

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2013100405

DECISION

Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH), State of California, on October 10, 2013, naming the Sacramento City Unified School District (Sacramento). On November 19, 2013, the matter was continued for good cause.¹

Administrative Law Judge (ALJ) Deidre L. Johnson heard this matter in Sacramento, California, on March 4, 5, 6, 11, 12, 13, 25, 26, and 27, 2014.

Attorney Daniel Shaw, Ruderman & Knox LLP, represented Student. Parents attended the hearing each day. Student appeared by telephone one morning to testify.

Attorney Daniel Osher represented Sacramento. Sacramento's Director of Special Education Rebecca Bryant attended the hearing on behalf of Sacramento.

¹ On November 6, 2013, OAH consolidated this case with Sacramento's case, bearing OAH case number 201301109. On the first day of hearing, Sacramento dismissed its case.

On March 27, 2014, a continuance was granted at the request of the parties to submit written closing arguments on April 28, 2014. On that date, the closing arguments were filed, the record was closed, and the matter was submitted for decision.

ISSUES²

1. For the 2013 extended school year and the 2013-2014 school year, did Sacramento deny Student a free appropriate public education (FAPE) by:³
 - (a) Failing to offer or provide appropriate academic instruction;
 - (b) Failing to offer appropriate mental health therapy services;
 - (c) Failing to offer an appropriate individual transition plan;
 - (d) Failing to offer any medication management; and/or
 - (e) Offering an inappropriate educational placement in Student's individualized education program (IEP), including failing to offer placement in a residential treatment program?
2. Beginning with the 2013 extended school year, did Sacramento procedurally deny Student a FAPE by having a policy and/or practice of refusing to place pupils in residential treatment as part of the IEP process such that Sacramento predetermined Student's IEP placement?

² The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) For purposes of this Decision, the issues have been reframed and reorganized for consistency with the applicable law.

³ At the outset of the hearing, Student dismissed her first issue about the appropriateness of District's 2013 psychoeducational assessment.

SUMMARY OF THE DECISION

Student contends that Sacramento's June and September 2013 IEP's denied her a FAPE because they failed to offer and provide her appropriate academic instruction, mental health therapy services, and individual transition plans. Sacramento contends that Student received educational benefit at school and its IEP offers were reasonably calculated to meet her educational needs. This Decision finds that Student did not sustain her burden to establish that Sacramento's June 2013 placement offer for the extended school year in the summer of 2013, denied her a FAPE.

As to the September 2013 IEP, this Decision finds that Sacramento's mental health therapy services, spread over two separate school locations with two different school-based therapists, denied Student a FAPE because she required the consistency of one therapist and a meaningful opportunity to benefit from her therapy on a daily basis. In addition, since the dual program of academic instruction relied on the sufficiency of the mental health therapy services for its effectiveness, the dual educational program also failed. Consequently, the September 2013 IEP denied Student a FAPE and Parents are entitled to reimbursement for the costs of her unilateral residential treatment placement as a remedy.

Student contends that Sacramento's June and September 2013 IEP's denied her a FAPE by not offering her an educational placement in a residential treatment center due to her severe state of emotional disturbance. Sacramento argues that it was not legally required to offer residential services to address her personal safety and mental health concerns outside of school. This Decision finds that because Student is entitled to reimbursement for her residential placement for the time period at issue, this problem is moot and need not be reached.

Finally, Student claims that Sacramento denied Parents a meaningful opportunity to participate in the IEP decision making process because Sacramento made a

predetermined decision to not offer a residential placement based on a policy and/or practice of not offering such placement. This Decision finds that Student did not sustain her burden to establish that Sacramento had such a policy or practice. Consequently, Sacramento did not predetermine the placement offers made at the IEP team meetings on that basis, and therefore did not deny her a FAPE.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTION

1. Student is now 17 years old and in the eleventh grade. Father resides within the educational boundaries of Sacramento, and Mother resides elsewhere in the area.⁴ From kindergarten through eighth grade, Student attended elementary schools in Sacramento. Beginning in ninth grade, Student transferred into the San Juan Unified School District (San Juan).

2. At an IEP team meeting on May 1, 2013, when Student was in tenth grade, San Juan determined that she was eligible for special education and related services under the educational category of emotional disturbance. Two weeks later, Parents reenrolled Student in Sacramento and requested special education services.

3. Sacramento held two IEP team meetings that are the subject of this case: the first on June 5, 2013, and the second on September 27, 2013. At both IEP team meetings, Parents requested that Student be placed in a residential treatment facility but Sacramento denied the requests. In October 2013, Parents unilaterally placed

⁴ Parents were divorced when Student was six years old. They have joint legal custody of her, and have alternated having physical custody of her during the relevant time period.

Student in a residential treatment center called Falcon Ridge Ranch (Falcon Ridge) in Utah where she still was at the time of hearing.

2011-2012 (NINTH GRADE) AND 2012-2013 (10TH GRADE) SCHOOL YEARS

4. In early 2012, Student began outpatient treatment for depression at Kaiser Permanente Medical Group (Kaiser). On May 30, 2012, at the end of ninth grade, Student was hospitalized at Sierra Vista Hospital, an inpatient psychiatric facility in south Sacramento, after an attempted suicide by overdosing on a combination of prescription and over-the-counter medications at home.

5. Dr. Jason Bynum, a child and adolescent psychiatrist for Kaiser, first medically diagnosed Student with a mood disorder, not otherwise specified, and polysubstance abuse in June 2012.⁵ Student insisted that suicide was a valid option for her, felt bullied and under stress at school, and was angry at Parents. She also admitted to abusing illegal substances, including marijuana, mushrooms, and codeine. Upon her discharge, Student was sent to the Edgewood Center for Children and Families in San Francisco for two weeks of intensive residential treatment, family meetings, and therapy, and was discharged from Edgewood on June 20, 2012.

6. Student's therapist at Kaiser, Paula Adams, began providing individual therapy to Student twice a week in the summer of 2012 after her release from

⁵ Dr. Bynum has been employed by Kaiser for over four years and works in that capacity at Sierra Vista Hospital, an inpatient psychiatric facility in South Sacramento. He obtained his bachelor's degree in chemistry in 1997, and graduated from medical school in 2001, completed his residency, then completed his child and adolescent psychiatry fellowship in 2006. He has evaluated over 4,000 children with mental health issues.

Edgewood.⁶ Ms. Adams struggled to establish a relationship with Student for about a year. Ms. Adams was persuasive, as was Dr. Bynum, that Student generally presented as "doing fine," when underneath she had suicidal, dangerous, and impulsive thoughts and undisclosed behaviors. None of Student's medical professionals were able to identify any particular triggers or stressors.

7. On July 19, 2012, Student was admitted to Sierra Vista Hospital after having been placed on an involuntary psychiatric hold under Welfare and Institutions Code section 5150, for being a danger to herself or others, due to severe depression and suicidal ideation. Student had experienced a good day with her grandparents the day before, but then underwent a precipitous drop into suicidal ideation. Student was discharged the next day for outpatient follow-up at Kaiser.

8. For the fall of 2012 in 10th grade, Parents secured her admission into the Humanities International Study Program at McClatchy High School in Sacramento, an advanced program for gifted pupils. They hoped it would provide Student with motivation to return to school. McClatchy was a large comprehensive general education campus where Student experienced intense pressure to perform perfectly so she could go to college. She was a general education pupil with no special education supports or services. Student began having panic attacks at school and became overwhelmed emotionally and depressed. Parents removed her after about a month and enrolled her in the independent study program at Choices Charter School (Choices) in San Juan.

⁶ Ms. Adams is a licensed clinical social worker and has provided intensive outpatient therapy with Kaiser for about 10 years. She obtained a bachelor's degree in psychology in 1989, and obtained a master's degree in social work in 1994. Prior to working with Kaiser, she was an outpatient therapist with Sacramento County Mental Health, and also was a therapist at a school.

However, that program was not an appropriate educational environment for Student as she was alone at home for significant periods of unstructured time, when she should have been under adult supervision and engaged in structured activities.

9. On December 31, 2012, Student was admitted to Sierra Vista Hospital after she deliberately ingested a carpet cleaner solution, vomited, and called 911 for help. At that time, Student was in 10th grade and enrolled at Choices but it was closed for the winter break. The hospital discharged Student on January 4, 2013, and she returned to intensive outpatient therapy at Kaiser.

10. On March 8, 2013, Student was admitted to Sierra Vista Hospital, after being placed on a section 5150 hold. Student stole \$1000 from her mother, took her car to drive to New York, and drove as far as Nevada before Parents had law enforcement intervene. She also purchased marijuana to sell during the trip. On her return, Student demanded the right to be emancipated and threatened to kill herself.

11. On March 19, 2013, Student was discharged from Sierra Vista Hospital for further assessment and residential therapeutic treatment at Edgewood, including individual and family therapy. Student was discharged from Edgewood on April 5, 2013.

12. On April 25, 2013, Student was again hospitalized at Sierra Vista Hospital after she attempted to run away to Europe. She forged a letter from Parents, and obtained Mother's bank account information and a passport. Mother had been in the shower but was able to stop Student before the car left the driveway. Student was discharged from the hospital on May 10, 2013. During these hospitalizations, Parents learned that Student had been engaging in other risky and dangerous behaviors at home or in the community, including cutting herself, purging food, and doing illegal drugs.

April 2013 San Juan Assessment and May 2013 IEP Team Meeting

13. On April 8, 2013, a San Juan school psychologist assessed Student and the results were reviewed at the May 2013 IEP team meeting.⁷ On standardized assessment tests for cognitive functioning, Student scored in the above average range. On standardized academic tests, Student scored in the average or high average range in all areas. However, Student was in the clinically significant range (showing severe mental health concerns) for depression, anxiety, conduct problems, low self-esteem, and significant social stress. Primarily due to her hospitalizations that spring, Student's grades suffered. Although she had an A in Honors English 2, she had a D+ in French 2, an F in Earth Science, a C+ in English 3.

14. At the May 1, 2013 IEP team meeting, held while Student was still hospitalized, San Juan found Student eligible for special education under the emotional disturbance category because she had a general pervasive mood of unhappiness or depression, and inappropriate types of behavior or feelings under normal circumstances that adversely affected her educational performance over a long period of time and to a marked degree. The IEP team determined that Student's disability affected her involvement and progress in the general curriculum due to multiple hospitalizations and absences from school. When Student was emotionally fragile, her academic performance was impacted: "With multiple hospitalizations her ability to pass classes and earn credits is compromised and school changes exacerbate her anxiety."

