

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT;
SIMI VALLEY UNIFIED SCHOOL DISTRICT;

OAH Case No. 2014120059

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT.

OAH Case No. 2014120530

Reversed and Remanded by the
Attached District Court Order

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on November 21, 2014, naming Los Angeles Unified School District and Simi Valley Unified School District. On December 11, 2014, Los Angeles Unified filed a due process hearing request with OAH, naming Student. The matters were consolidated by order dated December 22, 2014, and Student's Complaint was designated the primary case such that the date of its filing governed the timelines. The first continuance of the consolidated case was granted, for good cause, on December 29, 2014.

Administrative Law Judge Elsa H. Jones heard this matter in Van Nuys, California, on February 24, 25, and 26, 2015; and March 3, 4, 9, and 10, 2015.

Janeen Steel, Edith J. Madrid, Dean Conklin, and Kyra Clipper, Attorneys at Law, represented Student. Ms. Steel and Mr. Conklin were present on all hearing days; Ms. Madrid was present on most hearing days, and Ms. Clipper was present on one hearing day. Student's educational rights holder was present on most hearing days.

Diane M. Willis, Attorney at Law, represented Los Angeles Unified. Marla Wilmott, Los Angeles Unified Due Process Specialist, attended all days of hearing, except for the afternoon of March 3, at which time Patricia Tamez-Simplicio, Los Angeles Unified Due Process Specialist, attended the hearing.

Darin W. Barber, Attorney at Law, represented Simi Valley. Sean Goldman, Executive Director, Student Support Services for Simi Valley, attended most days of hearing.

Sworn testimony and documentary evidence were received at the hearing. A continuance was granted for the parties to file written closing arguments, as well as the submission of exhibits regarding Los Angeles Unified's school calendar, and the record remained open until April 2, 2015. Upon timely receipt of the written closing arguments and the calendar exhibits on April 2, 2015, the record was closed and the matter was submitted for decision.¹

¹ Also on April 2, Student filed a 27-page document, entitled "Demonstrative Master Behavior Chart," which was intended as an addendum to her closing brief. The "Behavior Chart" derived information from 17 separate exhibits, and included a one-page key to assist in understanding it. Los Angeles Unified filed a motion to strike the "Behavior Chart," because it constituted evidence and required authentication. The motion is granted. The "Behavior Chart," despite its title, is not simply a "chart" but new

ISSUES²

1. STUDENT'S ISSUES

A. Whether Los Angeles Unified deprived Student of a free appropriate public education by reason of the following:

- (1) Failing to timely assess Student's behavior from April 19, 2013, through the completion of the functional behavioral assessment report on February 21, 2014;
- (2) Failing to conduct an appropriate functional behavioral assessment in January 2014;
- (3) Failing to conduct an appropriate educationally related mental health services assessment because the assessor did not (a) evaluate Student's need for

evidence, which would require authentication to ensure that the information it contained was accurate. Also, an almost identical "Behavior Chart" was filed with OAH on February 23, 2015, the day prior to the hearing, under cover of "Student's Second Set of Supplemental Evidence," yet Student never offered it at hearing. Finally, the ALJ expressly warned the parties that they should not file any new evidence with their closing briefs.

² At the prehearing conference, Student withdrew all of the issues alleged in her Complaint regarding whether Los Angeles Unified denied Student a FAPE by failing to provide an appropriate transition plan.

- residential placement; and did not (b) evaluate Student's mental health needs as they related to Student's academic functioning;
- (4) Failing to conduct an appropriate psychoeducational assessment, because (a) the assessor did not interview or obtain reports from staff members at Student's residence; (b) the assessor did not provide a valid description of Student's social-emotional functioning and needs; (c) the assessor deferred an opinion as to Student's eligibility and placement to the individualized education program team; and (d) the assessor did not appropriately analyze the test results;
 - (5) The individualized education program team failed to discuss residential placement as a placement option at the October 21, 2014 IEP team meeting;
 - (6) At the October 21, 2014 IEP team meeting, the IEP team failed to review the independent educational evaluation performed by Dr. Mary Large;
 - (7) Predetermining Student's placement at the October 21, 2014 IEP meeting with respect to residential placement,
 - (8) Predetermining services and placement at the February 26, 2014 IEP meeting by not offering a one-to-one aide;
 - (9) Failing to offer Student an appropriate one-to-one behavioral aide from April 19, 2013,³ to the time of filing Student's Complaint;
 - (10) Failing to develop appropriate behavior support plans in the June 4, 2013 IEP, the February 26, 2014 IEP, and the October 21, 2014 IEP;
 - (11) Failing to offer residential placement in the IEP's of February 26, 2014, and October 21, 2014; and
 - (12) Failing to offer appropriate accommodations in the October 21, 2014 IEP.

³ The date was misstated in the PHC Order as April 13, 2014.

- B. Whether either Los Angeles Unified or Simi Valley is responsible for funding a residential placement for Student.

2. LOS ANGELES UNIFIED'S ISSUES

- A. Whether Los Angeles Unified's psychoeducational assessment conducted in January 2014 was appropriate, such that Student is not entitled to an independent assessment at Los Angeles Unified's expense.
- B. Whether Los Angeles Unified's educationally related mental health assessment conducted in January 2014 was appropriate, such that Student is not entitled to an independent evaluation at Los Angeles Unified's expense.
- C. Whether Los Angeles Unified's functional behavioral assessment conducted in January 2014 was appropriate, such that Student is not entitled to an independent assessment at Los Angeles Unified's expense.

SUMMARY OF DECISION

Student has a complicated history of mental, emotional, and behavioral difficulties, and has been under the control of the Los Angeles County Superior Court and the Los Angeles County Department of Children and Family Services since 2010. Department of Children and Family Services has been under court order to provide placement for Student, and due to her mental health needs, it has placed Student in the locked level 14 residential treatment center at Vista Del Mar Family and Child Services. Department of Children and Family Services was legally responsible to provide an appropriate placement for Student's mental health needs, and the evidence was undisputed that placement in the locked Vista residence was appropriate. At all times relevant to this action, Los Angeles Unified was responsible for Student's education, because the locked Vista residence was within the boundaries of Los Angeles Unified. Therefore, Simi Valley had no obligation to Student in this matter.

Los Angeles Unified had no obligation to offer the locked Vista residence as part of its FAPE offer to Student, because Department of Children and Family Services had already placed Student there, in compliance with the court order that it provide a residential placement to Student, and further in compliance with its own legal obligation to provide a placement that was appropriate for Student's mental health needs. Los Angeles Unified provided Student placement, and special education and educationally related mental health services, at the Vista School nonpublic school which was located within the locked Vista residence.⁴ In approximately February 2014, Los Angeles Unified appropriately conducted a psychoeducational assessment of Student, which included an appropriate educationally related mental health services assessment, and Student's teacher at the locked Vista nonpublic school appropriately conducted a functional behavioral assessment. Student's IEP's contained appropriate behavior support plans. Student's dysfunctional behaviors and her emotional status improved while in the locked Vista residence and the closed Vista nonpublic school. In approximately January 2015, Department of Children and Family Services transitioned Student to less restrictive level 12 placements, including Delilu. Delilu was a temporary level 12 residence within the boundaries of Los Angeles Unified, and Department of Children and Family Services provided Student a one-to-one aide in the residence. While Student was at Delilu, Los Angeles Unified placed Student at the open Vista nonpublic school and provided Student placement and special education and educationally related intensive counseling

⁴ There was another nonpublic school at the Vista Del Mar facility which was located on the open part of the facility.

services there.⁵ Ultimately, at or about the time of the hearing, Department of Children and Family Services placed Student at Diamonddale, a level 12 residence.

Los Angeles Unified provided Student a FAPE in all aspects at issue in this case but one. Los Angeles Unified failed to consider Dr. Mary Large's neuropsychological assessment report pertaining to Student, which was a procedural violation of the Individuals with Disabilities Education Act, and which deprived Student of a FAPE. Therefore, Student is entitled to the remedies discussed below.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTIONAL MATTERS

1. Student is a 16-year-old young woman, who, at all relevant times, has been a dependent child of the Los Angeles County Superior Court and eligible for special education under the category of emotional disturbance. When she was four years old, Student witnessed her mother's death from an aneurysm. Student's father was not involved in her life. She was cared for by her grandparents after her mother died, but in 2010, when she was 11 years old, Department of Children and Family Services removed Student from her grandparents' care due to allegations of physical abuse and caretaker incapacity. Since then, Student has resided in a succession of foster homes and group homes, as well as at Juvenile Hall.

2. Student's emotional and psychological behavior problems began when she was about six or seven years old. Her initial behaviors included stealing from teachers and peers. As she grew older, Student's behaviors included aggression, anxiety, hypervigilance, irritability, temper tantrums, impulsivity, defiance, dissociation, suicidal

⁵ Los Angeles Unified re-designated educationally related mental health services as educationally related intensive counseling services in July 2014.

and homicidal ideations, cutting herself, and blunted affect with social isolation. Her diagnoses included bi-polar disorder, psychosis not otherwise specified, post-traumatic stress disorder, and attention deficit hyperactivity disorder. She has been prescribed a variety of psychotropic medications.

3. At all relevant times, Student has been under a conservatorship. By order dated December 13, 2012, the Los Angeles County Superior Court designated Ms. K, who resided within the boundaries of Los Angeles Unified to be Student's educational rights holder.⁶ On April 19, 2013, Department of Children and Family Services placed Student in the locked Vista residence, which is located within the boundaries of Los Angeles Unified. The Vista Del Mar facility where the locked Vista residence is located in a licensed children's institution, and its level 14 locked residential facility is a community treatment facility. Department of Children and Family Services placed Student there because Student required intensive psychiatric care.

4. Student was a resident of the locked Vista residence at the time Student filed her Complaint. Student resided in the locked Vista residence from April 19, 2013, through mid-January, 2015. During that period, she attended the locked Vista nonpublic school located within the locked facility. In late 2014 or early 2015, Department of Children and Family Services moved Student from the locked Vista residence, and briefly placed Student at a Level 12 residential facility outside of the boundaries of Los Angeles Unified, from which she ran away. Department of Children and Family Services then placed Student in Delilu Achievement Home, a temporary level 12 residential placement located within the boundaries of Los Angeles Unified. In January 2015, while Student was residing at Delilu, Los Angeles Unified placed Student at the nonpublic school at the

⁶ To protect their confidentiality, the educational rights holders will only be identified by initial.

Vista Del Mar facility that, in general, served students who did not require a Level 14 locked facility.⁷ Ultimately, at some point just prior to or during the hearing, Department of Children and Family Services placed Student in Diamondale, a level 12 group home in Carson California, which is a licensed children's institution. Diamondale is located within the boundaries of Los Angeles Unified.

5. The Los Angeles Superior Court has changed the Student's educational rights holder twice during the pendency of Student's Complaint. By order dated March 25, 2014, the Superior Court designated Ms. W., who resided within the boundaries of Simi Valley, as Student's new educational rights holder. By order dated January 30, 2015, the Superior Court designated Ms. H., who resided within the boundaries of Los Angeles Unified, as Student's educational rights holder in place of Ms. W.

STUDENT'S PLACEMENT AT THE LOCKED VISTA RESIDENCE AND LOCKED VISTA NONPUBLIC SCHOOL

6. Immediately prior to her placement at Vista Del Mar, Student had been detained for approximately seven months at Central Juvenile Hall, because she had broken a peer's nose and assaulted staff at Harbor View Adolescent Center, a group home not located within the boundaries of Los Angeles Unified, where Department of Children and Family Services had placed her. While at Juvenile Hall, Student attended a special day class in the Juvenile Court and Community School, and the Los Angeles County Office of Education was responsible for her education. At the time she left Juvenile Hall, Student was in the eighth grade in the special day class at the Community School. Student's IEP of February 28, 2013, which was the last IEP developed for Student at the Community School, provided only one related service: individual counseling twice

⁷ Some students who resided at the locked Vista residence were permitted to attend classes at the open Vista nonpublic school, but Student was not among them.

per week, for 30 minutes each time. The IEP did not contain a behavior support plan, and did not reflect that any IEP team member had requested a functional behavioral assessment. By court order dated March 14, 2013, Department of Children and Family Services was ordered to provide permanent placement services to Student when she was released from Juvenile Hall. Additionally, the evidence was undisputed that Department of Children and Family Services was required to ensure that foster children such as Student receive all necessary individualized mental health services, including intensive psychiatric treatment.

7. In April 2013, upon Student's admission to the locked Vista residence, Student was diagnosed with mood disorder not otherwise specified. A child's admission to the locked Vista residence was determined by a screening committee, which included representatives of the Los Angeles County Department of Mental Health, Department of Children and Family Services, the Los Angeles County Probation Department, and representatives from other level 14 facilities. The screening committee evaluated whether a particular child met the criteria to be in a locked level 14 facility.

8. Students in the locked level 14 residence participated in a day treatment program, which provided regularly scheduled group therapy as well as milieu therapy throughout the day. There was a point reward system that applied to both the residence and the locked Vista nonpublic school. All students in the locked Vista residence received 60 minutes per week of group counseling in the locked Vista nonpublic school.

9. Amanda Atwood was Student's main teacher at the locked Vista nonpublic school. Student also had one or two classes with Daphne Cannon, another teacher at the locked Vista nonpublic school. Student's class usually consisted of from 8 to 10 students (but there could be 2 or 3 and up to 12), the teacher, a teaching assistant, and often at least 1 youth day counselor from the residential unit. Student used a remedial English Language Arts program in Ms. Atwood's class daily, which focused on comprehension.

10. Staff constantly documented, on a daily basis, Student's behaviors both at the residence and in the classroom. Classroom behaviors were inputted into a computer daily by both the teacher and the teaching assistant to form a document entitled Time-Out Summary. The Time-Out Summary contained data regarding the type of behavior (e.g., absent without leave, cheating, classwork refusal, disrupting class, etc.), the date and time the behavior occurred, and the duration of the behavior. If a student engaged in the same type of behavior sporadically for a series of minutes or hours, the person recording the duration of the behavior might not record each separate incident of the behavior, but might simply record the overall amount of time the student exhibited the behavior that day. Additionally, some of the categories of behavior overlapped, such that occasionally the same behavior at the same date and time would be recorded under more than one category. The Time-Out Summaries for Student contained nearly a minute by minute account of her inappropriate behaviors each school day.

11. Additionally, residential staff documented "unusual occurrences" and more serious behaviors that occurred at the residence, by date, time, and category, with a brief description of the incident and the follow-up action taken.

12. School-based clinicians (counselors) were available to the students in the locked Vista nonpublic school throughout the school day. Teachers could call or text them to come to the classroom, or sometimes they would appear in the classroom simply to check in. If there was a problem in the classroom, the residential staff would take the student back to the residence, or walk the student out to the hall. Residential staff would also bring the student back to the classroom, if appropriate.

13. Department of Children and Family Services provided Student a one-to-one behavioral aide in the locked Vista residence when she first arrived and for some time thereafter. Due to a scheduling misunderstanding, the aide was also in the classroom with Student for part of each day over a two-week period. Student was very

vocal that she did not want the aide in the room. Student wanted the aide to sit some distance away from Student, and Student would sometimes leave the classroom to avoid the aide.

14. At no relevant time did Los Angeles Unified have a contract with Vista Del Mar to place students in the locked Vista residence. However, at all relevant times Los Angeles Unified had a contract to place students in both the locked Vista nonpublic school and the open Vista nonpublic school.

KAUFMAN TEST OF EDUCATIONAL ACHIEVEMENT ASSESSMENT OF APRIL 22, 2013

15. Prisca Gloor-Maung administered the Kaufman Test of Educational Achievement II on April 22, 2013, shortly after Student's arrival at the locked Vista residence and her enrollment in the locked Vista nonpublic school. Ms. Gloor-Maung received her post-secondary degrees from the University of Zurich, including a Ph.D. in the psychopathology of children and adolescents. She is a licensed clinical psychologist in California, and has been a California school psychologist since approximately 2007. She holds a pupil personnel services credential. She has been employed by Vista Del Mar since 2003, and she has been administering academic assessments such as the Kaufman to Vista students since approximately 2008.

16. Student obtained a standard score of 75 (below average range) on the Comprehensive Achievement Composite. She obtained a standard score of 85 (average range) on the Reading Composite. The Reading Composite was composed of the Letter and Word Recognition subtest, upon which Student obtained a standard score of 95 (average range), and the Reading Comprehension subtest, upon which Student obtained a standard score of 78 (below average range.) Student's Math Composite standard score was 72 (below average range), and consisted of Student's standard score of 74 (below average range), on the Math Concepts and Applications subtest and her standard score of 72 (below average range) on the Math Computation subtest. Student received a

standard score of 96 (average range) on the Written Language Composite, with a standard score on the Written Expression subtest of 84 (below average range) and a standard score of 109 (average range) on the Spelling subtest. Student's Oral Language Composite standard score was 58 (lower extreme range), which included the Listening Comprehension subtest, on which Student obtained a standard score of 73 (below average range) and the Oral Expression subtest, on which Student obtained a standard score of 45 (lower extreme range). Student obtained a standard score of 102 (average range) on the Decoding Composite, which consisted of the Nonsense Word Decoding subtest, on which Student obtained a standard score of 109 (average range), and the Letter and Word Recognition subtest, the score of which is provided above. Student received a standard score of 108 (average range) on the Reading Fluency Composite, which consisted of Student's standard score of 110 (average range) on the Word Recognition Fluency subtest, and standard score of 105 (average range) on the Decoding Fluency subtest. Student received a standard score of 68 (lower extreme range) on the Oral Fluency Composite, which consisted of her standard score of 71 (below average range) in Associational Fluency, and her standard score of 78 (below average range) in Naming Facility.

JUNE 4, 2013, IEP

17. On June 4, 2013, when Student was 14 years old and in the eighth grade, Los Angeles Unified convened Student's annual IEP. All required members of the IEP team were present. The team also included Student's attorney and Student's educational rights holder. The team noted that Student was a resident at Vista Del Mar, that it was a licensed children's institution, and that Department of Children and Family Services had placed Student there. The team reported her eligibility category as emotional disturbance. Los Angeles Unified gave the educational rights holder the parent procedural rights document.

18. The team reviewed Student's progress on her previous goals from the February 28, 2013 IEP, when she attended the Juvenile Court and Community School. She had not met her reading or social/emotional goals, or any of the objectives of those goals. Student had met both objectives of the mathematics goal, but not the goal itself. She had met one objective of both her written language goal and behavior support goal.

19. The team considered Student's present levels of performance as of the June 4, 2013 IEP in the areas of social-emotional, written language, behavior support, math, reading, and transition. Kristina Mazic, the counselor who provided Student's school-based group therapy, drafted the present level of performance in the social-emotional area. At the time these levels were established Student was working on acclimating to the school setting, increasing her attendance at group school counseling, and developing a rapport with her counselor. Based on a review of records, Student had difficulty managing her mood, and she exhibited low frustration tolerance, emotional outbursts, physical aggression, depressed mood, anxiety, poor coping skills, and difficulty maintaining positive interpersonal relationships with peers, staff, and teachers. Weekly school counseling would help Student increase her ability to verbalize feeling and needs, and identify and develop positive coping strategies. Ms. Mazic elaborated upon Student's general social-emotional status at hearing. She did not see Student having emotional outbursts or aggression in the school setting, but the residence staff had advised her that Student had altercations in the residence. In her opinion, Student's leaving the classroom was a positive coping strategy for Student.

20. With respect to Student's written language, the team reported Student's standard score in the average range on the Spelling subtest of the Written Language Composite of the April 22, 2013 Kaufman II, and described Student's strengths and

weaknesses.⁸ In particular, she rushed through her work, making careless mistakes, and often refused to edit or revise her work. The team recommended accommodations, to include one- or two-step instruction, checks for understanding, preferential seating, use of a notebook and a graphic organizer to assist with organization, extra time to complete assignments, and individual assistance as needed. With respect to mathematics, the team noted Student's April 22, 2013 Kaufman II standard scores on the Math Composite subtests of Concepts and Applications and Computation. The team described Student's strengths and weaknesses in math. The recommended accommodations were the same as for the written language area with the exception of the addition of the use of a calculator when appropriate. With respect to reading, the team reported Student's related subtest scores from the April 22, 2013 Kaufman II. These subtest scores spanned the below average range to the average range. The team described Student's strengths and weaknesses in reading.

21. With respect to the area of behavior support, the team noted that Student had no timeouts since April 19, 2013. She asked for breaks to de-escalate approximately 50 percent of the time. When extremely anxious and overwhelmed by her immediate environment, she was only able to use her coping skills and remain in the classroom setting 30 percent of the time. She completed assignments with 65 percent accuracy, but then often would destroy the completed assignment by scribbling over it or erasing it. She stayed on task most of the time that she remained in the classroom, and she preferred to work independently. She mostly requested staff assistance when needed. The team recommended most of the same accommodations as with the written language area.

⁸ The team reported "no results" for the Written Expression subtest but, in fact, as was stated above, Student obtained a standard score of 84 on that subtest.

22. The team developed appropriate goals that addressed all of Student's areas of need. Three of those areas of need were social-emotional, behavior support, and transition. The social emotional goal was directed at Student's ability to express a variety of emotions appropriately when triggered by negative situations, and use learned coping skills, four times per week. The behavior support goal provided that Student would use coping skills to remain on task and in the classroom setting 90 percent of the school day when anxious and/or overwhelmed by her immediate environment. The transition goal provided that Student would improve work-related skills by remaining integrated in the learning environment, seeking staff assistance and completing assignment within the allotted time frame in five to seven classes daily.

23. The IEP team elaborated upon Student's classroom behavior. Student's school attendance was improving but Student had difficulty remaining on task and integrated in the classroom. Student frequently engaged in AWOL behavior, which meant that she left the classroom without permission, and usually did not stay in school for the entire school day. The triggers to the AWOL behavior had not been identified. Student presented as an anxious student who wanted to work independently. The team noted that, at the Juvenile Court school, Student was receiving counseling through the Los Angeles County Department of Mental Health. The team recommended educationally related mental health services and Student's educational advocate requested a functional behavioral assessment. The notes included a description of Vista nonpublic school, and commented that the team considered Vista nonpublic school as the least restrictive educational setting that was suitable at the time for Student to enable her to progress towards her goals.

24. The offer of FAPE included placement at the locked Vista nonpublic school, with special education, a general education curriculum, and special education summer school. Instructional accommodations were to include a visual schedule, a consistent

daily schedule, sensory/physical breaks, preparation for transitions, breaking down of tasks, structured choices, calm language, praise, a reward system, a small structured classroom, preferential seating, consistent behavior support, extended time to complete assignments, comprehension checks, chunking of assignments, graphic organizers, and calculators as needed. The related services to be provided were direct educationally related mental health services counseling services to be provided one to five times per week, for 120 minutes, for both the regular school year and summer school. The team noted that a psychoeducational evaluation would be completed at the time of the next annual IEP, which would be the triennial IEP. The team also reviewed an individualized culmination plan for middle school in relation to the number of credits completed and number required.

25. The team agreed upon a behavior support plan, which was drafted by one of Student's teachers, Amanda Atwood, and was attached to the IEP. The behavior support plan identified off-task behavior as the behavior impeding learning, and stated that Student wanted out of the classroom three to four times in a 40-minute period. This conduct, which the behavior support plan described as moderate, impeded learning because it disrupted other students and led to lost instructional time. At hearing, Ms. Atwood explained that the behaviors were considered moderate, and that severe or extreme behaviors were those that constituted a danger to self or others. The conduct was reported and observed by staff. The behavior support plan identified a variety of predictors for the behavior, including unstructured time, events from previous environments, under stimulation, internal physical/emotional state, peer conflict, room conditions, and lack of predictability. Ms. Atwood explained at hearing that "under stimulation" referred to Student being frustrated or irritated by something at such a level that it distracted her from her classwork. The environmental conditions that promoted the behavior were noise levels and adult and/or peer interactions. The

behavior support plan stated that the behavior mitigating aspects which the environment lacked were re-teaching, social skills instruction, conflict resolution skills, and a communications system. The environmental changes, supports, and structures required to remove the Student's need to use the behavior were listed as: give more time on tasks; allow completion in parts; teach a closure system; assign preferred seating; allow more personal space; accommodate work; provide an organized notebook organizer; use of cueing, modelling, and verbal praise; and use of specific support communications, and calm, de-escalating language. The special education teacher would establish these environmental factors and staff would monitor them.

26. The behavior support plan included reasons for the behavior. Student wanted to obtain sensory input and avoid peer attention, and that the behavior occurred because of peer interactions and disruptions in class. Instead of the problem behavior, Student would ignore disruptions and remain on task. To avoid the unwanted peer attention, Student would request a break, regroup, and return to the classroom. The strategies necessary to develop the replacement behaviors were: employ anger management; employ self-management systems; follow schedules and routines; learn how to request breaks; learn notebook organization; and learn social skills, how to negotiate, and how to use conflict resolution. Again, these strategies would be established by the special education teacher, and monitored by staff. The reinforcers for the replacement behaviors, as well as for a general increase in positive behaviors would include smiles, handshakes, access to a preferred activity, points, extra test points, and a preferred seating location. The reinforcer would be selected based upon Student preference, and the special education teacher would be responsible for the reinforcements. Reactive strategies when the behavior occurred would include Student losing points from both the school log and the unit. Staff would also attempt to verbally redirect Student, and would ask Student to leave the room if the behavior became a

distraction to the class. The personnel responsible for the reactive strategies were the special education teacher, the counselor, and the residential staff. Staff would communicate regarding the behavior support plan daily. Student's behavioral goal, which was described in the goal portion of the IEP, was developed to increase use of the replacement behavior, reduce frequency of the problem behavior, and develop new general skills that remove student's need to use the problem behavior. The behavior support plan did not include one-to-one aide support to implement and monitor.

