incarcerations or hospitalizations, and believed that District could meet Student's needs in an environment that was less restrictive than a residential placement. In addition, District members felt that Student's primary obstacles in accessing her curriculum were off-task and avoidant behaviors, which did not warrant a residential placement. Also, District members reiterated that Student did not qualify for special education under the eligibility category of ED. As such, Student did not demonstrate that she required a 24 hour, seven days a week, therapeutic setting. Moreover, District IEP team members believed the offer of placement and services in the December 9, 2010 IEP was designed to meet Student's needs, as well as address, as necessary, her social-emotional issues that prevented her access to the curriculum.

73. District continued to offer placement at Arch to address Student's academic, on-task behavioral, and executive functioning needs. The placement included speech and language services of 60 minutes per week (two 30 minute sessions), school-based counseling services 30 minutes per week, workability consultation services of 60 minutes per month, curb-to-curb transportation services, a BSP, and continued offer for an audiology assessment, contingent upon Father making Student available for the assessment. In addition, District continued to offer a referral for a mental health

assessment for consideration of eligibility for mental health services, as well as an Independent Educational Evaluation (IEE) with a mutually agreed upon assessor to reconsider the eligibility criteria of ED. District offered the IEE as a way to resolve the disagreement of whether a residential placement was appropriate, and not because District believed that its offer of Arch was inappropriate. Father and the educational attorney disagreed with the offer of placement and services, so Father declined to provide his consent. Father requested the team to consider further information from Aspen Ranch, but Father never provided any further documents.

74. At hearing, Ms. Singh explained that in her experience as a school psychologist, students that required residential placement were generally those who had demonstrated significant maladaptive behaviors, which Ms. Singh did not see in Student.

75. On January 13, 2011, Ms. Singh sent a letter to Dr. Kopley requesting more information for the basis of her recommendation that Student warranted placement in a residential facility. Dr. Kopley never responded to the letter, and never contacted Ms. Singh.

76. On January 25, 2011, Ms. Wadley, sent Father a letter advising that District had sent him, via registered mail on January 19, 2011, another packet to begin a mental health services referral. Ms. Wadley also advised that District would process the packet within three business days upon its receipt from Father. In addition, Ms. Wadley advised that District was still ready, willing, and able to complete Student's audiology assessment, and requested Father to advise her when Student would be made available. Ms. Wadley further requested that if Father did not intend to have Student leave Aspen Ranch, to please advise District of that intention. Father never responded to this letter.

77. On February 7, 2011, Ms. Wadley sent Father, via certified mail, prior written notice of District's response to Father's request for reimbursement for his

unilateral placement of Student at Aspen Ranch. Specifically, District denied Father's request for reimbursement, as District believed that its offer of placement and services at the January 12, 2011 IEP constituted an offer of FAPE in the least restrictive environment. As of February 7, 2011, District had not received the mental health assessment referral packet from Father.

78. Thereafter, Father returned the mental health packet to District, which District processed, and forwarded to CMH. CMH received the packet on approximately February 15, 2011, which included IEP's, Student's psychoeducational assessment, speech and language assessment, and other records.

79. On March 17, 2011, CMH requested an extension of the timeline for conducting a mental health assessment, and an extension of the timeline for holding an IEP meeting. Because Student was out of state, CMH experienced obstacles in completing Student's assessment in a timely fashion.

#### CMH ASSESSMENT

80. On March 25, 2011, Chrystyne Curry, LMFT, a licensed mental health clinician from CMH, completed an assessment of Student, and prepared a written report. Ms. Curry provided testimony at hearing. Ms. Curry received her bachelor's degree in child psychology from West Virginia University in 1967, her master's degree in marriage, family, and child psychology from Chapman University in 1996, and has had her marriage and family therapy license since 2000. Ms. Curry has worked for CMH for seven years, and has assessed children in grades kindergarten through twelfth grade that were referred by school districts for possible mental health issues. In her capacity as an assessor, Ms. Curry conducts 50 to 60 mental health special education assessments per year, attends approximately 50 to 60 IEP meetings per year, and has recommended approximately 75 to 100 children for residential treatment over the last seven years. At hearing, Ms. Curry explained that the purpose of mental health evaluations for special

educations students was for CMH to make recommendations for treatment to help the special education student perform educationally.

81. Ms. Curry noted that District referred Student for an assessment due to problems with Student's social, emotional, and behavioral functioning, that were impacting upon her ability to perform in the special education environment. She also noted that Student's most recent difficulties included a contentious relationship with her parents, inattention and off-task behaviors, habitual tardiness and truancy, substance abuse, and a history of cutting.

82. Ms. Curry used the following assessment procedures: (1) conducted interviews of Father, Student (via webcam), Dr. Margot Kopley (Student's private therapist), Ms. Wadley, Todd Graves (Student's therapist at Aspen Ranch), Ms. Borders, and Ms. Singh; and (2) reviewed records. Specifically, Ms. Curry reviewed the November 2010 psychoeducational assessment report, the October 2010 speech and language assessment report, IEP's dated September 10, 2010, October 27, 2010, December 9, 2010, and January 12, 2011, discipline records from October 2010 through January 2011, a bio-psycho-social assessment report from Aspen Ranch dated January 5, 2011, transcripts, grades, and attendance records.