15. Parents requested a residential treatment placement. However, the school district members of the San Juan IEP team tentatively offered Student an educational placement, including the 2013 extended school year, at La Vista Center, a small therapeutic school for pupils with emotional disturbance. Parents agreed to visit the

⁷ The legal sufficiency of assessments is not at issue in this proceeding.

offered school site, and the team agreed to continue the IEP team meeting to complete the IEP. Parents then canceled the visit.

16. At that time, Student had unique needs related to her educational disability in the areas of safety (due to suicidal ideation); self-advocacy when overwhelmed, anxious, or fearful; mental health, including depression and anxiety; attendance (when hospitalized); and postsecondary transition to adult life, college, and career.

2013 EXTENDED SCHOOL YEAR AND THE JUNE 2013 IEP

17. On May 13, 2013, Parents declined San Juan's proposed placement and chose not to complete that IEP process. Since Parents did not complete or consent to the San Juan IEP, Student therefore reentered Sacramento as a general education pupil without an IEP. Sacramento had attended the San Juan IEP team meeting and offered to immediately place Student at the Sierra School at Eastern: Upper School (Sierra School), pending an IEP team meeting in June 2013, and Parents agreed.

18. Sierra School is a nonpublic school in contract with Sacramento which provides specialized instruction in a small campus environment, with a school-wide behavior management system and therapists on staff. Sierra School is a small school comprised of about 85 special education pupils, of whom about 25 pupils were eligible for services under the emotional disturbance category. The high school program had about 12 pupils with special needs.

19. On June 5, 2013, Sacramento held an IEP team meeting. At the time of this meeting, Student's unique needs had not changed since the May 2013 IEP team meeting with San Juan. She had been attending Sierra School in 10th grade since mid-May 2013 without incident. Sacramento offered Student continued placement at Sierra School, including the extended summer school, along with annual goals, weekly individual and group counseling sessions, a one-to-one aide, and behavioral

intervention and transition services, which are discussed in more detail below. Because Sacramento was concerned about the quality of the San Juan assessment, Sacramento offered to reassess Student after the summer break. Parents consented to the IEP but objected that Student's mental health professionals had recommended a residential placement, and requested a program review six weeks into the fall quarter at school. The regular school year ended two days later.

Extended school year Academic Instruction

20. Student does not contend that Sacramento's initial 30 day placement of her at Sierra School denied her a FAPE. She contends that Sacramento's June 2013 IEP denied her a FAPE beginning with the summer 2013 extended school year because it did not offer or provide her appropriate academic instruction. For the special education extended school year, from June 17, to July 18, 2013, the IEP offered her 330 minutes of specialized academic instruction per day for 20 school days. In addition, it offered her the same rate of daily specialized education for the 2013 – 2014 school year in 11th grade.

21. For the June 2013 IEP team meeting, Student's teacher at Sierra School, Sara Williams, conducted a standardized academic assessment of Student.⁸ On the standardized tests, Student's grade equivalency was 12.9 (12th grade, 9 months) for reading comprehension, numerical operations, and math reasoning, and 10.8 (10th grade, 8 months) for spelling. Her reading comprehension score was in the superior range. By that point, Student had received transfer credits from San Juan, and was getting an A in all of her subjects (English 10, English 11, Algebra II, Fine Arts, and US

⁸ Ms. Williams obtained a bachelor's degree in 2009 and is obtaining her master's degree in special education. She holds a mild to moderate teaching credential and has taught special day classes at Sierra School since 2012.

History) at Sierra School. Student was very bright and verbally expressive, and presented to the school staff as "exceptionally talented."

22. For the extended summer school year at Sierra School, Student was successful academically and received all A's in her subjects. The academic curriculum conformed to California standards. However, the curriculum during the extended school year was designed to prevent special education pupils from regression as required by law and was not rigorous. For many of the pupils, the curriculum was modified as they had more academic challenges. The grades in Student's class were issued based on the quality and quantity of each pupil's school work, along with their attendance. Student also received transfer grades from Choices.

23. Ms. Williams remained Student's teacher through the extended summer school period. Ms. Williams was persuasive that Student was articulate, witty, completed her classwork and homework, had an organized binder, actively participated in class, and was successful academically. Because the summer program was not rigorous academically, Student took a U.S. History course for extra units, completed that work at home, and received extra credits. Parents' claim that Student did not have any homework was not credible.

24. Student did not present any persuasive evidence that her academic levels of performance shown by both standardized academic assessments and grades received at Sierra School were inaccurate or falsified. Student's teacher worked with her individually for 30 to 60 minutes each day on a one-to-one basis, and there is no evidence her curriculum was substandard. Student was able to perform successfully in the academic curriculum in a cooperative, respectful and committed manner, and received educational benefit. Student did not engage in any inappropriate emotional outbursts or behaviors or otherwise display signs of emotional dysregulation with either peers or adults at school.

25. Dr. Paula Solomon was retained by Parents in late January 2013, reviewed Student's records, observed her at Falcon Ridge, and observed one of Sierra School's classes in February 2013.⁹ Dr. Solomon spent only a short time in the class at Sierra School, at a time when there were few pupils and no structured activities. She did not interview Student's teacher or therapist. Dr. Solomon discounted Student's ability to function well and perform academically at school with mental health supports outside of a residential placement, and claimed that Student could not focus sufficiently on academic materials in order to receive an education. This opinion was persuasively contradicted by the testimony of Sacramento's witnesses from Sierra School who worked with her daily and saw her engaged in the curriculum.

26. Student's claim that the academic instruction at Sierra School was a "joke" reflected her depressed mental outlook as well as her probable misunderstanding about the nature of the special education summer school program. Indeed, Parents informed the IEP team and established at hearing that Student was prone to exaggeration and her statements could not always be trusted. In addition, Student tended to drive herself very hard and competitively in academics, which was often counterproductive as it led to increased stress, anxiety, and fears of inadequacy. Consequently, if Sierra School's summer academic curriculum was not as demanding as she would have preferred, it provided her a sufficient learning environment in which to obtain educational benefit while receiving therapeutic counseling and working on stabilizing her social emotional

⁹ Dr. Solomon is a licensed clinical psychologist. She obtained her doctorate in 1991. She has been in private practice conducting assessments and the clinical director of TLC, a nonprofit agency in Sebastopol, California, for almost 23 years. TLC provides a variety of services for emotionally disturbed youths, including foster care, residential treatment, a high school and outpatient services.

regulation, which were her primary areas of need. The extended school year curriculum supported keeping Student safe and avoiding regression or deterioration in her mental health, and academics was not an area of need outside of attendance. The fact that there were pupils in Student's class who functioned at lower cognitive levels demonstrated the diversity of the disabled population at the school and did not establish a fatal defect in the academic program tailored for Student. As found below, for 11th grade, Sacramento offered Student a more rigorous academic program in the September 2013 IEP. However, that offer did not establish that the academic curriculum at Sierra School for the four-week extended school year in the summer was inappropriate.

Mental Health Therapy Services

27. Student contends that the June 2013 IEP denied her a FAPE because it did not offer her appropriate mental health therapy services for the extended school year or the beginning of 11th grade until her next IEP team meeting on September 27, 2013. To support Student's mental health needs, the IEP offered her annual mental health goals, individual and group counseling, behavior intervention services, and a behavioral aide, discussed in detail below. By the time these services were offered, Sacramento and Sierra School staff had observed and worked with Student for about 30 days.

28. Specifically, the IEP offered her an annual goal in the area of self-advocacy, and three annual goals in the social emotional areas of self-esteem, safety, and self-talk. Student's areas of need addressed by these goals and her levels of functioning with respect to them were developed based on the assessment and other information provided to Sacramento by Parents and San Juan. The self-advocacy goal provided that when Student became overwhelmed, anxious or fearful, she would initiate a conversation with a trusted staff member and respond positively to de-escalation strategies. The self-esteem goal worked on Student's ability to recognize and

acknowledge positive comments from others. The safety goal was for Student to utilize on-campus supports, and develop outside social supports and positive relationships as protective factors against her persistent suicidal ideation. The self-talk goal encouraged Student to engage in positive self-talk and discuss strategies for increasing her self-image and engaging in future-oriented thinking. The IEP provided that Student's therapist at Sierra School was the primary staff responsible to work with Student on her goals.

29. For the extended school year, the June 2013 IEP offered four 30-minute sessions of individual counseling, and one group session of counseling and guidance. The IEP offered behavioral intervention services of 120 minutes of consultation during the extended summer school from Learning Solutions, Behavioral and Educational Consultants, a nonpublic agency. The IEP provided that Learning Solutions would also provide an instructional or behavioral aide to accompany Student each day to address her safety needs. The aide was instructed to be within "earshot and eyesight" of all of Student's interactions on a daily basis, including using the restroom, and report any occurrence of possible precursor verbal or physical behaviors, including inappropriate comments, that would warn of emotional dysregulation. The aide had a safety crisis plan and mobile phone to swiftly intervene in an emergency. The behavior support services included data collection and a crisis plan, and allowed Student to take breaks throughout the school day as needed.

30. As of the June 2013 IEP team meeting when the above offers were made, Sierra School staff, including her therapist, perceived that Student typically appeared to be in a positive mood at school and rarely appeared to be emotionally deregulated, and were impressed with her intelligence and leadership qualities. Student was very social with her peers, often acted as a mediator in group situations, and there were no reports of self-harm, inappropriate statements or suicidal ideation. There were occasions when

Student stated that she did not want to complete an assignment, engaged in off-task behavior, and attempted to sleep in class. Student's challenges at school were primarily emotional in nature, whereas most of the school's other pupils had both behavioral and emotional challenges. However, Student presented uncontested evidence that she was skilled at masking her true feelings.

31. Pursuant to the IEP, Student received school based counseling and therapy at Sierra School from one of the school's therapists, Tara Peterson.¹⁰ Ms. Peterson has provided counseling to about 150 pupils with mental health needs, including 30 to 50 with suicidal ideation, and 15 to 20 who have been actively suicidal or placed on involuntary psychiatric holds. She has conducted risk assessments and had called law-enforcement for that purpose. During summer school, Student's group therapy was a girls' process group, focused on increasing understanding, insight, and self-awareness about one's own behavior and its impact on others, including perspective taking.

