

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT,

v.

STUDENT.

OAH Case No. 2015050838

DECISION

On May 21, 2015, Palos Verdes Peninsula Unified School District filed a request for a due process hearing with the Office of Administrative Hearings, naming Student, a non-conserved adult. OAH granted a continuance for good cause on June 4, 2015.

Administrative Law Judge Caroline A. Zuk heard this matter in Palos Verdes Estates, California, on October 27, 2015.\

Carlos M. Gonzalez, Attorney at Law, represented District. Jessica Silberling, District's Director of Special Education, was present for the entire hearing.

There was no appearance for Student.¹

At the conclusion of the hearing, the matter was continued to November 6, 2015, at District's request to file a written closing brief. The record was closed on November 6,

¹ OAH notified Student at her last known address, her mother's residence, of the hearing date.

2015, when District filed its closing brief, and the matter was submitted for decision.

ISSUE

Did District's April 15, 2015 individualized education program amendment to the November 18, 2014 IEP offer Student a free appropriate public education in the least restrictive environment?

SUMMARY OF DECISION

District contends that its April 15, 2015 amendment to the November 18, 2014 annual and triennial IEP, which offered to place Student at Devereux Cleo Wallace, a residential treatment center in Westminster, Colorado, constituted a FAPE in the least restrictive environment.

Student's contention is difficult to discern as she did not participate in the prehearing conference or the hearing. While Student provided full written consent to the November 18, 2014 IEP, and the subsequent offer to be placed at Devereux, she voluntarily signed herself out of Devereux, because she did not like being there, and was adamant that it was not a good place for her.

This Decision concludes that District's April 15, 2015 IEP amendment to the November 18, 2014 IEP offered Student a FAPE in the least restrictive environment, because the IEP's were procedurally compliant, and Student required Devereux's therapeutic environment and mental health services to address her significant social-emotional needs.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTION

1. Student, born July 11, 1996, is a non-conserved woman, currently 19 years old. When Student turned 18 on July 11, 2014, she was competent and all educational

rights accorded to her parents transferred to her.

2. During the 2013-2014 school year (11th grade), Student resided within the geographical boundaries of the Lake Elsinore Unified School District, and attended the Montcalm School and Treatment Center, a residential treatment center in Michigan, due to poor family relationships, substance abuse, unhealthy peer relationships, negative means of coping, and poor school performance and attendance. On or about June 13, 2014, Student's parent withdrew Student from Montcalm even though she had not met all of her therapeutic goals.

3. In August 2014, Student enrolled as a 12th grader at District's Palos Verdes Peninsula High School with an IEP developed by Lake Elsinore Unified School District, designating her as a student with an emotional disturbance and other health impairment. While Student resided with her mother within District's boundaries, at times Student's whereabouts were unknown, because she often ran away from home.

4. After Student enrolled in District, she was referred for a triennial psychoeducational assessment, and an educationally related mental health services assessment. The IEP team convened on November 18, 2014, to review the results of the assessments, and develop Student's annual and triennial IEP.

5. Due to Student's significant social-emotional needs, District diligently revised the November 18, 2004 IEP several times by way of IEP amendments, dated December 18, 2014, January 7, 2015, January 13, 2015, February 26, 2015, and April 15, 2015. The primary purpose of these amendments was to discuss an appropriate placement to meet Student's social-emotional needs.

VALIDITY OF THE APRIL 15, 2015 AMENDMENT TO THE NOVEMBER 18, 2014 IEP

6. There are two parts to the legal analysis of a school district's provision of a FAPE. First, the tribunal must determine whether the district has complied with the procedures set forth in the Individuals with Disabilities Education Act. Second, the

tribunal must decide whether the IEP was designed to meet the student's unique needs, and was reasonably calculated to enable her to receive educational benefit. The reasonableness of the IEP is evaluated in light of the information available at the time of its development.

November 18, 2014 Annual/Triennial IEP Team Meeting

7. Since Student was a non-conserved, competent adult as of July 11, 2014, the procedural rights previously accorded to Student's parents had transferred to her prior to the development of the November 18, 2014 IEP and its April 15, 2015 amendment. Accordingly, District's procedural compliance must be analyzed in light of Student's rights instead of her parents'.

8. The November 18, 2014 IEP team meeting was convened to conduct Student's annual and triennial review, including the development of an individual transition plan. Since Student had recently enrolled in the school district, the IEP team also discussed her adjustment to Palos Verdes Peninsula High School, a comprehensive campus of 2,600 students, from her previous placement at a residential treatment center in Michigan.

9. At hearing, District did not offer evidence that it properly notified Student of the November 18, 2014 IEP team meeting. However, Student attended the meeting as did her parent and her advocate. The IEP meeting notes do not indicate that Student asserted that she had not received proper notice of the meeting. Therefore, it is reasonably inferred that District provided proper notice to her.

10. The following IEP team members participated in the meeting: Student; Student's parents; Student's non-attorney educational advocate Allan Roth; one regular education teacher of Student Lisa Dohren; one special education teacher of Student

Natalie Kelly;² one District representative associate principal Michael Wamner; one program specialist Elif Cagin; one school psychologist Ilana Stoll; one mental health psychologist and licensed educational psychologist Dr. Karen Hawkins; one behaviorist Kymberly Sprofera; one behavior site lead Jamie Contis; one school counselor Heather Gerber; and one attorney for District Adam Newman. Student, her parents and advocate did not contend at meeting that District failed to have in attendance the required IEP team members.