83. During her interview with Father, Father reported that before he placed Student at Aspen Ranch, the atmosphere at home was unbearable. Father and Student had a contentious relationship. Student sometimes lost control, and would scream, yell, push Father, and throw things. Father advised that Student's frustration level was low, and Student had poor self-esteem. She exhibited anxiety and had a history of cutting. Father reported that when Student was moved to the Learning Center for instructional support for 100 percent of her school day, Student began spiraling downward. Student was attracted to the "fringe crowd," was caught smoking marijuana, and would leave school during the day. Father also advised that Student's concentration was poor, and

that she did not pick up on social cues. Father reported that Student often had difficulty following instructions, lied to get what she wanted, was cruel and mean to others, had temper outbursts, argued with adults, blamed others for her problems, and would become easily annoyed by others. Although Father enrolled Student in horseback riding and dancing, and encouraged Student to attend church, these activities did not help to improve Student's attitude. Father did not provide Ms. Curry with any documents he wished for her to consider.

84. When Ms. Curry interviewed Student's private therapist, Dr. Kopley, Dr. Kopley reported that she counseled Student every two weeks from October 2010 through December 2010. Dr. Kopley described Student as academically impaired with learning disabilities and poor social and emotional functioning. Dr. Kopley attributed Student's misbehavior to school failure and a history of family difficulties. She reported that Student exhibited little common sense and displayed poor social judgment, and that Student found it difficult to learn, and teachers found Student difficult to teach. Student confided in Dr. Kopley that she was insulted when she was placed in special education classes. Dr. Kopley's treatment plan for Student included goals to increase polite discourse and negotiate appropriately with Father without acting out or arguing. There is no evidence that Ms. Curry and Dr. Kopley discussed the issue of residential placement.

85. During her interview with Ms. Wadley, Ms. Wadley reported that Student struggled with poor attention, and had significant deficits in the learning arena. Ms. Wadley believed that Student's multiple school placements contributed to her poor academic performance. In addition, Ms. Wadley felt Student mainly came to school to socialize, and was a "follower".

86. During Ms. Curry's interview with Ms. Singh, Ms. Singh reported that Student avoided work, was often off-task, and was easily distracted. Student, after many

prompts, worked reluctantly, and possessed poor executive functioning in the areas of self-monitoring, time management, memory, planning, and organizing. When at school, Student did not exhibit crying, depression, or any outbursts.

87. When Ms. Curry interviewed Ms. Borders, Ms. Borders reported that Student had significant learning issues with math. Student was inconsistent with compliance, and had been defiant in the past. Ms. Borders found Student impulsive, easily frustrated, and demonstrated poor persistence. Student's work productivity was low, and before she left LCCHS, Student had mostly F's. Ms. Borders reported that when Student received clear boundaries with tight controls, she performed well on tasks, when given in small chunks. Student appeared not to know social rules, and read social cues poorly.

88. During Ms. Curry's interview of Mr. Graves, Student's therapist at Aspen Ranch, Mr. Graves reported that Student was an impressionable girl who preferred to spend time with defiant and aggressive peers. She tended to become attracted to oppositional peers who pushed her around and who bossed her. She had great difficulty in reading social cues and processing social situations. Mr. Graves reported that Student's program at Aspen Ranch focused on difficulties in the social environment, defiance, rebellious attitude, control issues, and participating as a team member. Mr. Graves found that Student had a poor understanding of cause and effect, and the consequences of her actions. She also had an immature ego and low self-esteem. Mr. Graves believed that Student benefitted from the structure at Aspen Ranch. He found that in individual and family therapy, Student easily manipulated Father, in that she perseverated on things, and hounded him until she got her way. Mr. Graves advised that Student was not prescribed any medications at Aspen Ranch.

89. Ms. Curry interviewed Student via webcam. Although Ms. Curry ideally should have had a face-to-face interview with Student, Student had been unilaterally

placed out-of-state. Ms. Curry considered a webcam interview to be the next best thing and sufficient under the circumstances. The interview lasted about 30 minutes, and Student admitted to Ms. Curry that before she arrived at Aspen Ranch, she smoked cigarettes daily, smoked marijuana daily, and drank to drunkenness at least three times. She had tried cocaine once, and drank a half bottle of cough and cold medicine. She had also engaged in cutting. Student believed that Father placed her at Aspen Ranch because she could not get along at home. She admitted to arguing with Father, slamming doors, and otherwise expressing her anger and frustration. In therapy, Student worked on self-awareness and how she affected others. At Aspen Ranch, Student earned B's, but did not get along with her team, because they bickered and fought a lot. She did not express any thoughts of self-harm or harm to others.

90. At hearing, Ms. Curry explained that her impression of Student was that she was oppositional to authority, had a contentious relationship with Parents, and had difficulty with peers and handling social cues. Ms. Curry also believed Student was not suicidal, never ran away from home, and though she used drugs, Ms. Curry felt that Student did not use them in excess. Finally, based on the records she had, as well as the interviews she conducted, Ms. Curry felt she had enough information to determine whether Student was depressed or had an anxiety disorder, and concluded that Student had neither.