32. From May 13, through the end of the regular school year on June 7, 2013, and from the start of the extended school year on June 17, through July 18, 2013, the behavioral aide from Learning Solutions did not observe Student engage in any emotional or behavioral incidents of concern at school. Nor were there any reportable concerns during the beginning of 11th grade prior to September 9, 2013.

¹⁰ Ms. Peterson has been a high school therapist at Sierra School since June 2012, and had interned there the year before. She obtained a bachelor's degree in 2006, and a master's degree in counseling and psychology in 2012. She has almost completed the hours required to obtain a license as a marriage family therapist. Ms. Peterson also has prior experience providing therapy to troubled youth at the Sacramento Assessment Center.

33. Ms. Peterson was persuasive that Student's overall participation and cooperation in the therapy process was genuine. For example, Ms. Peterson credibly established that many of Student's private journal entries regarding the depth of her despair and depression did not surprise Ms. Peterson because Student had shared those feelings with her during their therapy sessions. Ms. Peterson wrote Student's goals for self-advocacy, self-esteem, safety, and self-talk, and worked with Student on the goals on a regular basis. Student struggled with low self-esteem and negative self-talk, but Ms. Peterson noted some progress on the goals through the extended school year and the beginning of 11th grade. Ms. Peterson was persuasive that Student was able to recognize when she engaged in negative self-talk and was able to work with Ms. Peterson to develop strategies to focus more positively. However, while Student established a rapport with Ms. Peterson, liked her, and disclosed sensitive matters to her individually and in the group counseling sessions, Student did not establish a meaningful level of therapeutic intimacy with her by the beginning of 11th grade. For example, Student did not disclose to Ms. Peterson her illegal drug use or other risky behaviors in her personal life, such as engaging in sexual conduct outside of school. However, this did not become apparent to Ms. Peterson or Sacramento until the September 2013 assessment, as found below.

34. At the time Sacramento offered the above mental health therapy services and supports to Student in the June 2013 IEP, Sacramento had observed and worked with Student for a month and did not have reason to believe that she required more frequent or different educationally related therapy in order to access and benefit from her education. Nor did Student's conduct during the extended school year provide any objective indication that the services were not appropriate. The mental health services and supports that Sacramento offered to Student were reasonably calculated to provide

educational benefit, meet her mental health needs, and keep her safe in the school setting during that time.

Individual Transition Plan

35. Student contends that Sacramento denied her a FAPE because the June 2013 IEP failed to offer her an appropriate individual transition plan. After Student was made eligible for special education and began attending Sierra School, the staff determined that she would like to go to college and major in public relations as a career interest. Eric Hernandez, a behavior intervention specialist with Sacramento, drafted the individual transition plan that was presented to Student's June 2013 IEP team with her stated postsecondary objectives in mind.¹¹

36. The transition plan offered to Student at the June 2013 IEP team meeting noted that she needed to complete a career assessment. Based on Student's desire to attend college and major in public relations, the plan provided for a postsecondary educational goal to attend college, a postsecondary employment goal to work part-time while attending college, and a postsecondary independent living goal to live independently upon completion of school. At the time this transition plan was offered, Student had completed 130 credits toward graduation with 95 pending and was on track to graduate. She had already passed the California High School Exit Examination in English language arts and math. The IEP offered Student 30 minutes monthly of career awareness services, and career awareness activities were also embedded in the

¹¹ Mr. Hernandez obtained a bachelor's degree in 2007, and obtained an educational specialist credential and a special education mild-moderate teaching credential in 2011. He has taught at, and been a resource program specialist in high school, including several years in a special day class, and taught for one year at Sierra School.

curriculum. Student participated in an independent living skills class at Sierra School twice a week, with a focus on social skills, daily living skills, and career exploration.

37. The plan included transition services to support each of these goals. For the example, for the goal to attend college, the plan provided for Student to complete career research in her chosen career of interest, complete her last two years of high school, and take tours of colleges. For independent living, Student was to work on a budget and explore different living options. For employment, Student would complete a career assessment, do career research, and learn skills related to completing applications, along with industry tours. The IEP also included an annual goal in the area of career exploration, noting that Student had not engaged in career exploration activities to date to research jobs of interest.

38. Student was critical of the individual transition plan because it did not include any goals or services to help her advocate for mental health services after high school, or to understand her underlying mental health issues. However, the individual transition plan was part of Student's June 2013 IEP, which included self-advocacy and multiple social emotional goals to support her mental health needs. Mr. Hernandez was persuasive that Student's transition plan for the 2013 extended school year and the beginning of 11th grade provided her the foundational skills in postsecondary planning that would be further developed as she entered her 12th grade year. In addition, Sacramento's Workability program visited the campus to provide services related to postsecondary goals including job searches and college tours. Student did not establish that Sacramento's transition plans violated the law.

2013-2014 SCHOOL YEAR TO THE SEPTEMBER 27, 2013 IEP OFFER

39. As found above, for the start of the 2013-2014 school year in 11th grade, the June 2013 IEP offered continued placement at Sierra School with specialized academic instruction, mental health therapy services, a one-to-one aide, and behavioral

intervention and transition services. Student contends that the placement, instruction, mental health therapy services and supports, and the transition plan continued to deny her a FAPE.

Academic Instruction

40. After Student's 11th grade year began on August 19, 2013, Student continued to receive specialized academic instruction pursuant to the June 2013 IEP. Ms. Williams accepted another job just as school started, and another teacher at Sierra School taught Student's class for about two weeks until the school hired another teacher. Student did not establish that the school failed to provide her academic instruction during that time. Student's classes conformed to the state curriculum for 11th grade.

41. However, while the academic curriculum for the extended school year program was adequate to prevent Student's regression during that time period, for 11th grade Student was entitled to a higher level of academic rigor commensurate with her abilities. Sacramento was therefore required, based on its knowledge of her academic success, to convene an IEP team meeting and consider other academic options for 11th grade. Sacramento had agreed to revisit Student's IEP within six weeks of the start of the fall school year at Parents' request. Student was hospitalized at Sierra Vista Hospital on September 10, 2013. Thereafter, Sacramento assessed Student and reconvened an IEP team meeting on September 27, 2013. At that time, Sacramento offered Student a higher level of academic instruction at another school, discussed in more detail below.

42. Sacramento had already planned to reassess Student after the start of the new school year. Sacramento timely assessed her, and convened the September 2013 IEP team meeting. Student did not establish that the school district's failure to revisit her academic program any earlier denied her a FAPE.

Mental Health Therapy Services

43. For the beginning of the 11th grade school year at Sierra School, the June 2013 IEP offered Student 30 minutes of individual counseling 30 times, for a total of 900 minutes (about once a week). In addition, the IEP offered group counseling and guidance sessions for 160 minutes per month during the school year (40 minutes a week).

44. At the beginning of 11th grade, Ms. Peterson led a girls' "think confident" group in which Student participated weekly, focusing on cognitive behavioral therapy to change one's thinking patterns and create a more positive self-image. The group learned tools and interventions including peer feedback and social skill exercises. Ms. Peterson also continued to provide individual therapy to Student once a week. Student had perfect attendance in therapy, was engaged in the conversations, and offered appropriate feedback to others. In addition, Ms. Peterson saw Student daily on campus and was available as needed.

45. The behavioral intervention services were for 120 minutes of monthly consultation, along with the continued daily presence of the behavioral aide. From the start of the new school year on August 19, 2013, the Learning Solutions aide accompanying Student daily only reported one incident of questionable behavior at school that occurred on August 28, 2013. Student said she was going to "kill a book," and then joked that she was not serious.

46. On September 9, 2013, Student had ingested cocaine at home during the night or before school started. The aide reported that Student arrived at school exhibiting very "hyper" behaviors (fidgeting, pacing, and talking fast), reported she hadn't slept, was exhausted and sick, and asked to call Father, who told her to stay at school. Student later informed the aide she felt like crying and requested to speak with the counselor, Ms. Peterson. Student did not disclose to Ms. Peterson that she was

coming down from using cocaine but shared that she was concerned and ill. Ms. Peterson conducted a risk assessment, concluded that Student was not at risk for suicide but provided her with a suicide hotline number just in case, and contacted Father, who directed Student to go to her grandparents' home. Mother picked Student up and brought her to a Kaiser Hospital emergency room for drug testing. Mother found Student's journal, read through some of it, and discovered Student had snuck out of the home and engaged in sex with someone known to Mother. She also found a recent journal entry in which Student expressed feelings of hopelessness and suicidal ideation, and informed the hospital. The hospital admitted Student to Sierra Vista Hospital Student on a section 5150 involuntary psychiatric hold. Aside from the journal entry, there was no other evidence of suicidal ideation at the time of hospitalization.

47. Student remained in the hospital for a month. On September 18, 2013, Parents provided Sacramento with written notice that they intended to unilaterally place Student in a residential treatment center and seek reimbursement. October 4, 2013, Parents transferred Student from the hospital to Falcon Ridge in Utah.

48. Based on San Juan's assessment information, and Student's performance at school from May through September 8, 2013, prior to this hospitalization, the mental health therapy services offered in the June 2013 IEP supported Student's ability to be academically and socially productive in the school setting over the summer as she received school-based therapy for the first time under an IEP. Sacramento had already offered to reassess Student after the summer break and followed through with that plan. Thus, Student's sudden hospitalization did not establish that Sacramento should have revisited the services at an IEP meeting any earlier than September 27, 2013. As found below, however, this hospitalization required Sacramento to review Student's levels of performance and IEP services.

Individual Transition Plan

49. Student contends that the June 2013 individual transition plan continued to be inappropriate at the beginning of 11th grade because it continued not to include any goals or services to help her advocate for mental health services after high school, or to understand her underlying mental health issues. However, as found above, the individual transition plan was part of Student's IEP, which contained goals to support her mental health needs, along with individual and group counseling sessions every week. Student did not present any evidence that Sacramento's transition plan should have been revisited any earlier than the September 2013 IEP team meeting.