11. Ms. Stoll and Ms. Kelly credibly testified about Student's participation in the November 2014 triennial assessment and the November 18, 2014 IEP meeting. Prior to the IEP team meeting, Student completed an Achenbach Youth Self Report and Career Clusters Interest Survey, and engaged in interviews with school psychologist Ms. Stoll and special education teacher Ms. Kelly, providing extensive information about her strengths, aspirations, and challenges. Student's input was memorialized in the detailed, triennial assessment report and IEP, each exceeding twenty pages. At the IEP team meeting, which was audio recorded, Student received a copy of her procedural safeguards and the triennial assessment report. Ms. Stoll recalled that during the IEP team meeting, Student participated in discussions regarding the assessment results, and development of the IEP document, including eligibility (emotional disturbance), present levels of performance, goals, placement, and services. Student provided full, written consent to the IEP on December 9, 2014.

12. The combination of Ms. Stoll's and Ms. Kelly's testimony regarding Student's participation in the assessment and IEP process; the detailed contents of the triennial assessment report and IEP; the information, support and advocacy available to

² Ms. Kelly was Student's Collaborative English teacher, Study Skills teacher, and Case Carrier at Palos Verdes Peninsula High School.

Student through the numerous IEP team members, including her parents and advocate; and Student's full written consent to the IEP established that she meaningfully participated in the IEP process.

13. There was no evidence that District decided its offer of FAPE prior to the November 18, 2014 IEP team meeting. The IEP team needed to review the results of the triennial psycho-educational assessment, which included a functional behavior assessment, to discuss placement options for Student. Student participated in the discussion regarding placement options, and requested that her placement be changed from her then full-day schedule at Peninsula High to a split day schedule between the high school and Beach Cities Learning Center, a State certified non-public school in Palos Verdes. Student's rationale for the split day was that she liked the social aspects of attending Peninsula High but needed a smaller setting, such as Beach Cities, where she could receive additional mental health supports and individualized attention.

14. Ms. Stoll's and Ms. Kelly's credible testimony confirmed that District considered Student's request before making a final recommendation regarding Student's program. In response to Student's request, District agreed with Student that she needed additional mental health supports and individualized attention, but had concerns about her ability to navigate between two schools. District nevertheless adopted Student's split-day proposal for a 30-day diagnostic period, because of Beach Cities' ability to provide a therapeutic program, Student's motivation to complete her high school graduation requirements there, and Student's "buy-in" to her own proposal. Ms. Stoll's and Ms. Kelly's testimony, combined with a contemporaneous memorialization of Student's specific request in the IEP team meeting notes, demonstrate that District developed the November 18, 2014 IEP with an open mind, and did not predetermine its offer.

15. The November 18, 2014 IEP was the product of an IEP meeting that was

properly noticed, held, and staffed. The detailed IEP contained the required present levels of performance, goals, accommodations, services, and placement offer.

16. In the alternative, any procedural error District might have made in the formulation or presentation of the November 18, 2014 IEP was harmless. Student as an adult held her own educational rights, and any procedural violation did not impede her opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefits.

Events Leading to the April 15, 2015 IEP Team Amendment Meeting

17. Following the November 14, 2014 IEP team meeting, there was a series of four IEP amendments leading up to the development of the fifth and final IEP amendment on April 15, 2015.³ Student consented to each amendment, except the final one, which triggered District's hearing request.

18. The December 18, 2014 IEP amendment offered Student a full-time placement at Beach Cities due to Student's poor attendance in the split-day diagnostic placement.

19. The January 7, 2015 IEP amendment documented Student's return to Beach Cities following a three-day suspension for bringing a switchblade to school and her poor attendance there.

20. The January 28, 2015 IEP amendment offered a Behavior Intervention Plan and home-based behavior intervention services to address Student's chronic inability to attend school on a regular basis. District explained to Student that if her attendance did not dramatically improve in two weeks with these additional supports, then it would need to offer a residential treatment center placement to address Student's needs.

³ The IEP amendments will be discussed in more detail below when analyzing the substantive appropriateness of the District's offer of a residential treatment center.

21. The February 26, 2015 IEP amendment offered to place Student at Devereux Cleo Wallace, a residential treatment center in Colorado, through November 18, 2015, because the severity of Student's social-emotional challenges impeded her ability to attend school even with additional behavioral supports. On Thursday, February 26, 2015, Student provided written consent to the Devereux placement. Student and her mother flew to Colorado over the weekend, and she was admitted either over the weekend or on Monday, March 2, 2015.

22. Given the fact that Student participated in the IEP team meeting, it is reasonably inferred that she had proper notice of it.

April 15, 2015 IEP Team Amendment Meeting

PROCEDURAL VALIDITY

23. District convened an IEP team meeting for Student on April 15, 2015 to conduct a 30-day review of Student's placement at Devereux. In addition to Student's parent and advocate, the following IEP team members attended the meeting: (1) Student; (2) special education teacher of Student from Devereux Geoff Gibbons; (3) District representative and non-public school case manager Carol Schenasi; (4) District representative and program specialist Cindy Uruburu; (5) Devereux representative and special education director Carolyn Lawless; (6) Devereux representative and case coordinator James McHenry; (7) District mental health school psychologist and licensed educational psychologist Dr. Hawkins; (8) clinician of Student's from Devereux Jeff Johnson; and (9) District's attorney Mr. Newman. Because there was no prospect that Student would be placed in general education, no general education teacher attended.

24. At hearing, District did not offer evidence that it properly notified Student of the April 15, 2015 IEP team meeting. However, Student attended the meeting as did her parent and her advocate. The IEP meeting notes do not indicate that Student

asserted that she had not received proper notice of the meeting. Therefore, it is reasonably inferred that District provided proper notice to her.