91. Ms. Curry concluded that Student qualified for mental health services, which were designed to assist students in their school setting. The emphasis in treatment would be to help Student develop skills to gain better behavioral control in order to help her maintain focus in the classroom, and benefit from her educational placement. Ms. Curry concluded that the least restrictive level of care to address Student's needs was outpatient services, such as individual, group and/or family therapy sessions, for a total of 15 sessions. At hearing, Ms. Curry explained that she

recommended outpatient services for Student because Student's risk potential was low, evidenced by Student's lack of hospitalizations, manic episodes, medication, suicidal thoughts, or a run-away history. Additionally, Ms. Curry recommended the provision of case management and medication management services, if appropriate. Finally, Ms. Curry developed two social-emotional-behavioral goals. One goal addressed Student's self-control and focused on Student developing appropriate behaviors when angered, annoyed, frustrated, or upset. The second goal addressed Student sobriety, and a relapse prevention plan.

#### APRIL 25, 2011 IEP

92. On April 25, 2011, the IEP team convened to review the mental health assessment. The attendees included Father, Ms. Borders, Ms. Krassny, Ms. Singh, Dr. Beam, Ms. Curry, and a family friend. Father waived the presence of a general education teacher, due to Student's absence from LCCHS since December. District members provided Father with a copy of procedural safeguards.

93. Ms. Curry presented her report, and advised the team that Student did not qualify for residential treatment through CMH. Rather, Student qualified for outpatient services, such as individual, group and/or family therapy. Father disagreed, and advised the team that Student necessitated a higher level of care than District and CMH could provide.

94. District continued to offer placement at Arch, which included speech and language services of 60 minutes per week (two 30 minute sessions), school-based counseling services 30 minutes per week, workability consultation services of 60 minutes per month, and curb-to-curb transportation services. District also offered mental health services that would include individual, group and/or family therapy sessions, for a total of 15 sessions, until the IEP annual review in of October 2011. District also offered to

provide case management and medication management services, if appropriate. Father declined to consent to District's offer of placement and services.

95. Director of Special Education, Dr. Eric Beam, who attended Student's January 12, 2011 and April 25, 2011 IEP meetings, provided testimony at hearing. Dr. Beam has been employed with District since December 2010. Prior, he was the Coordinator of Psychological Services for one and one-half years, a vice principal for nearly two years, a school psychologist for five years, and the lead psychologist for eight months with the Antelope Valley Union High School District. He received his bachelor's degree in psychology from the University of Massachusetts, his master's degree in applied educational psychology from Northwest University, and his doctorate in educational leadership from the University of California at Los Angeles. He has a clear pupil personnel services credential, a clear administrative services credential, and is a licensed educational psychologist. He also taught college courses in educational psychology at the University of LaVerne in 2005, child development at Chapman University in 2005, and in physiological psychology at Brandman/Chapman University in 2009 and 2010. Dr. Beam attended Student's IEP meetings as an administrator designee, and, including the period in which he was a school psychologist, has attended thousands of IEP meetings.

96. Dr. Beam explained that if CMH had recommended residential treatment, District would have offered it. Dr. Beam opined that the offer of placement and services was appropriate for Student, because it was designed to meet her presenting needs in terms of addressing her educational obstacles. Dr. Beam explained that he visited Arch in January or February 2011, and it consisted of 20 students, 12 of whom were students of District. Because Arch was not on a comprehensive campus, he believed that many of the distractions Student experienced on a comprehensive campus would be eliminated. In addition, two of the five staff members at Arch were licensed clinicians, and could

address directly Student's off-task behaviors, as well as other behavioral, social, and emotional concerns. Furthermore, Arch had a diploma-oriented program, and not a certificate of completion program. As such, Dr. Beam explained that Arch was not a school for those with low to moderate autism, or severe cognitive or developmental needs. Rather, the majority of District students sent to Arch were college-prep students, who had social, emotional, or behavioral issues that needed to be addressed.

#### APRIL 2011 PSYCHOLOGICAL EVALUATION

97. While at Aspen Ranch, licensed psychologist, Dr. Kevin M. Fenstermacher, conducted a psychological evaluation of Student, which he began on April 14, 2011, and subsequently prepared a written report. The purpose of the evaluation was to provide information about Student's cognitive, academic, personality, and mental health functioning to assist Aspen Ranch in treatment planning. Father received a copy of the report, but never provided District administrators or the IEP team with a copy. Dr. Fenstermacher did not provide District with a copy of his report either.

98. The report stated that Parents enrolled Student in Aspen Ranch because of aggressive and disrespectful behavior toward Parents, her refusal to do her academic work, her failing grades, and her alcohol and drug use. The report also noted that Student had a long and complicated history of academic placements and learning difficulties, which had a significant, negative impact on her self-esteem. Student also struggled socially, and despite changing schools almost every year, her poor social skills routinely resulted in her either alienating peers, or being bullied by her female peers. The report also noted Student's previous diagnosis of ADHD, ODD, and that Student had exhibited symptoms of an auditory processing problem. The report also noted obsessive-compulsive rituals, such as collecting items, demanding sameness in her personal space, and spending hours folding her laundry perfectly.

99. The report noted that since enrolling at Aspen Ranch, Student had been largely compliant, but had struggled considerably with her female peers. She also had difficulty completing her academic tasks and required a great deal of one-on-one attention and support from her teachers to do so.

100. Dr. Fenstermacher used the following assessment tools: (1) Weschler Adult Intelligence Scale-Fourth Edition (WAIS-IV); (2) WJ-III; (3) Minnesota Multiple Personality Inventory-Adolescent Edition (MMPI-A); (4) Millon Adolescent Clinical Inventory (MACI); (5) Behavior Rating Inventory of Executive Function-Self-Report (BRIEF-SR); (6) Rorschach Inkblot Test (Rorschach); (7) Substance Abuse Subtle Screening Inventory-Adolescent Edition (SASSI-A2); (8) A Finishing Game Sentence Completion Task; (9) Mental Status Examination; (10) Clinical Interview of Student; (11) Interviews of Parents; (12) Interview of Student's Aspen Ranch therapist, Mr. Graves; and (13) review of relevant clinical records.