SEPTEMBER 2013 ASSESSMENT AND SEPTEMBER 27, 2013 IEP OFFER

September 2013 Psychoeducational Assessment

50. While Student was hospitalized, Sacramento obtained Parents' consent to conduct another assessment as the staff felt San Juan's assessment did not provide them with sufficient information in light of Student's hospitalization. Beginning on September 13, 2013, Sacramento school psychologist Sara Pieschl, school social worker Maria Lopez, and behavior intervention specialist Eric Hernandez conducted a multidisciplinary psychoeducational assessment. This team was part of Sacramento's educationally related mental health services division in the special education department. They interviewed many people, including Dr. Bynum, Ms. Adams, and other Kaiser and Sierra Vista hospital personnel, Parents, Ms. Peterson, and Student, reviewed her school records, and administered a battery of standardized assessment tests and social emotional, and behavioral rating scales.

51. At hearing, Dr. Bynum established that his diagnoses of Student evolved over time from a generalized mood disorder, and the diagnostic guidelines have also changed. Prior to May 2013, the guidelines prohibited diagnosing an adolescent under

the age of eighteen with borderline personality disorder, but the new guidelines permit it.¹² As of September 2013, Dr. Bynum diagnosed Student with a borderline personality disorder, involving chronic emotional lability, impulsivity, mood swings, and suicidality. He informed the Sacramento assessors of this diagnosis when they interviewed him.

52. Sacramento's assessment team visited Student at the hospital to assess her, during which Student stated that, in her opinion, the hospital was "a holding cell," not a therapeutic environment. Dr. Bynum viewed Student's recent conduct as a precursor to further self-harm and Sacramento was informed that Student tried to choke herself in the hospital. Dr. Bynum candidly admitted that he cooperated with Parents in September 2013, to retain Student at Sierra Vista Hospital to keep her safe until Parents located a residential treatment placement and that process took a month.

53. Sacramento's multidisciplinary team recommended that Student remained eligible for special education under the category of emotional disturbance with the same areas of concern found by the San Juan assessment. The assessors noted that there was mixed information regarding the adverse impact of Student's disability on her educational performance. While they acknowledged that her "engagement in the school environment has been limited due to frequent hospitalizations due to mental health needs," they noted Student had passed every class in high school, passed the California High School Exit Exam, was at or above grade level according to academic achievement testing, and met or exceeded all classroom expectations. However, the assessment data found that Student had elevated levels of depression, ineffectiveness, and sense of

¹² Official notice is taken of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (American Psychiatric Association), and the Fifth Edition, issued in May 2013. The specific medical diagnosis is not material as this case involves Student's educational needs.

inadequacy, and would therefore benefit from educationally related mental health services in the school. The assessors did not make any recommendation regarding residential placement, but left that discussion to the IEP team.

54. Based on the behavior data collected, Ms. Pieschl determined that Student did not require a behavior support plan in her IEP because her problems were emotional and not behavioral in nature within the school setting.¹³ Student's scores on the assessment tests were consistent with those obtained by the San Juan assessment, except that for written expression Student scored in the very superior range. Parents and Student rated her behaviors primarily in the at-risk or clinically significant range based on Student's behaviors at home or in the community. However, Sierra School staff primarily rated her behaviors within the average range because Student did not manifest any significant concerns at school.

September 2013 IEP Offer

55. On September 27, 2013, Sacramento held an IEP team meeting to review the multidisciplinary assessment results, which lasted over three and a half hours. In addition to Parents, Student participated in the IEP team meeting by telephone from the hospital for a few minutes and expressed a desire to have more rigorous academic classes, as she did not feel challenged by the academics at Sierra School. Dr. Bynum also

¹³ Ms. Pieschl obtained a bachelor's degree in psychology, a master's degree in counseling with a marriage family counseling emphasis, holds a credential as a school psychologist, and is a licensed marriage family therapist intern. She has been a school psychologist with District for two years, and has prior experience as a marriage family counselor in Sacramento County's former educationally related mental health services program.

participated by telephone, and recommended a residential treatment center placement for Student.

56. At the time of this IEP team meeting, Student had unique needs in the areas of interpersonal communication, self-advocacy, mental health, self-worth and self-esteem, planning and task completion, safety, attendance, and postsecondary college and career exploration.

57. After considering all factors, including Parents' concerns, Sacramento did not offer Student a residential treatment placement. Instead, the September 2013 IEP offered Student new annual goals; a dual educational placement at both Sierra School and George Washington Carver School (Carver); continuation of a one-to-one aide for her safety purposes, continuation of her mental health therapy and supports, the addition of mental health services at Carver, and a new individual transition plan. These offers are discussed in more detail below.

11th Grade Academic Instruction

58. Student contends the September 2013 IEP offer denied her a FAPE because the offer for academic instruction was inappropriate to provide her educational benefit. At the time of this offer, Student was enrolled at Sierra School in English 12, Life Science, US History, Geometry, Physical Education/ Health, and Fine Arts. Grades for these subjects were not due until October 2013, and Student had been absent due to her hospitalization since the second week of September 2013. The IEP offered specialized academic instruction for Student's core academic classes, for three 55-minute periods at Carver daily (totaling 165 minutes), in a special day class for emotionally disturbed pupils. It offered 165 minutes of daily specialized academic instruction back at Sierra School for Student's nonacademic classes. Based on reports from Parents and Student of her organizational and task completion difficulties at home,

Sacramento offered goals to address those areas in the September 2013 IEP, although staff had not observed those difficulties at school.

59. The Sacramento members of the IEP team agreed to offer Student a higher level of academics at Carver for the remainder of the 2013-2014 school year in 11th grade, because she excelled in the academic curriculum at Sierra School and would benefit from a more rigorous level of instruction. However, after the team considered offering Carver as her educational placement full time, the concerns about Student's ability to handle a general education campus, based on her past experiences, led Sacramento to offer the dual placement. In addition, Sacramento determined that it was not therapeutically advisable to return Student to a general education campus all at once, even within the safety of a special day class. The dual placement would provide Student time to remain safe at Sierra School and in therapy there, while receiving a higher level of academics at Carver. The IEP team would work with Student and Parents upon Student's return to school to determine the daily schedule.

60. Carver is a small public charter school of about 300 pupils, utilizing a Waldorf philosophy of education individualized to the developmental levels of the pupils. Denis Herlihy, the teacher of the emotionally disturbed special day class at Carver where Student would be placed, established that the class would provide Student educational benefit.¹⁴ There were about 13 pupils, many of whom did not stay in his class all day, but mainstreamed in and out of other general education classes on campus as appropriate. Mr. Herlihy was assisted by two instructional aides and generally maintained a pupil teacher ratio of four to one, guaranteeing individualized instruction.

¹⁴ Mr. Herlihy obtained a bachelor's degree in 2004, and obtained dual teaching credentials in multi-subjects and special education in 2009. This is his fourth year as a teacher in the district.

The academic subjects included math, English, science, art and crafts, and a social skills and study period, and included a therapy component built into the curriculum.

Sacramento's offer was for Student to attend three periods of the academic classes in the morning. Members of Sacramento's educationally related mental health services team came to the class at least weekly for counseling, along with a behavior specialist. Student would have two sessions of individual therapy at Carver each week, in addition to her therapy at Sierra School. Carver maintained high academic standards, including electives and advanced placement classes. Mr. Herlihy actively consulted with the general education teachers to ensure the safety and progress of his pupils while mainstreaming. Five pupils in his class had suffered suicidal ideations and the teacher was supporting their abilities to remain in school and progress. Mr. Herlihy possessed experience and training in dealing with suicide risks, conducted suicide risk assessments, if needed, and had called law enforcement to invoke section 5150 involuntary psychiatric holds.

61. Mr. Herlihy established by his professional demeanor and credible testimony that he was qualified to, and could competently implement Student's IEP, provided Student had sufficient mental health services and supports. He met Student by telephone at the September 2013 IEP team meeting, and understood she was very intelligent, articulate, and required consistent mental health supports. In addition, he is familiar with Sierra school, has experience with a prior dual placement with that school, and had no concerns about cooperating with them to support Student's education.

62. Dr. Solomon observed the Carver class in February 2014, on the same day she observed Sierra School. Dr. Solomon had no criticism of the offered class at Carver, educationally, except that it did not have a treatment program and was not a therapeutic day class. Student was open to spending half-days at a high school and Parents were impressed with Mr. Herlihy and his class at Carver as a placement after

residential intervention. Dr. Solomon's criticisms of the placement offer address the adequacy of the mental health services offer and the denial of a residential placement, not the adequacy of Carver's academic instruction program for 11th grade. Her opinion that significant therapeutic supports would need to be in place in order for Student to receive educational benefit is therefore considered below. Assuming that the mental health therapy services and supports would be appropriate, Student did not establish that the academic instruction offer, in and of itself, denied her a FAPE. However, as found below the offer for mental health therapy services in the dual program was insufficient, and therefore the specialized instruction offer could not stand on its own.

11th Grade Mental Health Therapy Services

63. Student contends that the September 2013 IEP's offer of mental health services was inappropriate to provide her with educational benefit because she needed more intensive services and supports.

64. After school started in August 2013, Student had begun displaying some minor erratic behaviors at school by utilizing periodic breaks that were provided for her as an accommodation in her IEP, due to her self-reported frustrations with some peers. In addition, her teacher had seen an increase in some manipulative and staff splitting behaviors in her attempts to converse with peers from other classrooms. At the September 2013 IEP team meeting, however, Sacramento had significant new information and changed circumstances to consider, including Student's use of an illegal drug in the home environment, appearance at school under the influence of the drug on September 9, 2013, subsequent hospitalization, and Sacramento's assessment results, including detailed information from Student's private medical providers.

65. The IEP offered Student multiple annual goals derived from the assessment data in the areas of interpersonal communication, self-worth, planning, task completion, strategies to overcome low self-esteem, and identifying and reframing

feelings of hopelessness. For the interpersonal communication goal, Student would recognize and acknowledge positive comments from staff and peers, and respond with positive statements. The self-worth goal provided that Student would be able to use strategies to identify the point in an event or project where her negative thinking would interfere with its completion. The IEP offered a goal for Student to be able to identify situations and relationships that have contributed to her low self-esteem and be able to develop and implement constructive strategies to overcome them within the safety of her therapy sessions. To address Student's sense of hopelessness, the IEP offered a goal for her to identify feelings of hopelessness and learn to reframe them into statements of self-empowerment. Student's therapists were responsible to implement most of these goals, and Student's teachers were responsible for implementing the planning and task completion goals. While there was no evidence that Student suffered from emotional dysregulation or suicidal ideation in the school environment, her mental state of health was educationally related and these IEP goals were designed to improve her ability to function on a daily basis, avoid hospitalization, and receive educational benefit.