25. Dr. Hawkins participated in the April 15, 2015 IEP team meeting, and credibly testified about Student's contribution to discussions regarding her behavior, vocational training, and continued placement at Devereux. Student informed the IEP team she wanted to sign herself out of Devereux, because she did not like being there, and did not think it was a good fit for her. Student's mother supported Student's position. She informed the IEP team that she intended to fly to Colorado the next day to pick up Student. While District and Devereux staff did not agree with Student's position, Student nevertheless had an opportunity to seek input from multiple IEP team members, voice her opinion, and ultimately make her own decision regarding her education. Accordingly, Student had an opportunity to participate meaningfully in the IEP team meeting.

26. The April 15, 2015 IEP amendment was the product of an IEP team meeting that was properly noticed, held, and staffed. The IEP amendment incorporated the detailed statements and findings from the November 18, 2014 IEP, and specifically stated District's offer of FAPE as to services and placement and, therefore, contained all the required elements. District complied with all the procedural requirements in developing and presenting the April 15, 2015 IEP amendment.

27. In the alternative, any procedural error the District might have made in the formulation or presentation of the April 15, 2015 IEP was harmless. Nothing in the record shows that the procedures by which the IEP was developed or presented caused any loss to Student's education or her right to participate in the process to develop her IEP.

SUBSTANTIVE VALIDITY

28. An IEP must adequately address a student's unique needs and must be

reasonably calculated to enable her to receive educational benefit. In addition, when a student approaches the age of 16, her IEP must contain adequate planning and provision for her transition to adult life and the acquisition of independent for that transition.

STUDENT'S UNIQUE NEEDS

29. District's November 18, 2014 triennial psycho-educational assessment, which included a functional behavior assessment and health assessment, provided ample information regarding Student's unique needs. Based on Ms. Stoll's review of Student's records from her previous school district and Montcalm, and input from Student's current teachers at Peninsula High, Student presented as a bright student, academically capable of graduating with a regular high school diploma and attending college. In June 2014 just two months prior to Student's enrollment at Peninsula High, Student had been administered the Woodcock-Johnson Tests of Achievement – Third Edition, at Montcalm. Ms. Stoll interpreted the results, finding that Student performed in the average range in reading and mathematics, and in the superior range in writing. At Peninsula High, Student performed below her ability, because of her significant emotional challenges, poor school attendance, and missing class work and homework assignments.

30. Ms. Stoll's assessment, Ms. Stoll's testimony, and Dr. Hawkins' testimony established that Student had significant social-emotional needs as of the November 18, 2014 and April 15, 2015 IEP team meetings. Ms. Stoll's triennial psycho-educational assessment appropriately considered data from multiple sources, including a thorough review and summary of records from Lake Elsinore Unified School District, Montcalm and Peninsula High; the concurrent health and functional behavior assessments; an interview with Student; progress reports from Student's current teachers; extensive observations of Student across various school settings; rating scales regarding social,

emotional, and behavioral functioning; and consultation with Dr. Hawkins and Ms. Kelly. Ms. Stoll diligently attempted to obtain data from Student's parents through completion of questionnaires and rating scales, but the forms were not returned. However, Student's mother provided helpful input when the school nurse and behaviorist completed, respectively, the health and functional behavior assessments.

31. As of the November 18, 2014 annual/triennial IEP team meeting, Student presented with significant social-emotional needs. Student's mother reported that Student had a history of cutting herself when stressed or depressed. The most recent incident occurred at home approximately one month prior to the IEP meeting, described as cut marks on Student's left forearm. Student's mother reported Student's history of medical diagnoses, including anxiety disorder, mood disorder, oppositional defiant disorder, attention deficit hyperactivity disorder, and temporal lobe disorder, and described Student as having "very good" and "very bad" days. Student's own ratings of her social-emotional functioning persuasively revealed the extent of Student's suffering with standardized scores falling within the clinical range for anxiety, depression, social problems, thought problems, attention problems, and rule-breaking behavior.

32. As to anxiety, Student was afraid of darkness, sleeping and school. She felt worthless, that no one loved her, and that she had to be perfect. As to depression, she had suicidal thoughts but was not suicidal. There was very little that Student enjoyed, and she preferred to be alone and to keep things to herself. As to somatic complaints, Student experienced nightmares, dizziness, fatigue, headaches, and vomiting. As to social problems, Student felt lonely, jealous, and too dependent on adults. She felt that she was not liked, and that others were out to get her. As to thought problems, Student could not get her mind off of a car accident in 2013 for which she was hospitalized, and an undisclosed traumatic childhood event. She thought about deliberately hurting herself, had trouble sleeping, and had thoughts that others would think are strange. As

to rule-breaking behavior, Student drank alcohol, ran away from home, skipped classes, set fires, used profanity, and thought about sex too much. She also exhibited aggressive behaviors, such as destroying her own things, being mean to others, and getting in fights.

33. Student's significant emotional problems affected her everyday functioning, manifested by difficulty sleeping, abysmal school attendance, inability to complete needed credits to graduate from high school, elopement from home, and strained relationships with peers and adults. Her refusal to take prescribed medications (Seroquel and Prozac), because she did not like the way they made her feel, compounded her challenges.

34. As of the April 15, 2015 IEP team amendment meeting, Student's educational needs had not changed since November 2014. Dr. Hawkins, who had been integrally involved in Student's case, beginning with the triennial assessment through the April 2015 IEP team meeting, persuasively testified that Student's social-emotional needs still required the intensive mental treatment available at Devereux. Just days prior to the April 2015 IEP meeting, Student's behavior had escalated, because Devereux had declined her request to play soccer. Student had injured her knee and did not yet have medical clearance to play. At the IEP meeting, Student admitted that her behavioral escalation was a way to get attention.

PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

35. An IEP must contain a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects her involvement and progress in the regular education curriculum. The present levels of performance create a baseline for designing educational programming and measuring a student's future progress toward annual goals.

36. Based on the comprehensive triennial assessment, the IEP team had current and detailed information from which to write Student's present levels of academic achievement and functional performance. Ms. Stoll and Ms. Kelly discussed Student's present levels of performance during the November 18, 2014 IEP team meeting, which were agreed upon by Student, and incorporated into the April 15, 2015 IEP amendment. The November IEP included two statements of present levels. The first set of statements generally summarized Student's present levels in academics, communication, gross motor, fine motor, social-emotional development, behavior, vocational skills, and daily living skills. The second set of statements was contained in Student's annual goals, which included a detailed and combined present level of performance and baseline, consisting of anecdotal, descriptive information and measurable, objective data.

37. The November 18, 2014 IEP also appropriately summarized how student's disability affected her involvement and progress in the regular education curriculum. Student suffered from an emotional disturbance, manifested by an inability to maintain satisfactory interpersonal relationships, inappropriate types of behavior and feelings under normal circumstances, a general pervasive mood of unhappiness or depression, and a tendency to develop physical symptoms or fears. Student's behaviors and feelings had existed over a long period to a marked degree, adversely affected her attendance, grades, and interactions with peers/adults.

38. District established that the November 18, 2014 IEP and the April 15, 2015 IEP amendment contained the required information regarding the development of the present levels using the then-current, triennial assessment data; the IEP team discussions regarding the present levels; the detailed, written statements in the IEP document; and Student's written consent to the November 18, 2014 IEP.

GOALS AND OBJECTIVES

39. An IEP must contain a statement of measurable goals that are designed to meet the individual's needs that result from the individual's disability to enable the student to be involved in and make progress in the general curriculum, and meet each of the pupil's other educational needs that results from the individual's disability. An IEP's statement of goals must also include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress towards the goals will be measured.

40. The November 18, 2014 IEP contained nine goals, which were incorporated into the April 15, 2015 IEP amendment. While Student had the ability to access the general education curriculum, her social-emotional challenges adversely affected her ability to attend class, complete assignments, and earn the credits that she needed to graduate with a regular high school diploma. Ms. Stoll and Ms. Kelly drafted the annual goals with Ms. Stoll focusing on the five goals relating to Student's social- emotional development and behavior, and Ms. Kelly focusing on the three goals related to transitional planning and writing. The draft goals were reviewed and finalized at the November 18, 2014 IEP meeting. Student did not challenge any of the goals, and provided written consent to all of them.

41 The goals appropriately targeted Student's functional performance at school in these areas: initiating and completing tasks, attention to task, compliance and problem-solving, accountability, coping strategies, appropriate comments, career awareness, college awareness, and written expression.

42. The initiating and completing tasks goal expected Student to increase her ability to initiate difficult assignments by transitioning to and completing the non-preferred assignment without prompts. The attention to task goal expected Student to

remain engaged in class discussions by taking notes, asking questions, and contributing on-topic comments. The compliance and problem-solving goal expected Student to apply three learned solutions to improve her ability to follow adult directives at school. The coping strategies goal expected Student to apply strategies to manage feelings of anxiety, anger or sadness at school; the appropriate comments goal expected Student to distinguish between appropriate and inappropriate verbal comments at school, and identify how her behavior impacts others.

43. The career awareness goal expected Student to show knowledge of qualifications for two careers of interest to her. The college awareness goal expected Student to demonstrate the ability to research college admission costs, program options and career opportunities offered by three post-secondary institutions. The writing goal expected Student to apply her grade level abilities by completing teacher-directed essay assignments.

44. All of the goals contained objective criteria to measure progress over one year, including two short-term objectives to measure progress as of March and June 2015 using multiple evaluation procedures, including teacher observation, student interview, grades, and charting. The goals included objective criteria for measuring student's progress by targeting Student's ability to exhibit the behavior across a series of trials with a specific level of accuracy.

45. District established through the testimony of Ms. Stoll and Ms. Kelly, the comprehensive triennial assessment data, the detailed present levels and baselines, and the well-crafted goals and related objectives that the November 18, 2014 IEP and April 15, 2015 IEP amendment contained appropriate goals designed to meet Student's needs.

PROGRAM MODIFICATIONS, SUPPORTS AND ACCOMMODATIONS

46. An IEP is required to contain a statement of the program modifications or

supports that will be provided for the student to advance appropriately toward attaining her annual goals, and to be involved in the regular education curriculum; and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance.

47. Student did not require program modifications to access the general education curriculum, as she had the ability to earn a regular high school diploma with accommodations. The April 15, 2015 IEP amendment incorporated all of the following accommodations and supports from the November 18, 2014 IEP: providing a copy of class notes when Student was absent; limiting homework to demonstration of knowledge or skill; providing preferential seating near the teacher; checking for Student's understanding of concepts; breaking assignments into manageable chunks; taking tests in a smaller setting (Learning Center); allowing extended time to take tests; and providing a pass for Student to leave a general education classroom to see her case carrier when she needs a sensory break or needs to remove herself from a situation.