101. The report noted that Student had a history of aggression, in that she had been verbally and physically volatile throughout her life, and her tantrums had become more intense as she aged. She had numerous verbal conflicts with Parents over the years, had broken things, and had put holes in walls when angry. The police had been called to her house on four occasions, because Student and Mother had been engaged in intense conflicts. The report also noted that Student, who was 16-years-old, smoked marijuana daily, and that she started experimenting with marijuana when she was 14 years old.

102. Dr. Fenstermacher noted in his report that Student presented as a young woman who was developmentally immature and quite egocentric in her thinking and problem-solving. She struggled with even the most basic insight into her emotional motivators behind her behavior, as well as the impact that her social behavior had on her relationships.

103. In order to assess Student's intellectual capacities, Dr. Fenstermacher administered the WAIS-IV, and found that Student's cognitive abilities ranged from the borderline to the average range of functioning. Her full scale IQ score of 78 on the WAIS-IV showed that Student's verbal and non-verbal reasoning ability were in the bottom of the low average range of functioning. She had a relative strength in her auditory working memory, a considerably slower processing speed, and struggled with cognitive efficiency. Dr. Fenstermacher concluded that this combination of factors suggested that Student was at cognitive risk for hitting "information overload" when presented with information at a rapid pace.

104. Student completed the BRIEF-SR to provide information about her executive functioning. Student's overall response profile suggested that she did not perceive herself as having any concerns regarding her everyday executive functioning. Dr. Fenstermacher noted that this was very inconsistent with her history and reports from her treatment providers at Aspen Ranch, who described Student as having struggles with many aspects of her executive functioning, including her ability to organize, plan, and tolerate changes in her environment. The report indicated that these factors reflected Student's anxiety, lack of insight, and an unwillingness to reflect upon her difficulties.

105. In order to assess Student's level of achievement across a range of academic subjects, Dr. Fenstermacher administered the WJ-III. In the area of broad reading, Student's scores ranged from the top of the low average range to the average range of functioning. She scored in the 48th percentile in the area of letter-word identification, representing the average range, in the 24th percentile in the area of reading fluency, representing the low average range, and in the 20th percentile in the area of passage comprehension, representing the low average range. In the area of mathematics, Student scored in the 11th percentile for calculations, representing the low

average range, in the fifth percentile for math fluency, representing the borderline range, and in the fourth percentile for applied problems, representing the borderline range. Overall, Student's math abilities were well below average, and at approximately the fourth grade level. In the area of written language, Student scored in the 18th percentile for spelling, representing the low average range, in the 41st percentile for writing fluency, representing the average range, and in the 18th percentile for writing samples, representing the low average range. Overall, Student's writing scores were considered below average, and at approximately the seventh grade level. Dr. Fenstermacher concluded that based on Student's overall cognitive profile, lower processing speed, and pervasive learning difficulties, she met the DSM-IV criteria for a Learning Disorder NOS diagnosis.

106. In order to evaluate Student's personality functioning and mental health issues, Dr. Fenstermacher administered the Rorschach, MMPI-A, the MACI, and A Finishing Game sentence completion task. Dr. Fenstermacher concluded from the results of these tests that Student's self-esteem had been negatively impacted by her academic and behavioral struggles, and it appeared that Student developed well-engrained patterns of "learned helplessness" and a prominent fear of failure concerning her ability to be successful in her academic environments. She withdrew and avoided when required to exert effort rather than risk embarrassment or failure. Emotionally, Student experienced chronic feelings of anxiety and dysthymia, as well as exhibited a level of dysregulation that was consistent with her diagnosis of ADHD. Her pervasive need to be in control was evident in her somewhat brash and oppositional behavior, as well as in her expression of obsessive tendencies. Student used her behaviors as a smoke screen to prevent others from seeing her learning and social difficulties and to protect her fragile self-esteem.

107. Dr. Fenstermacher's report noted that Aspen Ranch would be closing at the end of the 2011-2012 school year, and noted that Student would be transferring to another residential treatment center. Dr. Fenstermacher recommended that Student's subsequent placement be a smaller, structured, social-skill building environment that would help Student address her social deficits while also improving her overall self-awareness. He also indicated that Student continued to require a nurturing therapeutic environment. Because of Student's history of ADHD, cognitive issues, slower processing speed, and other learning issues, Dr. Fenstermacher recommended the following: (1) connecting her current learning to an already existing knowledge base; (2) increase her ability to use organizational schemes; (3) frequent summarization of information that has been presented; (4) frequent checking for understanding; (5) in depth discussions of topics taught and connecting the information with topics already learned by Student; (6) clear behavior contracts outlining expected behavior and consequences; (7) incorporating and applying taught information to Student's life; (8) teaching study strategies, such as checking her work, asking for help, highlighting information, effective note-taking, reading, and reviewing the chapter subheadings before tackling the larger chapter; (9) regularly scheduled breaks; and (10) use of a calculator on assignments and tests.