66. The September 2013 IEP offer continued Student's counseling at Sierra School with Ms. Peterson at the same rate as that in the June 2013 IEP: one session of individual counseling for 30 minutes, and one session of group counseling 40 minutes per week. In addition, the IEP added two 30-minute sessions of individual, educationally related mental health counseling at Carver each week to support her mental health needs on that campus with the intent to provide continuity of support on her IEP goals. The IEP also offered 30 minutes weekly of ongoing consultation between Student's family, Sacramento's educationally related mental health team, the Sierra School therapist, and Student's private medical mental health team. Hence, the IEP offered Student three individual counseling sessions per week, one at Sierra School and two at Carver with two different therapists; one group therapy session per week at Sierra; and

30 minutes of weekly consultation among all of Student's educational and medical providers and family.

67. Both Ms. Peterson, Student's therapist at Sierra School, and Mary Bourgeois, a Sacramento school psychologist in the educationally related mental health services division, believed that Sacramento's offer to have Student receive mental health therapy from two different therapists at two different schools was workable and would not hinder Student's receipt of adequate mental health therapy.¹⁵ If Student attended Carver, Ms. Bourgeois would provide her mental health therapy services there. Both therapists were confident that regular communication and consultation between them would work, and would avoid Student's manipulation of them, or engaging in "splitting" behaviors by giving inconsistent information to each of them. However, they did not establish that such an arrangement would be therapeutically advisable or effective for Student, whose ability to share confidential information with a trusted therapist would be compromised. First, Student had already demonstrated avoidance of sharing her thoughts with the behavioral aide, because Student understood that whatever she said or did would be reported. Second, Sacramento should have understood by then that Student did not establish a meaningful level of therapeutic intimacy with Ms. Peterson by the beginning of 11th grade, and had not established sufficient trust with Ms. Peterson to engage in intensive disclosure of her deepest needs and anxieties. Consequently, adding another therapist was problematic.

¹⁵ Ms. Bourgeois has been a school psychologist with Sacramento for ten years. She holds a master's degree in counseling and is a licensed educational psychologist. She has completed about half of the requisite hours to become a licensed marriage family therapist. She has experience counseling pupils with emotional disturbance, including those with suicidal ideation and active suicide attempts.

68. The evidence established that Sacramento offered Student mental health therapy services at Carver because she required therapy there to be placed on that campus, not because the school district believed she required more intensive mental health therapy supports in general. Sacramento staff viewed Student's hospitalization as involving her conduct outside of school including drug use. That view overlooked the school district's responsibility to offer and provide meaningful and effective therapy in the complex areas of mental health and self-worth.

69. Ms. Adams was critical of Sacramento's offer to have an educationally related mental health therapist worked with Student at Carver, in addition to her therapy work with Ms. Peterson at Sierra School, and her criticism was persuasive. Ms. Adams was persuasive that Student was able to mask what she was really feeling and highly resistant to allow for a more intimate therapeutic relationship necessary for effective therapy. Ms. Adams was not aware of Sacramento's plan to have weekly consultations between the therapists and the family, including her. Nevertheless, given the fragility of Student's mental health, anxiety, depression, and sense of hopelessness, Ms. Adams was persuasive that it would be extremely difficult and challenging for Student to establish an effective therapeutic relationship with two separate therapists at two schools, plus continue with her or another private therapist at Kaiser, and that Student was capable of manipulating all of them. Given Ms. Adams' extensive outpatient therapy with Student since 2012, her opinion on this point was entitled to great weight.

70. In addition, Ms. Adams established that Student was at a high risk precisely when she was doing well, because her downward spirals into self-harm were sudden and unpredictable. On September 25, 2013, both Ms. Pieschl and Ms. Lopez interviewed Ms. Adams during the assessment process. Ms. Adams informed them in no uncertain terms that, over the period in which she had been providing therapy, Student would attend and participate in therapy regularly, appear to be compliant, and then

engage in sudden self-harming behavior shortly thereafter. Ms. Adams's concern that Sacramento did not understand the severity of Student's mental health needs and suicidality was valid given the scope of the September 2013 offer for limited and fractured mental health supports. Ms. Adams was persuasive that Student required one experienced therapist to provide her with effective counseling. Ms. Adams' opinion on this point was more persuasive than that of Ms. Peterson, who did not have much experience and seemed to take Student's statements and demeanor at face-value, without realizing the extent to which Student successfully masked her inner turmoil and had sudden declines. Moreover, Ms. Peterson had failed to follow through in arranging communication with Ms. Adams during the extended school year, suggesting that the proposed design for weekly consultation among all players would be problematic. In addition, based on the detailed information from Dr. Bynum and Ms. Adams, Sacramento should have realized that Student's apparent progress socially and emotionally was fragile, if not illusive, and required more intensive supports.

71. Dr. Solomon was critical of Sacramento's September 2013 offer of mental health services because, in her opinion, Student needed group counseling on a daily basis, along with individual and family counseling from an experienced therapist in a residential treatment setting. Dr. Solomon believed that Student fit the profile for a bipolar disorder, a disorder with lengthy periods of grandiosity and depressive states. Dr. Solomon recommended that Student should be in the "container" of a residential treatment center placement and did not think that Student had the coping skills to function outside of that structured placement when things go wrong. While Dr. Solomon was mistaken in thinking that Sacramento did not offer Student group therapy, which she needed for accountability, Dr. Solomon was persuasive that, overall, Student required daily mental health supports to progress. Dr. Solomon's opinion as to the level of placement required was based on a clinical evaluation of what Student needed

medically to treat her illness. Nevertheless, she was persuasive that Student required more intensive therapy from an experienced therapist, rather than two different therapists at two different school locations with no structure for daily therapeutic supports.

72. Based on the foregoing, Sacramento's September 2013 IEP offer of mental health therapy services to Student was insufficient to support her receipt of meaningful educational benefit because the IEP offered a fractured structure of therapy divided between two schools and two therapists, which created unacceptable risks that Student's mental health needs would not be adequately met. While the number of weekly counseling sessions may have been adequate, the offer also failed because there was no structure of daily therapeutic supports to help Student work meaningfully on her mental health and social emotional goals on a daily basis. Because Sacramento denied Student a FAPE by not offering sufficient mental health therapy services in this IEP, Student is entitled to relief.

11th Grade Individual Transition Plan

73. Student contends the individual transition plan Sacramento offered at the September 2013 IEP team meeting denied her a FAPE. Mr. Hernandez was part of the educationally related mental health services team that assessed Student while she was in the hospital, was cognizant of her significant mental health needs, and proposed a revised plan.

74. The revised plan identified the specific colleges Student was interested in attending and added appropriate transition services, including completing a career exploration assessment online, attending college workshops, researching "job families" related to her interests, and interviewing professionals within those areas of interest. The IEP offered two postsecondary goals, one for specified research in the areas of specific

college admissions requirements, applications, and financial aid or scholarships; and an employment goal to research possible jobs, internships, and volunteer opportunities.

75. Student was again critical of the individual transition plan because it continued not to include any goals or services to help her advocate for mental health services after high school, or to understand her underlying mental health issues. However, the individual transition plan was part of Student's IEP, which included multiple goals to support her mental health needs. In addition, during 11th grade, both at Carver and Sierra, Sacramento's Workability program was on campus to provide services related to postsecondary goals including job searches and college tours. Student did not present any evidence that Sacramento's transition plans violated the law.

MEDICATION MANAGEMENT

76. Student contends that both the June and September 2013 IEP's denied her a FAPE because they each failed to offer her medication management services.

77. The evidence established that only licensed physicians and psychiatrists may manage medications, including issuing prescriptions, changing prescriptions, and adjusting dosages or combinations of regulated drugs.

78. Sacramento's health nurse was available to help, not in the management of medications, but in the administration of any prescription medications that were required to be taken by pupils during the day.

79. There is no evidence that Student or Parents ever requested prescription medication management or administration from Sacramento or Sierra School. Student took medications prescribed by her personal physicians and psychiatrists in the morning before school. She was not required to take any medications during the school day. Therefore, the failure of both IEP's to offer her medication management did not violate the law.

PREDETERMINATION

80. Student contends that Sacramento's June and September 2013 IEP's denied Parents meaningful participation in the IEP process because the Sacramento members of the IEP team made a predetermined decision not to offer Student a residential treatment program, based on a policy or practice of not making residential placements.

81. No Sacramento witnesses who testified were informed that its board of education had issued any policy prohibiting residential treatment placements for pupils identified with special needs. None of the Sacramento members of Student's June and September 2013 IEP teams were informed that they could not consider a residential treatment center placement for Student. The IEP team meeting notes for both IEP team meetings reflected that Parents expressed their concerns and requests for a residential placement, and that the Sacramento members of each team considered residential placement as an option for student, but rejected it.

82. Ms. Bryant, Sacramento's special education director, was responsible for determining the special education department's budget for each school year and has included residential placements in the budget. For the 2013-2014 school year, Ms. Bryant budgeted \$700,000 for residential placements, and the board did not reject that budgeted item. After July 2011, when the California statutory structure for providing special education pupils with county mental health services was revoked, and responsibility for providing educationally related mental health services returned to the local educational agencies, Sacramento created an educationally related mental health services division within the special education department, and retained and organized teams of specialists to provide "in-house" mental health services to its pupils. The teams included school psychologists, school social workers, behavior intervention specialists, and therapists. As found above, Student's September 2013 psychoeducational

assessment was conducted by a Sacramento team of educationally related mental health specialists.

83. Student established that, following the change in the law in 2011, and the return of educationally related mental health services to Sacramento, it had a decline in the number of residential placements funded. Between 2008 and 2013, Sacramento had 38 pupils enrolled in residential placement, the bulk of whom had been previously placed by the County mental health agency. There was no evidence as to the actual number of residentially placed pupils enrolled in the Sacramento as of the start of the 2011-2012 school year. For that school year, and the 2012-2013 school year, Sacramento did not place any special education pupils in a residential treatment setting. For the current 2013-2014 school year, Sacramento is still funding a couple of placements that originated under the former statutory structure, and has one new residential placement offer pending.