48. At Devereux, staff provided additional individualized accommodations based on Student's needs and preferences to facilitate her progress there. These accommodations included minimizing changes to roommate assignments; limiting the number of roommates and, at times, arranging for only one roommate; helping her with time management in the morning; providing individualized encouragement to motivate her to continue with the program; providing almost daily feedback to Dr. Hawkins regarding Student's response to the program; and holding team meetings at Devereux to discuss Student's progress, and needed changes to her treatment, including flexibility with treatment goals based on her then-current needs, which changed from day to day.

49. Nothing in the record showed that Student needed any accommodations or supports other than those provided to her. Student was capable of graduating with a regular high school diploma; the accommodations and supports were appropriate to

help Student attend class, access the curriculum, complete assignments, and earn the needed credits for graduation by the end of the 2014-2015 regular school year.

RELATED SERVICES

50. Student's April 15, 2015 IEP amendment included a services grid that clearly stated the type, frequency, duration, and location of each service offered to Student. Each service had been previously offered in the November 18, 2014 IEP, agreed upon by Student, and incorporated into the April 2015 amendment. These services were residential treatment, school-based counseling for student, counseling for parents, college awareness training, and career awareness training. The residential treatment services represented District's offer to place Student at Devereux, which is analyzed below regarding the appropriateness of District's placement offer in the least restrictive environment.

51. Based on Student's long history of mental health problems, and the frequency, duration, and intensity of Student's social-emotional current challenges across home, school and community settings, Ms. Stoll and Dr. Hawkins persuasively testified that Student needed intensive, mental health services to benefit from her special education, consisting of counseling services for Student, counseling services for Student's parents, and the therapeutic, round-the-clock support available at Devereux.

52. Prior to the November 18, 2014 IEP team meeting, Ms. Stoll had provided individual counseling services to Student pursuant to her last IEP from Lake Elsinore School District. Given Ms. Stoll's graduate training and experience as a school psychologist, her personal knowledge of Student through prior counseling sessions, and her detailed analysis of Student's social-emotional functioning through the November 2014 psychoeducational assessment, Ms. Stoll's counseling recommendations were given great weight.

53. Due to Student's extreme mood changes, poor coping skills, crippling

depression, and maladaptive social behaviors, including eloping, she needed individual counseling services to support the implementation of her IEP goals and her special education. Ms. Stoll appropriately recommended one session per week, 60 minutes per session, of individual counseling for Student. These services were first offered during the November 18, 2014 IEP meeting, agreed upon by Student, subsequently provided at Beach Cities, and continued as part of the April 15, 2015 IEP amendment.

54. Ms. Stoll's and Dr. Hawkins' testimony established that a prominent manifestation of Student's depression was her difficulty getting up in the morning and going to school. Student feared going to sleep, because of nightmares related to an undisclosed but traumatic childhood event and her car accident in 2013. During periods of depression, she benefited from sleep, which her mother understandably accommodated by allowing Student to stay at home instead of going to school. Student also eloped from home on numerous occasions, reportedly sleeping on peoples' lawns or at her boyfriend's house. Student's fluctuations in mood and maladaptive behaviors contributed to her poor attendance, and required a team effort between home and school to help Student make better choices. Accordingly, Ms. Stoll appropriately recommended one session per month, 60 minutes per session, of parent counseling to support the implementation of Student's goals and her special education. These services were first offered during the November 18, 2014 IEP meeting, agreed upon by Student, subsequently provided at Beach Cities, and continued as part of the April 15, 2015 IEP amendment for implementation at Devereux.

55. Despite Student's social, emotional, and behavioral challenges, she still planned to attend college and envisioned herself in a career where she would help others, such as teaching high school history. While Student had general ideas regarding future careers, she lacked specific knowledge of the qualifications needed for those careers. Student expressed an interest in attending out-of-state colleges, but lacked

specific knowledge about the requirements for college admission, and the programs available there related to her career interests. Accordingly, Ms. Kelly recommended college awareness and career awareness services, consisting of group specialized academic instruction (resource specialist program), 20 minutes per session to support the implementation of Student's goals and her special education. These services were first offered during the November 18, 2014 IEP meeting, agreed upon by Student, subsequently provided at Beach Cities, and continued as part of the April 15, 2015 IEP amendment for implementation at Devereux.

Individual Transition Plan

56. 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 also include appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills. Every such IEP must also include transition services to assist the child in reaching those postsecondary goals.

57. During the November 18, 2014 IEP team meeting, District developed an individual transition plan for Student, which was agreed upon by Student and incorporated into the April 15, 2015 IEP amendment. Ms. Kelly was the principal drafter of the transition plan. Ms. Kelly knew Student well, because she was Student's special education case carrier, study skills teacher, and English teacher at Peninsula High, and had completed the vocational assessment.

58. The transition plan was based upon the individual needs of Student, identified through the vocational assessment, which were stated in detail in the present levels of performance and the transition plan itself. Student reported her strengths as sports, writing, and socializing. The triennial assessment revealed that Student had strengths in intellectual ability, academic achievement, receptive and expression communication, capacity to graduate with a regular high school diploma and attend

college, ability to socialize appropriately, self-awareness about her disability, and desire to graduate early and attend college.

59. Student's preferences as to characteristics of potential jobs included using her mind, working outdoors, being challenged, feeling needed, being her own boss, receiving detailed instructions, working in a relaxed atmosphere, and earning a lot of money. Her top three career interests fell into three clusters: (1) law, public safety, corrections and security; (2) arts, technology and communications; and (3) government and public administration. Student preferred to attend a two-year college and then transfer to a four-year college, and expressed interest in several out-of-state intuitions.

60. The transition plan included Student's goals to attend a two-year college and then transfer to a four-year college, and be a high school history teacher. It included a coordinated set of activities to facilitate Student's transition from high school to college, including meeting with a counselor to ensure that she is on track to graduate; participating in the IEP process; utilizing accommodations; practicing self-advocacy skills; using the resources in the College and Career Center; exploring volunteer opportunities; developing a resume and personal statement; attending a career fair on campus; completing interest surveys; and identifying skills, talents, and careers of interest. These activities were linked to two transition goals (attend college, pursue a career as a teacher) and four IEP goals (initiating and completing tasks, career awareness, college awareness, and written expression), and supported by specialized academic instruction for career and college awareness.

61. Ms. Kelly's testimony, the detailed contents of the present levels of performance and transition plan based on the triennial assessment and Student's needs, strengths, preferences and interests, the two transition goals and four related IEP goals, and related services for career and college awareness established that District developed an appropriate transition plan for Student.

CONTINUUM OF PLACEMENT OPTIONS AND LEAST RESTRICTIVE ENVIRONMENT

62. School districts are required to ensure that a variety of potential educational placement options are available to special education students, including placements in general education classes, resource classes and special day classes in public school settings and, if needed, placement in a certified non-public school or residential treatment center.

63. An analysis of the least restrictive environment must consider four factors: (1) the educational benefits to the student of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled student will have on the teacher and students in the regular class; and (4) the costs of educating the student in a regular classroom with appropriate supports, as compared to the costs of educating the student in the district's proposed setting.

64. After the November 18, 2014 IEP team meeting, District conducted a series of IEP amendment team meetings to address its concerns about Student's inability to access the curriculum due to her on-going social-emotional difficulties, and related chronic attendance problems.

65. The first IEP amendment, dated December 18, 2014, offered Student a full-time placement at Beach Cities due to her poor attendance in the split-day diagnostic placement at Peninsula High and Beach Cities. On January 7, 2015, Student provided written consent to the change in placement.

66. The second IEP amendment, dated January 7, 2015, documented Student's return to Beach Cities following a three-day suspension for bringing a switchblade to school and her poor attendance. Student also was experiencing additional challenges at the time. She did not want to take her medications, and she had not been living at home for the three weeks prior to this IEP team meeting. Student's parents were understandably worried about Student's ability to take care of herself when she did not

come home.

67. The third IEP amendment, dated January 28, 2015, documented Student's persistent attendance problems at Beach Cities. Since her first day there on November 19, 2014, Student had only attended school for 19 days. District offered a Behavior Intervention Plan and home-based behavior intervention services to try to improve Student's attendance. District explained to Student that over the next two weeks, she needed to attend school 75 percent of the time and, if she was unable to meet that criterion, then District would need to offer her placement in a residential treatment center. District started to research residential treatment centers that accepted adult students.

68. The fourth IEP amendment, dated February 26, 2015 IEP, offered to place Student at Devereux through November 18, 2015, because the severity of Student's social-emotional challenges impeded her ability to attend school even with additional behavioral supports. Student provided written consent to the IEP amendment on Thursday, February 26, 2015, and she and her mother flew to Colorado over the weekend, and Student was promptly admitted there.

69. The April 15, 2015 amendment documented the IEP team's 30-day review of Student's progress at Devereux, and her decision that she no longer wanted to remain there. District continued to recommend Devereux as an appropriate residential treatment center through November 18, 2015, the annual IEP review date. Student declined to consent to this IEP amendment. After this IEP team meeting, Student, signed herself out of Devereux with her mother's approval. Student left Devereux on or about April 16, 2015.

70. District not only considered a continuum of placement options for Student but, as noted above, it actually *implemented* several placements during the 2014-2015 school year before determining that Student needed to be placed in a residential

treatment center to receive a FAPE because those lesser restrictive environments did not work. District satisfied its duty to ensure that a continuum of placement options was available to Student.

71. Dr. Hawkins was instrumental in searching for an appropriate residential treatment center for Student. Dr. Hawkins knew Student well, beginning with her consultations with Ms. Stoll during the triennial assessment, and continuing with her attendance at the IEP team meetings, dated November 18, 2014, January 28, 2015, February 2, 2015, and April 15, 2015, and her monthly consultations with staff and Student, beginning in November 2014, including a home visit on February 25, 2015.

72. Dr. Hawkins and Ms. Stoll persuasively testified that Devereux was an appropriate placement in the least restrictive environment for Student as of February 26 and April 15, 2015. The placement was appropriate for several reasons. First, it served adult students with disabilities. Second, it had a unit dedicated to female students with mental health challenges. Third, Devereux could implement the goals, counseling services, transition services, and accommodations set forth in the April 15, 2015 amendment to the November 18, 2014 IEP. Fourth, it could supplement the individual counseling services with daily, group counseling sessions, because group counseling was embedded into Devereux's program. Fifth, it could provide close, round-the-clock monitoring and support to keep Student safe from her own risky behaviors (eloping, substance abuse), and motivate her to remain with the program. Sixth, it had a central nurse's station where the administration of Student's medications could be monitored on a daily basis. Seventh, it could implement accommodations, strategies, and coaching to help Student get to class on time. Ms. Stoll's and Dr. Hawkins's testimony established that Devereux could provide Student with individualized, intensive mental health services in a safe, therapeutic environment that Student needed to receive academic and social-emotional benefits.

73. District had offered and implemented placements in less restrictive environments during the 2014-2015 school year prior to offering Devereux. However, Student was unable to receive sufficient academic benefits in a full-time regular class, a split-day program (Peninsula High and Beach Cities) or a full-time, non-public school placement (Beach Cities), because she missed far too much instruction. Student received some social benefit when she attended Peninsula High and Beach Cities but the benefits were minimal, considering the extent of her social, emotional, and behavioral needs. District diligently tried to address Student's academic and non-academic needs in less restrictive settings but she needed round-the-clock monitoring and interventions in a structured, therapeutic setting to benefit from her education. Accordingly, Devereux was the least restrictive environment for Student.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.⁵; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education 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. §

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All references to the Code of Federal Regulations are to the 2006 version.

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, which meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "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, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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 (*Mercer Island*) [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. 951, fn. 10.)

4. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was implemented. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.2d 1141, 1149 (*Adams*). In determining the validity of an IEP, a tribunal must focus on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

BURDEN OF PROOF

5. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) District requested the hearing and, therefore, District has the burden of proof related to the issues of FAPE.

TRANSFER OF EDUCATIONAL RIGHTS

6. In California, a person who is 18 years or older is an adult. (Fam. Code, § 6501.) When a student who has been receiving special education services reaches the age of 18, all educational rights are transferred to the student, and the district must notify the student and the parent of the transfer of rights. (Ed. Code, § 56041.5.) If no guardian or conservator has been appointed for the student, the student becomes a “parent” for purposes of special education law. (Ed. Code, § 56028, subd. (a)(2).) The local educational agency must provide any required notice of procedural safeguards to both the student and the student’s parents. (34 C.F.R. § 300.517(a); Ed. Code, § 56041.5.)

7. There is no dispute that Student was a non-conserved adult, who was responsible for decisions regarding her education since July 11, 2014, when she turned 18 years of age. Accordingly, Student became a “parent” for purposes of special education law.

8. Since Student became a “parent” as of July 11, 2014, District’s compliance with the procedures of the IDEA must analyze whether Student’s rights were protected in the development of the April 15, 2015 IEP amendment to the November 18, 2014 IEP.

ISSUE: DISTRICT’S APRIL 15, 2015 IEP AMENDMENT TO THE NOVEMBER 18, 2014 IEP OFFERED STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT.

9. District contends that its April 15, 2015 amendment to the November 18, 2014 IEP, which offered to place Student at Devereux with related services, offered a FAPE in the least restrictive environment. Student’s contention to the extent it could be discerned based on the evidence in the record was that she did not like being at Devereux, and did not think it was a good place for her.

PROCEDURAL REQUIREMENTS OF A FAPE

10. The Supreme Court has recognized the importance of adherence to the

procedural requirements of the IDEA. (*Rowley, supra*, at pp. 205-06.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's (Student's) opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484; *E.P. v. San Ramon Valley Unified School Dist.* (N.D.Cal., June 21, 2007, Case No. C05-01390) 2007 WL 1795747, pp. 10-11.)

Student's Participation in IEP Team Meetings

11. Federal and state law require that parents (here, Student) of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

12. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP team meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

13. Student meaningfully participated in the development of the November 18, 2014 and April 15, 2015 IEPs, because she attended the meetings; received detailed

information regarding the nature of her disability through the triennial assessment, and the input of the multiple mental health professionals assigned to her case; had the assistance of her parent and educational advocate at each meeting; and voiced her opinions about her preferences for her educational program, including her request for a split-day placement at Peninsula High and Beach Cities, which was granted and incorporated into the November 18, 2014 IEP.

14. While District did not offer evidence that it properly noticed Student of the IEP meetings, it is inferred that Student received notice of the IEP meetings, and agreed to the IEP dates, because Student attended the meetings, as did her parent and advocate, Student was an active participant at the meetings, and Student did not indicate to the other IEP team members that she had not received adequate notice of the meetings.

Required Attendance At IEP Team Meetings

15. An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the student if the student is, or may be, participating in the regular education environment; a special education teacher or provider of the student; an individual who can interpret the instructional implications of assessment results; and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district or parents; and, when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).)

16. The November 18, 2014 IEP team meeting included 14 participants, including the minimum participants required by law: Student who was acting as the parent; District representative Mr. Wamner; regular education teacher Ms. Dohren; special education teacher Ms. Kelly; and school psychologist Ms. Stoll who interpreted the triennial assessment results. The IEP team also included other individuals invited by

Student (her parents and educational advocate), and District. District satisfied its duty to convene a procedurally compliant IEP team meeting.

17. The April 15, 2015 IEP team amendment meeting included 11 participants, including the minimum participants required by law: Student; District representative Ms. Schenasi; special education teacher Mr. Gibbons; and mental health school psychologist Dr. Hawkins. The IEP team also included other individuals invited by Student (her parent and educational advocate), and District. District satisfied its duty to convene a procedurally compliant IEP team meeting.

Predetermination

18. A school district may not predetermine its IEP offer. Predetermination occurs when an educational agency has decided on its offer prior to the 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 district may not arrive at an IEP team meeting with a “take it or leave it” offer. (*JG v. Douglas County School Dist., supra*, 552 F.3d at p. 801, fn. 10.)

19. There was no evidence in the record that District predetermined its offer. District diligently considered and implemented less restrictive placements during the 2014-2015 school year before determining that Student needed a residential treatment center. District first attempted to meet Student’s needs at Peninsula High with specialized academic instruction and related services, followed by a split-day program at Peninsula High and Beach Cities and then full-time placement at Beach Cities prior to recommending a residential treatment center. District was open and flexible in properly considering a continuum of placement options, including Student in the decision-making process every step of the way.

Required Contents of an IEP

20. Federal and state law specify in detail what an IEP must contain. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320; Ed. Code, § 56345.) An annual IEP must contain, among other things, a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects her involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).) The statement of present levels of performance creates a baseline for designing educational programming and measuring a student's future progress toward annual goals.

21. An annual IEP must also contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in, and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) For a student assessed using alternative assessments aligned to alternative achievement standards, the goals must be broken down into objectives. (20 USC § 1414 (d)(1)(A)(i)(I)(cc).)

22. In addition, the IEP's statement of goals must include "appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved," and a statement of how the student's progress toward the goals will be measured. (Ed. Code, § 56345, subd. (7), (9); 20 U.S.C. § 1414(d)(1)(A)(i)(III).)

23. An IEP must also contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals, and to be involved in and make progress in the regular education curriculum; and a statement of any individual accommodations that are necessary to

measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

24. 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 also 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); Ed. Code, § 56345, subd. (a)(8).) Every such IEP must also include transition services to assist the child in reaching those postsecondary goals. (*Ibid.*)

25. "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).)

26. District obtained accurate information about Student's strengths and needs through the triennial assessment, and accurately reflected this information in the detailed November 18, 2014 IEP, which was incorporated into the April 15, 2015 IEP

amendment. The IEP's included the content required by law, including the manner in which Student's emotional disturbance affected her involvement and progress in the regular education curriculum; present levels of academic achievement and functional performance; measurable, annual goals and post-secondary goals; accommodations; related services; an individual transition plan; and a specific offer of placement. District, therefore, complied with the procedural requirements of federal and State law in developing the contents of the April 15, 2015 IEP amendment to the November 18, 2014 IEP.

SUBSTANTIVE REQUIREMENTS

27. In *Board of Educ. v. Rowley, supra*, the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at p. 198.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201; *Mercer Island, supra*, 592 F.3d at pp. 950-953.) The Ninth Circuit has referred to the educational benefit standard as "meaningful educational benefit." (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2007) 541 F.3d 1202, 1212-1213; *Adams, supra*, 195 F.3d at p. 1149.)

LEAST RESTRICTIVE ENVIRONMENT

28. A school district must provide special education in the least restrictive environment. A special education student must be educated with nondisabled peers "to the maximum extent appropriate," and may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be

achieved satisfactorily.” (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii).) Least restrictive environment requirements apply to transitional placements. (*Letter to Spitzer-Resnick, Swedeen, and Pugh* (OSEP 2012) 59 IDELR 230.) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: 1) the educational benefits of placement full-time in a regular class; 2) the nonacademic benefits of such placement; 3) the effect [the student] had on the teacher and children in the regular class; and 4) the costs of mainstreaming [the student]. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the LRE for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette’s Syndrome].)

29. District’s April 15, 2015 amendment to the November 18, 2014 IEP offered Student a FAPE in the least restrictive environment, because District’s offer was reasonably calculated to provide Student with some educational benefit based on accurate present levels of performance and functional performance from District’s November 2014 triennial psycho-educational assessment.

30. As of November 18, 2014 and April 15, 2015, Student had needs in the areas of social-emotional functioning, regular school attendance, and transition from high school to college. District offered nine appropriate, measurable goals and related objectives to address these needs, focusing on improving her ability to initiate, attend and complete tasks, comply with adult directives, demonstrate personal accountability, use coping strategies, interact appropriately with peers and adults, and prepare for college. District appropriately offered accommodations, an individual transition plan,

and related services in individual counseling, college awareness, and career awareness to support the implementation of the goals.

31. Although the Court determined in *Rachel H.* that the little girl at issue should have been educated in a general education setting, applying the *Rachel H.* factors to the instant situation results in a different conclusion with respect to District's offer to place Student at Devereux. Here, with regard to the first *Rachel H.* factor, Student could not receive sufficient academic benefits in a full-time general education setting, because her severe social-emotional problems resulted in chronic absenteeism which, in turn, affected her ability to access the curriculum in general education classes at Peninsula High.

32. With regard to the second *Rachel H.* factor, the evidence supports a conclusion that Student would have obtained only *de minimus* benefit from the non-academic benefits of placement in a general education setting. While Student received some social benefits when she attended general education classes at Peninsula High, she could not receive sufficient non-academic benefits there, especially with her absenteeism related to her social-emotional deficits. Student needed round-the-clock monitoring in a therapeutic residential setting with intensive mental health supports to receive non-academic benefits.

33. With regarding to the third *Rachel H.* factor, the evidence supports a finding that Student engaged in some non-compliant and socially inappropriate behaviors at Peninsula High. However, these behaviors alone did not justify placement in a more restrictive setting.

34. District diligently tried to address Student's academic and non-academic needs in less restrictive placements but she continued to engage in risky behaviors, and was unable to receive sufficient educational benefits at Peninsula High and Beach Cities. As of April 15, 2015, Student needed round-the-clock monitoring in a therapeutic

residential setting with intensive mental health supports to receive academic and non-academic educational benefits and, therefore, placement at Devereux was the least restrictive environment for her.

35. By voluntarily signing herself out of Devereux after only a few weeks, Student assumed the risk of refusing the opportunities to receive the academic and non-academic benefits offered by the IEP. District appropriately offered Student an opportunity to receive needed interventions to improve her social-emotional functioning, and place her on a path to transition from high school to college.

ORDER

District's request for the April 15, 2015 amendment to the November 18, 2014 IEP be determined an offer of FAPE to Student is granted.

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. District prevailed on the only issue presented for decision.

RIGHT TO APPEAL THIS DECISION

The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of this Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b); Ed. Code, § 56505, subd. (k).)

DATE: December 7, 2015

/s/

CAROLINE A. ZUK

Administrative Law Judge

Office of Administrative Hearings