108. Dr. Fenstermacher also recommended that Student receive ongoing treatment to solidify her sense-of-self around her strengths, rather than continue to be overwhelmed by her anxieties, fears, and perceived weaknesses. In addition, Dr. Fenstermacher recommended continued individual and group-related therapeutic experiences, as well as ongoing family therapy. Dr. Fenstermacher did not testify at hearing.

109. In June 2011, after Aspen Ranch closed for financial reasons, Student enrolled at the Academy at Sisters Therapeutic Boarding School (Academy) in Oregon,

which was an all-girls boarding school. At hearing, Father advised that Academy offered a lot of one-to-one instruction to Student, as well as weekly individual psychological therapy sessions, under which Student has thrived. Specifically, Student has become less oppositional and has begun to invest herself in treatment. Additionally, Student has applied herself in school, made academic progress, and has developed academic skills.

## LEGAL CONCLUSIONS

1. District contends that its offer of placement and services in Student's triennial IEP dated October 27, 2010, completed on December 9, 2010, and amended on April 25, 2011, constituted a FAPE in the LRE, as it offered Student an appropriate NPS placement and services to address Student's unique needs. Student disagrees, and contends that Student required placement and services in a therapeutic residential facility, as recommended by Dr. De Llanos, Dr. Kopley, and Dr. Fenstermacher, and based on Student's current success at her residential treatment facility.

### APPLICABLE LAW

2. The petitioner in a special education due process hearing has the burden to prove his or her contentions at the hearing. As the petitioning party, District has the burden of persuasion on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

3. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. §1400(d); Ed. Code, §56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is

defined as “specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability....” (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031). “Related services” are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

4. In *Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p.200) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at 200, 203-204.)

5. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district’s offer of

special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p.1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 93 F.2d 1031, 1041.) Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Ibid.*)

6. In determining the educational placement of a child with a disability, a school district must ensure the following: (1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and consider the requirement that children be educated in the least restrictive environment (LRE); (2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; (3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; (4) in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (5) the child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116 (2006).<sup>3</sup>)

---

<sup>3</sup> All subsequent citations to the Code of Federal Regulations are to the 2006 edition.

7. In order to provide the LRE, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a).) To determine whether a special education student 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 non-academic benefits of such placement"; (3) "the effect [the student] had on the teacher and children in the regular class"; and (4) "the costs of mainstreaming [the student]." (*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, 1948-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the LRE for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome.]) If it is determined that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been 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.)

8. The continuum of the program options includes, but is not limited to, regular education, resource specialist programs, designated instruction and services, special classes, nonpublic, nonsectarian schools, state special schools, specially designed

instruction in settings other than classrooms, itinerant instruction in settings other than classrooms, and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

9. When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

10. The IEP team is required to include one or both of the student's parents or their representative, a regular education teacher if a student is, or may be, participating in the regular education environment, a special education teacher, a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a).)

11. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the IEP process when he or she has an opportunity to discuss a proposed IEP and when parental concerns are considered by the IEP team. (*Fuhrmann v. East Hanover Bd. Of Educ., supra*, 993 F.2d at p. 1036.)

12. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional

performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) When appropriate, the IEP should include short-term objectives that are based on the child's present levels of academic achievement and functional performance, a description of how the child's progress toward meeting the annual goals will be measured, when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(iii); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code § 56345, subd. (a)(7).) The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).)

13. An IEP must include a post-secondary transition plan during the school year in which the child turns 16 years old. (Ed. Code, § 56043, subd. (g)(1).) "Transition services" means "a coordinated set of activities for an individual with exceptional needs"

that: (1) "Is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to postschool activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation"; (2) "Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil"; and (3) "Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation." (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

14. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).)

15. To provide information to the IEP team, a school district is required to conduct a reevaluation of each child at least once every three years, unless the parent and the local educational agency agree that a reevaluation is unnecessary. (34 C.F.R. 300.303(b)(1) (2006);<sup>4</sup> Ed. Code, § 56381, subd. (a)(2).) A school district is required to assess a child in all areas of suspected disability. As part of any reassessment, the IEP team is required to review existing assessment data and, on the basis of that data, identify what additional data, if any, is necessary to determine whether the pupil continues to have a disability, the pupil's present levels of performance and educational

---

<sup>4</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version, unless otherwise indicated.

needs, whether the pupil continues to need special education and related services, and whether any additions or modifications to the educational program are needed to enable the pupil to meet his annual IEP goals. (Ed. Code, § 56381, subd. (b).)

16. Education Code section 56320, subdivisions (a) through (e), provides that assessments must be conducted in accordance with the following pertinent requirements: that testing and assessment materials and procedures be selected and administered so as not to be racially, culturally, or sexually discriminatory; that the materials and procedures be provided and administered in the student's primary language or other mode of communication, unless unfeasible to do so; that the assessment materials be validated for the purpose for which they are used; that the tests be administered by trained personnel in conformance with test instructions; that the tests and other assessment materials be tailored to assess specific areas of educational need, and not merely those that are designed to provide a single general intelligence quotient; that the tests be selected and administered to best ensure that, when administered to a student with impaired sensory, manual, or speaking skills, the test produces results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure; and that no single measure be used as the sole criterion for determining eligibility or an appropriate educational program for the student.