84. Ms. Bryant was persuasive that Sacramento's substantial investment in its in-house educationally related mental health division has been effective and has enabled many pupils to receive needed mental health services within the school system, or at least locally, without the need for removal to a restrictive residential facility. In addition, Sacramento had disagreed with the County's recommendations for residential treatment in the past, which were often for clinical instead of educational reasons, but were required by law to comply with the County's placement decisions. Thus, the change in the law resulted in significant changes to Sacramento's delivery of educationally related mental health service but residential treatment placements remain a valid option on the continuum.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹⁶

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1, et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)¹⁷ The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, §

¹⁶ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

¹⁷ All references to the Code of Federal Regulations are to the 2006 version unless otherwise stated.

56363, subd. (a). [In California, related services are also called designated instruction and services.]

3. In *Board of Education of the Hendrick Hudson Central School District 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 pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the

issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student carries the burden of persuasion.

ISSUE 1(A): APPROPRIATE ACADEMIC INSTRUCTION

5. Student contends that Sacramento denied her a FAPE by failing to offer and provide her appropriate academic instruction for the 2013 extended school year in 10th grade, and her 2013-2014 school year in 11th grade. She argues that the June 2013 IEP failed to offer or provide her with meaningful educational benefit because she was not academically challenged at Sierra School, her class grades and credits were artificial, and her academic assessment scores did not measure her receipt of actual educational benefit. While Student's closing argument only addresses deficiencies at Sierra School, the issue nevertheless includes the September 2013 IEP and dual program specialized instruction offer. Sacramento argues that the 10th and 11th grade academic instruction offered in both IEP's was reasonably calculated to provide Student educational benefit.

IEP Requirements

6. At the beginning of each school year, each local educational agency must have an IEP in effect for each child with a disability within its jurisdiction. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a); Ed. Code, § 56344(c).) An IEP is a written document detailing, in relevant part, the pupil's current levels of academic and functional performance, a statement of measurable academic and functional goals, a description of the manner in which the goals will be measured, a statement of the special education and related services that are to be provided to the pupil and the date

they are to begin, and an explanation of the extent to which the child will not participate with nondisabled children in a regular class or other activities. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320(a); Ed. Code, § 56345, subd. (a).) The IEP consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A)(i); Ed. Code, §§ 56032, 56345.)

7. An IEP is to be evaluated in light of information available at the time it was developed and offered, and is not to be evaluated in hindsight. (*Adams v. State of Oregon*, (9th Cir. 1999) 195 F.3d 1141, at 1149.) The Ninth Circuit has endorsed the "snapshot rule," explaining that "[a]n IEP is a snapshot, not a retrospective." (*Ibid.*) The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*; *Christopher S. v. Stanislaus County Off. of Ed.* (9th Cir. 2004) 384 F.3d 1205, 1212; *Pitchford v. Salem-Kaiser School Dist. No. 24J* (D.Ore. 2001) 155 F.Supp.2d 1213, 1236.) To determine whether a school district offered a pupil a FAPE, the focus is on the appropriateness of the placement offered by the school district, and not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

2013 Extended School Year

8. In addition to special education instruction and services during the regular school year, school districts must provide extended school year services in the summer if the IEP team determines, on an individual basis, that the services are necessary for a child to receive a FAPE. (34 C.F.R. § 300.106 (2006); Ed. Code, § 56345, subd. (b)(3).) California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for each individual with unique and exceptional needs who requires special education and related services in excess of the regular academic year. Pupils to whom extended school year services must be offered under section 3043 ". . . .

shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition." (See also 34. C.F.R. § 300.106 (2006); Ed. Code, § 56345, subd. (b)(3).)

9. Sacramento's June 2013 IEP offered Student specialized academic instruction for 20 school days during the 2013 extended school year. The program was located at Sierra School, a small nonpublic school for special education pupils, with a small high school class where Student was able to receive individualized instruction at the 10th grade academic curriculum level. While the curriculum was at grade level for Student, it was not academically rigorous.

10. Student did not have any unique needs related to her disability in the area of academics. Her primary needs were in the areas of mental health and safety, and the extended school year program was offered to prevent regression in those areas.

11. Student did not sustain her burden to establish that the academic curriculum at Sierra School for the extended school year was below California state educational standards or otherwise insufficient to provide her with an appropriate education. During the extended school year, Student received all A's, excelled in her classes, and took another class for extra credit by working on it at home. Although the classes were not academically rigorous, Sacramento was not required to optimize her academic performance to her maximum potential. In addition, Student was working on her emotional and mental health and it was not advisable for her to overdo academics and undermine her mental health. Student's criticisms that the academic curriculum at Sierra School was inferior and that there were pupils in Student's class who functioned at lower cognitive levels were insufficient to establish that the academic curriculum at

Sierra School was legally inappropriate to meet her educational needs for the four-week extended school year period. Student's academic success there shows otherwise.

2013-2014 School year until the September 2013 IEP offer

12. For the beginning of 11th grade, Student's specialized academic instruction at Sierra School was controlled by the June 2013 IEP. By this time, Sacramento and Sierra School staff knew that Student should have a higher level of academic instruction based on her academic achievement and success over the summer. Therefore, Sacramento was required to convene an IEP team meeting to revisit the options for providing her with academic instruction in either specialized or general education classes.

13. Sacramento timely convened an IEP team meeting on September 27, 2013, and offered another type of placement. Although this IEP team meeting was not held until a bit more than a month after the start of the school year, Student was hospitalized on September 10, 2013, and Sacramento used that time to conduct a comprehensive assessment of Student's levels of performance and unique needs to guide the IEP review process. Student did not establish that Sacramento denied her a FAPE by not convening the IEP team meeting and making a new offer for academic instruction earlier. There was no denial of FAPE on that basis.

September 27, 2013 until the present

14. The September 2013 IEP offered Student a dual placement for purposes of specialized academic instruction, with three classes at Carver for core curriculum instruction in the morning. Although Carver was a comprehensive general education campus, it was a small charter school, and Mr. Herlihy's special day class for emotionally disturbed pupils provided a more rigorous academic study, a small structured environment, and access to educationally related mental health therapy services. The IEP

also offered Student the remaining half a day back at Sierra School for non-academic classes, including her life skills class and therapy with Ms. Peterson. However, considering Student's past difficulties on comprehensive general education campuses, and her recent hospitalization, Student required time to transition from the safety of Sierra School to another campus and the dual program was intended to provide that bridge. Mr. Herlihy possessed experience and training in dealing with suicide risks and suicidal ideation and could competently implement Student's IEP, provided she had sufficient mental health therapy services to support her.

15. Dr. Solomon persuasively established that significant therapeutic supports would need to be in place in order for Student to receive educational benefit in the dual instructional program. If the mental health therapy services and supports would have been appropriate, the academic instruction offer combined with such supports would not have denied her a FAPE. However, since the offer for mental health therapy services in the dual program was insufficient, as determined below, that insufficiency rendered the academic placement equally defective since they were inextricably bound together.

ISSUE 1(B): MENTAL HEALTH THERAPY SERVICES

2013 Extended School Year

16. Student contends that Sacramento's June 2013 IEP's denied her a FAPE for the extended school year by failing to offer her appropriate mental health therapy services. Student argues that Sierra School did not have a therapeutic component and that the school therapist, Ms. Peterson, was insufficiently experienced. Sacramento contends that it offered educationally related mental health services in compliance with the law, and was not required to offer her clinically intensive mental health services to cure her or intervene in her personal life outside of the school setting.

17. Educationally related mental health services are a related service which is "required to assist a child with a disability to benefit from special education . . . " (34 C.F.R. § 300.34(a).) As of July 2011, local educational agencies, generally the school districts, have the full responsibility to provide mental health care services that are required to provide a FAPE in a child's IEP.¹⁸ Mental health services related to a pupil's education are statutorily required to be provided by the pupil's responsible local educational agency. (Gov. Code §7570, et seq.) A pupil who is determined to be an individual with exceptional needs and is suspected of needing mental health services to benefit from his or her education, is to be assessed by the pupil's responsible local educational agency. (See Gov. Code § 7573.)

18. Student did not sustain her burden to prove that Sacramento's June IEP failed to offer her sufficient mental health therapy services to support her ability to benefit from her education. The fact that Ms. Peterson, Student's therapist at Sierra School, did not have extensive years of experience did not render the mental health services offered in the IEP defective. She had a master's degree in counseling and psychology, was qualified and supervised, and established a rapport with Student. Ms. Peterson was on campus, saw Student daily, and worked on her social emotional goals with her. Student did not challenge the legal sufficiency of the goals, but claimed that Ms. Peterson's reports that Student made progress on the goals were incorrect.

¹⁸ On June 30, 2011, the California Governor signed into law a budget bill (Senate Bill 87) and a trailer bill affecting educational funding (Assembly Bill 114). Together they made substantial amendments to Chapter 26.5 of the Government Code which eliminated the responsibility of the Department of Mental Health for the provision of mental health services if required in a pupil's IEP, and transferred that responsibility to the local educational agencies. (See Gov. Code § 7573.).

However, Sacramento was entitled to rely on objective signs of trouble or emotional trauma in evaluating Student's performance in the school setting based on the information known to the school staff at the time. Student's claim that her subsequent hospitalization proved the prior mental health services and goals were insufficient is not persuasive. In addition, the June 2013 IEP cannot be judged in hindsight based on the results of the September 2013 assessment, which showed that Student required higher degree of mental health therapy supports.

2013-2014 School year until the September 2013 IEP offer

19. The June 2013 IEP offered sufficient mental health therapy services to support Student at Sierra during the beginning of the 11th grade school year, including one individual and one group session weekly. In addition, Sacramento provided a behavioral or instructional aide on a daily basis to help keep Student safe, listen to her concerns, and monitor any inappropriate behaviors, with a crisis plan ready at hand. The aide's data from mid-May to September 9, 2013, documented that Student engaged in no questionable or inappropriate emotional or behavioral incidents at school until that day.

20. The night before that date, Student used cocaine, an illegal substance, did not sleep, and arrived at school under the influence. Student was able to request help from Ms. Peterson, although Student reported being ill instead of under the influence, but sought to be allowed to go home. School staff called Father, and delivered Student into the safety of her family without further incident. Student's use of the school resources to get help does not support her claim that the services were insufficient. There was no denial of FAPE on that basis.

September 27, 2013, until the present

21. Following Student's hospitalization on September 10, 2013, Sacramento's assessment of her in the hospital yielded valuable information from Student's medical doctor, her Kaiser therapist, Student herself, and many others about her fragile mental health. In particular, Dr. Bynum emphasized the extent to which Student could do apparently well for some months and then suddenly and precipitously spiral into reckless self-harming behaviors, suicidal ideation, and suicide attempts. At that point, Sacramento should have known that Student required an increased level of mental health therapy services to have a meaningful chance of helping her progress in her areas of mental health and social emotional needs, particularly her sense of self-loathing and hopelessness.