27. There was no evidence that anyone disagreed with the IEP during this meeting. There was no evidence that anybody requested that Los Angeles Unified offer Student a residential placement. There was no evidence that Student's representatives requested a one-to-one behavioral aide in class during the IEP team meeting. There was plenty of adult assistance and presence in Student's classes, and Student's behaviors were not so severe as to require a one-to-one aide. Based on Student's experience with the residential one-to-one aide that Department of Children and Family Services provided in her classroom, Student would not have tolerated having a one-to-one aide in the classroom. Furthermore, a one-to-one aide would not have been able to prevent Student's AWOL behavior, as the one-to-one aide could not touch Student.

28. Ms. K., the educational rights holder signed her consent to the implementation of the IEP, but noted next to her signature that she disagreed that the IEP constituted a FAPE. Ms. K. provided no explanation to why she did not believe the IEP constituted a FAPE. On the consent page of the IEP, Ms. K requested an "educationally related mental health assessment for residential."

STUDENT'S PROGRESS AFTER THE JUNE 4, 2013 IEP

29. Student's final grades for the fall semester 2013 were an Incomplete in Algebra, C's in English and Physical Education, D in Strategic Literature, and D- in Biology, World History, and Health.

30. Between August 21, 2013, and January 4, 2014, Student was admitted four times to various hospitals for psychiatric reasons, and went to the emergency room twice. These hospital visits resulted from events that occurred in the locked Vista residence rather than in the classroom.

LOS ANGELES UNIFIED/VISTA DEL MAR ASSESSMENTS

Academic Assessment of December 3, 2013

31. Ms. Gloor-Maung administered the Kaufman-II to Student again on December 3, 2013. Student obtained a Comprehensive Achievement Composite standard score in the average range, based on her overall scores. Her standard scores were in the average range in the subtests that comprised the Reading Composite, Written Language Composite, Sound-Symbol Composite, Decoding Composite, Reading Fluency Composite, and Oral Fluency Composite. Her Math Composite standard score was in the below average range, based upon her average range standard score on the Math Concepts and Applications subtest, and her score in the below average range on the Math Computation subtest. The Oral Language Composite was the only other area in which she obtained scores in the below average range. Her Oral Language Composite standard score was in the below average range, based on her scores in the below average range on the Listening Comprehension subtest, and in the average range on the Oral Expression subtest. These scores show improvement over Student's previous scores from the April 22, 2013 Kaufman-II testing, in that only two subtest scores remained in the below average range, and all other subtest scores that had been in the below average range were now in the average range.

32. Los Angeles Unified did not timely respond to Student's request for a functional behavioral assessment and an educationally related mental health services assessment. Ultimately, Los Angeles Unified did not obtain the educational rights

holder's consent to assess until November 20, 2013. Therefore, on December 13, 2014, Student filed a complaint with the California Department of Education. The Department of Education found that Los Angeles Unified was out of compliance, and ordered Los Angeles Unified, among other things, to provide evidence to it by February 28, 2014, that an IEP team meeting had been held to address the results of the requested assessments. Also on November 20, 2013, Los Angeles Unified received the educational rights holder's consent to conduct a triennial psychoeducational assessment. On January 8, 2014, at Los Angeles Unified's request, Los Angeles Unified received the educational rights holder's signed consent to add an assessment in the area of General Ability to the assessment plan.

Functional Behavioral Assessment

33. In February 2014, Ms. Atwood, still one of Student's teachers, performed a functional behavioral assessment of Student, and wrote a report dated February 21, 2014. Student's functional behavioral assessment was the first such assessment Ms. Atwood had performed. However, she was sufficiently familiar with Student to perform the assessment because she was with Student in class for over four hours per day, five days per week. Ms. Atwood received her B.S. in education in 1987 from the University of Kansas. At the time of the hearing, she was in the process of obtaining her M.A. in special education from California State University, Dominguez Hills. She received her preliminary specialist credential in special education, mild/moderate disabilities in 2012. She holds a clear credential in special education, mild/moderate disabilities, and in 2014 she received an education specialist instruction credential. She has been a special education teacher at Vista Del Mar since 2012. She was trained in performing functional behavioral assessments while working on obtaining her teaching credentials, and she also had an in-service training on performing the assessments.

34. Ms. Atwood did not have the written rubric or form for preparing the assessment report such as were included in Los Angeles Unified's Policy Bulletin number 6269.0, dated April 7, 2014. However, Student's colleagues at Vista Del Mar provided her a template for the assessment report and a written protocol, and these were sufficient for the assessment.⁹

35. Ms. Atwood's report stated that the purpose of the assessment was to address Student's current behavioral needs and determine whether changes to her special education services were required. The assessment procedures listed in the report were: an interview with Ms. Atwood, a review of Student's 2013 IEP, and classroom observations from August 2013 through January 2014. However, this list was not complete, as Ms. Atwood also based her assessment on the time-out summary reports from both her classroom and Ms. Cannon's classroom. Ms. Atwood also spoke to Ms. Cannon every day regarding Ms. Cannon's experiences with Student, and incorporated

⁹ This policy bulletin was designed to replace previous Los Angeles Unified policy bulletins pertaining to functional analysis assessments which, unlike functional behavioral assessments, were highly technical assessments performed under specifically defined circumstances. Functional analysis assessments, as distinguished from functional behavioral assessments, were governed by title 5, California Code of Regulations, section 3052. However, section 3052 was repealed as of July 1, 2014, thereby eliminating functional analysis assessments. The subject policy bulletin stated that the functional behavioral analysis procedure described therein would replace the functional analysis assessment procedures. No evidence was presented as to the relationship of this policy bulletin to the functional behavioral assessment which Student requested. Significantly, Ms. Atwood completed the functional behavioral assessment prior to the effective date of this policy bulletin.

this information into her assessment. She also reviewed her own files, Student's records, Student's point logs, and interviewed her teaching assistant, Christopher Ceballos.

36. The report included some background information about Student. Student was polite, she complied with rules when on task, and she was capable of independent grade-level work. She asked for help with assignments 70 percent of the time. She volunteered to participate in class in four out of five situations and frequently volunteered to read out loud. When agitated by the classroom environment/peer interactions, or her own internal emotional state, Student would provoke peers, be AWOL from the classroom, and become highly disruptive. She would become verbally and physically aggressive both to peers and staff when escalated. Student had difficulty managing mood daily, exhibiting low frustration tolerance, emotional outbursts, physical aggression, depressed mood (isolative behavior), anxiety, poor coping skills, and difficulty maintaining positive interpersonal relationships. Some academic progress was impeded due to inconsistent school attendance from engaging in AWOL behavior and recent hospitalization. The report listed 22 categories of behaviors during the 2013-2014 school year, and the number of times they occurred, ranging from 33 incidents of disrupting class to 1 incident of each of the following: assaultive behavior toward staff, AWOL off grounds, violating the dress code, inappropriate reference to drugs, operating classroom equipment without permission, violating electronic policy, and throwing objects. The report listed Student's 13 absences, the dates they occurred, and the day of the week they occurred. Ms. Atwood also listed Student's 22 days of psychiatric hospitalizations, which occurred at various times in August, September, and November 2013.

37. Ms. Atwood reported Student's behaviors. The most significant behaviors impacting Student's education appeared to be poor attendance and behaviors which fell within the disruptive/attention seeking/oppositional range, such as provoking peers, not

following directions, and classwork refusal. With respect to attendance, due to truancies, hospitalizations, and incidents of Student being AWOL, Student was absent from school 59 days out of 113 school days. Ms. Atwood could not correlate Student absences to a specific date or time of day and could not ascertain a motivation for the absences other than Student's current emotional state and/or unwillingness to attend school on a daily basis. Disruptive/attention seeking and oppositional behaviors occurred within the classroom environment across all subject areas and throughout the school day. Student's inability to independently modulate her mood or unwillingness to use positive coping strategies resulted in Student's inability to maintain herself in the classroom

38. Ms. Atwood reported that the antecedents that predicted or supported the two subject behaviors were inability to modulate/control impulsivity; peer interactions; internal emotional state; low frustration tolerance; difficulty maintaining positive interpersonal relationships with staff and peers; depressed mood/isolative behaviors; directions to perform a non-preferred task; and adult directions and re-directions. Classroom staff attempted to remediate and accommodate the behaviors by: making Student aware of expectations and class assignments; providing Student with breaks and assistance; allowing Student preferred seating; reducing the noise level; personalizing assignments geared to Student's cognitive level; giving fewer group assignments and more independent assignments; accommodating Student's need to converse; using a visual schedule; extending time to complete assignments with comprehension checks; and having Student use a graphic organizer and calculator when needed; and using a reward/point system.

39. Ms. Atwood noted Student's social-emotional supports in Student's behavior support plan, which included a behavior goal, educationally related mental health services counseling and a social-emotional goal, and the involvement of

Department of Children and Family Services, Department of Social Services, and Department of Mental Health.

40. The report concluded that Student had made minimal progress in her overall program. Improvement occurred after Student's most recent hospitalization in November 2013. However, Student continued to exhibit a tendency to leave the classroom 25 percent of the time when frustrated with her surroundings, which impacted her ability to access the curriculum. Student's refusal of assignments, disruption of class, and failure to follow directions occurred 50 percent of the time, and impacted Student's ability to participate in classroom instruction and assignments. Student was generally not willing to complete missed assignments, or to re-do incorrect assignments, stating, "I'm not going to do it; this is the best I can do."

41. The functional behavioral assessment did not address the issue of whether Student required a one-to-one aide in the classroom. Ms. Atwood did not recommend that Student have a one-to-one aide, because Student was not a danger to herself or others in the classroom. Furthermore, she had spoken to Student and Student did not want a one-to-one aide. Student did not want to be perceived as different from her classmates.

Psychoeducational and Educationally Related Mental Health Services Assessment

42. Cynthia Brockman-Coleman, a Los Angeles Unified school psychologist, performed a combined psychoeducational and educationally related mental health services assessment of Student commencing in October 2013 and extending into February 2014. Ms. Coleman received her B.A. in psychology with a minor in sociology from the University of Southern California in 1992. She received her M.S. in counseling: school psychology, and an M.S. in marriage and family therapy from California State University, Los Angeles. At the time of the hearing, she was a licensed educational

psychologist and a licensed marriage and family therapist. She received a pupil personnel services credential in school counseling and school psychology and a preliminary administrative credential. She has been employed by Los Angeles Unified as a school psychologist since 1995.

43. Ms. Coleman wrote a report of the assessment, dated February 21, 2014. The report noted Student's identifying information, her eligibility as a student with emotional disturbance, and that she was receiving educationally related mental health services. The report stated that the assessment was a triennial review, to examine Student's strengths, areas of need, and appropriate educational placement in the least restrictive setting, as well as to consider the continuation of educationally related mental health services.

44. The assessment report reviewed Student's background information. A Los Angeles Unified school nurse prepared a summary of Student's health history on October 22, 2013. Student's diagnosis was bipolar disorder.

45. The report also summarized Student's family history, including her removal from her grandparents' care by Department of Children and Family Services in 2010. Ms. Coleman performed a records review of Student's educational history, but the records were limited.

46. Ms. Coleman's report listed some of Student's absences from school. She had four psychiatric hospitalizations between August and November 2013. Her most recent hospitalization was due to disregulated mood and affect, and paranoid perception. She had a parole officer meeting on September 15, 2013, and she had taken leave of the classroom on October 28, 2013, and October 29, 2013. Ms. Coleman also reviewed Student's history of previous psychiatric hospitalizations.

47. Student had no history of drug or alcohol use. The report noted Student's history of Probation/Juvenile Court involvement. In the past, Student had received

academic modifications and accommodations to address her behavioral needs, and received one-to-one support and group and individual counseling. She had been on several different medications to help her manage her behavior. The report summarized the accommodations, modifications, and services Student had received since arriving at the Vista Del Mar facility. Student had received support from a one-to-one behavioral aide and her June 2013 IEP added educationally related mental health services counseling services, as well as accommodations and modifications.

48. The report summarized Student's cumulative education file and the limited records regarding her special education history from May 2012 through her June 4, 2013 IEP, including a brief summary of Student's IEP's during that period.

49. Ms. Coleman's report contained Ms. Coleman's analysis and interpretation of her assessment results. The materials and procedures used for the assessment were selected and administered so as not to be racially, culturally, or sexually discriminatory and were considered valid and reliable for the assessment. When published norms were not appropriate, the instruments were administered for the purpose of analyzing qualitative responses and information. The assessment instruments were administered in English, Student's native language. No IQ tests were used to determine special education eligibility. The assessment was an accurate and valid description of Student's functioning.

50. Ms. Coleman used the following instruments in her assessment: Records Review, Teacher Behavior Questionnaire; Vista School Teacher Behavior Checklist; Behavior Assessment Scale for Children-2 (Teacher); Teacher Interview, Teacher Observation and Report Form; Vista School IEP Therapist Questionnaire; Kaufman-II; Conners-3 (Self Report Short Form); Conners-3 (Teacher Short Form); Differential Test of Conduct and Emotional Problems); and Piers-Harris Children's Self Concept Scale.

51. Student's general ability was an estimate of her cognition due to her non-compliance with testing. Ms. Coleman visited Student's classroom, in an attempt to observe Student and also administer the Cognitive Assessment Scale. Student had just returned to class after a behavior incident, and when she returned to class Ms. Coleman was there for the observation and assessment. Student loudly complained about Ms. Coleman's presence and refused to be in the room with Ms. Coleman. Nonetheless, Ms. Coleman observed for approximately 20 minutes and reported on Student's behavior in the classroom. Student refused to complete her work. Student became very loud and confrontational with the teacher about her work. A classroom assistant tried to calm her down, but Student was visibly upset and had difficulty calming down.

52. Student had a history of non-compliance with testing, which was contributed to by Student's eligibility of emotional disturbance. Based on her records review, Student's average to high average Kaufman-II scores,¹⁰ teacher report, interviews, and observations, Ms. Coleman estimated Student's cognitive function as in the average range of her potential. At hearing, Ms. Coleman elaborated upon her inability to directly assess Student, which was a new experience for Ms. Coleman. Ms. Coleman believed that forcing Student to participate in the assessment would have only further provoked Student. Ms. Coleman felt that Student was hostile and threatening towards her. Ms. Coleman consulted with her supervisor, who advised her that Ms. Coleman could not compel Student to participate in the assessment.

53. Ms. Coleman's report listed Student's December 3, 2013 Kaufman-II scores pertaining to reading, and considered Student's strengths and weaknesses in these areas. She could read simple sentences independently. She participated in oral reading in class with teacher prompts, and she could complete a graphic organizer of the

¹⁰ In fact, Student had no scores on the Kaufman-II in the above-average range.

assigned reading. She understood the overall context of simple readings. Student had difficulty with comprehension of text at grade level, and explaining facts or detail for the story. She did not often participate in group discussions. Student had difficulty with retention of the material as she confused facts with her perceived outcome of the reading.

54. The report listed Student's December 3, 2013 Kaufman-II scores pertaining to math, and considered Student's strengths and weaknesses. She could add and subtract single and double digit positive rational numbers. She could multiply with single digit positive integers. She could use proper regrouping with addition and subtraction, and she solved simple rational number equations. The report also considered Student's areas of need. Student had difficulty doing two digit multiplications, and was only rarely able to solve problems when the problems involved multi-step procedures and positive and negative integers. She could not complete division problems. She had difficulty completing simple word problems, often not correctly reading the problem and thus answering incorrectly.

55. The report listed Student's December 3, 2013 Kaufman-II scores related to writing, and considered Student's strengths and weaknesses. Student could write simple sentences with proper capitalization of the beginning letter of the sentence, a period at the end, and proper subject-verb agreement. She completed writing assignments of only up to three paragraphs in length, disregarding proper grammar, spelling, and punctuation. The report also considered Student's areas of need. Student could rarely write complex sentences, and often did not use proper paragraphs when writing. Student rushed through her work, making careless mistakes in grammar and writing conventions. She often refused to edit her work or revise writing assignments.

56. Ms. Coleman's report considered Student's language and communication skills. There was no history of speech and language services and this was not an area

impacting Student's academic progress. The report also considered Student's motor skills. There were no significant concerns in this area that impacted Student's learning. Student could access all aspects of the school campus and her writing was legible.

57. The report discussed Student's social-emotional status. A records review revealed that Student may have significant attachment problems due to witnessing her mother's death, as well as due to her father's absence and her separation from her grandparents. She began to steal from her classmates and teacher when she was six years old, and thereafter Student demonstrated numerous inappropriate behaviors, including yelling out, difficulty interacting with peers, verbal and physical aggression, isolating herself, low self-esteem/target for bullying, having difficulty completing assignments, non-compliant behaviors, and not staying on task or focusing on class work. The report noted that Student began to receive educationally related mental health services counseling in June 2013, to address anger management difficulty, oppositional behavior, mood swings, depression with psychosis, peer difficulties, and work avoidance.

58. Ms. Coleman interviewed Ms. Atwood. Ms. Atwood believed that Student was smart but did not apply herself. Since her last hospitalization, Student was more willing to stay on task, was more compliant, and was more willing to stay in the class. Her self-help skills were adequate. Student struggled with her temper and her negative behaviors were becoming more physical. Student would not read the instructions for class assignments and thus would complete work incorrectly. Student annoyed others and was easily agitated, and she sometimes disconnected from others.

59. Ms. Atwood completed the Vista School Teacher Observation Form, and Ms. Coleman's report described its contents. Ms. Atwood reiterated that Student was smart and capable of grade-level work, when she applied herself, and could follow simple directions. She worked best independently, wanted to complete assignments,

and could do well. At other times, she did not follow directions, completed assignments incorrectly, and drifted off task. Student would disrupt the class by walking around the room, using profanity, and singing during instruction. She provoked peers, was messy, and tended to be alone.

60. Ms. Coleman also interviewed Student's school-based counselor, Ms. Mazic. Ms. Mazic was familiar with Student's behavior both in class and in the residence, because Ms. Mazic spoke to residence staff regarding Student's behaviors there. Student was able to form friendships by displaying concern and empathy. She could calm herself at times, and identified a best friend. She appeared to be sensitive to criticism and at times her verbal aggression would escalate to physical aggression. Ms. Mazic completed the Vista School Therapist Questionnaire on which she listed Student's problem behaviors as: inattention, impulsivity, physical aggression, verbal aggression, truancy, AWOL's, suicidal ideation, depressed mood, and elevated mood. Her attendance was inconsistent due to multiple hospitalizations. Student was easily distracted from tasks. She had engaged in self-harm behaviors as well as threatened others.

61. Ms. Coleman also administered the Differential Test of Conduct and Emotional Problems to Ms. Mazic. Ms. Mazic stated "true" to the following comments with respect to Student: cannot control temper, "blows up" over the least thing, uses poor judgment, exhibits rather odd behavior, becomes very upset at changes in routine, has frequent psychosomatic complaints, hears voices or sees things that others cannot, was disruptive, on medication, has threatened suicide, defied adults, has nervous mannerisms and was frequently defiant to instructions or commands.

62. Ms. Coleman administered the Conners Rating Scale to Ms. Atwood and to Student. This instrument is designed to assess attention deficit hyperactivity disorder. Ms. Atwood's rating resulted in Very Elevated scores in the areas of Hyperactivity/Impulsivity, Peer Relations, Inattention, Aggression, and Learning

Problems/Executive Functioning. Student's self-ratings resulted in Average range scores for the areas of Inattention, Hyperactivity/Impulsivity, Defiance/Aggression, Learning Problems and Family Relations. Student did not report any significant areas of behavioral concerns. Ms. Coleman reported that Student's self-ratings could indicate either Student's denial of her situation, or Student having limited insight into the impact of her behaviors.

63. Ms. Coleman also administered the Behavior Assessment Scale to Student's teacher. Behaviors in the "Clinically Significant" range suggested a high level of maladjustment, and scores in the "At Risk" range could identify a significant problem that did not yet require formal treatment, or may identify a potential problem that needed careful monitoring. The teacher scored Student in the Clinically Significant range in Externalizing Problems, Depression, Atypicality, Aggression and Conduct Problems. At Risk scores included Hyperactivity, Internalizing Problems, Anxiety, Attention, Learning Problems, Withdrawal, Social Skills, and Adaptability and Study Skills.

64. Ms. Coleman administered the Piers-Harris to Student. The Piers-Harris evaluates a child's self-concept. The items on the scale were statements that expressed how the respondent might feel about themselves, and respondents are asked to respond yes or no to each item. Student's self-ratings on this scale were generally not significant and indicated she had a strong positive general sense of happiness, satisfaction, and self-appraisal of her behaviors. Some sentences, however, were significant, in that Student indicated "yes" to the following: "My classmates make fun of me"; "It is hard to make friends", "I get into many fights"; "My family is disappointed in me"; and "I am different from other people."

65. Ms. Coleman's report contained a behavior analysis. The report summarized Student's current behavior support plan from her June 4, 2013 IEP, which focused on peer interactions which contributed to off-task behaviors and leaving the

classroom. Based on Ms. Atwood's input regarding Student's behaviors, Ms. Coleman determined that the antecedents to the behavior occurred anytime and at no specific time. Sometimes the noise level bothered Student, and she would tell others to shut up, or she would have lingering problems with a peer from the residence that carried over into the classroom. Student's non-compliant behaviors were throwing trash on the floor once or twice per day, using profanity, going AWOL two or three times per day, and verbal threats. The consequences of the behaviors were that Student would take a personal break, but then she often refused to re-enter class. Student received time-outs and loss of points. Sometimes peers joined in Student's behaviors, other times they ignored her. Student's teacher redirected, reminded of consequences, and asked if Student needed a break. The report included responses to intervention. Student liked praise, did not want to be involuntarily removed from class, and begged not to be given a time-out. However, the behavior would re-occur. The function of the behavior appeared to be to escape a situation or to gain peer or adult attention. Ms. Coleman's report suggested positive replacement behaviors. Student should learn ways to seek out positive attention from peers and adults. Also, Student should continue to request a break for a limited period of time, and then she must return to class for a certain period of time before requesting another break. Student's attention difficulties as a factor in Student's educational performance could be mainly attributed to her mental health/social-emotional needs.

66. The report then listed the indicators for educationally related mental health services. Student met all of them: counseling history, psychiatric history, prior diagnoses, history of isolation, history of significant depression, history of social impairment, history of self-injurious behavior, history of significant aggression toward people, and a pattern of negative and/or defiant behavior. Student was receiving educationally related mental health services counseling, and her goal was as set forth in

the June 4, 2013 IEP. Student's counselor, Ms. Mazic, reported that Student had made some progress on the goal in that she verbalized her feelings more often, but Student continued to have difficulty implementing coping skills.

67. The report summarized Student's social-emotional functioning, consistent with Ms. Coleman's findings. In the area of adaptive functioning, Student's self-help, orientation and mobility skills were age-appropriate. However, her overall adaptive behavior skills were negatively impacted by her internal and social-emotional difficulties, such as her limited ability to communicate her frustrations and emotional triggers, her limited social skills, and her limited ability to cope with social stressors.

68. The report included a summary of the overall assessment, including Ms. Coleman's estimate that Student's cognitive functioning was in the average range. Ms. Coleman's interviewees described Student as very smart and capable of grade level work. Ms. Coleman's report stated that Student's emotional status interfered with her being compliant so as to be able to produce work that represented her ability and potential. The report noted that results of the evaluation were not primarily due to environmental, cultural, or economic disadvantage, unfamiliarity with the English language, limited school experience, poor attendance, social maladjustment, mental retardation, or visual, hearing, or motor impairment. The report listed the eligibility criteria for emotional disturbance. The report concluded that emotional disturbance was the primary handicapping condition that affected Student's learning, and recommended continued educationally related mental health services counseling. At hearing, Ms. Coleman elaborated upon her opinion that Student's emotional disturbance affected her educational performance, in that Student's refusals to stay in class or do her work impacted her performance in the classroom.

69. The report included 12 recommendations, including referral to the IEP team for determination of the appropriate eligibility and educational placement;

continue with the behavior support plan; provide small group and individualized instruction; minimize distraction in the classroom; use behavior modification techniques to increase attention and on-task behavior; seat Student closer to the teacher; give simple and concise direction; break study and activities into smaller units; reward attention and other appropriate behavior; use appropriate instructional levels; and use instructional approaches which maximized Student's strengths. An appendix attached to the report explained the relative meaning of standardized scores and summarized the assessment data.

70. Ms. Coleman's report did not recommend a particular level of educationally related mental health services. Los Angeles Unified's policy provided that the IEP team would determine the level of services based upon Student's counselor's recommendations. Similarly, the report did not recommend a residential placement because that was also a decision for the IEP team pursuant to Los Angeles Unified's policy. An educationally related mental health services assessment was an assessment for eligibility for services, not an assessment for placement.

FEBRUARY 26, 2014, IEP

71. Los Angeles Unified convened Student's triennial IEP on February 26, 2014, when Student was in ninth grade. The IEP team consisted of all required members, including Student's educational rights holder, and Student's attorney.

72. The team noted that Student resided in a licensed children's institution and was attending Vista nonpublic school. The team recorded Student's eligibility as emotional disturbance. The parent's rights document was provided to the educational rights holder.

73. The team reviewed Student's progress on her goals. While she had met none of the objectives of any goal, with the exception of the first objective of her transition goal, she had made some progress on all of the goals.

74. Student's health assessment revealed no current area of concern. The IEP repeated the nurse assessment contained in Ms. Coleman's psychoeducational report.

75. The team considered Student's present levels of performance in the areas of social-emotional, reading, math, written language, behavior support, and transition, and the IEP stated how Student's disability impacted her performance in each area. Ms. Coleman presented her psychoeducational report, and her findings were included in the IEP in each area. In the social emotional area, the team noted that Student had increased her participation in school-based group counseling. She was able to appropriately verbalize some feeling and needs related to school stressors, and she actively engaged in various group activities. Records reflected that Student had difficulty managing moods on a daily basis, exhibiting low frustration tolerance, emotional outbursts, physical aggression, depressed mood (manifesting as isolative behavior/withdrawn), anxiety, poor coping skills, and difficulty maintaining positive interpersonal relationships with peers, staff, and teachers. The team commented that some of Student's progress toward her social-emotional goal was impeded due to her behavior in taking leave from the classroom, and hospitalization, which resulted in inconsistent school attendance.

76. In the areas of reading, math, and writing, the team noted Student's December 3, 2013 Kaufman II scores. The team's comments pertaining to Student's present level of performance in these areas were substantially the same as its comments in the June 4, 2013 IEP, supplemented by the comments regarding Student's reading skills in Ms. Coleman's assessment report. The team did not alter Student's accommodations from the June 4, 2013 IEP.

77. In the area of behavior support, the team noted that Student had 196 timeouts from August 20, 2013, to February 7, 2014, and listed 23 inappropriate behavior categories in which Student had engaged. Ms. Atwood presented her

functional behavioral assessment report, and the team incorporated her findings into the IEP. The team did not alter Student's accommodations from the June 4, 2013 IEP.

78. The team discussed Student's present level of performance in the transitional area. The team noted that she had 23 absences and four tardies. She mostly arrived at school on time, remained integrated in the classroom setting 60 percent of the day, and properly requested breaks as necessary. Student communicated with peers appropriately in three out of five trials. She only completed assignments with 20 percent accuracy, retaining the information studied in one out of five situations. Student became angry 75 percent of the time due to peer interactions or classroom disturbances, and would then become disruptive and ultimately she would leave the classroom.

79. The team considered the cognitive area, and again incorporated into Student's present levels of performance in this area the portion of Ms. Coleman's triennial assessment report that pertained to cognition. Additionally, the team incorporated into Student's present levels of performance in language and motor skills that portion of Ms. Coleman's triennial assessment report that pertained to Student's language and communication skills and Student's motor skills. Student did not have any needs in this area that impacted her academic progress.

80. The team developed six goals in the areas of social-emotional, reading, mathematics, written language, behavior support, and transition. The IEP provided appropriate goals that addressed each area of need.

81. The team modified the behavior support goal, to provide that when frustrated by academic tasks, peer interaction, or her internal emotional state, Student would appropriately seek staff, express her needs and accept assistance while remaining integrated in the classroom environment with minimal staff support for five to six periods daily. The social-emotional goal remained the same. The transition goal was

modified somewhat, but still focused on Student's school attendance and completing assignments.

82. The team performed a least restrictive environment analysis. The team determined that Student required a nonpublic school setting, and that Student would participate in a special education setting 100 percent of the school day, in the general education curriculum. The team would continue to monitor Student to determine whether a less restrictive environment would be appropriate. The IEP described Vista nonpublic school. The team discussed the possibility that Student would attend the open Vista nonpublic school. The team did not recommend it at that time, due to Student's behaviors.

83. The team determined that Student was eligible for special education summer school. The team offered as accommodations modeling, small group instruction, extended response time, repetition of instructions, scaffolding, individual instruction, shortened assignments, close proximity control, a behavior management system, visual cues, concrete examples, and tangible reinforcements. The team offered direct educationally related mental health services to address Student's social emotional goals from one to five times weekly for 120 minutes, both during the regular school year and during special education summer school. The IEP specified that the counseling would be 60 minutes group and 60 minutes individual per week. This was the same level of service as was provided in the June 4, 2013 IEP, and this level of service was appropriate. The team did not want to lower the level of service as Student had not met her goal. The team felt that increasing the level of services was not necessary, especially since Student was not always amenable to accessing the level of service that was provided.

84. Los Angeles Unified had completed the functional behavioral assessment and psychoeducational assessment to address the Student's compliance complaint with

the Department of Education. Los Angeles Unified did not offer any compensatory services because Student's mental health services remained at the same level as in the June 4, 2013 IEP. Academically, Student's classroom performance did not change significantly, but Student obtained higher scores on the December 3, 2013 Kaufman II.

85. During the meeting, Student's attorney, the representative from Department of Children and Family Services, and the representative from the locked Vista residence had requested a one-to-one classroom assistant to decrease Student's AWOL behavior, and the team discussed this issue. The team considered a one-to-one aide because Student had difficulty regulating herself during the entire day (which caused her leave-taking behavior), not because of any need for academic support. In this regard, Student was permitted to leave the classroom, but she was required to ask permission to do so. The IEP team referred to it as "AWOL" behavior because Student was not at the point where she could ask for a break; she would just leave when she felt stressed. However, a one-to-one aide could not have physically stopped Student from leaving the classroom, because the adults could not place hands on students. The functional behavioral assessment results did not recommend one-to one assistance. Additionally, the current placement did not usually offer such assistance for behavioral purposes in the level 14 setting. Department of Children and Family Services had supplied Student with one-to-one assistance in the classroom for approximately two weeks, and Student's teacher stated that while the additional support was worthwhile, there was not enough time to determine whether there were conclusive long-term benefits. The IEP team did not offer Student a one-to-one aide.

86. Charles Watterson, the counseling supervisor for Student's unit at the locked Vista residence, ultimately agreed with the team's decision not to offer a one-to-one aide. Student had never requested a one-to-one aide, and he did not believe that she needed one at that time for academics or for behavior. Jayne Merrill, assistant

principal for both Vista nonpublic schools, also attended the meeting, and also did not believe that Student required a one-to-one behavior aide. One-to-one aides were not generally needed in the locked Vista nonpublic school, because there were already behavior aides in the placement, and residential staff could also step in if needed. A one-to-one behavior aide would only be needed if a student was a danger to self or others in the academic setting, and Student did not meet those criteria. Nothing established that a one-to-one behavior aide would decrease Student's AWOL behavior. Student was not amenable to having a one-to-one aide in the classroom, as she had not liked having the one-to-one aide provided by Department of Children and Family Services with her in class.

87. The IEP included a behavior support plan drafted by Ms. Atwood. Unlike the behavior support plan in the June 4, 2013 IEP which addressed off-task behavior, this behavior support plan identified outbursts, rage, and explosive reactions as the behaviors that impeded learning. The change in focus of the behavior support plan was due to the results of the functional behavior assessment. The behavior support plan explained that this behavior manifested by Student throwing objects and shouting at staff and peers. Student's behavior impeded learning in a variety of ways, including lack of work production, disrupted other students, caused instruction to stop, and caused negative peer interactions. The behavior was described as moderate, occurring three times per hour, of medium intensity, lasting approximately five minutes. The predictors for the behavior were disruption in routines; unstructured time; events from previous environments; internal physical/emotional state; lack of freedom, choice, desirable activities and friends; verbal directives; conflict with peers; and lack of predictability. The behavior support plan identified that noise levels in the environment should be changed so as to improve the behavior, and that conflict resolution skills should be included in the environment. To remove Student's need to use the impeding behaviors, the

behavior support plan suggested providing: a break, preferred seating, personal space, high-interest materials, verbal praise, and modeling, and using calm, de-escalating language. The team believed that the function of the behavior was to obtain staff attention and to avoid sensory input. The behavior support plan recommended that to obtain staff attention Student should stay seated and raise her hand to be called on. To avoid sensory input, the behavior support plan recommended that Student stay on task with her lesson, and avoiding provoking her peers.

88. The behavior support plan stated that Student needed to learn the following: anger management, self-management systems, to follow schedules and routines, new social skills, notebook organization skills, and conflict resolution. The behavior support plan recommended use of the following reinforcements for using replacement behaviors: smiles, recognition of student's strengths and talents, a point system, and that Student be rewarded with a choice of seating locations. When the behavior occurred, Student would be reminded to stay in her seat, raise her hand, request breaks as needed, and speak with staff if needed. Student would lose points on her point log for excessive redirections.

89. The behavior support plan referred to the behavioral goal in the IEP, and stated that the behavior support plan was to be coordinated with Student's residential placement. Communication between the school staff and residence staff would occur via daily and weekly reports, daily charting, written notes, and behavioral logs.

90. Nobody at the IEP meeting questioned Ms. Coleman's psychoeducational and educationally related mental health services assessment, or Ms. Atwood's functional behavioral assessment. Nobody at the IEP meeting requested that Los Angeles Unified offer a residential placement. Cheryl Polsky, Student's social worker, who has been a Los Angeles County social worker for 21 years, attended this IEP meeting as a representative of Department of Children and Family Services. She did not request that Los Angeles

Unified provide a residential placement.¹¹ Nobody at the IEP meeting stated that Department of Children and Family Services residential placement of Student in the locked Vista residence was inappropriate for Student. Nobody at the IEP meeting stated that the IEP did not provide Student an educational benefit.

91. On March 10, 2014, Ms. K, the educational rights holder, submitted the signature page of the IEP, along with an attached statement. Ms. K. stated that she disagreed with the IEP in its entirety on the grounds that it was not a FAPE, and refused to consent to Los Angeles Unified implementing the IEP. Ms. K also disagreed with the functional behavioral assessment, psychoeducational, and educationally related mental health services assessments. She agreed that Los Angeles Unified could implement the IEP dated June 4, 2013, but disagreed it was a FAPE. Thereafter, by court order dated March 25, 2014, the court replaced Ms. K as the educational rights holder with Ms. W. Ms. W. resided within the boundaries of Simi Valley. On April 25, 2014, Ms. W. signed the consent page to the IEP, and signed an attached statement stating that she consented to the February 26, 2014 IEP, but did not agree that it offered a FAPE. The statement did not explain why Ms. W. believed that the IEP did not offer a FAPE. Los Angeles Unified began to implement the February 26, 2014 IEP.

92. Simi Valley was not notified by anybody, at any time prior to the filing of Student's Complaint, of Student's existence. At no relevant time was Student placed in any institution located within the boundaries of Simi Valley.

ASSESSMENT BY MARY LARGE, PH.D.

93. Student's attorney referred Student to Mary Large, Ph.D. for a comprehensive neuropsychological assessment. Dr. Large received a B.A. in psychology

¹¹ Ms. Polsky was represented by Roy J. Daniel, Principal Deputy County Counsel for the County of Los Angeles, when she testified at hearing.

in 1986 from the University of California, Los Angeles; an M.A. in clinical psychology in 1989 from California State University, Northridge; and a Ph.D. in clinical psychology in 1993 from the California School of Professional Psychology. Dr. Large has been a licensed psychologist in California since 1995. In 2004 she received a Certificate of Completion from the Post-Doctoral Neuropsychology Training Program at Fielding University. She has been in private practice since 1997, conducting neuropsychological, developmental, and forensic evaluations, providing individual therapy to adults and children, and providing consultation to parents, educators, social workers, and other professionals. Dr. Large assessed Student in May 2014, and wrote a report of the assessment dated June 8, 2014.

94. Dr. Large's report contained background information about Student. The purpose of the assessment was to obtain information regarding Student's neurocognitive strengths and limitations, her emotional functioning, and potential learning issues. Student's attorney also requested recommendations regarding interventions and support services, and information regarding appropriate academic and residential placements, including whether Student placement at Vista Del Mar was appropriate. The report noted that Student had not cooperated with previous attempts to assess her.

95. Dr. Large was able to interview Student. Student provided some biographical details regarding aspects of her early life. Student also described her current living situation at Vista Del Mar, her peer interactions, and the activities she liked. Student talked with Dr. Large about school, and provided Dr. Large with significant insights into her emotional and mental health issues.

96. Dr. Large interviewed a number of people who worked with Student and summarized these interviews in her report. All of them commented on the progress Student had made while at Vista Del Mar. Many of their observations and comments

regarding Student's mental health and social-emotional status were consistent with the conclusions of Student's IEP teams and with Ms. Coleman's assessment and report.

97. On May 14, 2014, Dr. Large interviewed Department of Children and Family Services social workers Cheryl Polsky and Joan Parker. They advised her that Student was very paranoid, assaultive towards peers and staff, and extremely emotionally unstable when she first arrived at Vista. Upon arrival she was assigned a one-to-one aide in the residential unit, who worked with Student 41 hours per week at first. At the time of the interview, the aide was only working with Student 12 hours per week, and was in the process of being phased out. Dr. Large was told that the aide was not present with Student in class at the locked Vista nonpublic school, because the school staff was able to manage any behavioral outbursts. At the time of the assessment, Student's assaultive behavior had been eliminated, Student was less likely to leave class without permission, and was better able to calm herself. She was interacting better with her peers and was starting to go on weekend outings without her one-to-one aide. Academically, Ms. Polsky and Ms. Parker considered Student to be smart, but she refused to do her school work. She rushed through her work and refused to correct it or finish an assignment that was incomplete. Ms. Polsky and Ms. Parker provided some additional details regarding Student's prior history. Student was highly motivated to move to a lower level of care, and there have been discussions regarding that possibility, depending upon Student's behavior.

98. Dr. Large's report summarized her interview on May 20, 2014, with Charles Watterson, one of the supervisors who oversaw Student's residential unit at Vista Del Mar. As did Ms. Polsky and Ms. Parker, he advised that Student had improved since entering Vista Del Mar. Her behavior was more predictable. She was displaying significantly less physical aggression, and was better able to tolerate changes. She was also better able to self-soothe by removing herself from situations. He felt that her peer

interactions were in some ways developmentally typical. She tended to withdraw when in the middle of "drama," but at the same time she did not want to be ignored by staff as that made her feel ostracized. Rather, she wanted staff to check on her. Student appeared to be exerting considerable effort to manage her behavior so that she could move to a lower-level, less restrictive facility. She had transitioned from a modified point system to the regular point system, which also demonstrated behavioral progress.

99. Dr. Large also summarized her interview on May 14, 2014, with Darrin Lewis, one of Student's direct care staff people in her residential unit. He also reported substantial progress in Student's ability to manage her behaviors. Like Mr. Watterson, he also reported that Student had significantly reduced her physical behaviors. She continued to have verbal outbursts, but rather than respond physically, Student would walk away after verbally expressing herself. Student could regulate her behavior and mood well when trusted staff was available to talk to her and help her process her irritation. Student's social interactions had also improved. At first, she had isolated herself, and appeared paranoid about what others thought, would not initiate interactions, and often would end conversations in an argument. She now took the initiative, conversed constructively, and advocated for herself. She saw her family more frequently, and had worked her way up to earning on-site visits with them. She was working toward having unmonitored, community day visits. Her hygiene had also greatly improved since she came to the facility.

100. Dr. Large also reported on her interview with Student's residential therapist, Paloma Chavez, on May 28, 2014. Ms. Chavez saw Student daily in milieu therapy, twice a week for individual therapy, and in group therapy for 45 minutes once per week. Student only tolerated individual therapy for 20 to 30 minutes at a time. Ms. Chavez advised that Student had made significant behavior gains overall. In addition to a huge decrease in physical aggression, Student displayed a notable increase in terms of

awareness of her emotions. She was better able to communicate her feelings, and better at using coping skills to calm herself. Ms. Chavez identified social skills and interpersonal interactions as ongoing needs. Student also felt lonely and depressed because she was separated from her family.

101. Dr. Large interviewed Ms. Atwood, Student's teacher since she was placed at Vista Del Mar. Ms. Atwood advised that Student's behavior had improved significantly. She was not as easily provoked, nor was she as provocative with peers. She was calmer, better able to cope, and left the room less frequently. Ms. Atwood stated that Student did all of her work, but completed it so quickly that she made careless errors, and she would refuse to re-do it. She did not take feedback, redirection, or criticism well. When Student slowed down and read the instructions carefully, she demonstrated solid skills. Student was recently referred to a math tutor, but she would often work with the tutor for only 10 to 15 minutes before shutting down and refusing to do any more work. Her peer interactions were good in the school setting, but there were a few peers who easily provoked her, or whom Student would provoke.

102. Dr. Large interviewed Ms. Mazic on May 19, 2014. Ms. Mazic saw Student twice per week, for 60 minutes of individual therapy and for 60 minutes of group therapy. Ms. Mazic shared the opinions of the other interviewees regarding Student's improved behavior. Ms. Mazic also believed Student's academic performance had improved.

103. Finally, Dr. Large reported on her May 14, 2014, interview with Cynthia Brockman-Coleman, the school psychologist. Much of the information Ms. Coleman provided was based on her triennial psychoeducational assessment of Student in February 2014.

104. Dr. Large summarized Student's family history, including her history of previous placements, and medical history. With respect to her mental health history,

Student saw a psychiatrist as part of her residential treatment program at Vista del Mar. She was prescribed Lithium and Gerodon, and she had been taking them since at least November 2013. Dr. Large reported that she had no information regarding Student's educational history. She noted that Student was currently enrolled in the ninth grade at the locked Vista nonpublic school, and that she might fail ninth grade either because she would not do her work or would not correct mistakes in her work. Dr. Large had only very limited information or no information regarding Student's developmental and early history, and social history. She reported that Student denied any history of alcohol or substance use, and that Student had been twice arrested for assaulting staff members at a previous residential placement.

105. Dr. Large administered a number of assessment instruments to Student over the course of three test sessions. Dr. Large listed the assessment scores in an appendix to her report. The cognitive and achievement instruments she administered included the Wechsler Intelligence Scale for Children-Fourth Edition; the Gray Oral Reading Tests-Fourth Edition; the Test of Written Language-Third Edition; and the Woodcock-Johnson Tests of Achievement-Third Edition. The portion of Dr. Large's report that analyzed performance on these instruments, however, rarely identified the particular instrument which measured the skill the report discussed, or the specific score Student obtained on any such instrument.

106. Dr. Large's report summarized her observations of Student during the assessment process. Student was alert and able to stay on task, or to readily re-direct herself to task. Student's effort was variable.

107. Dr. Large assessed Student's visual-perceptual skills and expressive and receptive verbal skills. These appeared to be adequately developed. Student had some limitations with pragmatic speech. She did not always respond when Dr. Large greeted her, and her ability to maintain eye contact varied. She appeared hypervigilant, with her

eyes often darting around the room. Conversation was adequate during the interview portion of the evaluation.

108. Student's overall cognitive functioning appeared to fall in the average range, based on Student's verbal and problem solving ability. Speech and thought processes were usually logical and coherent, and memory appeared to be adequate for more recent events. However, Student's memory was vague when reporting aspects of her history, and it was unclear whether that was due to memory lapses or because Student was reluctant to share information. Student's insight into her own behavior was emerging but was still limited. Student presented as wary and guarded. Dr. Large did not observe any grossly paranoid thinking, or depressive symptoms, but believed Student had a fair amount of anxiety and a significant degree of internal emotional tension.

109. Based on Student's Wechsler scores on the verbal subdomain, Student responded just within typical limits on concrete, fact-based tasks. She had much more difficulty identifying key social rules/norms, and using them to problem-solve. These limitations suggested that Student would have trouble effectively navigating social relationships. Student's scores on the performance measures fell into or very close to the average range. Student also consistently responded within typical limits on tasks assessing working memory. She had the most difficulty with measures of processing speed.

110. Dr. Large reported that Student's sensorimotor skills were notable in that she did not consistently show greater sensitivity, speed, and proficiency with her dominant right hand. On some assessments she performed within typical limits bilaterally, sometimes performing quicker with her left hand.

111. Dr. Large assessed Student's language processing skills. With regard to receptive language, speech-sound perception appeared intact, as did linguistic working

memory. Comprehension fell significantly below typical limits. Student's scores on expressive language measures were also variable. She had no difficulty with phonological processing, and she could also adequately generate semantically or phonemically organization information in response to a cue. Student's verbal automaticity skills were considerably less well developed, however, as Student was unable to quickly and accurately retrieve what should be overlearned information. On one such task, Student made a high rate of errors, the majority of which Student did not notice or correct problems with self-monitoring.

112. Student's visual perceptual and visual-motor processing skills were also variable. Dr. Large reported that Student appeared to grasp the big picture on these assessments, but did not adequately attend to and incorporate details. Student's ability to attend and concentrate was also variable across tasks. This suggested problems with sustained attention and self-control. She was also challenged by tasks that required Student to shift her attention and to sustain it over a longer period of time.

113. Dr. Large assessed Student's memory and learning skills and concluded they were variable. With respect to visual memory, Student had difficulty organizing and reproducing a complex geometric form, but her ability to copy the figure after a short delay and then a long delay was within typical limits. With respect to verbal memory, her consistency of recall was poor. Dr. Large concluded that Student relied on inefficient strategies, such as trying to recall things in order, rather than grouping them.

114. Student struggled on many tasks that measured executive functioning. She had notable difficulty on tasks that required her to plan ahead, and to monitor and organize her behavior to solve a problem. She struggled on tasks that measured inhibitory control, and again tended not to notice or correct her mistakes. Student did not have any notable difficulty with perseverative tasks, but she had problems with

conceptual thinking and generating ideas or information in the absence of any cues. Her responses were variable on working memory tasks.

115. Dr. Large analyzed Student's academic abilities. Dr. Large administered the Gray to measure Student's reading rate, accuracy, and comprehension. Student's reading skills were developing within typical limits. Student's reading comprehension was less well developed. Based on her responses to the test items, Dr. Large concluded that Student was better able to recall fact-based information, but had trouble with reasoning, integrating information, and drawing inferences.

116. Dr. Large administered the Written Language test to measure Student's basic writing skills and writing fluency. Student consistently scored at least in the average range for all tasks required to demonstrate proficiency in written mechanics. Spelling was especially well developed.

117. Dr. Large administered the math subset from the Woodcock. There was some variability in Student's responses, in part because she refused to complete one of the tasks. She scored within typical limits on a task assessing math fluency, and her ability to solve written calculations fell in the low average range. For some of the calculations Student used her fingers to assist her in solving the problems. Quantitative knowledge fell in the low average range.

118. Dr. Large administered the parent report of the Behavioral Assessment Scales to Tamisha Diaz, one of Student's primary staff in the locked Vista residence. Dr. Large reported that Ms. Diaz responded to items in an internally consistent manner and did not exhibit a negative response bias, which suggested that her ratings were valid. Ms. Diaz rated Student in the At Risk range or above in all areas of the externalizing dimension, including withdrawal, attention problems, hyperactivity, aggression, conduct problems, and atypicality. To Dr. Large, this meant that Ms. Diaz was "often" or "almost always" observing a number of overt behaviors, such as name calling, teasing, arguing,

impulsivity, lying, and foul language. Ms. Diaz's ratings in the internalizing dimension fell into the Clinically Significant range in the areas of anxiety and depression. Ms. Diaz's ratings in the adaptive domain indicated that Ms. Diaz was observing significant limitations in all areas. Ms. Diaz's ratings in areas of functional communication, social skills, leadership and decision making fell in the At -Risk range. Ms. Diaz rated Student in the Clinically Significant range in adaptability and independence with activities of daily living.

119. Ms. Diaz also completed the Behavior Rating Inventory of Executive Functioning, which assesses executive functioning. Again, Ms. Diaz responded in an internally consistent manner and did not exhibit a negative response bias. Her ratings indicated that Student had marked problems with initiative, planning, organization, self-monitoring, and divided attention.

120. Ms. Atwood completed the teacher report of the Behavior Assessment Scale and the Behavior Rating Inventory. As did Ms. Diaz, Ms. Atwood responded in an internally consistent and unbiased manner to these measures, suggesting that her responses were valid. Ms. Atwood's ratings on the Behavior Assessment Scale were elevated in all areas on the externalizing dimension. Specifically, her ratings in the areas of learning problems and atypical behaviors were in the At Risk range, while ratings regarding hyperactivity, aggression, conduct problems, attention problems, and withdrawal were in the Clinically Significant range. With respect to the internalizing dimension, Ms. Atwood's ratings fell within typical limits for the somatization and anxiety subscales, but were in the Clinically Significant range for the depression subscale. Ms. Atwood's ratings in the adaptive domain fell consistently in the At-Risk range. On the Behavior Rating Inventory, Ms. Atwood's ratings reflected significant elevations in all areas.

121. Student completed the self-report form of the Behavior Assessment Scale. She responded in an internally consistent manner and did not exhibit a negative response bias. However, Student's responses were almost entirely within typical limits and reflected an almost universal lack of elevation in any area. Dr. Large concluded that caution must be used in interpreting Student's responses, as they were likely skewed in an overly and unrealistically positive direction.

122. Dr. Large summarized some of the records she reviewed, including Student's December 3, 2013 Kaufman II test results, and Ms. Atwood's functional behavioral assessment of February 21, 2014. Dr. Large's report did not question or criticize the Kaufman II test results or the functional behavioral assessment. She also reviewed and summarized Student's February 26, 2014 IEP, the locked Vista nonpublic school report cards, and Student's state achievement test scores from sixth grade. The state testing scores reflected that Student scored in the basic level for English language arts and in the far below basic level in math.

123. Dr. Large's report reiterated that, academically, Student was developing within normal limits in a number of ways. However, she was concerned that Student's skills in reading comprehension were not well-developed, and that when writing, Student had difficulty organizing her ideas in a grammatically cohesive and accurate way. Student's deficient math computation abilities also concerned Dr. Large. She concluded, based on the criteria in the Diagnostic and Statistical Manual of Mental Disorders, 5th edition, that Student had a specific learning disorder in reading, and that she wished to further investigate whether Student had a specific learning disorder in math with impairment in math calculations, according to Diagnostic and Statistical Manual criteria. Dr. Large was reluctant to diagnose Student as having a learning disorder in math, because she could not satisfactorily ascertain whether Student's deficiency in this area was due to task refusal or to an inability to perform the

calculations. She did not perform any analysis to determine whether Student met Education Code criteria for a learning disability.

124. Dr. Large analyzed Student's behavior and emotional status in relation to Student's personal history and experiences. She considered the variety of diagnoses that Student has garnered during her life in attempts to explain her behavioral and emotional dysfunction. She ultimately concluded that Student's symptoms were consistent with a disruptive mood dysregulation disorder, and that she could not yet rule out post-traumatic stress disorder. She recommended continued placement in a locked, level 14 residence, as Student had made slow but steady gains in that setting at Vista Del Mar. Dr. Large also noted that it might be appropriate to move Student to a less restrictive placement, such as an unlocked level 12 facility, in three to six months. She also recommended that Student continue consultation with her psychiatrist for medication management, as well as continued therapy, to consist of individual therapy no less than twice per week, and group therapy.

125. Academically, Dr. Large recommended that Student remain in a nonpublic school, and participate in a reading intervention program to target her deficits in reading comprehension. She recommended consultation with a reading specialist to identify such a program. Dr. Large believed that additional information should be obtained regarding Student's math calculation skills and that remediation be implemented if necessary. Additionally, she recommended that Student receive the assistance of a one-to-one trained behaviorist in the classroom, so that Student could more consistently and effectively respond to classroom demands. Dr. Large also made specific recommendations regarding the education and training Student's one-to-one assistant should have.

126. Finally, Dr. Large recommended a number of classroom accommodations for Student: extended time on all timed in-class exams and assignments; provision of a

private or semi-private room in which to take timed exams; flexible preferential seating; supplemental and individualized instruction and explanation; repetition of instructions and check for understanding; detailed course outlines; provision of class notes; use of a calculator for all math tasks, including during tests; monitor Student's work pace and slow her down; provide immediate feedback on her work to allow for modification of responses; teach Student to re-check her work; modify class and homework to include fewer problems or fewer problems on a page; and use a homework log or daily planner to help her learn to track assignments. Dr. Large also recommended a number of teaching strategies.

127. At hearing, Dr. Large elaborated upon her report and her opinions. Based upon her interviews with Student's counselors, she believed that nobody at Vista Del Mar knew what Student's academic skills were. Personnel at Vista del Mar did not have a complete evaluation, and Student refused to perform her school work.

128. In her opinion, Student required the level 14 residential placement with the attached nonpublic school, because she needed a high level of containment both residentially and educationally. In particular, Student required milieu therapy on a regular basis and trained staff to respond to a range of situations. Student received milieu therapy in the residence, and some milieu therapy was also available at the school. At the time of her assessment, Dr. Large believed that Student could not have benefitted from her nonpublic school placement if she had not also had a residential placement. Student needed the residence placement to provide the behavioral support she needed.

129. Dr. Large expressed that Student needed more behavioral regulation before placement in a level 12 facility would be appropriate. She recommended a one-to-one classroom behavioral aide because, at the time of the assessment, Student was

missing much instructional time due to her leaving the classroom when Student was not able to tolerate the demands of the classroom.

130. Dr. Large believed Student needed a systematic reading intervention on a regular basis, and deferred to educational professionals to choose the specific program. She was unaware that Student had been receiving a remedial language program while at the locked Vista nonpublic school.

131. By invoice dated June 6, 2014, Dr. Large billed a total of \$4,415 for her assessment and report, which was paid by a trust on behalf of Student.

STUDENT'S PROGRESS FOLLOWING THE FEBRUARY 26, 2014, IEP MEETING

132. Student's final grades on her report card for spring semester 2014 were an A-in World History, C's in Enrichment and Strategic Literature, C-'s in English¹² and Physical Education, and Incompletes in Algebra and Biology. Teacher comments on the report card for English reflected that Student was a pleasure to have in class and completed work well. Teacher comments for World History noted that her work habits improved greatly. Teacher comments for other classes regarding Student's behavior were less positive. She was not willing to make up missing assignments in Algebra, she refused to complete multiple Biology assignments, and she needed constant prompting in Enrichment. Overall, the report card noted that Student was indifferent in her attitude toward completing work for a passing grade. In terms of behaviors, Student was admitted for one psychiatric hospitalization in August 2014, which resulted from an event that occurred in the residence and not in the classroom.

¹² The English grade on the report card is C-; it is a C on Student's corresponding school transcript.

KAUFMAN SCORES OF OCTOBER 1, 2014

133. On October 1, 2014, Ms. Gloor-Maung administered the Kaufman 3 to Student, comprising the Reading Composite, Math Composite, Written Language Composite, Oral Language Composite, and Sound-Symbol Composite. Student's standard scores on all of the subtests comprising the composites fell in the average range, except for two subtests. Student's standard score on the Math Concepts and Applications subtest in the Math Composite fell from its level on the December 3, 2013, Kaufman II in the average range to the below average range, placing her Math Composite score in the below average range. Student's subtest score on the Oral Expression subtest of the Oral Language Composite rose from the average level that she obtained on the December 3, 2013 Kaufman II into the above average range, placing her composite score in the average range. Overall, Student's scores were improved from the Kaufman II scores Student obtained on April 22, 2013.

OCTOBER 21, 2014, IEP

134. Los Angeles Unified received a copy of Dr. Large's report prior to the October 21, 2014, IEP team meeting. Los Angeles Unified sent a notice of the meeting to Ms. W., Student's educational rights holder, on September 30, 2014. The notice reflected that Los Angeles Unified had invited Dr. Large and a school psychologist to the meeting. On October 10, 2014, Student's counsel sent a letter to Ms. Merrill, advising that he wished to discuss four topics at the meeting: (1) placement in the least restrictive environment for Student, including inclusion and mainstreaming opportunities; (2) the need for a one-to-one behavior aide; (3) the need for supervision of the behavior aide by a trained behavior specialist; and (4) a Los Angeles Unified assessment to evaluate Student's math calculation skills.

135. Los Angeles Unified convened the IEP meeting, as noticed, on October 21, 2014. At the time, Student was 15 years old and in the ninth grade. The meeting participants included all parties necessary to hold an IEP meeting, and included Ms. W., Student, and Student's attorneys. Dr. Large did not attend. Simi Valley was not invited to attend the meeting.

136. The team noted that Student resided at the locked Vista residence. The team reiterated that Student was eligible for special education and related services as a Student with emotional disturbance. The team provided the parent's rights document to Ms. W.

137. The team reviewed Student's progress on goals. She had met both objectives on the reading goal, but she had not yet met the annual goal. Student had met both objectives on the mathematics goal, but she had not yet met the annual goal. She could solve 10 equations at 75 percent accuracy, when the annual goal required 90 percent accuracy. Student had met both objectives on the written language goal, but had not yet met the annual goal primarily because she refused to correct or rewrite drafts. She had met the behavior support goal. Student had made progress on the social-emotional goal, but had not yet met any of the objectives. Student had made progress in verbalizing feelings and needs, but she had to continue working on identifying and implementing coping skills. Student had met her transition goal.

138. The team considered Student's present levels of performance in the areas of reading, math, written language, social-emotional, behavior support, and transition, and the IEP stated the impact of Student's disability on her performance in these areas. The team reported Student's Kaufman 3 results of October 1, 2014, related to reading, and described Student's strengths and weaknesses. The team included the same accommodations that it had included in Student's February 26, 2014, IEP.

139. The team reported Student's math computation score on the Kaufman 3 of October 1, 2014, which was in the average range, and described Student's strengths and weaknesses. The team included the same accommodations that it had included in Student's February 26, 2014, IEP.

140. The team reported Student's written expression and spelling scores on the Kaufman 3 of October 1, 2014. The team included the same accommodations that it had included in Student's February 26, 2014 IEP, with the addition of a writing rubric.

141. In the social-emotional area, the team noted that Student attended weekly school counseling groups fairly regularly and participated in some group discussions and activities, but attended individual counseling sessions only sporadically. In both individual and group sessions, she presented as somewhat anxious and guarded. The team described Student's history of behavioral difficulties at school, including physical and verbal aggression and AWOL behaviors. The team noted that Student's school attendance had improved and her participation in weekly school counseling groups had increased. She had made some progress in appropriately verbalizing her feelings and needs with respect to school stressors. She continued to struggle in her ability to use positive coping skills on a regular basis. Future counseling sessions would continue to assist Student in increasing her ability to cope with feelings of anger, frustration, and anxiety to improve her access to the academic environment.

142. In the area of behavior support, Student had 78 behavior incidents from July 5, 2014 through October 7, 2014, in a variety of categories. She had improved classroom attendance and her tolerance for the academic environment. She could ask for breaks as needed to de-escalate from elevated emotional states in three out of four situations. She completed assignments, staying on task 70 percent of the time that she stayed integrated in the classroom setting. She preferred to work independently 100 percent of the time. She requested and accepted staff assistance when needed in three

out of four trials. When anxious and overwhelmed, she experienced difficulty remaining in the classroom and using coping skills 60 percent of the time. She completed assignments, but invalidated her work by scribbling over or erasing the work 60 percent of the time. When seeking peer responses or attention she verbally provoked peers during class, disrupting the class and requiring redirection and intervention from staff in three out of five trials. The team included the same accommodations as it had recommended in the February 26, 2014, IEP.

143. In the area of transition, Student had 12 absences and 8 tardies from July 5, 2014, through October 7, 2014. Student had greatly improved her attendance and was able to remain integrated in the classroom setting 80 percent of the day. She completed 90 percent of all assignments and was able to request breaks as necessary with minimal prompting. When not agitated by her surroundings or peer interactions, she would communicate with peers appropriately in three out of five opportunities. The team described Student's weakness as her strong preference to work independently, because she completed assignments with only 20 percent accuracy when she was unwilling to accept assistance from classroom staff, use the text as a guide, or work cooperatively. She had difficulty retaining previously taught information in three out of five situations, and required consistent review of information. Student was challenged by working in small groups or with a peer. When she was unable to cope with peer interactions, frustration, or disturbances in the classroom, she would shut down and/or become angry 75 percent of the time, impacting her ability to complete tasks.

144. The team developed six goals, including a transition goal. The IEP provided appropriate goals that addressed all of Student's areas of need. A new behavior support goal required Student to appropriately respond to challenging peer interactions that caused her frustration, by conflict resolution, walking away, or seeking staff support in four out of five opportunities. The team also developed a new transition goal, which

required Student to seek assistance when needed and appropriately express feelings without prompting five out of five times during a school day as measured by point logs and observations. The new social-emotional goal required Student to identify and use positive coping skills, such as relaxation strategies, anger management techniques, mindfulness, and journaling when triggered by feelings of anger, frustration, and anxiety on five out of five days per week.

145. The team determined that Student would receive direct educationally related intensive counseling services one to five times per week for a total of 120 minutes per week. Student would receive the same level of educationally related intensive counseling services during special education summer school.

146. The team analyzed least restrictive environment. The team discussed whether Student could attend the open Vista nonpublic school, but determined that until Department of Children and Family Services decided whether to change Student's residential placement, Student should remain at the locked Vista nonpublic school. Student would be in special education 100 percent of the time, with a general education curriculum, but Student could be returned to a less restrictive environment when it was appropriate. Student's instructional accommodations were the same as those set forth in her February 26, 2014 IEP.

147. The IEP also included a new behavior support plan and a transition plan. The new behavior support plan, which was drafted by Ms. Atwood, identified off-task behavior as the behavior that impeded learning. Student exhibited the behavior by provoking peers, destroying assignments, and refusing to work. The behavior impeded learning because it diminished work production, disrupted other students, required the teacher to stop instruction, led to lost instructional time, and involved negative interaction with peers. The behavior support plan described the behavior as moderate,

and it occurred three times daily for about five minutes, as observed by teacher and school staff.

148. The environmental factors which generated the behavior included verbal directives, lack of predictability, Student's internal physical/emotional state, peer conflict, and events from previous environments. The environmental factors in the classroom that needed changing were the classroom interactions, and conflict resolution skills were missing in the classroom. Student's need to use the problem behavior could be ameliorated on a daily basis by providing a break; giving Student preferred seating and personal space; providing hands-on learning and high interest materials; and by modeling, praise, and use of calm, de-escalating language; all to be established by the teacher and monitored by school staff. The behavior was designed to get peer attention and to avoid lengthy tasks.

149. Instead of the behavior, the Student would use appropriate language and opportunities to engage peers, and that Student would request modified assignments and complete tasks in smaller parts, while reviewing work for accuracy. The suggested teaching strategies were learning anger management and self-management systems; learning how to negotiate, learning to use conflict resolution, and learning to request breaks. These strategies were to be implemented daily by the teacher and school staff. The replacement behaviors would be reinforced to establish, maintain, and generalize them. The reinforcements included smiles, a pat on the back, recognition of student's strengths and talents, and points. Staff would award privileges in the form of extra test points and preferred seating locations. Teacher and staff would choose the reinforcer based on Student's preferences and school policy. If the behavior recurred, teacher, school staff, or residence staff would remind Student to use positive verbal interaction with her peers, ask her to take a short break, ask her to reintegrate into class and complete assignments, and remind her of a loss of points for multiple redirections. The

behavior support plan included the behavior goal. The plan was designed to increase use of replacement behavior and could also serve to develop new general skills to remove Student's need to use the problem behavior. The behavior support plan was to be coordinated with Department of Children and Family Services and the residence. The counselor and the residence would be responsible for the interagency communication, and communication between the school/residence and the educational rights holder would occur daily through daily and weekly reports, daily charting, and behavioral logs. The behavior support plan was available at the meeting but, except for the behavioral goal, it was not reviewed at the meeting

150. The IEP team discussed the four topics that Student's counsel had previously advised the parties he and the educational rights holder wanted to discuss at the meeting. First, the team addressed placement. Due to Student's increased academic and behavioral improvement, Department of Children and Family Services planned to move Student to a less restrictive, level 14 unlocked residential facility. The team also discussed whether Student should take classes at Vista's open nonpublic school if she were not transitioned to another facility, as well as whether Student could attend a public school. Until Department of Children and Family Services determined where it would place Student, the team determined that Student would remain at the locked Vista nonpublic school.

151. Student's attorneys tabled the discussion of a one-to-one aide and of the need for a trained behavior specialist to supervise the one-to-one aide, because of the pending change in Student's residential placement and possible change in her nonpublic school placement. Finally, the team discussed the request for a Los Angeles Unified assessment to evaluate Student's math calculation skills. The team referred to Student's standard score of 91 (average range) that Student obtained on the October 1, 2014 Kaufman 3 in Math Computation. There was no request for any further math

assessment. Student's attorney agreed that the meeting could be adjourned, and the IEP could be closed, due to the uncertainty as to whether Department of Children and Family Services would be changing Student's placement.

152. The discussion at the IEP meeting was wide-ranging. It included discussions of the present levels of performance, goals, accommodations, and services. The team also discussed the plans of Department of Children and Family Services to change Student's residential placement, and an appropriate school setting for Student depending upon where Department of Children and Family Services placed Student, including whether Student should attend public school or a nonpublic school. Student expressed her opinions regarding where she wanted to go to school, and stated that she did not want a one-to-one aide. The team extensively discussed Student's behavior and social-emotional goals. Student and her attorneys actively participated in the meeting, asking questions and making comments and suggestions. Los Angeles Unified addressed their concerns. Student's attorney suggested changes to the IEP, and suggested that the team close the IEP and hold another IEP when Student's new placement was ascertained. Student's attorneys did not request that the team, or any of its members, review Dr. Large's report, and Dr. Large's report was not reviewed at the meeting. Nearly all team members commented on, and complimented Student on, the progress Student had made.

153. At hearing, Dr. Large discussed her opinions of the behavior support plan included in this IEP. She felt the behavior support plan was partly adequate, and that implementing it might help the off-task behavior targeted by the behavior support plan. However, she stated it did not provide enough support for Student to regulate herself and maintain herself in class, based upon the assessment Dr. Large performed in May 2014. She also commented that Student's continued inability to regulate her own emotions and behavior would have been ameliorated had Student had a one-to-one

behavioral aide. Dr. Large did not express any criticisms of Ms. Coleman's or Ms. Atwood's assessments.

154. Dr. Large also felt that it was important for the IEP team to include Student's residential placement in her IEP because of its impact on the educational setting, and Student required interventions across settings to obtain a lower level of care. However, she did not know that the Superior Court had ordered Department of Children and Family Services to provide a placement for Student. Student did not demonstrate through Dr. Large's assessment report and her testimony that the October 21, 2014 IEP was not reasonably calculated to permit Student to make meaningful educational progress.

155. On November 18, 2014, Ms. W. signed her consent to implementation of the IEP, but disagreed that it constituted a FAPE. She did not specify at that time why she did not believe that the IEP constituted a FAPE.

STUDENT'S PROGRESS AFTER THE OCTOBER 21, 2014, IEP MEETING

156. Student's grades for the fall semester of the 2014-2015 school year (from August 16, 2014, through January 15, 2015) were: C's in English and Strategic Literature, a C- in Health, and Incompletes in Physical Education, World History, Biology, and Algebra. Student had another psychiatric hospitalization on January 6, 2015, which resulted from an event that occurred in the residence and not in the classroom. There was no evidence that Student had any additional psychiatric hospitalizations through the time of the hearing.

PLACEMENT AND PROGRESS AT OPEN VISTA NONPUBLIC SCHOOL

157. In or about mid-January 2015, Department of Children and Family Services removed Student from the Vista residence and placed her in another placement in Fullerton, California, from which she ran away. Fullerton is outside of the boundaries of

Los Angeles Unified. Department of Children and Family Services then placed Student at Delilu, a level 12 temporary residential placement located within the boundaries of Los Angeles Unified, and provided her with a one-to-one aide in the residence. In February 2015, at about the time the hearing in this matter commenced, Department of Children and Family Services placed Student at Diamondale, a level 12 residential licensed children's institution located in Carson, California, which is also within the boundaries of Los Angeles Unified. There was no evidence as to whether Student had a one-to-one aide in the residence at Diamondale. On or about January 30, 2015, while Student was at Delilu, Los Angeles Unified placed Student at the open Vista nonpublic school, and continued to place her there when she transitioned to Diamondale. Los Angeles Unified paid for Student's transportation to and from the open Vista nonpublic school and Diamondale.

158. Student's attendance at the open Vista nonpublic school was good. She stayed in all of her classes, except for math, for the entire period. She was prepared for class, she did her classwork, and she participated in class. She did not like math, and therefore she did not stay in math class. When she left class, or when she arrived for class but did not enter, she sat on a bench outside of the class, and sometimes an aide or counselor would sit with her and help her with math. The open Vista nonpublic school provided a therapeutic environment, in that trained counseling staff from the Vista level 12 residential facility was available on-site.

159. As of January 15, 2015, Student was in 10th grade. She was on track to graduate on time with a diploma in spring 2017, when she would be 18 years old.

SUPPLEMENTAL REPORT BY MARY LARGE, PH.D.

160. In February 2015, at Student's counsel's request, Dr. Large observed Student in her new academic placement at the open Vista nonpublic school and

interviewed some of the Vista del Mar personnel who were involved with Student. Dr. Large wrote a report of her investigation, dated February 16, 2015.

161. Dr. Large observed Student in her English class for about 20 minutes. Student was well-behaved and prepared for class. Student did not display any behavior that might be viewed as disruptive to the learning process.

162. Dr. Large re-interviewed Mr. Watterson, Student's former residence supervisor at the locked Vista residence, who updated her on Student's behavior since Dr. Large's initial evaluation. Mr. Watterson advised that Student had improved in her ability to verbalize her needs and feelings, and she was working to build trust with adults and peers. Student had progressed to the highest levels on the residential unit, and was able to develop positive peer relationships. Mr. Watterson informed Dr. Large of Student's behavioral deterioration towards the end of her stay at the locked Vista residence, when she was disappointed because her transition out of the residence was delayed. At the same time, other girls were able to transition out of the facility and new girls entered who could be provocative and who evoked Student's suspicions. Student was hospitalized briefly towards the end of her stay at the locked Vista residence.

163. Dr. Large reported that she spoke with the supervisor of Delilu, Keta Davis, who advised that Student had some good days and some not-so-good days, with occasional verbal tantrums and one instance of property destruction. Student's peer interactions were sometimes good and sometimes not so good.

164. Dr. Large documented her interviews with several of Student's teachers at the open Vista nonpublic school. Ms. Pierce, student's history teacher, Ms. Mendel, who taught Student English and art, and Mr. Devian, Student's physical education teacher, all reported that Student's behavior was appropriate, non-disruptive, and not aggressive. She did not interact with her peers very much, but she did not have negative peer relationships. Ms. Farkas, Student's math teacher, reported that Student only remained

in class the entire period on her first day in class. Since then, she only came into the class for a short period of time at the beginning of class. Then she left and sat quietly outside the classroom until class ended. She was not disruptive. She has not confided in any adult as to why she would not stay in class. Ms. Farkas advised Dr. Large that there were plans to bring another staff person into the classroom to help encourage Student to stay in class, and to provide support for Student while she sat outside of class. This person would not, however, be a one-to-one aide for Student.

165. Dr. Large concluded that Student was making a mostly positive transition to her new academic placement, and was relatively stable at Delilu. Dr. Large was concerned about Student's failure to participate in her math class and her failure to respond to adult inquiries regarding her unwillingness to stay in class. She posited that there might be gaps in Student's math skills and knowledge which might be contributing to her resistance to learning math. Dr. Large was also concerned that Student was missing math instruction. She recommended that Student have a one-to-one behavior aide only for math class. Dr. Large maintained that, since she was unaware that Student received any specialized instruction to address her deficits in reading comprehension, Student still required such additional, specialized support. Finally, Dr. Large recommended that Student continue her placement in a therapeutic residential facility. Such a placement was required to provide Student the level of emotional and behavioral containment necessary to facilitate interpersonal functioning and learning, and, without it, she was unlikely to derive much, if any benefit from her educational environment. Provided Student could maintain some degree of self-regulation similar to what she had achieved at the locked Vista residence, Dr. Large recommended that she continue to be placed at a level 12 residential facility, and that she have a one-to-one aide at the residence.

166. Dr. Large elaborated upon her supplemental report at hearing. She explained that all data showed that Student made adequate progress so as to be placed in a level 12 facility. She believed that a one-to-one behavior aide was necessary for Student to retain stability in that setting. Ideally, the level 12 residential placement would include an on-site nonpublic school, to offer more stability and more consistency to Student. She realized that might not be possible, but she strongly advised that the nonpublic school provide therapeutic support. In her opinion, Vista Del Mar with its Level 12 residential facility and the open Vista nonpublic school was an appropriate placement. However, if Vista Del Mar were not available, she deferred to an educational consultant to select the appropriate long-term level 12 placement with a one-to-one aide. She believed it would be appropriate if Department of Children and Family Services placed her there, or if Los Angeles Unified placed her there.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹³

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.;¹⁴ 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them

¹³ Unless otherwise indicated, the legal citations in this introduction are incorporated by reference into the analysis of each issue decided below.

¹⁴ Unless otherwise stated, all references are to the 2006 edition of the Code of Federal Regulations.

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. "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. The IEP 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 Dist. 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, the *Rowley* court decided that the

FAPE requirement of the IDEA was met when a child received access to an education that was 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).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) 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 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student has the burden of persuasion as to the issues designated “Student’s Issues,” since they were the subject of Student’s Complaint, and Los Angeles Unified has

the burden of persuasion as to the issues designated “Los Angeles Unified’s Issues,” since they were the subject of Los Angeles Unified’s Complaint.

STUDENT’S ISSUE 1(A)(1): FAILURE TO TIMELY PERFORM BEHAVIORAL ASSESSMENTS

5. Student contends that Los Angeles Unified should have performed a functional behavioral assessment before the June 4, 2013 IEP meeting, and that Los Angeles Unified failed to comply with the assessment timelines for completing the assessment. Specifically, Student contends that her educational rights holder requested a functional behavioral assessment at the June 4, 2013 IEP meeting but Los Angeles Unified did not provide the assessment plan until September 24, 2013, which was beyond the required due date for the assessment plan. Furthermore, Los Angeles Unified did not complete the assessment and hold the IEP meeting within the statutory 60-day timeline, and did not comply with the Department of Education’s order because Los Angeles Unified personnel did not conduct the assessment.¹⁵

6. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student’s educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) (*Target Range.*) Citing *Rowley, supra*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but determined that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Target Range, supra*, at 1484.) This principle was subsequently codified in the IDEA and Education Code, both of which provide that a procedural violation only

¹⁵ Student’s contention regarding the identity of the assessor is not addressed with respect to this issue because (a) it was not alleged in Student’s Complaint (Ed. Code, § 56502, subd. (i)); and (b) it has no bearing on the timeliness of the assessment.

constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's¹⁶ opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).) The failure to comply with procedures for assessments is a procedural violation. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2005) 464 F.3d 1025, 1031.)

7. The IDEA and California law require that an IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address behavior when a student's behaviors impedes his learning or that of others. (34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1). Under the IDEA, the Department of Education recommends that school districts be proactive and perform a functional behavioral assessment when a child engages in behaviors which interfere with learning. Following the functional behavioral assessment, a school district develops a behavior support plan or a behavioral intervention plan. (Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46721 (August 14, 2006.))

8. A school district shall develop a proposed assessment plan within 15 calendar days of a request for assessment, unless the parties agree in writing to an extension. (Ed. Code, § 56043, subd. (a).) A parent shall have at least 15 calendar days from the receipt of the proposed assessment plan to consent to the proposed assessment plan. (Ed. Code, § 56403, subd. (b).) However, when the request for assessment has been made 10 days or less prior to the end of the school year, the assessment plan shall be sent to parent within 10 days after the commencement of the

¹⁶ For purposes of this Decision, and for purposes of educational decision making, parent is Student's educational rights holder.

subsequent school year. Thereafter, a school district must conduct the assessment and convene an IEP to discuss the assessment no later than 60 calendar days from the date of receipt of the parent's written consent to assessment (excluding days of school vacation in excess of five school days), unless the parent agreed in writing to an extension. (Ed. Code, § 56043, subd. (d).)

9. Student's contention that Los Angeles Unified was obligated to perform the functional behavioral assessment prior to the time of the June 4, 2013 IEP meeting, when Student's educational rights holder requested such an assessment, is unmeritorious. Student presented no legal authority or evidence to support this contention.

10. Student arrived at the locked Vista nonpublic school and in Los Angeles Unified in April 2013, accompanied by the County Office of Education IEP from her previous educational placement at Juvenile Hall. That IEP did not contain a behavior support plan and only provided one hour of counseling per week. That IEP did not contain any request for a functional behavioral assessment.

11. At the time of the June 4, 2013 IEP meeting, Student had been at the locked Vista nonpublic school for only six weeks. During that period of time, her classroom behaviors were monitored not only on a daily basis, but almost on a minute-to-minute basis. This data provided the foundation for the functional behavioral assessment that Ms. Atwood eventually conducted. Until this data was collected, and until Student had settled into her new educational and residential setting, a meaningful functional behavioral assessment could not have been performed. Additionally, Student was receiving counseling not only in school, but also a panoply of counseling and therapy in the locked Vista residence, where staff also closely monitored her behaviors. In short, Student's behavioral needs were not neglected or ignored at any time while she was attending the locked Vista nonpublic school. To the contrary, teachers and staff at

both the nonpublic school and the residence were scrutinizing her behaviors from the time she entered Vista Del Mar. Under these circumstances, Student did not demonstrate that Los Angeles Unified's failure to conduct a functional behavioral assessment immediately upon Student's arrival at the nonpublic school violated any special education procedure, let alone that Los Angeles Unified's conduct impeded Student's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits.

12. Turning to the issues raised by the Student's compliance complaint, the Department of Education found that Los Angeles Unified did not comply with the statutory timelines regarding sending the assessment plan for the functional behavioral assessment that Student's educational rights holder requested at the June 4, 2013 IEP meeting. The Department of Education found that Los Angeles Unified did not send an assessment plan within 10 days from the beginning of the 2013-2014 school year (or on August 23, 2013),¹⁷ but rather sent it on September 24, 2013, beyond the required due date. Therefore, the Department of Education found that Los Angeles Unified had violated the statutory timeline of Education Code section 56321, subdivision (a).

13. Subsequently, Los Angeles Unified received the signed assessment plan on November 20, 2013, but did not hold an IEP to discuss the assessment results until February 26, 2014, past the 60 calendar-day period for holding an IEP after receiving

¹⁷ In fact, the Department of Education calculated the due date incorrectly. The first day of the 2013-2014 school year for Vista nonpublic school was August 19, which meant that Los Angeles Unified had until August 29, 2013, not August 23, 2013, to send the assessment plan. This error does not affect the Department of Education's reasoning or conclusion with respect to the compliance complaint.

written consent to assess. The 60 calendar-day period of Education Code section 56043, subdivision (d) expired on approximately January 29, 2014, and therefore the February 26, 2014 IEP meeting was held approximately four weeks late.

14. However, Student failed to demonstrate that Los Angeles Unified's failure to comply with the assessment timelines, while complying with the Department of Education's order to complete the entire process by February 28, 2014, deprived Student of a FAPE. First, the Department of Education's order to Los Angeles Unified to conduct the assessments and hold the IEP did not specify that Los Angeles Unified was to complete the functional behavioral assessment and hold the IEP meeting within the Education Code timelines. Rather, the order only required that Los Angeles Unified complete the functional behavioral assessment and hold the IEP meeting, and then notify the Department of Education that it had completed these events by no later than February 28, 2014. Los Angeles Unified had indeed completed the functional behavioral assessment and the IEP meeting by that date.

15. Secondly, even if the Department of Education's order were not considered as a release of Los Angeles Unified from the obligation of complying with the Education Code timelines for completing the assessment and holding the IEP, Student did not demonstrate that this procedural violation: 1) impeded her right to a FAPE, 2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or 3) caused a deprivation of educational benefits. From the time that the assessments were requested, on June 4, 2013, until the assessments were completed and the February 26, 2014, IEP meeting was held, Student was in the level 14 Vista residence and enrolled in the locked Vista nonpublic school. As such, Student's behaviors were the focus of all staff who worked with Student, whether in the residence or in the nonpublic school. Observations regarding Student's behaviors were made and reported multiple times daily during that

period, by both staff in the residence and staff in the nonpublic school. Student received an abundance of behavioral services during nearly every waking hour, including group therapy and individual therapy, as well as milieu therapy in the residence. Student did not identify a behavioral need that was not addressed, or a single behavioral service that Student required and that she did not receive as a result of Los Angeles Unified's failure to comply with the assessment timelines. Under these circumstances, Los Angeles Unified's conduct did not deprive Student of a FAPE, significantly impair the educational rights holder's ability to participate in the IEP process, or deprive Student of an educational benefit.

STUDENT'S ISSUE 1(A)(2): FAILURE TO CONDUCT AN APPROPRIATE FUNCTIONAL BEHAVIORAL ASSESSMENT

16. Student contends that the functional behavioral assessment was inappropriate because Ms. Atwood was not competent to conduct the assessment and because she was not an employee of Los Angeles Unified. Further, the assessment data was unreliable, and the report of the functional behavioral assessment was not sufficiently comprehensive. Los Angeles Unified contends that the functional behavioral assessment and the report were appropriate.

Assessment Requirements¹⁸

17. There are no specific legal requirements for conducting a functional behavioral assessment. The general law pertaining to assessments provides that, before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) The pupil must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the pupil has a disability or whether the pupil's educational program is appropriate. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code, § 56320, subds. (e) & (f).) The assessment must be sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306.)

18. The school district must provide notice to the parents of a child with a disability, in accordance with 34 Code of Federal Regulations parts 300.503, that describes any evaluation procedure the agency proposes to conduct. (34 C.F.R. § 300.304.) The district must obtain informed parental consent prior to conducting an assessment or reassessment of a child with a disability. (34 C.F.R. § 300.300.) Parental consent pursuant to the IDEA requires that the parent be fully informed of all information relevant to the evaluation, the parent understands and agrees in writing to

¹⁸ Amendments to title 5 of the California Code of Regulations which were effective on July 1, 2014, changed various aspects of the law pertaining to assessments. Since all of the assessments at issue in this matter occurred before July 1, 2014, the law pertaining to assessments in this Decision is the law that was in effect prior to July 1, 2014.

the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom. (34 C.F.R. § 300.9.)

19. The general law pertaining to assessments provides that as part of a reevaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including teacher and related service providers' observations. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. §300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the school district must identify any additional information that is needed by the IEP team to determine the present level of academic achievement and related developmental needs of the student, and to decide whether modifications or additions to the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The school district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

20. Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).) Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) A health assessment shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56325, subd. (b).) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary

language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).)

21. In conducting the assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This includes any information provided by the parent which may assist in determining whether the student is a child with a disability and the content of the IEP. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).)

22. Assessments must be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d); 34 C.F.R. § 300.304(c)(3).)

23. The assessor must prepare a written report that includes: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) the need for specialized services, materials, and equipment for pupils with low incidence disabilities. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting required after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

24. The IEP team shall meet to review an initial formal assessment, and may meet to review any subsequent formal assessment. The team shall also meet upon the request of a parent to review, develop, or revise the IEP. (Ed. Code, § 56343, subd. (a), (c).)

25. The functional behavioral assessment was not fatally flawed in any manner asserted by Student. First, Ms. Atwood was qualified to perform the functional behavioral assessment. As a credentialed special education teacher, part of her training included training in conducting such assessments. Student criticized Ms. Atwood for not following Los Angeles Unified's April 7, 2014 Policy Bulletin 6269.0 regarding data collection and functional behavioral assessments. However, Student did not establish that the failure to follow Policy Bulletin 6269.0 rendered the functional behavioral assessment inappropriate. Student did not establish the relevance of the policy bulletin to the subject functional behavioral assessment. In this regard, Ms. Atwood's assessment was completed approximately two months before the policy bulletin was issued. Moreover, the policy bulletin referred to an assessment to replace the soon-to-be eliminated by law functional analysis assessment, which was a different type of assessment than the assessment Ms. Atwood conducted.

26. Second, Student cites no legal authority that the functional behavioral assessment was inappropriate because Ms. Atwood was employed by Vista Del Mar, and not by Los Angeles Unified. Ms. Atwood was Student's classroom teacher from the time Student enrolled in the locked Vista nonpublic school in April 2013 through the time Ms. Atwood performed the assessment. Therefore, at the time Ms. Atwood conducted the assessment, Ms. Atwood had been assigned to spend with Student over four hours per day, five days per week for approximately seven months, which was more time than any Los Angeles Unified employee spent with Student at any time during Student's tenure in Ms. Atwood's classroom. Indeed, Ms. Atwood's intense familiarity with Student

at the time Ms. Atwood conducted the functional behavioral assessment supports that she was qualified to conduct the functional behavioral assessment.

27. Finally, the functional behavioral assessment was based on sufficient data and was sufficiently comprehensive. The assessment was based on a records review, Ms. Atwood's observations of Student while in her classroom, Ms. Ceballos' observations of Student, Ms. Cannon's observations of Student while in Ms. Cannon's classroom, and data that recorded nearly every minute of every day that Student was in the nonpublic school. Student presented no evidence that the functional behavioral assessment did not accurately identify the behaviors it assessed. Student contends that Ms. Atwood failed to identify the interventions that Student needed to access her curriculum, such as a one-to-one aide. The functional behavioral assessment did not make any specific recommendations. However, the assessment report identified the efforts made by classroom staff to manage Student's behaviors. In any event, Ms. Atwood ultimately determined, outside of the assessment process, that Student did not need a one-to-one aide since Student was not a danger to herself or others. Moreover, the one-to-one aide could not have prevented Student's absences from school, and Student did not want a one-to-one aide. Student cited no legal authority that Ms. Atwood's failure to make recommendations in her report made the assessment inappropriate. Indeed, as is further discussed below, the behavior support plan which was based upon Ms. Atwood's functional behavioral assessment contributed to the behavior progress which Student ultimately achieved.

28. When Ms. Atwood presented the functional behavioral assessment report at the February 26, 2014 IEP meeting, there was no evidence that any IEP team member questioned or criticized it, even though both Student's educational rights holder and Student's attorney were present at the meeting. Nor did Student establish at hearing how any of Student's representatives were impeded from participating in the meeting

by reason of any aspect of the assessment or report. Indeed, even Student's expert, Dr. Large, did not criticize the functional behavioral assessment, either in her reports or at hearing. Under these circumstances, Student did not demonstrate that the functional behavioral assessment was inappropriate, and Student did not demonstrate that she was deprived of a FAPE by reason of the assessment. Student failed to demonstrate that any deficiency in the functional behavioral assessment deprived Student of a FAPE, substantially interfered with her educational rights holder's ability to participate in the IEP process, or deprived Student of an educational benefit.

STUDENT'S ISSUE 1(A(3): FAILURE TO CONDUCT AN APPROPRIATE EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

29. Student contends that Ms. Coleman's educationally related mental health services assessment was inappropriate because Ms. Coleman did not evaluate Student's need for residential placement, and did not evaluate Student's mental health needs as they related to Student's academic functioning. Los Angeles Unified contends that Student was not required to evaluate Student's need for a residential placement because Department of Children and Family Services, which had the obligation to provide residential placement for Student pursuant to court order, had already placed Student in a residential placement. Moreover, Los Angeles Unified does not conduct educationally related mental health services assessments for residential placement. Rather, it conducts assessments of social-emotional needs and presents those findings to the IEP team to determine whether a student requires a residential placement for educational reasons to meet Student's needs noted in the report. Furthermore, Ms. Coleman evaluated Student's mental health needs as they related to Student's academic functioning, and recommended that Student receive educationally related mental health services at school.

30. Student's contentions are unmeritorious. Student presented no legal authority or evidence to support its theory that Los Angeles Unified must conduct an educationally related mental health services assessment for residential placement so as to have an appropriate assessment. Los Angeles Unified educationally related mental health services assessment reports do not make recommendations for residential placement because Los Angeles Unified convenes an IEP meeting to review the results of the assessment, and the IEP team decides whether residential placement is appropriate. Nor did Student demonstrate, under the circumstances of this case, that when Department of Children and Family Services has an obligation to provide Student a placement and that Department has undisputably been fulfilling its obligation by providing Student an appropriate placement, that Los Angeles Unified has any obligation to conduct an assessment to determine whether Student requires a residential placement.

31. Student's contention that Ms. Coleman did not evaluate Student's mental health needs in relation to her academic functioning is factually incorrect. In her report, Ms. Coleman determined that Student's attention difficulties in the classroom environment was a factor in her educational performance and were mainly attributable to her mental health and social emotional needs. She further stated that Student's emotional status interfered with her being sufficiently compliant so as to produce work that represented her ability and potential.

32. Under these circumstances, Student has not demonstrated that the educationally related mental health services assessment was not appropriate.

STUDENT'S ISSUE 1(A)(4): FAILURE TO CONDUCT AN APPROPRIATE PSYCHOEDUCATIONAL ASSESSMENT

33. Student contends that Los Angeles Unified failed to conduct an appropriate psychoeducational assessment because (a) the assessor did not interview or

obtain reports from residential staff; (b) Ms. Coleman did not provide a valid description of Student's social-emotional functioning and needs; (c) Ms. Coleman deferred to the IEP team as to Student's eligibility and placement, and (d) Ms. Coleman did not appropriately analyze the test results. Los Angeles Unified contends that there was no legal requirement to obtain input from the residential staff, that Ms. Coleman properly assessed Student's social emotional needs and provided a valid description of Student's social emotional functioning and needs, that Ms. Coleman was required to defer determination of eligibility and placement to the IEP team, and that Ms. Coleman properly analyzed the assessment results.

34. Student's contentions are not meritorious. There was no legal requirement that Ms. Coleman interview the staff at Student's residence to perform an appropriate assessment. Ms. Coleman's assessment did not merely involve information pertaining to the four walls of Student's classroom. Ms. Coleman performed an extensive records review, which included background information regarding Student's mental health and emotional status, and her previous residential and educational settings, including information regarding her psychiatric hospitalizations. She also obtained information directly from Student, through the Piers-Harris and Conner's Ratings scales, which involved Student's feelings and conduct in general, not just in school. Ms. Coleman also obtained information directly from Student's educationally related mental health services counselor, Ms. Mazic, who was familiar with Student's behavior both in class and in the residence. Ms. Coleman's failure to interview residence staff did not make the assessment inappropriate, as she obtained the information from other sources.

35. Ms. Coleman's assessment also adequately assessed Student's social-emotional functioning and needs. Indeed, her assessment focused on Student's behaviors and emotional problems, and she obtained such information not only through records reviews but through Ms. Atwood, Ms. Mazic, and Student herself. Ms. Coleman

even used the 20 minutes during which Student objected to Ms. Coleman's presence in the classroom to observe and record Student's behavior during that event.

36. Ms. Coleman's assessment included an analysis as to whether Student met the criteria under the eligibility category of emotional disturbance. Ms. Coleman concluded that Student did so. However, Ms. Coleman referred the decision as to eligibility and placement to the IEP team. Student presented no legal authority that this course of action, which complied with Los Angeles Unified's policies, was improper.

37. Finally, contrary to Student's contention, Ms. Coleman's report sufficiently analyzed the test results and related them to Student's behaviors as reported by Ms. Atwood and Ms. Mazic, as well as to Student's classroom performance. In this regard, Ms. Coleman considered whether Student's responses to the ratings scales represented denial or limited insight. Ms. Coleman's report demonstrated that the information she obtained regarding Student's behaviors from interviews with Ms. Atwood and Ms. Mazic were consistent with their ratings of Student on the various rating scales.

38. There was no evidence that any member of the IEP team criticized or questioned Ms. Coleman's report when the report was presented at the February 26, 2014 IEP team meeting. There was no evidence presented at hearing that Ms. Coleman's report was inaccurate, or that her conclusions were in error, or how any purported error deprived Student of an educational benefit, impeded Student's right to a FAPE, or significantly impeded participation in the educational decision making process. Under these circumstances, Los Angeles Unified did not deprive Student of a FAPE by reason of any of the defects that Student has alleged.

STUDENT'S ISSUES 1(A)(5) AND 1(A)(7): FAILURE TO DISCUSS RESIDENTIAL PLACEMENT AT THE OCTOBER 21, 2014 IEP MEETING AND PREDETERMINATION OF RESIDENTIAL PLACEMENT

39. Student contends that Los Angeles Unified committed procedural violations of the IDEA and the Education Code by failing to consider the continuum of placement options in that it failed to discuss Student's need for a residential placement for purposes of a FAPE at the October 21, 2014 IEP meeting. Student also contends that Los Angeles Unified had predetermined Student's placement at that meeting, due to its belief that Department of Children and Family Services was responsible for Student's residential placement. Los Angeles Unified contends that it was not required to consider and/or offer a residential placement because Department of Children and Family Services had control over Student's residential placements, and that Department of Children and Family Services had determined prior to the meeting that Student would be discharged from the locked Vista residence and placed in a group home with a lower level of residential care. Further, the IEP team members fully participated in the discussion as to where Student would attend school while she was at the locked Vista residence.

40. In determining the educational placement of a special education student, the IEP team must consider placements along the continuum of alternative placements. (34 C.F.R. §§ 300.114-300.118; Ed. Code, § 56342.) Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances in which placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F. 2d 840, 857-859.) (*Deal*). To fulfill the goal of parental participation in the IEP process, the school district is required to conduct a meaningful IEP meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding

the IEP team's conclusion, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 [parent who had an opportunity to discuss a proposed IEP and whose concerns were considered by the IEP team has participated in the IEP process in a meaningful way].) "A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." (*Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) However, an IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an "education . . . designed according to the parent's desires."].) The relevant question in considering whether there has been predetermination is whether the school district came to the IEP meeting with an open mind. (*Deal, supra*, 392 F.3d at 858; *Doyle v. Arlington County School Bd.* (1982) 806 F.Supp. 1253, 1262.)

41. Education Code section 56155 et seq. sets forth the responsibilities of a school district when a child who is eligible for special education and related services has been placed in a licensed children's institution by a court or public agency other than an educational agency. Education Code section 56157, subdivision (a), provides that a district, in providing appropriate programs to children receiving special education who reside in a licensed children's institution, shall first consider public school programs. If those programs are not appropriate, special education and related services shall be provided by contract with a nonpublic school. Education Code section 56159 provides that if a school district did not make the decision to place a special education student in a licensed children's institution or foster home, the public agency placing the student shall be responsible for the residential costs and the non-educational costs for that student. Government Code section 7581 echoes Education Code section 56159, in that it

also provides that the residential and non-educational costs of a child placed in a medical or residential facility by a public agency, other than a school district, shall not be the responsibility of the state or school district, but shall be the responsibility of the placing agency. Government Code section 7579.1, subd. (b), provides that when a student who has an IEP is discharged from a licensed children's institution or foster family home, it shall be the responsibility of the receiving local educational agency to ensure that the student receive an appropriate educational placement that commences without delay, in accordance with Education Code 56325 [pertaining to inter-district transfers of special education students].

42. The Department of Children and Family Services Policy Manual (revised July 1, 2014), provides that Department of Children and Family Services is required, by law, to ensure that foster care youth with mental health needs receive necessary, individualized mental health services in the most home-like setting appropriate to their needs, including intensive psychiatric treatment. The evidence demonstrated that this policy was in effect at all times relevant to this matter.

43. Student did not demonstrate that Los Angeles Unified had any obligation to discuss the placement proposed by Department of Children and Family Services at the October 21, 2014 IEP meeting, or that Los Angeles Unified predetermined Student's residential placement so as to deprive Student of a FAPE under the circumstances of this case. First, the placement of Student by Department of Children and Family Services was in conformity with the court order that Department of Children and Family Services provide a permanent placement for Student. Second, there was no dispute by any party at hearing but that Department of Children and Family Services was fulfilling its independent legal obligation to provide a placement that would meet Student's mental health needs. Significantly, no party cited any authority that this obligation of Department of Children and Family Services is abrogated and Student's placement

becomes the sole responsibility of Los Angeles Unified if those mental health needs are *also* considered educational needs such that Student requires such placement and services to receive a FAPE. Government Code section 7579.1 would not support such a contention, as it does not rule out that the placement by the public agency might be necessary for the Student to receive a FAPE. Therefore, section 7579.1 requires that, when the Student is discharged, the responsible school district must immediately provide an "appropriate educational placement." Third, Department of Children and Family Services placed Student at the locked Vista residence based solely upon her need for intensive psychiatric treatment. Similarly, Department of Children and Family Services later changed Student's placement to a lower level of residential care, based not upon Student's need for educational services, but based solely upon her mental health needs. Fourth, there was no dispute at hearing but that the decision of Department of Children and Family Services to place Student at the locked Vista residence was appropriate. Student's expert, Dr. Large, agreed that Student's placement in this facility was an appropriate residential placement for Student. Fifth, there was also no dispute at hearing but that the decision of Department of Children and Family Services to move Student to a lower level of residential care, as was announced at the October 21, 2014 IEP meeting, was also appropriate. Dr. Large agreed that the transition of Student to the Delilu facility in late 2014 was appropriate.

44. Since Department of Children and Family Services was meeting its legal obligations to Student at all times relevant to Student's Complaint, Education Code section 56157, subdivision (a), applied, such that Los Angeles Unified's only obligation to Student was to provide an appropriate nonpublic school placement and related services. Student theorizes that Los Angeles Unified had an obligation to discuss a residential placement and to offer her a residential placement because Student required a residential placement to receive a FAPE. However, Student has offered no legal authority

that such is the case when Department of Children and Family Services is, as here, obligated to, and did, provide an appropriate residential placement for Student. Student has provided no legal authority that states that when, as here, a public agency that is not a school district or local educational agency is obligated to provide a placement or service, *and* provides such a placement or service, *and* the placement or service is appropriate, a school district must *also* offer to provide such a placement or service in the IEP. Student has cited nothing in the IDEA or the Education Code that requires a school district to offer duplicative services in that situation, even if the service or placement that the non-educational agency is providing may be necessary for the Student to receive a FAPE.¹⁹

45. In support of her position, Student relies on *Seattle School Dist. v. B.S.* (9th Cir. 1996) 82 F.3d 1493 (*Seattle*)²⁰. The *Seattle* court determined that a school district was required to provide an out-of-state therapeutic residential placement for a special education student with behavioral challenges, and that the placement, which was recommended by the student's experts, was an appropriate educational placement even

¹⁹ The situation would be different if Department of Children and Family Services were not fulfilling its obligations to provide Student an appropriate placement. In that instance, if Student required a particular placement for educational purposes, and Department of Children and Family Services was not providing it, Los Angeles Unified might be obligated to petition the Los Angeles Superior Court to modify the placement pursuant to Welfare and Institutions Code sections 362 or 388. Since Department of Children and Family Services has fulfilled its placement obligations thus far, the scenario contemplated by those code sections has not arisen.

²⁰ *Abrogated in part on other grounds by Schaffer v. Weast* (2005) 546 U.S. 49, 56-58, 126 S.Ct. 528, 163 L.Ed.2d 387.

though it also addressed student's medical and psychiatric disorders. The issue raised by Student's case, however, was not addressed by the *Seattle* court, as there was no juvenile court-ordered placement in *Seattle*. The issue here is whether Los Angeles Unified is required to offer a therapeutic residential placement in an IEP when Student has already been placed there by Department of Children and Family Services pursuant to the legal obligations of Department of Children and Family Services to provide Student such an appropriate placement. *Christopher T. v. San Francisco Unified School Dist.* (N.D. Cal. 1982) 553 F. Supp. 1107 (*Christopher*), also relied upon by Student, involved children who required residential placements but were referred by the school district to the San Francisco Department of Social Services for such placement, and/ or were advised that such residential placements were only available through the Department of Social Services. The court held that the Education for All Handicapped Children Act, the federal statute that was a precursor to the IDEA, required the school district to fund the residential placements for these students, as the residential placements were necessary for students to receive any educational benefit from their education. (*Id.* at p. 1119.) The facts in *Christopher* are not apposite to Student's case, however. Los Angeles Unified has never referred Student to Department of Children and Family Services for residential placement, or advised Student that the only method by which she could receive a residence placement was through that Department. Indeed, although Los Angeles Unified convened three IEP meetings for Student, there was no evidence that Student's counsel or her educational rights holder ever requested that Los Angeles Unified provide her with a therapeutic residential placement at any of those meetings. Rather, Department of Children and Family Services has been under a court order and an independent legal obligation to provide Student an appropriate residential placement, and it has done so, even before Los Angeles Unified had any role in educating Student.

46. Student also relies upon *County of Los Angeles v. Smith* (1999)⁷⁴ Cal. App. 4th 500 (*Smith*), to assert that Los Angeles Unified must offer Student a residential placement under the doctrine of federal preemption. Student's reliance is misplaced, as federal preemption is not at issue here. *Smith* involved whether Los Angeles County was entitled to reimbursement by the parents of a child who was a ward of the court for the costs incurred by the County in placing the child in a therapeutic residential facility. The Welfare and Institutions Code provided for such reimbursement. However, the child was eligible for special education as a child with severe emotional disturbance. The court determined that the IDEA required the County to provide Student a FAPE, and that this obligation was in conflict with the state statutes permitting the County to be reimbursed for its placement of the special education Student at the therapeutic residential facility. Therefore, the IDEA preempted the state statutes upon which the County relied in seeking reimbursement from student's parent for student's care while he was at the residential facility. The present case, however, does not involve any conflict between state law and the IDEA. There is no dispute that Los Angeles Unified must provide a FAPE under both the IDEA and the Education Code, and there is no dispute but that Department of Children and Family Services has been providing Student an appropriate residential placement. Rather, the issue in this case is one which the IDEA does not address, which is whether Los Angeles Unified is obligated to offer Student a residential placement when Department of Children and Family Services is already providing an appropriate residential placement pursuant to court order and its own, acknowledged independent legal obligation to meet Student's mental health needs. In short, Student has not cited any law or case that specifically addresses the issue which she has presented, and which also supports her position. Rather, the applicable law regarding Los Angeles Unified's obligations in this situation, relative to the obligations of

Department of Children and Family Service in this situation, is contrary to Student's position.

47. Moreover, any failure on the part of Los Angeles Unified to discuss the need for a residential placement option at the October 21, 2014 IEP meeting was not a procedural violation so as to deprive Student of a FAPE. As is further described below, placement options for Student were discussed at the meeting, such that Student's educational rights holder's right to participate in the decision making process was not significantly impeded. Additionally, nobody at the IEP meeting requested that Los Angeles Unified offer any residential placement for Student. There was no dispute but that Student's placement at the locked Vista residence as well as at Delilu, the level 12 residential placement, were appropriate, such that Student was not deprived of an educational benefit, and Student's right to a FAPE was not impeded.

48. Finally, there was no evidence that the October 21, 2014 IEP was presented to the educational rights holder already developed, on a "take it or leave it" basis, as was criticized in the cases cited above. Rather, the IEP was developed with input from Student's attorneys, representatives of Vista Del Mar, and representatives of Los Angeles Unified. The discussion at the meeting was wide-ranging. It included discussions of not only the present levels of performance, goals, accommodations, and services, but also a discussion regarding the plans of Department of Children and Family Services to change Student's residential placement, and an appropriate school setting for Student depending upon where Department of Children and Family Services placed Student. This discussion included whether Student should attend public school or a nonpublic school. The team extensively discussed Student's behavior goal and social emotional goal. Student's attorneys and Student asked questions at the meeting, and expressed their concerns and ideas, and Los Angeles Unified addressed their concerns. One of

Student's attorneys suggested changes to the IEP, and suggested that the team close the IEP and hold another IEP when Student's new placement was ascertained.

49. Under the circumstances of this case, Student has not met her burden of demonstrating that Los Angeles Unified had an obligation to offer Student a residential placement at the October 21, 2013, IEP meeting. Therefore, Los Angeles Unified had no obligation to participate in the discussion regarding the placement of Student by Department of Children and Family Services. Moreover, Los Angeles Unified cannot be liable for predetermining Student's placement because it had no authority over Student's residential placement at the time.

STUDENT'S ISSUE 1(A)(6): FAILURE TO REVIEW DR. LARGE'S INDEPENDENT ASSESSMENT AT THE OCTOBER 21, 2014 IEP MEETING

50. Student contends that Los Angeles Unified's failure to review Dr. Large's independent neuropsychological report at the October 21, 2014 IEP meeting was a procedural violation that deprived parent of the opportunity to participate in the IEP process. Los Angeles Unified contends that the October 10, 2014 letter from Mr. Conklin to Ms. Merrill at Vista Del Mar regarding topics to be covered at the IEP meeting did not include the topic of Dr. Large's report, and therefore Los Angeles Unified had no obligation to review the report.

51. If a parent obtains an independent assessment at public expense, or shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of a FAPE. (34 C.F.R. § 300.502(c); Ed. Code §§ 56341, subd. (b)(1) and 56381, subd. (b).) The duty to consider the evaluation does not obligate the school district to accept the evaluation or its recommendations, or discuss the report at the IEP meeting. (*G.D. v. Westmoreland School Dist.* (1st Cir. 1991) 930 F.2d. 942, 947) (*Westmoreland*). A district's failure to consider an independent

assessment is a procedural violation. (*Marc M. ex rel. Aidan M. v. Dept. of Ed.* (D. Hawaii 2011) 762 F. Supp 1235, 1245.)

52. The evidence was undisputed that Los Angeles Unified received Dr. Large's June 8, 2014 report prior to the October 21, 2014 IEP meeting. The report was briefly referred to by Student's counsel at the October 21, 2014 IEP meeting, but the IEP team did not review the report at that IEP meeting. There was no evidence that Los Angeles Unified reviewed the report at any other time.

53. The fact that Student's counsel did not request the report be reviewed at the IEP meeting did not absolve Los Angeles Unified of the obligation to review the report. This is especially so because, under *Westmoreland, supra*, the report need not be reviewed at an IEP meeting; it simply has to be reviewed.

54. The failure of Los Angeles Unified to review the report deprived the educational rights holder of the ability to participate in the development of the IEP, and potentially deprived Student of an educational benefit. Dr. Large was able to assess Student's cognitive and academic activities to an extent no Los Angeles Unified assessor had been able to, and Dr. Large's report included the most recent and best information that Los Angeles Unified had ever had with respect to Student's cognitive ability and academic achievement. To the extent that the present levels of performance in the October 21, 2014 IEP did not include Dr. Large's assessment results, the IEP was incomplete, and/or inaccurate. Further, Dr. Large's assessments reflected that Student might have learning disabilities in reading and math. Dr. Large's conclusions as to Student's learning disabilities were based on Diagnostic and Statistical Manual criteria and not the criteria for such disabilities in the IDEA and California special education law. However, Dr. Large's report put Los Angeles Unified on notice that these were areas of suspected disability for Student. The law requires that a school district investigate areas of suspected disability and determine whether Student's needs in those areas require

special education and related service to provide students with a FAPE. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, §§ 56320, subd. f.). Accordingly, Los Angeles Unified's failure to review Dr. Large's assessment report significantly prevented meaningful parental participation in the educational decision making process, and deprived Student of a FAPE. Therefore, she is entitled to the remedies set forth below.

STUDENT'S ISSUE 1(A)(8): PREDETERMINATION OF STUDENT'S PLACEMENT AND SERVICES AT THE FEBRUARY 26, 2014 IEP MEETING BY NOT OFFERING A ONE-TO-ONE BEHAVIOR AIDE

55. Student contends that Los Angeles Unified predetermined Student's placement and services at the February 26, 2014 IEP meeting because one-to-one aides were not ordinarily provided in Vista's level 14 nonpublic school, even though such assistance was requested by Student's attorney, by Department of Children and Family Services, and by Vista residence staff at the IEP meeting.

56. Student's contention is unmeritorious. First, there was no evidence that the issue was predetermined simply because of Student's placement in the level 14 nonpublic school. In fact, Student had a one-to-one aide in the level 14 nonpublic school for a brief period of time, albeit mistakenly, and the evidence reflected that one-to-one aides would be provided in the locked Vista nonpublic school when the student's behavior in class was dangerous to herself or others. The evidence reflected that Department of Children and Family Services and Vista residence staff requested the one-to-one aide in class to decrease incidents of AWOL, which belies that an aide could not be provided because of Student's placement. The team determined, after discussion at the IEP meeting, and based on the information that was reasonably available to the team at that time, that Student's academic and behavior needs could be met without a one-to-one aide. Student's behaviors in class were disruptive and defiant and she had difficulty controlling her emotions; however they were rarely physically aggressive.

Furthermore, a one-to-one aide, who would not legally be able to touch Student, would not be able to stop Student in the event she decided to leave the classroom. Finally, the undisputed testimony of Charles Watterson, the locked Vista residence representative at the meeting, demonstrated that the issue of a one-to-one aide was discussed at the meeting, and that, even though he had initially thought such an aide was necessary, he changed his mind during the discussion. The evidence of a discussion and of the factors the team considered in deciding against providing a one-to-one aide in the classroom for Student demonstrates that there was no predetermination of this issue.

Consequently, Student did not demonstrate that Los Angeles Unified committed any procedural violation such that Student was deprived of a FAPE on this ground. Nor did Student demonstrate that Los Angeles Unified's conduct impeded Student's right to a FAPE, significantly impeded her educational rights holder's opportunity to participate in the decision making process regarding the provision of a FAPE to Student; or caused a deprivation of educational benefit.

STUDENT'S ISSUE 1(A)(9): FAILURE TO OFFER STUDENT AN APPROPRIATE ONE-TO-ONE BEHAVIORAL AIDE

57. Student contends that she required a one-to-one behavior aide in the classroom from the time she entered the locked Vista nonpublic school due to her issues with behavior, staying in class, and working on-task. Los Angeles Unified contends that no one-to-one behavior aide was necessary for Student to obtain some benefit from her educational program.

58. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Ed.*, *supra*, 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed.

(*Ibid.*) Additionally, to determine whether a school district offered a student a FAPE, the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) (*Gregory K.*) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

59. Student did not demonstrate that she needed a one-to-one aide to obtain a FAPE. First, Student's classes at the locked Vista nonpublic school had 6 to 12 students in a class, and every class had at least three adults: a full-time special education teacher, a teaching assistant, and one or more counselors from the residential unit. The student to adult ratio, therefore, was approximately three to one, and, if necessary, an additional staff member from the residential unit could be deployed to the classroom. Therefore, there was plenty of opportunity for Student to have one-to-one attention as needed. Second, there was no evidence that Student would have tolerated a one-to-one aide, and the presence of such an aide would probably have led to other behavior concerns. The evidence demonstrated that Student wanted to work independently, that she did not like having anyone standing by her or observing her, and that she would leave the classroom to avoid the Department of Children and Family Services aide who was temporarily assigned to her for two weeks. Student attended the October 21, 2014 IEP, and adamantly advised the team that she did not want a one-to-one aide. Third, a one-to-one aide would not have been able to physically prevent Student from leaving the classroom. Fourth, Student was being taught to take breaks and leave the classroom as a positive coping skill to use when she became frustrated or angry to avoid a situation where her strong emotions would cause her to engage in disruptive behaviors in the

classroom. Fifth, Student's teacher, Ms. Atwood, Mr. Watterson, the residence staff representative at the February 28, 2104 IEP meeting, and Jayne Merrill, the assistant principal at Vista nonpublic schools, also agreed that Student did not require a one-to-one aide.

60. Student's expert, Dr. Large, recommended that District provide Student a one-to-one aide to assist Student in handling the class demands and thereby prevent her from leaving class. Dr. Large was concerned that Student was missing much instructional time because of her need to leave class. However, Dr. Large's opinion was not necessarily grounded in the reality of Student's classroom situation. Dr. Large had not observed Student in her classes at the locked Vista nonpublic school. Dr. Large was also not as aware as was Student's teacher of Student's negative feelings regarding having a one-to-one aide and the impact of those negative feelings on Student's behavior. Moreover, it was not clear what a one-to-one behavioral aide would do beyond all of the other adult support in Student's classes. Under these circumstances, Dr. Large's opinion on this issue must be given less weight than those of Student's teacher, of the locked Vista NPS staff, of Mr. Watterson, and of Student herself, as she expressed it at the October 21, 2014 IEP meeting. Indeed, despite having reviewed Dr. Large's report and recommendation at the October 21, 2014 IEP meeting, Student's counsel tabled the discussion of a one-to-one aide at that meeting.

61. The evidence demonstrated that Student's IEP's were reasonably calculated to provide Student some educational benefit. Student's scores on the Kaufman greatly improved after the June 2013 IEP. After the February 26, 2014 IEP, Student made behavioral progress and progress on her goals, which continued throughout her tenure at the locked Vista nonpublic school. Under of these circumstances, Student has not demonstrated that Los Angeles Unified deprived

Student of a FAPE by not offering her a one-to-one aide while she attended the locked Vista nonpublic school.

STUDENT'S ISSUE 1(A)(10): FAILING TO DEVELOP APPROPRIATE BEHAVIOR SUPPORT PLANS

62. In her Complaint, Student contends that the behavior support plans in the June 4, 2013 IEP, the February 26, 2014 IEP, and the October 21, 2014 IEP, were not appropriate for a variety of reasons. Student contends that the behavior support plan in the June 4, 2013 IEP failed to address numerous behaviors impeding learning. Student contends that the behavior support plan in the February 26, 2014 IEP used some of the same strategies as did the previous behavior support plan, even though Student had failed to meet the behavior goal in that behavior support plan. Student also contends that the February 26, 2014 behavior support plan was inadequate because it was based upon an inadequate functional behavioral assessment. Student contends that the October 21, 2014 behavior support plan was inadequate for the same reasons as the prior behavior support plans were inadequate.²¹ Los Angeles Unified contends that all of the subject behavior support plans were appropriate and met Student's needs, that Student had met her behavior support goal in the February 26, 2014 behavior support plan, and that, until Student's Complaint was filed, no member of the IEP team, including Student's counsel, criticized any aspect of the behavior support plans.

63. To the extent that Student's contentions regarding the behavior support plans are based upon the contention that the functional behavioral assessment was inappropriate, those contentions are unmeritorious, for the reasons stated in the

²¹ In her closing brief, Student provides a variety of additional criticisms of the behavior support plans, which criticisms were not alleged in Student's Complaint. Therefore, they will not be considered in this Decision. (Ed. Code, § 56502, subd. (i).)

discussion of Student's Issue 1A(2), above. With respect to the behaviors targeted by the behavior support plan, each behavior support plan targeted one behavior or one type of behavior that impeded learning. Student cited no legal or other authority that a behavior support plan is invalid unless it addresses every behavior that a student exhibits that impedes learning. No member of the IEP team, including Student's counsel or her educational rights holders, criticized any of the behavior support plans or the behavior support plan goals. Dr. Large, Student's expert, both praised and criticized the behavior support plan in the October 21, 2014 IEP. Dr. Large acknowledged that the behavior support plan would help the off-task behavior it targeted, but it did not provide enough support for Student to self-regulate so as to maintain herself in class. In view of the progress Student made, this criticism is not sufficient to invalidate the behavior support plan.

64. Moreover, the behavior support plans were not the only behavior management tool in the IEP's. Rather, each of the subject IEP's contained a social emotional goal and a transition goal, both of which were behavioral goals. As well, Student's entire school day was suffused with behavioral management, as her classroom included a counselor from the residence.

65. Student did not meet her annual behavior support plan goal in the eight month period between the June 4, 2013 IEP and the February 26, 2014 IEP. The February 26, 2014 IEP team adopted a new behavior support plan with a new goal, and Student met that goal in eight months, by the time of the October 21, 2014 IEP. By that time, her classroom attendance, attention to task, and disruptive behaviors in class had improved. She was completing her assignments. Her overall behavior had improved to the extent that she was about to be placed in a less restrictive placement. The October 21, 2014 IEP, which contained a new behavior support plan, reflected that Student had met or made progress on all of her goals. Her class grades had not improved, but her scores on

the Kaufman had improved. Thereafter, Department of Children and Family Services moved Student to a less restrictive placement, Los Angeles Unified placed Student at the open Vista nonpublic school, and Student's classroom behaviors continued to improve, except that she still would refuse to stay in math class.

66. Under these circumstances, and applying the "snapshot" rule which requires that IEP's not be judged in hindsight, each of Student's behavior support plans, considered in the context of the entire behavioral management program provided by Student's IEP's, were reasonably calculated to provide Student with some educational benefit. Los Angeles Unified did not deprive Student of a FAPE.

STUDENT'S ISSUE 1(A)(11): FAILING TO OFFER RESIDENTIAL PLACEMENT

67. Student contends that she required a residential placement to obtain a FAPE, and therefore Los Angeles Unified had an obligation to offer a residential placement in the IEP's of June 4, 2013, February 26, 2014, and October 21, 2014. Los Angeles Unified contends that Student was, at all relevant times, already in an appropriate residential placement, having been placed there by Department of Children and Family Services. Therefore, Los Angeles Unified had no obligation to offer a residential placement in Student's IEP.

68. Under the analysis and for the reasons discussed above with reference to Student's Issues 1(A)(5) and 1(A)(7), Los Angeles Unified did not deprive Student of a FAPE by not offering residential placement in any of Student's IEP's. Because of Student's dependency status, and an order by the juvenile court regarding Student's residential placement for non-educational reasons, Los Angeles Unified was not required to make a residential placement offer.

STUDENT'S ISSUE 1(A)(12): FAILING TO OFFER APPROPRIATE ACCOMMODATIONS IN THE OCTOBER 21, 2014 IEP

69. Student contends that the accommodations recommended by Dr. Large in her report were individualized to meet Student's needs, and that the accommodations in the October 21 2014, IEP were not individualized because they were the same as those in the February 26, 2014 IEP. Therefore, the IEP team should have followed Dr. Large's recommendations regarding accommodations.

70. Education Code section 56341.1, subdivision (c), provides that if the IEP team determines that a student needs an accommodation to receive a FAPE, the IEP team shall include a statement to that effect in the IEP. Federal and state law require an IEP to 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 on state and districtwide assessments. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subd. (a)(4), (6)(A).)

71. Student's contention is unmeritorious. Los Angeles Unified and the IEP team were not required to follow Dr. Large's recommendations regarding accommodations. However, the evidence reflected that the October 21, 2014 IEP, actually included many of the accommodations included in Dr. Large's report.

72. Specifically, Dr. Large's report and the October 21, 2014 IEP both contained the following accommodations: extended time to complete assignments, preferential seating, individual instruction and one-to-one assistance, repetition of instruction, check for understanding, use of a calculator for math tasks, shortened assignments, and use of a planner to track assignments. Dr. Large recommended the

following accommodations, which the IEP did not include: extended time on all in-class exams, provision of a private or semi-private room to take timed exams, provision of class notes and detailed course outlines, monitoring of Student's work pace, providing immediate feedback on her work, and teaching Student to re-check her work.

73. The accommodations recommended by both Dr. Large and the subject IEP team overlapped to a great degree. Dr. Large did not couch her recommended accommodations in terms of what was necessary for Student to receive a FAPE, and Student did not demonstrate that Student required any additional accommodations other than those presented in her IEP to achieve a FAPE. Neither the educational rights holder, nor Student's attorneys, criticized the IEP accommodations at the October 21, 2014 IEP or suggested any additional accommodations. The evidence demonstrated that the accommodations in the IEP were appropriate for Student, and were reasonably calculated to provide Student with some educational benefit. Los Angeles Unified did not deprive Student of a FAPE on this ground.

STUDENT'S ISSUE 2: RESPONSIBILITY FOR FUNDING RESIDENTIAL PLACEMENT

74. Student contends that Los Angeles Unified was and is responsible for funding Student's residential placement because her past educational rights holder, resided within the boundaries of Los Angeles Unified, and Student's current educational rights holder resides within the boundaries of Los Angeles Unified. Student further contends that Los Angeles Unified is responsible for funding Student's residential placement during the period that Student's educational rights holder was Ms. W., even though Ms. W. was a resident of Simi Valley, because Los Angeles Unified did not comply with the legal requirements for inter-district transfer of a Student when Ms. W. was appointed as Student's educational rights holder. Student further contends that Simi Valley should not be held responsible for funding Student's residential placement because (1) Los Angeles Unified had not notified it of Student's existence; and (2) even

though Simi Valley had notice regarding Student when Student's Complaint was filed in November 2014, Los Angeles Unified had not offered residential placement to Student as part of an offer of a FAPE.

75. Simi Valley contends that it has no obligation to fund any portion of Student's residential placement, because, under the circumstances of this case, a school district's obligation to offer Student a FAPE is governed not by the residency of the educational rights holder, but by the location of Vista Del Mar, the licensed children's institution in which Student resided from April 2013 through the time of filing of the Complaint. Vista Del Mar is located within the boundaries of Los Angeles Unified.

76. Los Angeles Unified contends that it has never been, and is not now, responsible for funding a residential placement, for the reasons set forth in the discussion regarding Student's Issues 1(A)(5) and 1(A)(7).

77. Under the analysis, and for the reasons set forth in the discussion regarding Student's Issues 1(A)(5) and 1(A)(7), above, Los Angeles Unified is not responsible for funding Student's residential placement.

78. Student's contentions regarding Simi Valley's obligations have changed radically from the allegations in Student's Complaint. In Student's Complaint, Student had sought to hold Simi Valley responsible for Student's residential placement because Ms. W., Student's educational rights holder at the time Student's Complaint was filed, was a resident of Simi Valley. Now, Student contends that Simi Valley is not responsible to fund Student's residential placement. However, Student has not moved to dismiss Simi Valley from this case. Indeed, Simi Valley filed a prehearing Motion to Dismiss on January 23, 2015, based upon its contention that the residency of the educational rights holder did not obligate Simi Valley to provide an educational placement to Student, which Student opposed and which was denied.

79. Student's new contention that Simi Valley is not responsible for Student's placement will be considered as a motion to dismiss Simi Valley. The motion is untimely and is denied. The matter has been heard, and Simi Valley appeared at, and participated in, each day of the seven-day hearing. This Decision will therefore determine the issue of Simi Valley's liability as alleged in Student's Complaint and as Student re-affirmed at the prehearing conference held in this matter.

80. Education Code section 48200 embodies the general rule that parental residence controls the school district in which a child attends school. Education Code section 48200 requires "each parent, guardian, or other person having control or charge of [a] pupil" to send the pupil to school "for the full time designated as the length of the school day by the governing board of the school district in which the residence of either the parent or legal guardian is located." For residency purposes, a court-appointed educational rights holder is a parent of a child who is eligible for special education and related services. (Ed. Code, § 56028, subd. (a)(3).)

81. However, Education Code section 48204, subdivision (a), states that "notwithstanding" the provisions of section 48200, a pupil who is a resident of a regularly established licensed children's institution, pursuant to a placement under Chapter 2, commencing with Section 200, of Part 1 of Division 2 of the Welfare and Institutions Code, is a resident of the school district in which the licensed children's institution is located. A licensed children's institution is defined by Education Code section 56155.5 as a "residential facility that is licensed by the state . . . to provide nonmedical care to children. . . ."

82. Education Code section 48202, subdivision (a), concerns children who are in general education, but it has a counterpart in Education Code section 56156.4, subdivision (a), for special education students. Education Code section 56156.4 provides that each special education local plan area shall be responsible for providing

appropriate education to individuals with exceptional needs residing in licensed children's institutions and foster family homes located in the geographical area covered by the local plan.

83. First, as was discussed above with respect to Student's Issues 1(A)(5) and 1(A)(7), since Department of Children and Family Services has undertaken the responsibility of funding Student's residential placement at all relevant times, neither Los Angeles Unified nor Simi Valley has been required to offer Student a residential placement in order to provide Student a FAPE.

84. Second, under the circumstances of this case, Simi Valley has never had the responsibility to provide Student a FAPE, from April 2013 when Department of Children and Family Services placed Student at Vista Del Mar, through the date of filing the Complaint, let alone pay for any aspect of Student's residential placement. In this regard, at no relevant time was Student admitted to or enrolled in any institution within the boundaries of Simi Valley. At no time did any party invite Simi Valley to an IEP meeting. At no time did any party advise Simi Valley that Student existed. The only connection Simi Valley has had with Student during the relevant time frame of this case is that from March 25, 2014, to January 30, 2015, Student's court-appointed educational rights holder lived within the boundaries of Simi Valley.

85. Student contended that the Education Code sections that designate the residence of the parent, and, in particular, the residency of the education rights holder, control this issue. Therefore, for the period during which Ms. W. was Student's educational rights holder, Student contended that Simi Valley was responsible to provide her a FAPE and to provide her residential placement. However, this argument ignores that Education Code section 56156.4, subdivision (a), addresses the specific situation in this matter: Student is a special education student who, at all relevant times, has resided in a licensed children's institution in which she was placed by Department of

Children and Family Services. The licensed children's institution is located within Los Angeles Unified. Therefore, under these circumstances, Los Angeles Unified is the only school district responsible to provide Student a FAPE, regardless of the residence of the educational rights holder. Student provided no authority as to why the provisions of section 56156.4, subdivision (a), should not apply here. Moreover, Student provided no authority as to the circumstances under which section 56156.4, subdivision (a), *would* apply, if it did not apply to the facts of this matter.

86. Therefore, Student's contention that Simi Valley was responsible to provide Student a FAPE and to fund Student's residential placement at any relevant time is unmeritorious.

LOS ANGELES UNIFIED'S ISSUE 1: APPROPRIATENESS OF PSYCHOEDUCATIONAL ASSESSMENT

87. Los Angeles Unified contends that Ms. Coleman conducted an appropriate assessment and met all the requirement of federal law and the Education Code, such that Student is not entitled at an independent assessment at public expense. Student's contentions are the same as those she presented with respect to Student's Issue 1(A)(4), which are incorporated by reference.

88. Los Angeles Unified's psychoeducational assessment met all legal requirements for assessments. Ms. Coleman, a school psychologist for 19 years, was qualified to conduct the assessment. Her assessment instruments were appropriate to administer to Student, they were selected so as not to be discriminatory, and they were administered in accordance with the test instructions. The assessment instruments were valid and reliable, as was demonstrated, in part, by the facts that Student's teachers and providers had no criticism of Ms. Coleman's report, and the IEP team did not question her report. Ms. Coleman used a variety of assessment measures, both standardized and non-standardized. She reviewed existing evaluation data. She assessed Student in all

areas of suspected disability to the best of her ability to do so, given that Student refused to submit to observation or to a full battery of standardized tests regarding her cognition and learning abilities. Nevertheless, Ms. Coleman obtained sufficient information about Student through some direct testing of Student, records review, and from Ms. Atwood and Ms. Mazic, and reached an accurate conclusion that Student's cognitive functioning was in the average range. Ms. Coleman prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's strengths and weaknesses, and discussed Student's need for special education and related services. Student's educational rights holder had access to a copy of the report in a timely manner. Nobody at the IEP meeting questioned or criticized Ms. Coleman's assessment or report. Dr. Large, Student's expert, did not criticize Ms. Coleman's assessment or report.

89. The evidence demonstrated that Los Angeles Unified's psychoeducational assessment was appropriate, and Student is not entitled to an independent assessment on that ground. However, as is further discussed with respect to Student's Issue 1(A)(6), above, Student is entitled to be reimbursed for the assessment performed by Dr. Large in May 2014, and the report Dr. Large generated detailing the assessment, because Los Angeles Unified failed to consider the report.

LOS ANGELES UNIFIED'S ISSUE 2: APPROPRIATENESS OF EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

90. The parties' contentions regarding the educationally related mental health services assessment were stated in the discussion of Student's Issue 1(A)(3) and are incorporated by reference.

91. Ms. Coleman performed the educationally related mental health services assessment in conjunction with the psychoeducational assessment, and incorporated the results into her assessment report dated February 21, 2014. Ms. Coleman was

qualified to conduct the educationally related mental health services assessment, as a school psychologist for 19 years. The assessment instruments were appropriate to administer to Student, they were selected so as not to be discriminatory, and they were administered in accordance with the test instructions. The assessment instruments were valid and reliable, as was demonstrated, in part, by the facts that Student's teachers and providers had no criticism of Ms. Coleman's assessment and report, and the IEP team did not question her assessment or report. Ms. Coleman used a variety of assessment measures, both standardized and non-standardized. She reviewed existing evaluation data. She assessed Student in all areas of Student's educationally related mental health issues, including performing a functional behavioral assessment, and she evaluated Student's mental health needs as they related to Student's academic functioning. Ms. Coleman prepared a thorough and appropriate report of the educationally related mental health services portion of the assessment, which explained the assessment results, described Student's strengths and weaknesses, discussed Student's need for educationally related mental health services, and recommended that such services continue. As was further discussed above with respect to Issue 1(A)(3), Los Angeles Unified does not conduct educationally related mental health services assessments for residential placement and, under the circumstances of this case, Los Angeles Unified did not have any obligation to assess Student for residential placement. Student's educational rights holder had access to a copy of the report in a timely manner.

92. The evidence demonstrated that Ms. Coleman's educationally related mental health services assessment was appropriate, such that Student was not entitled to an independent assessment at public expense.

LOS ANGELES UNIFIED'S ISSUE 3: APPROPRIATENESS OF FUNCTIONAL BEHAVIORAL ASSESSMENT

93. Los Angeles Unified contends that the functional behavioral assessment met all applicable legal requirements included in federal law and the Education Code, and was an appropriate assessment. Student's contentions are the same as those she asserted with respect to Student's Issue 1(A)(2) and are incorporated by this reference.

94. Ms. Atwood was qualified to conduct the functional behavioral assessment. She holds a preliminary credential in special education for moderate to severe disability, and a clear credential for mild to moderate disability. She has taught students with emotional disturbance for two years at the locked Vista nonpublic school, and had been a teaching assistant at the nonpublic school for three years before becoming a teacher there. She was also particularly knowledgeable regarding Student's emotional status and behaviors, as she was Student's classroom teacher, and therefore had been assigned to spend over four hours per day with Student, five days per week, for approximately seven months. She used a variety of strategies and procedures to collect the information for the functional behavioral assessment, including classroom behavior data collected daily from the time Student began attending the nonpublic school, her daily classroom observations, the classroom observations of Mr. Ceballos, her assistant in the classroom, a review of records, and information obtained from Ms. Cannon, Student's other teacher at the locked Vista nonpublic school. Ms. Atwood wrote a report which explained the functional behavioral assessment results, described Student's strengths and weaknesses, and discussed Student's need for behavior supports. Student's educational rights holder had timely access to the report. Nobody at the IEP meeting criticized or questioned the functional behavioral assessment or the report. Student's expert, Dr. Large, did not criticize the functional behavioral assessment or the report.

95. The evidence demonstrated that Ms. Atwood's functional behavioral assessment was appropriate, such that Student is not entitled to an independent assessment at public expense.

REMEDIES

96. Student prevailed on Student's Issue 1(A)(6). Student did not request a specific remedy that was directly related to the discrete failure of Los Angeles Unified to consider Dr. Large's assessment report dated June 8, 2014. As was discussed above, however, Dr. Large's report contained information about Student's cognitive ability and academic ability that Los Angeles Unified had been unable to obtain. Such information should have been considered by Los Angeles Unified, and the failure to consider it rendered the present levels of performance in the October 21, 2014 IEP incomplete and/or inaccurate, and significantly deprived the educational rights holder of the ability to participate in the development of Student's IEP. Further, to the extent that the report contained such additional information, it should have been considered by Los Angeles Unified to assure that Los Angeles Unified has considered all areas of suspected disability, and had identified all of Student's unique needs, so as to provide Student with a FAPE. Dr. Large's assessment would therefore have been useful to Los Angeles Unified, and Student should be reimbursed for the cost of the assessment and report. Los Angeles Unified should convene an IEP to discuss the report, and to determine whether it has offered appropriate services to Student. Should the IEP team determine that Student is entitled to additional services based upon its review of Dr. Large's report, the team should offer Student an appropriate type and level of compensatory services as it deems necessary to offer a FAPE to Student.

ORDER

1. Los Angeles Unified shall pay the amount of \$4,415 to the Trustee of the Plan of California Master Pooled Trust as reimbursement for the independent assessment Dr. Large performed in May 2014 within 30 calendar days of receipt of this Decision.

2. Los Angeles Unified shall convene an IEP meeting to discuss the independent assessment within 30 calendar days of its receipt of this Decision.

3. Los Angeles Unified shall invite Dr. Large to attend the IEP meeting ordered in paragraph 2 of this Order. Dr. Large shall be paid a reasonable hourly rate, including the time for portal to portal round-trip travel, if she attends the IEP meeting.

4. Should the IEP team determine that Student is entitled to additional services based upon its review of Dr. Large's report, the team shall offer Student an appropriate type and level of services as it deems necessary to offer a FAPE to Student.

5. All other relief sought by Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on Student's Issues 1(A)(6). Los Angeles Unified prevailed on Student's Issues 1(A)(1), 1(A)(2), 1(A)(3), 1(A)(4), 1(A)(5), 1(A)(7), 1A(8), 1A(9), 1A(10), 1A(11), 1(A)(12), Student's Issue 2, and Los Angeles Unified's Issues 1, 2, and 3. Simi Valley prevailed on Student's Issue 2, the only issue heard and decided in this matter that related to Simi Valley.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Dated: May 4, 2015

/s/

ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:15-cv-05819-CAS-MRW	Date	September 12, 2016
Title	M. S. v. LOS ANGELES UNIFIED SCHOOL DISTRICT		

Present: The Honorable	CHRISTINA A. SNYDER
------------------------	---------------------

Ingrid Valdes

None Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: MEMORANDUM AND ORDER ON APPEAL FROM
ADMINISTRATIVE LAW JUDGE'S DECISION

I. INTRODUCTION

This case arises under the Individuals with Disabilities Education Act (the "IDEA"), 20 U.S.C. §§ 1400, *et seq.* On July 31, 2015, plaintiff M.S., a minor, by and through her Guardian Ad Litem, R.H. (collectively, "plaintiff" or "M.S."), filed suit against defendant Los Angeles Unified School District ("the District" or "LAUSD"), alleging violation of the IDEA and seeking reversal of the Administrative Law Judge's ("ALJ") May 4, 2015 decision as to three issues.¹

Presently before the Court is M.S.'s administrative appeal. A hearing was held on June 3, 2016. Plaintiff presents the following three primary issues for determination: (1) Whether the District denied plaintiff of a Free and Appropriate Public Education under the IDEA by failing to discuss placement at a residential treatment facility at the October 21, 2014 IEP meeting, *see* Student Issue 1(A)(5); (2) Whether the District denied plaintiff of a Free and Appropriate Public Education under the IDEA by predetermining the question of placement at a residential treatment facility at the October 21, 2014 IEP meeting, *see* Student Issue 1(A)(7); and (3) Whether the District denied plaintiff of a Free and Appropriate Public Education under the IDEA by failing to offer placement at a residential treatment facility in the February 26, 2014 IEP and October 21, 2014 IEP meetings, *see* Student Issue 1(A)(11).

¹ M.S. presented a total of twelve issues to the ALJ, and the District prevailed on all but one of these twelve issues. Here, as discussed in greater detail *infra*, M.S. only seeks review and reversal of three of the eleven issues on which the ALJ ruled in favor of the District.

UNITED STATES DISTRICT COURT
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Having carefully considered the parties' arguments, the Court finds and concludes as follows.

II. STATUTORY FRAMEWORK

The IDEA grants federal funds to state and local agencies to provide a special education to children with disabilities. 20 U.S.C. § 1412(a); Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1469 (9th Cir. 1993). To this end, schools are charged with the responsibility of identifying and assessing all children who are suspected of having disabilities and are in need of special education and related services. 20 U.S.C. § 1400(a)(3); 34 C.F.R. § 300.125; see also Cal. Educ. Code § 56302.

The purpose of the IDEA is, among other things, to provide all children with disabilities

a free appropriate public education [(“FAPE”)] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; [] to ensure that the rights of children with disabilities and parents of such children are protected; [] and to assist States, localities, educational services agencies, and Federal agencies to provide for the education of all children with disabilities.

20 U.S.C. § 1400(d)(1)(A)-(C).

This purpose is implemented through the development of an individualized education plan (“IEP”). An IEP is crafted by a team that includes a student’s parents, teachers, and the local educational agency. 20 U.S.C. § 1414(d). The IEP contains the student’s present level of performance, annual goals, short and long term objectives, specific services to be provided, the extent to which the student may participate in regular educational programs, and criteria for measuring the student’s progress. Id.

The IDEA requires that educators also guarantee certain procedural safeguards to children and their parents, including: notification of any changes in identification,

UNITED STATES DISTRICT COURT
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education and placement of the student; parental presence at the IEP meeting; and a mechanism for parents to bring complaints about issues relating to the student's education and placement, which may result in a mediation or a due process hearing conducted by a local or state educational agency hearing officer. 20 U.S.C. § 1415(b)-(i). If, for example, a parent objects to certain proposed changes in a child's placement, the IDEA's "stay put provision" may, when invoked, permit the student to remain in his or her current educational placement until the dispute is resolved. See 20 U.S.C. § 1415(j) ("[D]uring the pendency of any proceedings conducted pursuant to this section, . . . the child shall remain in the then-current educational placement of the child.").

Furthermore, a party may bring a civil action in state or federal court in the event that it is dissatisfied with the decision of an agency hearing officer. 20 U.S.C. § 1415(i)(2). "The burden of proof in the district court rest[s] with . . . the party challenging the administrative decision." Hood v. Encinitas Union Sch. Dist., 486 F.3d 1099, 1104 (9th Cir. 2007). The court, in considering a request for review of a hearing officer's decision, must base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate. Id.

III. FACTUAL BACKGROUND

The decision below contains detailed and thorough factual findings. See AR 1751-1823 (ALJ Decision). With the exception of those factual findings that are more appropriately construed as conclusions of law, the Court concludes that the factual findings in the decision below are accurate, and adopts them as they are set out.¹ Additionally, since the factual findings encompass matters no longer pursued in this appeal, and to provide context for the Court's decision, the Court summarizes the relevant facts.

¹ For example, the ALJ styled the following as a factual finding: "[M.S.] did not demonstrate through Dr. Large's assessment report and her testimony that the October 21, 2014 IEP was not reasonably calculated to permit [M.S.] to make meaningful educational progress." AR 1791 (ALJ Finding of Fact No. 154). This finding is better characterized as a conclusion of law, and accordingly is not adopted by this Court as a factual finding.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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M.S. is a seventeen-year-old girl who has experienced emotional trauma since at least the age of four years old, when she witnessed her mother's death from a brain aneurism. After her mother passed away, M.S. lived with her maternal grandparents, as her father was not actively involved in her life. In 2010, when M.S. was eleven years old, the Los Angeles County Department of Children and Family Services ("DCFS") removed M.S. from her grandparents' care due to allegations of physical abuse and caretaker incapacity. M.S. has been a ward of the Los Angeles County Superior Court and DCFS ever since. As a result, DCFS is responsible both for providing her with suitable housing and for meeting her mental health needs, pursuant to California state law. In addition, because M.S. is categorized as having severe emotional disturbance, she qualifies for special education services under the IDEA.

In 2010, M.S. experienced the first of five mental health hospitalizations that continued over the next few years with episodes of violence towards others. By 2012, M.S. had been hospitalized six times and had been in eight different out-of-home placements. The placements included foster homes as well as numerous residential placements, including a placement at a locked residential treatment facility, Harbor View Adolescent Center, in May 2012. While at Harbor View, M.S. broke a peer's nose and assaulted a staff member, which led to her arrest and a seven-month-long detainment in Central Juvenile Hall.

A. February 28, 2013 IEP

At the time of her February 28, 2013 IEP meeting, M.S. was participating in a special day class at Juvenile Court and Community School. Among other things, M.S.'s February 28, 2013 IEP offered counseling, special day classes, and behavioral support. The IEP noted that several of M.S.'s educational goals were unmet, but found that a general education setting was an appropriate placement. M.S.'s educational rights holder signed the IEP, but disagreed that the IEP constituted a FAPE. Specifically, she wrote, "I agree to implement [special day class] placement while [M.S.] is detained, but maintain[] that she requires residential placement."

B. March 2013 Release from Juvenile Hall and Subsequent Placement by DCFS

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Pursuant to an order of the Juvenile Division of the Los Angeles County Superior Court (“the Juvenile Court”), dated March 14, 2013, M.S. “remains a dependent child of the court.” The Juvenile Court’s March 14, 2013 order further required DCFS to provide M.S. with “permanent placement services.”¹ On or about April 19, 2013, upon M.S.’s release from Juvenile Hall, DCFS placed M.S. in another locked residential treatment facility called Vista Del Mar Community Treatment Facility (the “Vista Facility”). The Vista Facility is a Community Treatment Facility (“CTF”) and a Licensed Children’s Institution (“LCI”), with a Rate Classification Level of 14. To qualify for placement in a CTF like the Vista Facility, certain criteria must be met. It is undisputed that M.S.’s placement at the Vista Facility was made in accordance with applicable state regulations and was made by DCFS because M.S.’s mental health and behavioral issues required intensive psychiatric care.

The Vista Facility is an LCI located within defendant Los Angeles Unified School District. While M.S. resided at the Vista Facility, the District provided her special education and services by paying for M.S.’s attendance at the non-public school located within the Vista Facility (the “Vista School”).² The District convened IEP meetings on each of the following three dates: June 4, 2013, February 26, 2014, and October 21, 2014.

C. June 4, 2013 IEP Meeting

At the June 4, 2013 IEP meeting, the IEP team noted that M.S. had not met the goals established in her previous IEP. The IEP team offered M.S. continued placement at the Vista School. The District did not offer placement in a residential treatment center for educational purposes, though M.S. was already in a residential treatment facility (the Vista Facility) pursuant to DCFS’s placement. M.S.’s educational rights holder at the time stated that she disagreed with the assessment and felt that the IEP did not constitute

¹ When a minor like M.S. is appointed a ward of the court, “the court may make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor or nonminor, including medical treatment, subject to further order of the court.” Cal. Welf. & Inst. Code § 727(a).

² Under the California Education Code, a nonpublic school is defined as a “private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program.” Cal. Educ. Code § 56034.

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a FAPE. She requested an “educationally related mental health assessment for residential.”

D. February 26, 2014 IEP Meeting

M.S. was still residing at the Vista Facility and enrolled in the Vista School at the time of her February 26, 2014 IEP meeting. At the meeting, the IEP team noted that M.S. had made some progress, but had not achieved the goals set forth in the previous IEP. The February 26, 2014 IEP itself states that M.S.’s “eligibility of Emotional Disturbance significantly impacts her ability to access instruction” It also states that additional support, including a one-to-one aid, had a positive effect on M.S.’s behaviors, such as her running away, which had been disrupting her education.

The District offered continued placement in a non-public school. Nobody at the IEP meeting requested that the District offer a residential placement. Nobody at the IEP meeting stated that the DCFS residential placement in the locked Vista Facility was inappropriate for M.S. And nobody at the IEP meeting stated that the IEP did not provide M.S. with an educational benefit. However, M.S.’s educational rights holder at the time, Ms. K., did not agree with the February 26, 2014 IEP and did not consent to implementing it, stating that it did not constitute a FAPE.

Shortly thereafter, Ms. K. was replaced as M.S.’s educational rights holder by Ms. W, who consented to the implementation of the February 26, 2014 IEP, but did not agree that it constituted a FAPE. M.S. continued to live at the Vista Facility under the authority of DCFS, and the District began to implement the February 26, 2014 IEP.

E. October 21, 2014 IEP Meeting

In May 2014, M.S.’s attorney referred M.S. to Dr. Mary Large for a comprehensive neuropsychological assessment. Dr. Large drafted a report and submitted it to the District prior to M.S.’s October 21, 2014 IEP meeting. On October 10, 2014, M.S.’s counsel sent a letter to Vista’s assistant principal, advising her that he wished to discuss four topics at the meeting, one of which was placement in the least restrictive environment for M.S., including inclusion and mainstreaming opportunities. At the time of the IEP meeting, M.S. was still residing at the Vista Facility and enrolled in the Vista School.

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During the meeting, the IEP team discussed the four topics that M.S.'s counsel had previously advised the parties he and the educational rights holder wanted to discuss. The team first addressed placement. Due to M.S.'s increased academic and behavioral improvement, DCFS planned to move M.S. to a less restrictive, level 14 unlocked residential facility. The team discussed whether M.S. should take classes at Vista's open nonpublic school in the event she were not transitioned to another facility, as well as whether M.S. could attend a public school. While the IEP team acknowledged that eventually M.S. may "step down to a less restrictive level of residential care," the administrative designee cautioned that "reading this IEP, I don't know if she's doing that great." M.S.'s attorney also explained that M.S. "has difficulty with transition" and "it seems like every time she starts somewhere new her behaviors will rise up again."

Although the District had received Dr. Large's neuropsychological assessment, the IEP team did not discuss or review the assessment. Ultimately, it was decided that M.S. would remain at the Vista Facility and Vista School until DCFS decided on a new residential placement. M.S. was not offered residential treatment as part of her IEP. The educational rights holder agreed to the implementation of the IEP but disagreed that it constituted a FAPE.

F. January 2015 Movement to a Less Restrictive Facility

In or about mid-January 2015, DCFS removed M.S. from the Vista Facility and placed her in a less restrictive facility outside the boundaries of the District. Almost immediately, M.S. ran away from this facility. Her whereabouts were unknown for four days and she did not attend school during this time. Eventually, she was located and returned by police to the care of DCFS.

DCFS then made an emergency placement for M.S. in Delilu Achievement Home, a temporary facility. While the facility is designed for temporary placement, M.S. remained there for 30 days. DCFS eventually placed M.S. in Diamondale, a level 12 residential LCI within the boundaries of the District. Diamondale was also a less restrictive environment than the Vista Facility. While M.S. was residing at Delilu and Diamondale, M.S.'s attorneys filed a "stay put" motion, pursuant to 20 U.S.C. § 1415(j), to keep M.S. enrolled at the Vista School, which was the educational placement stated on her latest IEP. Notably, while the IEP called for educational placement at the Vista

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School, it did not call for a residential treatment component at the Vista *Facility*. Indeed, none of M.S.’s IEPs reflected any need for a placement at a residential treatment facility like the Vista Facility.

IV. ADMINISTRATIVE PROCEEDINGS

On November 21, 2014, shortly after her October 21, 2014 IEP meeting, M.S. initiated a due process hearing before the Office of Administrative Hearings (“OAH”). She alleged that the District failed to provide her with a FAPE, in violation of the IDEA, on twelve separate grounds. Following a seven-day hearing with numerous witnesses, the ALJ concluded that the District “provided [M.S.] a FAPE in all aspects at issue in this case but one”—namely, the ALJ concluded that the District’s failure, during the October 21, 2014 IEP meeting, to consider Dr. Mary Large’s neuropsychological assessment report pertaining to M.S. constituted a procedural violation of the IDEA which deprived M.S. of a FAPE. See AR 1755 (ALJ’s discussion of Student Issue 1(A)(6)).

Of the eleven issues on which the ALJ ruled in favor of the District, M.S. appeals only the following three issues:

A. Whether the District deprived Student of a FAPE by reason of the following:

Student Issue 1(A)(5): failing to discuss placement at a residential treatment facility at the October 21, 2014 IEP meeting;

Student Issue 1(A)(7): predetermining the question of placement at a residential treatment facility at the October 21, 2014 IEP meeting;

Student Issue 1(A)(11): failing to offer placement at a residential treatment facility in the February 26, 2014 IEP and October 21, 2014 IEP meetings.

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As to these three issues, the ALJ concluded that only DCFS “was legally responsible to provide an appropriate placement for [M.S.’s] mental health needs, and the evidence was undisputed that placement in the locked Vista residence was appropriate.” AR 1754 (ALJ’s Summary of Decision). Therefore, the District “had no obligation to offer the locked Vista residence as part of its FAPE offer to [M.S], because [DCFS] had already placed [her] there, in compliance with the court order that it provide a residential placement to [M.S], and further in compliance with its own legal obligation to provide a placement that was appropriate for [M.S.’s] mental health needs.” AR 1755 (ALJ’s Summary of Decision).

V. STANDARD OF REVIEW

The standard of review applicable to IDEA administrative proceedings is established by the statute itself. The IDEA provides that in evaluating an administrative decision, the Court: “(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C); see Ojai, 4 F.3d at 1471-72.

The Court reviews *de novo* the appropriateness of a special education placement under the IDEA. Seattle Sch. Dist. No. 1 v. B.S., 82 F.3d 1493, 1499 (9th Cir. 1996); Livingston Sch. Dist. Nos. 4 & 1 v. Keenan, 82 F.3d 912, 915 (9th Cir. 1996). Despite the *de novo* standard of review, however, the Court is required to give due weight to the hearing officer’s administrative findings and appropriate deference to the policy decisions of school administrators. The Ninth Circuit has articulated the deference to be given to the administrative findings as follows:

The court reviews *de novo* the appropriateness of a special education placement under the IDEA. Nevertheless, when reviewing state administrative decisions, courts must give due weight to judgments of education policy. Therefore, the IDEA does not empower courts to substitute their own notions of sound educational policy for those of the school authorities which they review. Rather, the court in recognition of the expertise of the administrative agency, must consider the findings carefully and endeavor to respond to the hearing

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officer's resolution of each material issue. After such consideration, the court is free to accept or reject the findings in part or in whole. Despite their discretion to reject the administrative findings after carefully considering them, however, courts are not permitted simply to ignore the administrative findings.

Cnty. of San Diego v. California Special Educ. Hearing Office, 93 F.3d 1458, 1466 (9th Cir. 1996) (internal citations and quotations omitted); see also Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 206 (1982).

A court may, in its discretion, choose to accord greater deference to a hearing officer's findings when those findings are thorough and careful. Capistrano Unified Sch. Dist. v. Wartenberg, 59 F.3d 884, 891 (9th Cir. 1995). A court may "treat a hearing officer's findings as thorough and careful when the officer participates in the questioning of witnesses and writes a decision containing a complete factual background as well as a discrete analysis supporting the ultimate conclusions." R.B. v. Nappa Valley Unified Sch. Dist., 496 F.3d 932, 942 (9th Cir. 2007); Park v. Anaheim Unified High Sch. Dist., 464 F.3d 1025, 1031 (9th Cir. 2006). Nonetheless, "at bottom, the court itself is free to determine independently how much weight to give the administrative findings in light of the enumerated factors." Cnty. of San Diego, 93 F.3d at 1466.

In this case, the administrative hearing lasted seven days and the ALJ's seventy-two page decision contains a detailed factual analysis that runs 166 paragraphs in length. Moreover, although the parties dispute in their respective briefing each other's *characterizations* of the ALJ's findings, the ALJ's actual factual findings appear not to be disputed. Therefore, the Court will give the ALJ's factual findings deference and review the legal conclusions *de novo*. Id.

VI. DISCUSSION

The gravamen of this appeal is the following question: was the District required, at the IEP meetings on February 26 and October 21, 2014, to consider and offer M.S. an *educational* residential placement as part of her IEP when she was already placed in a

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residential treatment center by DCFS, for *non-educational reasons*, pursuant to a Juvenile Court order requiring DCFS to provide “permanent placement services.”

At the outset, the Court first takes note of certain issues on which the parties agree. It is undisputed that following M.S.’s release from Juvenile Hall, DCFS’s decision to place M.S. at the Level 14 locked Vista Facility (1) was for mental health reasons and not for educational reasons; (2) was required by—and was made in compliance with—relevant state law governing DCFS’s obligation to provide “permanent placement services” to M.S.; and (3) did not impose the financial burden of M.S.’s treatment at the Vista Facility upon M.S. See Plaintiff’s Responsive Brief (“P’s Resp. Br.”) at 10. The parties diverge, however, in their views regarding whether—in spite of DCFS’s discharge of its responsibilities to M.S.—the District was independently required under the IDEA to consider M.S.’s entitlement to residential placement for *educational* reasons.

The District contends that it was “not legally obligated” to discuss or consider the possibility of placing M.S. in a residential treatment center because DCFS “ha[d] already determined M.S.’s residential placement . . . pursuant to Court Order and DCFS policy.” See Defendant’s Opening Brief (“D’s Opening Br.”) at 11. The District maintains that it “had no obligation to offer a residential placement [that was] already being provided by DCFS at no cost to [M.S.]” Id. at 8. In the District’s view, it must “focus on education . . . because public school districts exist for the purpose of providing educational services, not residential placements to treat severe mental health problems, and are not general-purpose social service institutions, such as DCFS.” Id. at 10. M.S. argues, however, that DCFS and the District operate under two “separate but parallel statutory schemes,” pursuant to which each entity has distinct responsibilities under state and federal law. See Plaintiff’s Opening Brief (“P’s Opening Br.”) at 2. According to M.S., DCFS’s fulfillment of its responsibilities under state law regarding a child’s mental health needs does not relieve the District of its separate responsibility under the IDEA to consider whether placement in a residential treatment center is necessary for *educational* reasons and, therefore, needed to ensure that M.S. receives a FAPE.

As to these disputed legal issues, the ALJ ruled in favor of the District. For the reasons articulated in the discussion that follows, the Court reverses.

A. Whether the District Denied M.S. a FAPE by Failing to Discuss and

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**Predetermining her “Residential Placement” at the October 21, 2014
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A school district must comply with the IDEA both procedurally and substantively in order to provide a student with a FAPE. See Doug C. v. Hawaii Dep’t of Educ., 720 F.3d 1038, 1043 (9th Cir. 2013). To determine whether a public agency provided a student a FAPE, the Court must conduct a two-part inquiry: “First, [the court] must consider whether the State complied with the procedures set forth in the [the IDEA]. Second, [the court] must determine whether the IEP is reasonably calculated to enable the child to receive educational benefits. A state must meet both requirements to comply with the obligations of the IDEA.” Id. (internal citations omitted). Notably, however, “[w]here a court identifies a procedural violation that denied a student a FAPE, the court need not address the second prong.” Id.

1. Procedural Compliance

While “[h]armless procedural errors do not constitute a denial of FAPE,” those procedural inadequacies “that result in the loss of educational opportunity, or seriously infringe the parents’ opportunity to participate in the IEP formulation process, clearly result in the denial of [a] FAPE.” Id. (citations omitted). The Supreme Court has emphasized the importance that Congress attached to the IDEA’s procedural safeguards:

[T]he congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Secretary for approval, demonstrates the legislative conviction that *adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.*

Rowley, 458 U.S. at 206 (emphasis added). “More often than not, if a student is eligible under the IDEA, a procedural violation that causes ‘some defect’ in the student’s IEP is a denial of a FAPE.” Cupertino Union Sch. Dist. v. K.A., 75 F. Supp. 3d 1088, 1099 (N.D. Cal. 2014) (citation omitted).

a. Residential Placement under the IDEA

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In this administrative appeal, M.S. first argues that the District committed a procedural violation of the IDEA, and thereby denied her a FAPE, by (1) predetermining her residential placement in advance of her October 21, 2014 IEP meeting, and by (2) failing to discuss her residential placement during the October 21, 2014 IEP meeting. Throughout the course of both the administrative action and the instant suit, the District has maintained that it “was not legally obligated to discuss M.S.’s residential placement as part of the FAPE offer in the February 26, 2014 and October 21, 2014 IEPs” because DCFS was already required under state law to provide M.S. with a residential placement, and did in fact provide such a placement at no cost to plaintiffs. D’s Opening Br. at 11; see also AR 94; AR 103 (stating that it would be “legally impossible for the OAH to find [LAUSD] responsible for offering and/or providing” placement in a residential treatment center). The ALJ similarly concluded that M.S. had offered “no legal authority that states that when, as here, a public agency that is not a school district or local educational agency is obligated to provide a placement or service, *and* provides such a placement or service, *and* the placement or service is appropriate, a school district must *also* offer to provide such a placement or service in the IEP.” AR 1807 (ALJ Conclusion of Law No. 44) (emphasis in original).

In reaching these conclusions, both the District and the ALJ improperly conflate two distinct types of “placement.” On the one hand, there is DCFS’s obligation to provide necessary and appropriate “permanent placement services,” pursuant to a Juvenile Court order and with consideration to M.S.’s *mental health* needs. See AR 1308-1309; see generally Cal. Welf. & Inst. Code §§ 4094, et seq. (regarding programs for seriously emotionally disturbed children and court wards and dependents).

On the other hand, there is the District’s independent obligation to consider whether M.S. is entitled to a “residential placement,” pursuant to the IDEA, in light of her *educational needs*.¹ Under the IDEA, the services provided by a school district are

¹ In one passage that is demonstrative of how the District conflates these types of placement, the District states the following:

On April 14, 2013, while [M.S.] was residing at Central Juvenile Hall, DCFS was ordered by the court to provide “permanent placement services”. . . . Pursuant to the Court

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commonly referred to as the student’s “placement.” The IDEA provides that school districts like LAUSD “must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” 34 C.F.R. § 300.115(a). This “continuum” of alternative placements may include “placement in a public or private *residential program*,” in the event such a program “is necessary to provide special education and related services to a child with a disability.” 34 C.F.R. § 300.104 (emphasis added); cf. J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist., 626 F.3d 431, 441 (9th Cir. 2010) (“According to the IDEA and California’s Education Code, each student must be assessed in *all areas* of his or her suspected disability.”) (emphasis added) (citing 20 U.S.C. § 1414(b)(3); Cal. Educ. Code § 56320(f)).

Generally, in order to determine whether a residential placement under the IDEA is necessary to provide a student a FAPE, the relevant analysis in the Ninth Circuit “must focus on whether [the residential] placement may be considered necessary *for educational purposes*, or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process.” Ashland Sch. Dist. v. Parents of Student E.H., 587 F.3d 1175, 1184 (9th Cir. 2009) (emphasis added) (quoting Clovis, 903 F.2d 635, 643); see also Seattle Sch. Dist., No. 1 v. B.S., 82 F.3d 1493, 1500 (9th Cir. 1996) (“[R]esidential placement is appropriate for a disabled child if necessary for her to receive benefit from her education.”), abrogated in part on other grounds by Schaffer v. Weast, 546 U.S. 49, 56-58 (2005).

order[] . . . on April 18, 2013, DCFS placed [M.S.] at Vista Del Mar. There is no dispute that DCFS made the ***residential placement*** decision for [M.S.] . . . because DCFS was ordered by the court to provide placement services. As such, the District was not obligated to convene an IEP meeting to offer a ***residential placement*** because [M.S.] was already in a ***residential placement*** pursuant to a juvenile court placement order that placed her in the care, custody, and control of DCFS.

D’s Opening Br. at 21 (emphasis added).

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Where the level of services provided by a residential treatment center is needed for a student to access a FAPE—that is, when the residential placement is “considered necessary for educational purposes” and not merely “necessary quite apart from the learning process,” Clovis, 903 F.2d at 643—it is appropriate for the student’s IEP to reflect the need for residential placement.¹ See 20 U.S.C. §§ 1401(a)(9), (10) (defining elementary and secondary schools to include “residential schools”); see, e.g., N.G. v. ABC Unified School Dist., No. CV-13-06929, 2014 WL 4678967, at * 1 (C.D. Cal. Sep. 19, 2014) (Gee, J.) (“[U]pon discharge from College Hospital, N.G. should be placed in a [residential treatment center] which is reflected in the . . . IEP.”); Ash v. Lake Oswego Sch. Dist. No. 7J, 766 F. Supp. 852, 864 (D. Or. 1991) (“Since this court has concluded that it was appropriate to place Christopher in a residential facility contrary to the IEP prepared by the [school district] in 1989, the court has the authority to order reimbursement to his parents who have incurred the costs.”), aff’d, 980 F.2d 585 (9th Cir. 1992); J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 656 (S.D.N.Y. 2011) (noting that where parties agreed that student required residential treatment for educational purposes, the “IEP, including a residential program, small class sizes, and therapy, was appropriate for [the student]”); cf. Bd. of Educ. of Montgomery Cty. v. Brett Y, 155 F.3d 557 (4th Cir. 1998) (Hamilton, J., dissenting) (stating that the “IEP’s most serious flaw” in that case was that it “fail[ed] to require a residential placement so that [the student could] make educational progress”).

Here, the ALJ rejected M.S.’s argument that the District’s failure to discuss or consider a residential placement for educational reasons constituted a procedural violation of the IDEA and therefore denied M.S. a FAPE. Specifically, the ALJ found that the District “had no obligation to offer the locked Vista residence as part of its FAPE offer to [M.S.], because [DCFS] had already placed [M.S.] there, in compliance with the

¹ Pursuant to 34 C.F.R. § 300.104, “[w]hen a student requires a residential placement, the IDEA requires a [school] district to pay for reasonable, *non-medical* expenses associated with that placement.” Ashland, 587 F.3d at 1184 (emphasis added) (citing 34 C.F.R. § 300.104) (“If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.”).

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court order that it provide a residential placement to [M.S.], and further in compliance with its own legal obligation to provide a placement that was appropriate for [M.S.’s] mental health needs.” AR 1754 (ALJ’s Summary of Decision).

Because the Court here finds that the District had an independent obligation to “ensure that a continuum of alternative placements [was] available to meet [M.S.’s] educational] needs,” 34 C.F.R. § 300.115(a)—and to consider whether a residential placement was “considered necessary for educational purposes” and not merely “necessary quite apart from the learning process,” Clovis, 903 F.2d at 643—the Court concludes that the ALJ erred and, as explained more fully *infra*, is appropriately reversed.

b. The District’s Predetermination and Failure to Discuss M.S.’s Residential Placement

In the Ninth Circuit, “[a] school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement.” K.D. ex rel. C.L. v. Dep’t of Educ., Hawaii, 665 F.3d 1110, 1123 (9th Cir. 2011). Again, in developing M.S.’s IEP, the District was obligated to “ensure that a continuum of alternative placements [was] available to meet [M.S.’s] needs,” 34 C.F.R. § 300.115(a), and federal law further mandated that potential placement in a residential treatment center be a part of that continuum, 34 C.F.R. § 300.115 (a school district “must ensure that a continuum of alternative placements is available . . . [including] instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions”).

Here, the District cannot reasonably deny that with respect to M.S.’s *educational* needs, it predetermined M.S.’s placement—or at least “steer[ed] the IEP to [DCFS’s] predetermined [residential] placement”—in advance of the October 2014 IEP meeting. K.D. ex rel. C.L., 665 F.3d at 1123. Indeed, the District has consistently argued that it “had absolutely no obligation to provide a residential placement for M.S. under state law or federal law,” D’s Opening Br. at 13, and accordingly did not have to independently consider whether, under the IDEA, M.S. might be entitled to a residential placement to meet her educational needs. Thus, the development of M.S.’s October 2014 IEP—at least with respect to the question of whether residential placement was necessary for educational purposes—was effectively predetermined by the District based upon DCFS’s decision regarding residential placement for mental health purposes. Such

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CIVIL MINUTES - GENERAL

Case No.	2:15-cv-05819-CAS-MRW	Date	September 12, 2016
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“[p]redetermination violates the IDEA because the Act requires that the placement *be based on the IEP, and not vice versa.*” Id. (emphasis added); see also Doyle v. Arlington Cnty. Sch. Bd., 806 F. Supp. 1253, 1262 (E.D. Va. 1992) (noting that school officials must come to an IEP meeting with “an open mind,” although they may have given thought to placement), aff’d 39 F.3d 1176 (4th Cir. 1994).

In resisting this conclusion, the District does not argue that it did in fact “come to the IEP table with an open mind.” Doyle, 806 F. Supp. at 1262. Instead, the District essentially argues, on various grounds, that DCFS’s first-in-time residential placement—made pursuant to a Juvenile Court order and in light of California law governing the provision of services for emotionally disturbed children and court wards—effectively relieved the District of its duty to maintain an “open mind” regarding a potential residential placement for educational purposes, as required by the IDEA. Ultimately, each of the District’s arguments is unavailing.

First, the various California statutes to which the District cites do not relieve it of its duties under the IDEA. In particular, the District relies upon certain provisions of the California Education Code pertaining to Licensed Children’s Institutions and Foster Family Homes. The subset of statutory provisions at issue here, California Education Code sections 56155, et seq., “appl[ies] to individuals with exceptional needs placed in a licensed children’s institution [like the Vista Facility] or foster family home by [1] a court . . . or [2] public agency [like DCFS] *other than an educational agency* [like, for example, a local school district].” Cal. Educ. Code § 56155 (emphasis added).

In the District’s view, section 56157 of the Education Code “specifically limits the types of placements the District needs to consider” where, as here, a child is placed in a licensed children’s institution by a public agency like DCFS. D’s Opening Br. at 22. Section 56157 reads as follows:

(a) In providing appropriate programs to individuals with exceptional needs residing in licensed children’s institutions or foster family homes, the local educational agency shall first consider services or programs operated by *public educational agencies*. If those programs are not appropriate, special education and related services shall be provided by contract with a *nonpublic nonsectarian school*.

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Cal. Educ. Code § 56157 (emphasis added). The District argues, and the ALJ concluded, that pursuant to section 56157, the District here was only required to decide whether M.S. should be provided services or programs operated by (1) a *public* educational agency or by (2) a *nonpublic* nonsectarian school. See id. In the District’s view, “[t]hat’s it; there is no requirement to consider a ‘residential placement’ because the child is already in a residential placement for other reasons.” See Defendant’s Responsive Brief (“D’s Resp. Brief”) at 10. In other words, because DCFS placed M.S. into the Vista Facility based on its assessment regarding her mental health needs, the District contends it was no longer obligated to consider whether M.S. might need a residential placement for educational reasons, or whether any such need should be memorialized in her IEP.

This argument fails, however, because the California Education Code merely “supplements” the IDEA—it does not supersede it or otherwise relieve entities within its purview of their obligations thereunder. I.R. ex rel. E.N. v. Los Angeles Unified Sch. Dist., 805 F.3d 1164, 1168 (9th Cir. 2015); see also J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist., 626 F.3d 431, 433 (9th Cir. 2010) (“Both state statutes and federal regulations supplement IDEA’s procedural and substantive requirements.”). Under the District’s view of the law, a school district would actually be prohibited by section 56157 from considering placement in a residential treatment center for children placed by DCFS in “foster family homes,” even if the student’s IEP would otherwise call for a “residential treatment center” to meet the child’s educational needs.¹ This cannot be the law.

Second, the District suggests that it would be “absurd” to obligate it “to consider a residential placement for educational reasons” for “every special education student placed by DCFS at [the Vista Facility].” D’s Opening Br. at 21. In the District’s view, residential placements for educational reasons “are a function of a student’s *educational* needs *at the time of the IEP meeting*,” and at the time of the IEP meetings at issue here, “M.S. was already in an appropriate residential placement for her severe mental health needs; therefore, she did not need another residential placement.” D’s Resp. Br. at 2-3 (emphasis in original). The ALJ adopted a similar view, finding that M.S. had “cited nothing in the IDEA or the Education Code that requires a school district to offer duplicative services in that situation, even if the service or placement that the non-

¹ Notably, section 56157 expressly applies to children placed in “foster family homes,” as well as those placed in “local children’s institutions.”

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educational agency is providing may be necessary for the Student to receive a FAPE.” AR 1807 (ALJ Legal Conclusion No. 44). The ALJ cautioned, however, that “[t]he situation would be different if [DCFS] were not fulfilling its obligations to provide [M.S.] an appropriate placement.” AR 1807 (ALJ Conclusion of Law 44, n.19).

In that instance, if [M.S.] required a particular placement for educational purposes, and [DCFS] was not providing it, [the District] might be obligated to petition the Los Angeles Superior Court to modify the placement pursuant to Welfare and Institutions Code sections 362 or 388. Since [DCFS] has fulfilled its placement obligations thus far, the scenario contemplated by those code sections has not arisen.

Id.

As explained *supra*, this line of reasoning is flawed, as it assumes that the two obligations at issue here—i.e., DCFS’s obligation to provide necessary and appropriate “permanent placement services” in light of M.S.’s mental health needs, and the District’s obligation to consider whether M.S. is entitled to a particular residential placement to meet her educational needs—are duplicative. This, of course, is not the case, as DCFS and the District employ distinct criteria in determining which particular residential arrangement may be most appropriate for children within their purview. And while it is true, as the District argues, that an IEP “is a snapshot, [and] not a retrospective,” Adams v. State of Oregon, 195 F.3d 1141, 1149 (9th Cir. 1999) (citation omitted), an appropriate “snapshot” must, at any given moment in time, sufficiently capture the child’s *educational* needs. To the extent a residential placement is necessary for *educational reasons* in order to provide a FAPE “at the time the [IEPs] were drafted,” see id., indicating as much in the IEP is not “absurd,” as the District argues, see D’s Opening Br. at 21, but required.

Furthermore, the District’s argument appears to ignore the IDEA’s many procedural safeguards, such as the “stay put provision,” which provides that “during the pendency of any proceedings” wherein the child is disputing an altered placement, “the child shall remain in [his or her] then-current educational placement.” See 20 U.S.C. § 1415(j). Thus, for example, if the District *had* indicated an educationally-based need for a residential placement in M.S.’s IEP, M.S. could have filed a “stay put” motion to

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prevent or delay any change of residence to ensure that such a move was educationally appropriate and made with the least amount of disruption to her educational progress. The uniquely powerful nature of this procedural safeguard was recognized by the Ninth Circuit in Joshua A. v. Rocklin Unified Sch. Dist., 559 F.3d 1036, 1040 (9th Cir. 2009). As the court explained, “the stay put provision requires no specific showing on the part of the moving party, and no balancing of equities by the court,” which “evidences Congress’s sense that there is a heightened risk of irreparable harm inherent in the premature removal of a disabled child to a potentially inappropriate educational setting.” Id. In light of this risk, “the stay put provision acts as a powerful protective measure to prevent disruption of the child’s education throughout the dispute process.” Id. Here, the ALJ’s ruling, if allowed to stand, would permit school districts to deprive students entitled to this crucial procedural protection simply because a non-educationally focused public agency like DCFS happened to place the student in a residential arrangement that seemed appropriate for non-educational reasons.

Third, the District argues that there was no predetermination regarding M.S.’s placement because the October 21, 2014 IEP was developed with “*substantial input* from the educational rights holder . . . and M.S.’s attorneys, Dean Conklin and Edith Madrid, which is documented in the IEP meeting transcript.” D’s Opening Br. at 18 (citing AR 1604-1688). At bottom, the District contends that it did not predetermine M.S.’s placement because it satisfied the requirement of meaningful parental involvement at the IEP meeting by allowing M.S.’s representatives to take part in a discussion of other educational placement options, not including a residential treatment center. Id. at 11. (“[T]here was a full discussion regarding [M.S.’s] continued placement in the [nonpublic school] . . . or possibly public school placement All of these options were fully discussed by the IEP team, including . . . M.S.’s two attorneys and educational rights holder”). However, the District cannot defeat a finding of predetermination by simply allowing M.S.’s representatives to attend and speak at an IEP meeting. The IDEA “explicitly imagines that each child with special needs will receive an appropriate education through the collaborative process between the [District] and the parent(s),” and it “would run contrary to the spirit of the IDEA to conclude that the [District] is permitted to make some substantive choices about the child’s educational needs unilaterally”—such as a determination regarding her need (or lack thereof) for an educationally-related residential placement—simply “because it has made some other threshold amount of conclusions in consultation with the parent(s).” E.H. v. New York City Dep’t of Educ., — F. Supp. 3d —, No. CV-15-3535, 2016 WL 631338, at *9 (S.D.N.Y. Feb. 16, 2016).

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Ultimately, “[t]he clear implication” of the District’s central argument in this appeal is “that no matter how strong the evidence presented by [M.S.’s attorneys or caretakers], the [District] still would have refused to provide” for a residential placement based upon M.S.’s educational needs because, in the District’s view, DCFS had effectively discharged it of the duty to do so. Deal v. Hamilton Cty. Bd. of Educ., 392 F.3d 840, 858 (6th Cir. 2004). “This is predetermination.” Id.

c. Whether the District’s Predetermination of M.S.’s Educational Placement Substantively Denied Her of a FAPE

While “[h]armless procedural errors do not constitute a denial of FAPE,” procedural inadequacies “that result in the loss of educational opportunity, or seriously infringe the parents’ opportunity to participate in the IEP formulation process, clearly result in the denial of FAPE.” Doug C., 720 F.3d at 1043. As the Ninth Circuit explained in Doug C.,

an IEP team’s failure to properly consider an alternative educational plan can result in a lost educational opportunity even if the student cannot definitively demonstrate that his placement would have been different but for the procedural error . . . A procedural error results in the denial of an educational opportunity where, absent the error, there is a “strong likelihood” that alternative educational possibilities for the student “would have been better considered.”

Doug C., 720 F.3d at 1047 (citation omitted).

Here, as explained *supra*, LAUSD’s predetermination regarding M.S.’s residential placement and failure to discuss the propriety of a residential placement for educational purposes constitutes a procedural error under the IDEA. Absent this procedural error, there is undoubtedly “a ‘strong likelihood’ that alternative educational possibilities for [M.S.]”—including a residential placement for educational purposes—“ ‘would have been better considered,’ ” and, perhaps, would ultimately have been reflected in the IEP. Id.; see also M.L. v. Fed. Way Sch. Dist., 394 F.3d 634, 657 (9th Cir. 2005) (Gould, J. concurring in part and concurring in the judgment) (IEP procedural error cannot be

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“harmless” where, absent such error, other educational placements would have likely been considered).

Dr. Mary Large, M.S.’s expert, testified at the OAH hearing that “[i]n her opinion, [M.S.] required the level 14 residential placement with the attached nonpublic school[] because she needed a high level of containment both residentially *and educationally*.” AR 1785 (ALJ Finding of Fact No. 128) (emphasis added).

In particular, [M.S.] required milieu therapy on a regular basis and trained staff to respond to a range of situations. [M.S.] received milieu therapy in the residence, and some milieu therapy was also available at the school. At the time of her assessment, Dr. Large believed that *[M.S.] could not have benefitted from her nonpublic school placement if she had not also had a residential placement. [M.S.] needed the residence placement to provide the behavioral support she needed.*

Id. (emphasis added).

The record also demonstrates that M.S.’s educational rights holder and attorneys have, at times, appeared to request an IEP reflecting a placement in a residential treatment center. For example, while M.S.’s educational rights holder signed the February 28, 2013 IEP, she disagreed that the IEP constituted a FAPE, commenting as follows: “I agree to implement [special day class] placement while [M.S.] is detained, but maintain[] that *she requires residential placement*.” AR 730 (emphasis added). In June 2013, although DCFS had already placed M.S. at the Vista Facility, M.S.’s educational rights holder nonetheless requested in the IEP that there be an “*educationally related* mental health assessment for residential.” AR 1763 (ALJ Finding of Fact No. 28) (quoting IEP consent page) (emphasis added).

Furthermore, the District received the report of Dr. Large in advance of the October 21, 2014 IEP meeting. “Regarding school placement,” Dr. Large wrote in her report, “[M.S.] does not yet appear ready to move to a less restrictive *educational setting*.” AR 986 (Report). However, the IEP team did not review Dr. Large’s report at the meeting, and there was no evidence that the District reviewed it at any other time. AR 1810 (ALJ Conclusion of Law No. 52). Just as the District’s failure to review Dr.

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Large's report "potentially deprived [M.S.] of an educational benefit," AR 1810 (ALJ Conclusion of Law No. 54), there is a "strong likelihood" that alternative educational possibilities for M.S. "would have been better considered" had the District not failed to discuss M.S.'s need for an educationally-related residential placement, Doug C., 720 F.3d at 1047 (citation omitted). See also AR 1791 (ALJ Conclusion of Fact No. 154) (noting Dr. Large "felt that it was important for the IEP team to include [M.S.'s] residential placement in her IEP because of its impact on the educational setting, and [M.S.] required interventions across settings to obtain a lower level of care.").

Accordingly, the Court finds that the District's predetermination of M.S.'s educational placement, and the District's failure to discuss the potential necessity of including a residential treatment center as part of her IEP, was not harmless and indeed denied M.S. of a FAPE.

B. Whether the District Denied M.S. a FAPE by Failing to Offer Placement at a Residential Treatment Facility in the February 26, 2014 and October 21, 2014 IEP meetings

Because the Court has concluded that the District's procedural violation resulted in the loss of an educational opportunity and thus the denial of a FAPE, the court need not also address whether M.S.'s February and October 2014 IEPs were "reasonably calculated to enable [M.S.] to receive educational benefits." Doug C., 720 F.3d at 1043 (citation omitted); see also Deal, 392 F. 3d at 862 (noting placement must provide student with a "meaningful" educational benefit). Of course, M.S. contends that the District's failure to offer a residential placement at the February 26, 2014 IEP and October 21, 2014 IEP meetings denied her of a FAPE. The ALJ found otherwise, concluding, in accordance with its reasoning on the predetermination issue, that because of M.S.'s "dependency status, and an order by the juvenile court regarding [her] residential placement for non-educational reasons, [the District] was not required to make a residential placement offer." AR 1815 (ALJ Conclusion of Law No. 68).

In light of the Court's conclusions regarding the District's obligations under the IDEA, as discussed *supra*, the Court concludes that both the February and October 2014 IEPs denied M.S. a FAPE, as both IEPs only reflect placement in a non-public school, without any residential component. As M.S. notes, and the District concedes, an IEP must be "reasonably calculated to enable [a student] to receive educational benefits." D's

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Opening Br. at 10. The District cannot establish that M.S.'s IEPs met this standard, as both February 26, 2014 and October 21, 2014 IEPs only reflect that M.S. was to be placed in a nonpublic school and failed even to consider whether a residential placement for educational purposes might be appropriate or required.

VII. CONCLUSION

For the foregoing reasons, the ALJ's judgment as to Student Issues 1(A)(5), 1(A)(7), and 1(A)(11) is **REVERSED**.¹ The District deprived M.S. of a FAPE by (1) failing to discuss placement at a residential treatment facility at the October 21, 2014 IEP meeting; (2) predetermining the question of placement at a residential treatment facility at the October 21, 2014 IEP meeting; and (3) failing to offer placement at a residential treatment facility in the February 26, 2014 IEP and October 21, 2014 IEP meetings. M.S. is the prevailing party on all issues in this appeal.

The Court **REMANDS** to the ALJ for a determination regarding the appropriate relief in light of the Court's ruling here and the evidence in the record.

Counsel for plaintiff is directed to file in this Court a noticed-motion for an award of attorneys' fees no later than **Monday, October 10, 2016**.

IT IS SO ORDERED.

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¹ In reaching its conclusion here, the Court notes that it takes no position regarding which public entity may ultimately be responsible for payment of residential treatment services in the event that multiples entities, like DCFS and a local school district, independently decide a particular residential placement is appropriate for a given child under the agencies' respective statutory frameworks and obligations.