17. Assessments must be conducted by qualified persons who are knowledgeable of the student's disability, who are competent to perform the assessments, as determined by the local educational agency, and who give special attention to the student's unique educational needs, including, but not limited to, the need for specialized services, materials, and equipment. (Ed. Code, §§ 56320, subd. (g), and 56322.) The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§

56327 and 56329.) The report shall include, but not be limited to, the following: (1) whether the student may need special education and related services; (2) the basis for making the determination; (3) the relevant behavior noted during the observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health and development, and medical findings, if any; (6) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and (6) the need for specialized services, materials, and equipment for students with low incidence disabilities. (Ed.Code, § 56327.)

18. If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the IEP after having consented to those services in the past, the local educational agency shall file a request for due process hearing. (Ed. Code, § 56346, subd. (d).)

#### ANALYSIS

19. Here, the evidence showed that Student was properly assessed prior to the December 9, 2010 IEP team meeting. In order to provide the most appropriate program for Student, District assessed Student in all areas of suspected disability by conducting a series of assessments designed to measure Student's academic achievement, cognitive development, learning ability, visual perceptual skills, fine motor coordination, executive functioning, speech and language development, and social, emotional, and behavioral development. The assessments included the administration of standardized tests, rating scales, records review, interviews, teacher input, and observations of Student. All of the assessments were appropriate in that they were not racially, culturally, or sexually discriminatory, were not designed to provide a single general intelligence quotient, were administered in Student's primary language, and were selected and administered to

produce results that accurately reflected Student's aptitude, achievement level, and other factors the tests were purported to measure.

20. In addition, the assessments were administered by very qualified individuals. Specifically, school psychologist, Ms. Singh, who prepared the psychoeducational report, had been a school psychologist for approximately eight years at the time she conducted Student's assessment. In addition, she had conducted approximately 800 assessments during the course of her career, and had provided credible testimony at hearing. Ms. Singh's report was comprehensive, and demonstrated that the assessments were conducted properly. In particular, Ms. Singh's report demonstrated an extensive review of Student's background information and prior assessments, as well as her observations, interviews, and receipt of teacher input. In addition, Ms. Singh's assessment included the administration of multiple tests to measure Student's intellectual functioning, academic performance, adaptive behavior functioning, and social and emotional functioning. Similarly, Ms. Krassny, who conducted the speech and language assessment report, had approximately 25 years of experience as a speech pathologist with District, and had conducted approximately 65 assessments in a given school year, equaling approximately 1,625 assessments. She, too, prepared a comprehensive report setting forth assessment tools used to measure Student's receptive language and memory skills, vocabulary skills, grammar skills, and speech skills. Also, Ms. Borders, who administered the WJ-III, had been a special education teacher for approximately 20 years at the time of the assessment, and prepared the results to be incorporated in the psychoeducational assessment. The reports described above included the assessor's conclusions and recommendations for the IEP team to consider concerning Student's unique needs, all of them confirming that Student still required special education and related services, and none of them revealing results that conflicted with the other.

21. The evidence also showed that Student was also properly assessed for educationally-related mental health services prior to the April 25, 2011 IEP team meeting. Specifically, Ms. Curry, who completed a mental health assessment of Student, had been a licensed mental health clinician with CMH for seven years, and in that capacity, conducted 50 to 60 assessments a year, equaling 350 to 420 assessments. Her report demonstrated an extensive review of school records, including IEP's, prior assessment reports, discipline records, transcripts, grades, attendances records, as well as a bio-psycho-social assessment report from Aspen Ranch. In addition, her report established that she conducted in depth interviews of Student, Father, Ms. Wadley, Ms. Borders, Ms. Singh, and Student's private therapist, Dr. Kopley, as well as Student's therapist at Aspen Ranch, Mr. Graves. Moreover, her report included her conclusions and recommendations for the IEP team to consider concerning Student's unique needs.

22. The evidence showed that all of Student's IEP meetings, including the ones held on October 27, 2010, December 9, 2010, and April 25, 2011 IEP, were procedurally proper. Father received written notices of procedural safeguards and participated in each meeting. Also, Student's advocate participated in the December 9, 2010 meeting, and her attorney participated in a subsequent IEP meeting held on January 12, 2011. In addition, the correct district personnel attended all of the IEP team meetings, including the one on April 25, 2011, where, pursuant to Father's authorization, the only required person not in attendance was the general education teacher. Also, all assessments were explained by IEP team members who were qualified to do so. Specifically, at the December 9, 2010 IEP meeting, Ms. Krassny reported on her speech and language assessment of Student, Ms. Singh reported on her psychoeducational assessment, Ms. Borders presented the results from the WJ-III, and at the April 25, 2011 meeting, Ms. Curry presented the results of her mental health assessment. Moreover, the IEP's met the requirement of including a statement of the special education and related services

to be provided to Student, as well as specifying the frequency, duration, and location of services. Also, the IEP dated October 27, 2010, and completed on December 9, 2010, included Student's present levels of academic achievement and functional performance, including how Student's disability affected her involvement and progress in the general education curriculum. District also met the requirement of including in the IEP document a statement of measurable annual goals for Student, including goals for receptive language, problem solving, reading comprehension, math computation, math fluency, work completion, written expression, self-initiation, on-task behavior, and attendance goals, which were designed to meet Student's needs as identified in Ms. Singh and Ms. Krassny assessment reports. In addition, District also included two additional social-emotional-behavior goals in the April 25, 2011 IEP, as developed by Ms. Curry, which focused on self-control, and sobriety.