22. The September 2013 IEP offered mental health therapy services to support Student in the dual placement at both Sierra and Carver by providing three individual counseling sessions per week from two separate therapists: two sessions with a Sacramento psychologist or therapist at Carver, and one session with Ms. Peterson at Sierra. In addition, it offered one group therapy session per week at Sierra; no group therapy sessions at Carver; and weekly consultation among all of Student's educational and medical providers and family.

23. Sacramento contends that Student had a psychiatric mood disorder, if not borderline personality disorder, and that Sacramento was not required to provide intensive psychiatric treatment to cure her disorder. That contention has merit. However, Sacramento's argument that the above services were all that was legally required to provide Student educationally related mental health services to help her benefit from her education was not persuasive. That narrow view of a bright line delineation between keeping Student safe at school and having Parents maintain responsibility for her safety outside of school overlooks the fact that her absences from school due to her

hospitalizations was determined by two school districts to be educationally related. Regardless of where Student's acts of self-harm occurred, it was incumbent upon Sacramento to offer intensified mental health services for Student to work daily on her underlying mental health and social emotional needs, make meaningful progress in those areas, and avoid a continued cycle of repeated hospitalizations and resulting loss of educational benefit. The fact that Dr. Bynum kept Student hospitalized longer to help Parents have time to find a residential placement did not detract from the fact of the hospitalization itself, and the impact on Student's ability to receive educational benefit at a critical time in 11th grade.

24. Student's educationally related mental health goals in the September 2013 IEP were offered to address her needs in vital social emotional areas related to her mental health, including interpersonal communication, and learning strategies to move from feelings of hopelessness to feelings of value and self-worth on a daily basis. Sacramento determined that these needs were educationally related. Progress on the goals is therefore an IEP expectation. That progress is not obtained merely by having Student superficially act appropriately in school, but for her to benefit at a fundamental therapeutic level. In order to effectuate a meaningful level of mental health therapy, Student's experts persuasively established that she required therapy from one experienced therapist, rather than two separate therapists at two separate school campuses. The provision of mental health therapy could not be compared to academic instruction. Although high school pupils may have different teachers for different classes, it was not appropriate to provide different therapists merely because the dual placement had different therapists already in place at each school. Instead, Sacramento should have structured an offer that would result in her intensive therapy with one experienced therapist. The fact that the logistics of doing so may not have been

convenient for the school did not outweigh the need of Student to have therapy with one trusted counselor.

25. Student's experts were also persuasive that she needed mental health therapy supports in some form on a daily basis but none were offered. The fact that Student hid or masked her feelings meant that Sacramento could not rely on Student to self-report, and needed to work with her on a more intensive therapeutic level, particularly in regard to transitioning between home and school. There was no provision in the offer for any more than 30 minutes of weekly consultation among all of the proposed mental health parties, including the family and Student's private therapist. For example, Sacramento did not establish how Student would be expected to work daily on a self-esteem goal without direct daily access to a confidential therapist, rather than the classroom teacher. Mr. Herlihy, the teacher of the emotionally disturbed special day class at Carver, had no background in therapy and was not responsible for Student's mental health and social emotional goals. The IEP expressly provided that the therapists were responsible for those goals. The IEP should have offered increased consultation, collaboration, therapy, and other related supports to meet Student's needs on a daily basis. Because Student's fundamental mental health needs were educationally related, Sacramento was not entitled to wait until Student acted out in school to increase the intensity of the related services. Based on the foregoing, Student established that the September 2013 IEP's offer of mental health therapy supports denied Student a FAPE.

ISSUE 1(C): INDIVIDUAL TRANSITION PLANS

26. Student contends that Sacramento's June and September 2013 IEP's failed to offer her individual transition plans that complied with the law. Sacramento argues that the individual transition plans it offered complied with the law and were reasonably calculated to meet Student's needs and provide her with educational benefit.

Individual Transition Plans

27. Beginning not later than the first IEP to be in effect when a child with a disability turns 16, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb); 34 C.F.R. § 300.320(b) (2006); Ed. Code, §56345, subd. (a)(8).) The postsecondary goals must be based upon age-appropriate transition assessments and must be updated annually. (*Ibid.*) In addition to identifying such postsecondary goals, every IEP beginning with age 16 must also include transition services to assist the child in reaching those postsecondary goals. (*Ibid.*)

28. "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 post-school 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).) Transition services may consist of specially designed instruction or a designated instruction and service. (34 C.F.R. § 300.43(b); Ed. Code, § 56345.1, subd. (b).) Where the transition services are to be provided by outside agencies, the outside participating agencies should be invited, with

the consent of the parent, to any IEP meeting where their likely funding or provision of those services is involved. (Ed. Code § 56341, subd. (d)(3).)

29. The failure to properly formulate a transition plan may be a procedural violation of the IDEA that warrants relief upon a showing of a loss of educational opportunity or a denial of a FAPE. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276 [despite transition plans being a mandatory component of an IEP, notation in IEP that the transition plan would be “deferred” was procedural violation]; *A.S. v. Madison Metro School Dist.* (D. Wis. 2007) 477 F.Supp.2d 969, 978 [allegation of inadequate transition plan treated as procedural violation]; see also *Virginia S., et al. v. Dept. of Ed., State of Hawaii* (D. Hawaii, January 8, 2007, Civ. No. 06-00128) 2007 U.S. Dist. Lexis 1518 [transition plan violated procedural requirements of IDEA, but was ultimately found to be harmless error, when it was not based on an interview with the pupil or parents, did not reference pupil’s interests, and which generically described postsecondary goals as graduation from high school and employment following postsecondary education].)

Procedural Violations

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

June 5, 2013 Transition Plan

31. The June 2013 transition plan addressed Student's needs for both the 2013 extended summer school year, and the beginning of 11th grade in the legally required areas of postsecondary education or training, employment, and independent living skills. The plan was based on Student's stated interests in going to college and having a career. It was supported by annual goals, addressing areas such as completing high school, job interests, completing a career assessment, and college tours.

32. Student claimed the June 2013 individual transition plan denied her a FAPE because it did not include any goals or services to help her advocate for mental health services after high school, or to understand her underlying mental health issues. However, the individual transition plan was part of Student's IEP, which included self-advocacy and multiple social emotional goals to support her mental health needs. Student did not present any evidence that Sacramento's transition plan violated the law.

September 27, 2013 Transition Plan

33. In the September 2013 transition plan, Sacramento revised the plan to more accurately reflect student's specific interests in particular colleges and job areas. Student reiterated her complaint that the plan did not provide anything to assist her in understanding or advocating for her mental health needs. However, the law requires the IEP to include a transition plan. As determined above, the IEP, including the transition plan, should be read as a whole. In that regard, it contained many goals to address Student's unique needs and did not violate the law.

ISSUE 1(D) MEDICATION MANAGEMENT

34. Student contends that Sacramento denied her a FAPE by failing to offer any medication management services in her June and September IEP's.

35. In California, only physicians, including psychiatrists, are allowed by law to prescribe medications. Medication management involves a physician prescribing a medically needed prescription drug to a patient, monitoring its effects, and changing the prescription by the dosage or type of drug, alone or in combination with other drugs. The United States Supreme Court has held that the services of a physician for other than diagnostic or evaluation purposes are excluded from a school district's obligations under the IDEA. (*Irving Independent School District v. Tatro* (1984) 468 U.S. 883.)

36. When the California Department of Mental Health had the responsibility to provide educationally related mental health services to pupils if required in their IEP's, the local county mental health agencies employed psychiatrists. County psychiatrists provided services under myriad funding sources. (See former Cal. Code Regs., tit. 2, § 60020, subd. (f) (repealed 12/24/12).) The broad authority of county psychiatrists included the issuance of prescriptions, that were not within the ambit of services required to be provided by schools, but were under other provisions of law. When the responsibility for educationally related mental health services was transferred back to the school districts in AB 114, school districts were not given medication management authority by the Legislature. In contrast, school districts may be responsible for administering any doctor-prescribed medications required to be taken during a pupil's school day as a related IEP service.

37. The evidence established that Student was prescribed medications by her psychiatrists at Kaiser, and by Dr. Bynum and other psychiatrists at Sierra Vista Hospital and Edgewood. Student took those medications at home. There was no evidence that Student had prescribed medications that needed to be taken during the school day or that Parents ever asked Sacramento to help administer any medications. Sacramento did not deny Student a FAPE on this basis.

ISSUE 1(E): APPROPRIATE PLACEMENT AND SERVICES

38. Student contends that Sacramento's June and September 2013 IEP's denied her a FAPE because Sacramento should have offered her a residential treatment placement at a facility with 24-hour intensive behavioral and therapeutic services and supervision, medication management, and psychiatric care. Sacramento contends that Student's placement at a residential treatment center in Utah was not necessary to provide her with special education and related services in the least restrictive environment. However, as determined above, Sacramento denied Student a FAPE because the mental health therapy services in the September 2013 IEP were not reasonably calculated to meet her needs. Based on that denial of FAPE, Student is entitled to a remedy. As determined in the remedies section below, Parents are entitled to reimbursement for the costs of their unilateral placement of Student at Falcon Ridge. Therefore, whether Sacramento should have offered a residential placement as the least restrictive environment in which she could receive educational benefit is moot and need not be reached.

ISSUE 2: PREDETERMINING STUDENT'S PLACEMENT

39. Student contends that, in connection with the June and September 2013 IEP team meetings, Sacramento denied Parents meaningful participation in the IEP decision making process by predetermining that Sacramento would not offer Student a residential placement due to a policy or practice of not making such placements. Sacramento argues that it did not have any practice or policy of not making residential placements, and did not predetermine whether a residential placement was appropriate or not when it conducted the IEP team meetings.

Parental Participation

40. The United States Supreme Court has recognized that parental participation in the development of their child's IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School District* (2007) 550 U.S. 516, 524.) Parents must have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1); Ed. Code, § 56304.) Parental participation in the IEP process is considered "among the most important procedural safeguards." (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882 (*Amanda J.*).