23. The evidence also showed that the offer of placement and services made in the IEP dated October 27, 2010, and completed on December 9, 2010, as amended on April 25, 2011, was appropriate to meet Student's unique needs. Specifically, District offered Student a placement at Arch, where Student would also receive related services of speech and language therapy services 60 minutes per week (two 30 minute sessions), school-based counseling services 30 minutes per week, workability consultation services of 60 minutes per month, and curb-to-curb transportation services. District offered Arch, which was a self-contained NPS with 25 students or less, because it believed Student could benefit from more small group and individualized instruction, in a smaller environment, in order to meet her behavioral needs, off-task behavior, transition issues, and social, emotional, behavioral, and academic needs. This conclusion was supported by Ms. Singh's psychoeducational report, which demonstrated that Student struggled significantly with executive functioning, that impacted Student's learning and behavior in the school environment, including behavior regulation, such as cognitive planning

and organizing, inhibiting behaviors, and emotional self-regulation. She also struggled with initiating tasks, planning and organizing, working memory, self-monitoring, and task completion. Ms. Singh's report also demonstrated significant concerns in the area of externalizing behaviors, such as hyperactivity, and conduct problems, as well as attention problems, learning problems, and adaptive skills issues. Additionally, Ms. Singh provided credible testimony that Student required a higher level of service than what District could provide on a comprehensive campus, yet had not demonstrated the types of extreme behavior problems requiring a residential placement. Specifically, Ms. Singh believed that Student required a more contained environment, a smaller teacher to student ratio, a program that provided counseling, and a program that limited Student's transition from class to class, given her history of transitioning problems.

24. Additionally, according to the credible testimony of Ms. Wadley, District had exhausted all resources to help Student access her curriculum before offering a NPS, such as a BSP, school counseling, an escort, and more time in the Learning Center. Arch, which Ms. Wadley observed to be a small NPS with a therapeutic component embedded in its program, could provide a smaller and more structured environment, provide the related services Student required, and provide a therapeutic environment on the campus to address Student's social, emotional, and behavioral needs. Indeed, according to the credible testimony of Dr. Beam, two of the five staff members at Arch were licensed clinicians, and could address directly Student's behaviors. In addition, Ms. Wadley credibly testified that the principal and director of Arch, to whom Ms. Wadley had provided a copy of Student's IEP, indicated that Arch could implement the goals set forth in Student's IEP dated October 27, 2010, and completed on December 9, 2010.

25. Similarly, Ms. Borders credibly testified that Arch could provide Student with less distractions because of the substantially smaller environment, and, because of Arch's year-round program, could offer Student one class at a time, as opposed to

requiring Student to take six classes at a time, and, as such, could increase Student's chances of accessing her curriculum and addressing her social-emotional needs. Ms. Borders persuasively established that taking a smaller number of classes at one time was especially important for Student, because she seemed overwhelmed by the six classes she was required to take at LCCHS.

26. Father contends that Arch was not an appropriate placement because it provided a very pronounced special education environment, with approximately 50 percent of the students appearing low functioning, and intellectually disabled. Consequently, Father felt that Student would not thrive in that environment, and that she would shut down. However, contrary to Father's assertion, and according to the credible testimony of Dr. Beam, Arch had a diploma-oriented program, as most of its students were college-bound. In addition, Arch had no certificate of completion program, and was, therefore, not appropriate for those more developmentally disabled, or for students with low to moderate autism, or severe cognitive or developmental needs.

27. Father further contends that, given Student's unsuccessful history in special education classes, and the extent of Student's behavioral, emotional, and academic challenges, Student would not show substantial improvement unless she was in a therapeutic environment 24 hours a day, seven days a week. He also argues that his position is supported by the recommendations of Dr. De Llano, Dr. Kopley, and Dr. Fenstermacher, buttressed by Student's current success at the residential treatment facility. However, an IEP, including its offer of placement, must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (See *Adams, supra*, 195 F.3d at p. 1149; *Fuhrman, supra*, 93 F.2d at p. 1041.) In other words, the placement offer must not be judged in hindsight. (*Ibid.*) When the team developed the IEP dated October 27, 2010 and completed on December 9, 2010, the evidence conclusively

showed that District was unaware of any recommendations for residential treatment from Dr. De Llano, Dr. Kopley, or Dr. Fenstermacher. Specifically, Father never raised the issue of residential treatment at any IEP meetings held prior to December 9, 2010 (i.e., September 10, 2010, October 1, 2010, October 27, 2010, or November 5, 2010), and never provided the team with a copy of Dr. De Llano's one-page report for the team to consider, or to elicit information from her concerning the basis of her recommendation. In addition, the evidence showed that prior to the October 27, 2010 IEP meeting, Ms. Singh attempted to communicate with Dr. Kopley, as Student's private therapist, in preparation for her psychoeducational assessment of Student, but Dr. Kopley never returned Ms. Singh's calls, and, therefore, provided District with no information concerning her recommendations for placement prior to the October 27, 2010 and December 9, 2010 IEP meetings. District did not become aware of Dr. Kopley's recommendation of residential treatment until after the December 9, 2010 IEP meeting, when Father provided District with a one-page, handwritten letter dated December 13, 2010 from Dr. Kopley that recommended a residential placement, but included no evidence of any assessment results that formed the basis for her recommendation. When District attempted to communicate with Dr. Kopley to discuss the substance of her December 13, 2010 letter, Dr. Kopley never responded. Consequently, District did not have an opportunity to explore her reasons for her residential placement recommendation prior to the subsequent IEP amendment meeting held on April 25, 2011. Notably, the CMH assessor, Ms. Curry, who did have an opportunity to speak with Dr. Kopley prior to the April 25, 2011 meeting, included a summary of her interview with Dr. Kopley in her report, but it included nothing demonstrating that Dr. Kopley discussed her residential treatment recommendation with Ms. Curry. Finally, the evidence showed that neither Father nor Dr. Fenstermacher ever provided District with a

copy of Dr. Fenstermacher's report; therefore, the team had no opportunity to consider his recommendations either.