41. Under these guidelines, an educational agency must permit a pupil's parents "meaningful participation" in the IEP process. (*Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1131-1132 (*Vashon Island*); *Target Range, supra*, 960 F.2d at p. 1485; *Fuhrman, supra*, 993 F.2d at p. 1036.) A parent has meaningfully participated in the development of an IEP when he is informed of his child's problems, attends the IEP meeting, expresses his disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox 40 County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036.) The IDEA's requirement that parents participate in the IEP process ensures that the best interests of the child will be protected, and acknowledges that parents have a unique perspective on their child's needs, since they generally observe their child in a variety of situations. (*Amanda J., supra*, 267 F.3d at p. 890.)

Predetermination of IEP Offer

42. Predetermination occurs when an educational agency has decided on its offer prior to the pupil's IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton*

County Bd. of Educ. (6th Cir. 2004) 392 F.3d 840, 858.) A school district cannot independently develop an IEP without parental input and then present the IEP to the parent for ratification. (*Vashon Island, supra*, 337 F.3d 1115, 1131; *Target Range, supra*, 960 F.2d 1479, 1484.) A district may not arrive at an IEP team meeting with a “take it or leave it” offer. (*JG v. Douglas County School Dist.*, (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.) However, school officials do not predetermine an IEP simply by meeting to discuss a pupil’s programming in advance of an IEP team meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688 at p. 693, fn. 3.)

43. The evidence established that Sacramento, including its board of education, did not have any systematic policy or practice of refusing to offer residential treatment placements to pupils eligible for special education. While the number of pupils for which District has funded residential placements has declined significantly since the demise of the statutory county mental health placement system, that decline does not establish that district has systematically predetermined that no special education to pupils will be offered residential placements. In fact, for the current school year, such an offer is pending in another case. Ms. Bryant persuasively established that Sacramento’s educationally related mental health services division has successfully provided mental health services to most pupils within the school system so that pupils are able to remain in day programs and live in the community.

44. Since the recommendation for residential placement is made on a case-by-case basis by an IEP team, Student’s argument that there must have been many special education pupils during the last two school years that should have been educationally placed in a residential facility, but were not, is based on speculation and not evidence. The evidence showed that the IEP team meetings in this case lasted many hours and that Parents requests for residential placement were squarely on the table and thoughtfully considered by all participants. The fact that Sacramento did not offer

Student a residential placement did not establish that it was predetermined based on any systematic policy or practice.

REMEDIES

1. Student prevailed on Issues 1(a) and 1(b) in this case in that Sacramento's September 2013 IEP denied her a FAPE by offering inadequate mental health therapy services, which also rendered the dual educational placement offer inappropriate as well.

2. As a remedy, Parents request reimbursement for the costs of their unilateral placement of Student in an out-of-state residential treatment center, Falcon Ridge Ranch, in Utah, and related costs of parental travel, along with other appropriate relief, including an order for continued educational placement at Falcon Ridge.

3. Administrative Law Judges have broad latitude to fashion equitable remedies appropriate for the denial of a FAPE. (School Comm. of Burlington v. Department of Educ., *supra*, 471 U.S. at pp. 359, 370; Parents of Student W. v. Puyallup School Dist., No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496. [Pullyaup.])

4. A parent may be entitled to reimbursement for placing a pupil in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the pupil in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also School Committee of Burlington v. Department of Ed. (1985) 471 U.S. 359, 369-370 (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE).) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); Florence County School Dist. Four v. Carter (1993) 510 U.S. 7, 14 (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had

substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the pupil to progress from grade to grade and where expert testimony showed that the pupil had made substantial progress).)

5. The Ninth Circuit has held that to qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special education service necessary to maximize their child's potential. (*C.B. v. Garden Grove Unified School District* (9th Cir. 2011) 635 F.3d 1155, at 1159 [citing *Frank G the Board of Education* (2nd Cir. 2006) 459 F.3d 356, at 365.]) "They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." (*Ibid.*)

6. A hearing officer may not render a decision which results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school if the school has not been certified pursuant to Education Code section 56366.1. (Ed. Code, § 56505.2, subd. (a).) However, the District Court for the Northern District of California upheld an ALJ's authority to reimburse, as compensatory education, a pupil's ongoing placement at a noncertified school. (*Ravenswood City School Dist. v. J.S.*, (N.D. Cal. 2012) 2012 WL 2510844, p.7.)

7. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the

individual pupil's needs. (Reid ex rel. Reid v. District of Columbia (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing Student W. v. Puyallup School District (9th Cir. 1994) 31 F.3d 1489,1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (Reid ex rel. Reid v. District of Columbia (D.D.C. Cir. 2005) 401 F.3d 516, 524.

8. As determined above, Sacramento denied Student a FAPE in the September 2013 IEP offer by failing to offer her sufficient mental health therapy services and supports to provide her with meaningful therapy designed to address her needs. Given Student's level of intelligence and ability to manipulate multiple therapists, Sacramento did not establish the therapeutic value of having two different therapists at two different school locations. The evidence established that given Student's level of sophistication and prior therapeutic experience, she required focused therapy from one experienced therapist with enhanced daily mental health supports. Therefore, Sacramento should have structured a more comprehensive mental health therapy support program to help Student progress toward her educationally related mental health goals in the school district as found above. In addition, because the mental health therapy offer was deficient, it also diminished the appropriateness of the dual specialized instruction placement at both Sierra School and Carver because they were inextricably bound. Because the September 2013 IEP denied Student a FAPE in these regards, Student is entitled to relief.

9. Falcon Ridge is a licensed residential treatment center in Utah which provides a small, structured environment of therapy and academic programs 24 hours a day. The facility is composed of both a private nonpublic school and a residential treatment center for about 32 adolescent girls and is licensed by the State of Utah. The school is a fully accredited and licensed educational institution by the Northwest

Association and the Utah State Department of Education. All teachers at the center are credentialed by that state. Many pupils have been placed there on IEP's and the staff is experienced with the IEP process. The facility's clinical director, Dr. Carolle Bell, established that Falcon Ridge is not certified as a nonpublic school by the California Department of Education, but prior to the change in the California law in July 2011, the facility did receive referrals for residential mental health placements from California school districts.¹⁹ Joette Hayden, the principal and educational director at Falcon Ridge Ranch, established that Student attends classes daily in math, art, English, and history, with satisfactory or average performance. She does well academically when stable in her thinking and is slightly behind in both algebra and art.²⁰ The special education teacher on site also provides one-to-one tutoring with Student on her career and college readiness and postsecondary goals.

10. Therapeutically, Falcon Ridge has five full-time therapists, one part time physician, a psychiatrist, and a positive peer culture coordinator. The center has provided Student with one hour a week of individual therapy, one hour a week of group therapy, 90 minutes three times a week of equine therapy, and has positive peer culture groups for 90 minutes five times a week. The facility utilizes dialectical behavioral therapy and Student is supervised 24 hours a day. On Student's arrival, she did not want to be there, was dismissive, abrasive, oppositional, and not accountable for her behavior.

¹⁹ Dr. Bell obtained a bachelor's degree in psychology, a master's degree in social work, and her doctorate in special education. She has been the clinical director of Falcon Ridge for 10 years and was previously in private practice with a primary focus on adolescents with mental health and substance abuse issues.

²⁰ Ms. Hayden obtained a bachelor's degree in 1996, and a master's in 2000. She has over 11 years of teaching experience as special education teacher.

The facility's overseeing psychiatrist prescribed Student medications. Although the campus is not locked, it is in an isolated location, and Student has been under supervision 24-hour a day. Student has not engaged in any self-harming behaviors at the facility. As of the hearing, Student had made some progress therapeutically, and was no longer hostile to her therapist, more accountable, and more willing to engage in therapy.

11. Dr. Solomon visited Student at Falcon Ridge in February 2013, observed her in several classes, and interviewed the staff. Dr. Solomon was persuasive that the facility was offering Student both educational and therapeutic programs to address her needs. Student was slow to engage in treatment. The facility's staff has provided Student insight into her diagnosis and she was learning to recognize and understand her feelings. Student testified persuasively at hearing that she now recognizes the value of the programs there.

12. The evidence established that Falcon Ridge has provided Student with appropriate specialized academic instruction in a small contained, structured environment. She has received appropriate related services to meet her unique mental health and social emotional needs, including intensive individual, group therapy, and peer groups. The mental health therapy and supports are robust within the structure of the facility, and Student has received some educational benefit.

13. Based on the foregoing, Student has established that Falcon Ridge meets the criteria required by the Ninth Circuit for purposes of a reimbursement remedy even though it is not certified by the State of California. As a compensatory equitable remedy, Parents are therefore entitled to reimbursement for the costs of their travel and Student's nonpublic school tuition and residential treatment placement, and related services, from October 9, 2013, through the end of the regular 2013 – 2014 school year in June 2014. As an additional equitable remedy, Sacramento shall continue to

reimburse Parents for those costs through the end of the 2014 summer extended school year.²¹

ORDER

1. Sacramento shall reimburse Mother and Father individually for their costs associated with placing Student at Falcon Ridge for the months of October 2013, through April 2014, in the amounts specified in Student's closing brief as follows: (a) Mother: \$27,375 , and (b) Father: \$27,375. These costs include the daily rates for residential, educational, and therapeutic components of the program.

2. Sacramento shall reimburse Mother and Father individually for their costs associated with their travel to and from Falcon Ridge in connection with placement and visitation as follows: (a) Mother: \$2,790; and (b) Father: \$2,650.

3. Sacramento shall make the above reimbursement payments to Mother and Father within 45 days of the date of this Decision.

4. Sacramento shall reimburse Mother and Father individually for their costs associated with Student's placement at Falcon Ridge through the end of Sacramento's regular school year in June 2014, plus the 2014 extended school year, within 45 days of receipt of standard proofs of payment, including invoices, canceled checks, credit card statements, and/or receipts for payment. In addition, Sacramento shall reimburse Mother and Father individually for their costs associated with up to two trips each to and from Falcon Ridge in connection with Student's placement and visitation.

5. All of Student's other requests for relief are denied.

²¹ Student's complaint did not raise any issues in this proceeding regarding either the 2014 summer extended school year or at the 2014-2015 school year.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on Issues 1(a) and 1(b) in this case. Sacramento prevailed on all other issues.

NOTICE OF APPEAL RIGHTS

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

Dated: May 23, 2014

/s/

DEIDRE L. JOHNSON

Administrative Law Judge

Office of Administrative Hearings