28. The team did, however, have an opportunity to consider Ms. Curry's recommendation stemming from her mental health assessment of Student, and as discussed above, she had reasonably concluded that a residential placement was not required to provide Student a FAPE. According to the credible testimony of Ms. Curry, Student's risk potential was low, evidenced by Student's lack of hospitalizations, manic episodes, medication, suicidal thoughts, and run-away history. In addition, Ms. Curry detected no evidence of depression or anxiety at the time of her interview of Student. This was consistent with the findings of Ms. Singh's psychoeducational assessment of Student, where she found that Student did not meet the eligibility criteria for ED, and, according to her credible testimony, Student did not demonstrate signs of depression, anxiety, or OCD. According to the persuasive testimony of Dr. Beam, if Ms. Curry had recommended residential treatment for Student, District would have offered it.

29. District also met its burden of demonstrating that the placement offer was in the least restrictive environment. Overall, a determination of whether a district has placed a pupil in the least restrictive environment involves the analysis of four factors: (1) the educational benefits to the child of placement full time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the child. (See *Rachel H.*, *supra*, 14 F.3d at p. 1404.) Regarding the first factor, the evidence showed that Student experienced significant difficulty in the general education environment, which impacted her ability to access the curriculum. Specifically, at the October 1, 2010 IEP meeting, the general education teacher reported to the team that Student struggled with on-task behavior, and required significant prompting to complete her class work. The teacher also reported that Student often engaged in

avoidant behaviors, which had become disruptive, and impeded her learning. Despite District's efforts to address these behaviors in the general education environment, such as a BSP, and school counseling, Student continued these behaviors, and remained academically unsuccessful. Specifically, assessment results demonstrated that Student performed significantly under grade level academically, and that her lack of academic competence negatively affected her ability to access the general education curriculum. Consequently, Student's receipt of educational benefits in a general education setting was limited, at best.

30. In reference to the second factor, Student could receive a non-academic benefit of interacting with her peers, giving Student more opportunity to practice her socialization skills, as well as model behavior from typically developing peers. However, the third factor, specifically the effect Student's full time presence would have on the teacher and children in the regular class, poses several problems. The evidence showed that the general education teacher advised the IEP team that Student's avoidant behaviors had become disruptive to the class, which impeded the learning of others. In addition, during Ms. Singh's observation of Student for the development of the BSP, Student required direct teacher prompting to complete tasks, completed very little work independently, and required direct instruction from the teacher 18 of 20 minutes. Consequently, a general education teacher would be required to focus significant time and resources on Student, taking attention away from the other students in the class. Finally, regarding the fourth element, neither party introduced any evidence demonstrating the costs associated with educating Student in a general education setting versus a special education setting. Weighing the above factors, a general education placement would not be appropriate.

31. Placement in an out-of-state residential treatment center would be equally inappropriate, as the law requires school districts to educate students in the least

restrictive environment. On the continuum of placement options, an out-of-state residential facility is significantly more restrictive than an in-state, non-residential NPS. District persuasively established that it could meet Student's needs without resorting to the most restrictive of placements, an out-of-state residential facility. Specifically, according to the credible testimony of Ms. Wadley, Dr. Beam, and Ms. Borders, and as established above, Arch could meet Student's unique needs, and implement the goals set forth in Student's IEP.

32. District's offer of related services was also appropriate. Specifically, in the IEP dated October 27, 2010, and completed on December 9, 2010, District offered speech and language services of 60 minutes per week (two 30 minute sessions), school-based counseling services of 30 minutes per week, workability consultation services of 60 minutes per month, and curb-to-curb transportation services. District witnesses credibly established the appropriateness of the frequency and duration of these services, and their testimony was uncontradicted. Specifically, the credible testimony of Ms. Krassny and Ms. Singh clearly demonstrated that Student required such services, as established by the findings of their assessment results. In the April 25, 2011 amendment IEP, District offered additional related services to address Student's mental health needs, specifically, individual, group, and/or family therapy sessions, for a total of 15 sessions. District also offered to provide case management and medication management services, if appropriate. District appropriately based their offer on the recommendations of Ms. Curry, who conducted a mental health assessment of Student, and determined that Student qualified for educationally-related mental health services. The evidenced supported Ms. Curry's conclusion that the least restrictive level of care to address Student's needs was outpatient services, due to Student's low risk potential.

33. Given the above, District met its burden of demonstrating by a preponderance of the evidence that it offered Student a FAPE, as set forth in the IEP

dated October 27, 2010, completed on December 9, 2010, and amended on April 25, 2011. (Factual Findings 1 - 109; Legal Conclusions 1 - 33.)

## ORDER

District offered Student a FAPE as set forth in Student's IEP dated October 27, 2010, completed on December 9, 2010, and amended on April 25, 2011.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, the District was the prevailing party on the sole issue presented.

## RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (California Education Code § 56505, subd. (k).)

DATED: February 14, 2012

\_\_\_\_\_  
*/s/*

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings