

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014120525

DECISION

Student, by and through his Parents, filed a Due Process Hearing Request on December 3, 2014, with the Office of Administrative Hearings, State of California, naming San Diego Unified School District.

Administrative Law Judge Clifford H. Woosley heard this matter in San Diego, California, on March 17, 18, and 19, 2015.

Mother and Father, Student's educational rights holders, appeared on Student's behalf and were present throughout the hearing. Attorney Amy J. Bozone represented District. Special Education Administrator Jennifer Parks-Orozco attended on behalf of District.

On the last day of hearing, a continuance was granted for the parties to file written closing arguments and the record remained open until April 13, 2015. Upon timely receipt of written closing arguments, the record was closed and the matter submitted for decision.

## ISSUES<sup>1</sup>

1. Did District deny Student a free appropriate public education from September 2013 through November 2014, by failing to:
  - a) Convene an emergency individualized education program team meeting;
  - b) Consider the findings of Student's independent therapists;
  - c) Consider disability eligibility under serious emotional disturbance;
  - d) Offer an appropriate educational placement;
  - e) Offer appropriate educational goals;
  - f) Offer appropriate mental health services; and
  - g) Offer a Behavior Support Plan?

## SUMMARY OF DECISION

Student met his burden on Issue 1(b) by demonstrating that District denied Student a FAPE relating to the April 2014 and June 2014 IEPs. The sole assessment in support of the District's offers was not legally appropriate because it failed to consider the findings of Student's independent therapists and providers, as well as not conducting proper interviews and observations. District's offer was therefore based upon inappropriate information, denying Student a FAPE. Student also met his burden on Issue 1(d) in connection with the September 18, 2014 IEP because District failed to make an appropriate placement offer that integrated a transition plan from the residential treatment center back to the District. Since Student prevailed on Issues 1(b)

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<sup>1</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.).

and 1(d), analysis of Issues 1(e), (f), and (g) was unnecessary.

Student failed to meet his burden on Issues 1(a) and 1(c) because the evidence did not support a finding that District was legally obligated to hold an emergency IEP from September 2013 through May 2014 or that Student had the type of behaviors justifying eligibility for serious emotional disturbance.

Parents were entitled to unilaterally place Student because District denied him a FAPE after the April 2014 IEP. Student is entitled to reimbursement for appropriate costs associated with the placement. However, a number of factors warrant a reduction of full reimbursement, including Parents' failure to timely notify District of the unilateral placement, as well as choosing a private, residential placement in Utah without demonstrating consideration of a private, day treatment placement closer to home.

## FACTUAL FINDINGS

1. At the time of hearing, Student was a 19-year-old male, residing in Virginia and attending community college. In October 2011, while living in Virginia, Student was found eligible for special education services as a student with a specific learning disability and, secondarily, severe visual impairment. Student no longer receives special education services because he passed his General Education Development tests, which gave him the equivalency of a high school diploma. Student did not testify at the hearing.

2. Parents were divorced in 2003; Father moved to California and Mother lived in Virginia. Student primarily resided with Mother and attended public school. Father was regularly involved with Student, who previously lived with Father on a number of occasions. Both Parents testified regarding Student's mental wellbeing, physical health, and school performance.

3. From the time he was a young child, Student was medicated for intrusive and pervasive thoughts. He was diagnosed with anxiety and obsessive-compulsive

disorder at age six. He had been in intermittent treatment for mental health conditions, including manic and depressive phases, since early childhood. Student had amblyopia and nystagmus of the right eye and Duane Syndrome of the left eye, which caused double and unfocused vision, as well as fatigue. He had a history of migraine headaches. He wore specially prescribed, tinted corrective lenses that improved his vision and mitigated the headaches. As an adolescent, Father stated Student started to adjust and control his medication, and started to get in trouble, such as not doing his chores or inappropriately using the computers at school.

4. Through most of his childhood, Student received group, individual, and cognitive therapies. The therapy was of little benefit; some therapists discharged themselves because the sessions were ineffective. Student was very intelligent and treated therapy sessions as opportunities for intellectual conversation or debate. Student was very good at manipulating circumstances to benefit his purposes. By high school, Student concluded that counseling and therapy were not helpful. Mother and Father generally agreed.

#### SHENANDOAH ASSESSMENT AND IEP: JANUARY 2013

5. In the 2012-2013 school year, Student began attending the tenth grade at Stonewall Jackson High School, Shenandoah County Public Schools (Shenandoah), in Virginia. On October 24, 2012, an IEP team initiated a battery of full assessments including a vision evaluation, educational testing, sociocultural assessment, and classroom observation. At the time of the assessments, Student was taking five medications: Seroquel, Risperdal, Luvox, and Lexapro. A private psychiatrist managed Student's medication.

6. On January 23, 2013, Shenandoah convened an IEP meeting to review Student's eligibility. The IEP team affirmed specific learning disability as Student's primary eligibility and severe visual impairment as secondary eligibility. Student was

average to above average cognitively, but his school performance was below his capabilities. Student struggled with fluency, which affected his written expression and organization. Student had advanced computer skills and had recently created his own application that he sold to others. Student was compassionate, kind and tolerant, and he volunteered at a local library to help the elderly access technology. Student internalized his emotions but had no behavior issues and was respectful. Student had difficulty with executive functioning and organizational skills. He did not engage in school activities and would not complete assignments and homework, preferring to work on his computer programming. He would often rush through projects, quizzes, and tests, which affected his grades. He demonstrated little motivation and appeared apathetic, which Student sometimes attributed to his medication or vision deficits.

7. The Shenandoah IEP team placed Student, with Mother's agreement, in the general education environment, with specialized academic instruction, vision impairment support, assistive technology, and various accommodations to address his vision, executive functioning, and organization deficits. Student's school performance for the remainder of the 2012-2013 year was mixed.

8. By the time he started high school, Student often seemed apathetic and unmotivated, devoted himself to technology and computer programming, and would obsess over his computer, ignoring schoolwork. Student wanted to complete high school, go to college or trade school, earn a computer degree or certification, and work in the technology field. Student failed to apply himself and do the work necessary to pass his classes and accumulate the units needed for high school graduation

#### SAN DIEGO METROPOLITAN REGIONAL CAREER AND TECHNICAL HIGH SCHOOL (THE MET)

9. In summer 2013, Student moved to California to live with Father. Before Student moved to Father's home, Mother gave District copies of Student's Shenandoah

school records, including his IEP and assessments. Parents decided to enroll Student in District's San Diego Metropolitan Regional Career and Technical High School, commonly referred to as the Met. Mother expected that District would have informed her if it felt the Met could not meet Student's special education needs, which District did not do.

10. The Met is an alternative high school located on, and in partnership with, San Diego Mesa Community College. The Met program complied with all state and District graduation requirements, as well as University of California course prerequisites. Met's program was designed for students who knew what they wanted to do after high school, did not like traditional high school structure, and wanted to pursue their interests in the "real world." Met students were typically motivated and focused. As a consequence, the Met's program provided students substantial freedom in designing their study plan, community college involvement, and internships. The program did not work well for apathetic students.

11. Teachers worked with Met students in designing a learning plan focused on students' personal interests and passions. The Met encouraged students to pursue their interests through internships, regional occupational programs (ROP), college course work, and extra-curricular activities. Three days per week (Monday, Wednesday, and Friday), Met students attended classes or engaged in academic study on campus, while spending the other two days each week in Learning Through Interests internships. To qualify for an internship, students needed to maintain a 2.0 grade average and take a seven-week Business Environments class.

12. Learning of the program, Parents concluded that the Met would provide Student with incentives to do his schoolwork. His failure to perform had been the primary contributing factor in his poor marks. They believed the opportunity to participate in the internships, and pursue technological interests in the real world and at community college, would motivate Student to earn good grades.

13. Father enrolled Student at the Met on August 5, 2013, and Student started attending in September 2013. Father completed enrollment forms, including District's Special Services Questionnaire, identifying Student as a special education pupil. Father indicated on the form that Student was not emotionally or socially disabled. Father provided written permission for the District to obtain Student's prior schools' records.

#### September 18, 2013 Interim IEP

14. On September 18, 2013, District convened an Interim IEP team meeting. Student, Father, and the required District staff attended. General education teacher Ms. Donna Pilkington was Student's special education case manager and was responsible for interacting with Student's teachers regarding special education needs at the Met; she testified at the hearing.

15. The Met IEP team reviewed Student's records from Shenandoah, including his assessments, and present levels of academic achievement and functional performance. The team noted that Student's strengths were written language and verbal comprehension, with interests in technology and computer programming. Student preferred learning with electronic media, instead of printed texts, with audio supports. Student struggled with sustaining focus and fluency in reading and math fluency. Student's primary social, emotional and behavior challenge was lack of organization, as demonstrated by his disorganized backpack and work binders. The team noted Student's deficits, and recommended assistive technology and various accommodations. Student also had a medical diagnosis of obsessive-compulsive disorder and anxiety and was taking five medications.

16. The team confirmed Student's eligibility of specific learning disability and vision impairment and developed three goals in written language, social emotional behavior, and organizational behavior and skills.

17. Student, who was almost 17 years old and entering eleventh grade,

participated in developing the IEP's Transition Plan. He wanted to work part-time in a tech-related job after high school graduation, while attending community college to study technology. Transition Plan goals included Student researching college majors to narrow the technology fields of study and to explore different colleges related to his identified fields. District would provide services to assist Student in developing his career and college awareness.

18. The IEP placed Student in a general education classroom at the Met public school site, provided for 7 hours of specialized academic instruction per week, and 15 minutes a month of visual impairment reader services. Student received supports and accommodations in the presentation of his educational material, such as digital texts, directions given in a variety of ways, oral tests, recorded lectures, recorded texts, and shortened assignments. He was given increased verbal response time, extended time for completing assignments and tests, and frequent breaks. Student and his teachers would determine the amount of extended time he needed. District provided Student supplemental tools and aids, including assignment notebooks, calculator, low vision aids, note-taking assistance, reader services and small group instruction. Father signed and accepted the IEP.

#### Student's Time at the Met

19. Soon after starting at the Met, Father concluded that Student demonstrated his typical pattern of apathy toward homework assignments. From September 2013 through February 2014, Father and Mother regularly exchanged emails that involved various Met personnel, including: Ms. Pilkington; Student's advisor and teacher Tyler Hurl; 11th grade advisor Ms. Coulon; high school counselor Stephanie Hosking; and Jill Badger.

20. Ms. Badger was the internship coordinator at the Met for the 2013-2014 school year. She also taught the Business Environments class and an ROP class. She



worked with students and their respective advisors in identifying appropriate internships. The Met underwent several staff transitions in the fall of 2013. Sara Leonard replaced Mr. Novak as the principal in December 2013. In November 2013, Student's advisor and homeroom teacher changed to Mr. Hurl.

21. Ms. Badger saw that Student was technologically gifted and interacted with some technologically oriented pupils, but he did not form close friendships. Ms. Badger had not seen Student's IEP, but she discussed Student's special education issues with his special education teacher. She regularly had email exchanges with Father and Mother to report on Student's continuing resistance to do his coursework and attend her class. Ms. Badger copied Ms. Pilkington on the emails with Parents. Ms. Badger informed Parents of Student's pending, overdue, or missing assignments. She regularly scheduled meetings to assist Student, one-on-one. Student seldom went to the meetings with Ms. Badger.

22. Ms. Badger, as well as Student's other teachers, provided the accommodations of extra time to complete assignments. Teachers broke assignments into smaller pieces for Student, outlining step-by-step processes for finishing a particular project. Within a few days of successfully accomplishing a task, Student was dilatory or uninvolved in his coursework, falling increasingly behind. Ms. Badger reported Student's progress and lack of progress to Parents by email.

23. Ms. Pilkington was a special education teacher, with a mild-to-moderate credential. As Student's case manager, she assured that Student's teachers were aware of Student's IEP accommodations and services and properly implemented the IEP. In addition to receiving copies of Ms. Badger's emails with Parents, Ms. Pilkington personally talked with Father about Student's performance. She met with Mr. Novak three weeks after the start of the school year to discuss Student's challenges. She regularly collaborated with Student's teachers, working on strategies, such as a reward

system, to get Student to produce schoolwork.

24. During the fall semester of 2013, Father mentioned to District staff that Student was seeing a psychiatrist for medication management, which was consistent with the Shenandoah records' reference to medications. Father did not otherwise inform District of any emotional health issues.

25. Father and Student met with Ms. Badger, weekly; Student sometimes engaged in the conversation. However, Father observed that Student returned to his apathetic attitude when the meetings were over.

26. Student was capable of doing his classwork, but was uninvolved. Mr. Hurl communicated with Father and shared his concern that Student was not displaying effort in completing his assignments. As Student's homeroom teacher, Mr. Hurl collaborated with Student's teachers and he frequently communicated with Ms. Pilkington regarding Student's lack of motivation. Mr. Hurl also taught Student's English and social studies classes. Mr. Hurl found Student to be distracted by his computing, working on applications of his own design instead of classwork. Student was not a behavioral problem; he did not distract other students. He was courteous and could be redirected, although he would soon return to his own interests.

27. Mother often thanked Ms. Badger for her and the Met staff's efforts in getting Student to perform. Her emails reflected some hope that the Met would be able to motivate Student to do his coursework, but Mother's comments also indicated that she was not surprised at Student's continued failure to timely complete assignments.

28. On the morning of November 4, 2013, Ms. Badger emailed Mother, copying Father, Ms. Pilkington, and Ms. Leonard. Student was missing numerous assignments, some of which Student claimed he had not received. He was failing his ROP course. Mother responded by requesting that staff continue to hold Student accountable for his own choices and behavior.

29. On the afternoon of November 4, 2013, Ms. Badger emailed Father that Student said he was transferring to Mira Mesa High School. Father responded, explaining that he had given Student an ultimatum that if Student did not take advantage of the school's many benefits, Student would attend his local high school, which was Mira Mesa. Father advised Ms. Badger that he was having little success with Student and asked Ms. Badger to contact him with her suggestions. Father did not express any concern about Student's emotional health.

30. Ms. Badger opined that Student might have wanted to move to another school because he did not get an internship at the Met. Student did not qualify for an internship because of his poor grades. Therefore, while other students were away on Tuesday and Thursdays for internships, Student remained at school. Teachers were there to support Student in doing his classwork.

31. On November 19, 2013, Ms. Pilkington completed a Consultation Form request for District's Behavior Support Resources, seeking assistance in formulating strategies to encourage Student's work completion and to determine if further assessment was necessary. She included a list of the IEP accommodations and other methods used to date. Ms. Pilkington met with Behavior Support Services, who suggested some additional strategies.

32. On December 12, 2013, Mr. Hurl wrote Student an email, telling him that he was going to give Student a chance to resubmit class assignments. Mr. Hurl told Student that he was concerned Student was not taking the assignments seriously. Student replied, asking that Mr. Hurl look at some work he had submitted, which Student felt fulfilled some of the assignment. Student also acknowledged that he did not take school seriously, and concluded he was failure. Concerned by Student's statements, Mr. Hurl wrote Father, providing him a copy of Student's email. He also discussed the email with Ms. Pilkington, who recommended that Mr. Hurl talk to the

school psychologist. Parents did not express any concern about Student's emotional health.

33. After consulting with Behavior Support Resources, Ms. Pilkington met with Ms. Leonard, who was then principal, regarding Student's continuing indifference. They devised an Action Plan, dated December 17, 2013, to address Student's missing schoolwork. The plan had three elements: proactive strategies, materials needed and reactive strategies. The plan provided that Ms. Pilkington would communicate with Father regarding assignments to be worked on over the weekend; Ms. Pilkington would regularly spend time with Student to prioritize assignment completion; and District would hold a follow up meeting involving Parents after a few weeks of using the task list to gauge its effect. District implemented the Action Plan but Student did not complete his assignments and was failing most of his classes. Throughout the semester, Student was often absent from school. The absences increased following the December 2013 holiday break.

#### Parents Consider Moving Student to Mark Twain High School

34. Parents became progressively concerned that Student was not going to earn the credits necessary for a diploma. They feared that Student would simply stop school if he could not graduate on time. Father approached Met's staff for alternatives that would help Student move toward graduation. Ms. Hosking and Father discussed Student's regular home high school, Mira Mesa, and District's continuation/alternative Mark Twain High School (Twain). Twain had two satellite campuses, one of which, Twain Mesa, was near Father's residence. However, Twain Mesa did not support special education students. Twain Main, which was geographically further from Father's home, served special education students. Father did not want to drive Student to Twain Main.

35. Twain accommodated students who were unable to attend high school on a comprehensive campus or who were deficient in the number of credits needed for

graduation. Twain offered various specialized programs for credit recovery, designed to enable students to earn a regular high school diploma and prepare for postgraduate career training, transition to college, or reentry at their local high school. Students were given fewer assignments that required scheduling and work outside of class. Father believed that Twain would be a good setting for Student. Twain would assure that Student earned the basic credits needed for graduation while not demanding substantial scheduling of assignments outside classes. Mother was initially concerned that the Twain curriculum would not meet college preparatory standards. However, Parents eventually agreed that Twain was a good choice. Parents did not express any concern about Student's emotional health.

36. Following winter break, Father emailed Ms. Hosking on January 17, 2014:

Unfortunately, it looks like [Student] completely gave up on school regardless of the repeated warnings from many family members. We spoke about [Student's] options before winter break and I feel Twain High is the next logical move for him.

#### Student's January 2014 Hospitalization

37. On January 21, 2014, Student called a suicide hotline while at school. Police officers arrived, located Student, interviewed him, and took him to a hospital, which placed him on a Welfare and Institutions Code, section 5150, 72-hour hold.

38. Student remained hospitalized at Aurora Behavioral Health Care, San Diego, until January 29, 2014, where psychiatrist Satya Tata, M.D., evaluated him. Dr. Tata prepared a psychiatric evaluation report, dated January 23, 2014, as well as a formal

discharge summary dated February 3, 2014.<sup>2</sup> Dr. Tata found that Student had increasing suicidal thoughts, was admitted for his safety, and was closely monitored; he discussed medication management with Mother.

39. Before the hospitalization, District was unaware that Student had uncommon mental health needs. Parents did not tell the District of any unusual behaviors. Parents' emails generally indicated that Student's apathy and task avoidance was consistent with past behavior. Parents focused instead on strategies that would motivate Student and not his mental health. Student did not exhibit unusual or disturbing behaviors in the school setting.

40. Following Student's discharge from the hospital, and based upon Student's hospitalization, District determined that it would further assess him. Ms. Pilkington prepared an Assessment Plan on February 4, 2014, for a Mental Health Related Services assessment to be conducted by a mental health clinician or school psychologist. Father initially resisted signing; however, he signed and returned the assessment plan on February 9, 2014.

#### Parents Pursue Transferring Student to Mark Twain High School

41. Father contacted Ms. Hosking for the purpose of transferring Student to Twain after Student's discharge from the hospital. On February 3, 2014, Father emailed Ms. Hosking requesting that District exit Student from special education so he could transfer to Twain Mesa, the closer of the two Twain campuses; Twain Mesa did not serve special education students.

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<sup>2</sup> Dr. Tata's reports were not offered into evidence, but are summarized in the District's September 2014 mental health assessment.

42. Ms. Pilkington, Ms. Leonard, Mr. Hurl, and Ms. Hosking all opined that exiting Student from special education was not in Student's best interests. After further discussions involving Parents and Met staff, Parents elected not to exit Student from special education, and decided to enroll Student at Twain Main, where his special education needs could be met.

#### FEBRUARY 18, 2014 IEP, CHANGING PLACEMENT TO TWAIN MAIN

43. On February 18, 2014, District convened an IEP team meeting for the sole purpose of changing Student's placement from the Met to Twain Main. In addition to Father, all required District staff members were present. The team affirmed the change of placement to Twain Main. The IEP noted that a mental health assessment was in process. The District added eight hours of specialized academic instruction in a separate classroom and two hours a month counseling and guidance services. The IEP included a new goal for work completion.

44. Father did not express to the IEP team any concern about Student's emotional health or behaviors, at school or home. Father signed and approved the IEP.

45. Student started attending Twain Main on February 24, 2014. Father provided transportation.

#### District's Mark Twain High School, Main Campus (Twain Main)

46. Todd Lehr was Student's special education case manager, had 15 years' experience as a case manager, and had been at Twain Main since 2007. He was properly credentialed in single subject and special education. Student also had Mr. Lehr for English and homeroom. Mr. Lehr testified at the hearing.

47. Mr. Lehr knew and worked with Student from March through May 2014. The school psychologist told him about Student coming to Twain from the Met. Mr. Lehr reviewed all information available in Student's file, including the IEP's, psychological

information, teachers' anecdotal information regarding performance and behaviors, and grade reports. Before meeting Student in person, Mr. Lehr understood that Student had not been succeeding in classes at the Met, was apathetic about school, was not social, and did not bond with the school experience. He was aware of Student's January 2014 hospitalization.

48. Mr. Lehr worked with other students who were similarly apathetic, with disconnected dispositions. At Twain, such students were served by small class sizes where they could gain rapport with staff, be closely monitored, and receive quick responses to individual needs. For example, Mr. Lehr would take a student for a walk and engage in one-on-one talks, away from the academic atmosphere.

49. When Mr. Lehr first met Student, Student was excited to be at Twain. They talked about music, Virginia, and computers. Student gravitated toward the small classes. He openly talked about his depression, medications, and obsessive compulsive disorder. Student also said he thought himself bipolar.

50. Mr. Lehr concluded that Student was a very different person from the one portrayed in his file's paperwork. Initially, Student was disconnected from his environment, did not do his written work, was disorganized, and used familiar task avoidance tactics. However, after about four weeks, Mr. Lehr observed Student engage with some of his classes, submit written work, and connect with teachers. By the sixth week, Student appeared to be a good student, with excellent attendance; he was not complaining of headaches and going to the nurse as often.

51. Mr. Lehr saw an upward trend in Student's progress toward succeeding in school and earning needed credits toward a degree. Father acknowledged that Student did better at Twain because the program required less work. However, Father did not agree with teachers that Student was doing well merely because Student's grades improved. Father believed that Student increasingly struggled with his emotions and



that the academic performance was not sustainable. Father testified about these concerns at hearing but did not tell District at the time. Student's conduct at school was emotionally and behaviorally unchanged.

52. According to Mr. Lehr's April 22, 2014 IEP goal progress reports, Student was working toward achieving his goals. As of May 27, 2014, Student had earned credit in one class, Choir. His teachers reported Student to be between 25 and 80 percent complete in his remaining classes, with grades of C, B, and an A. He was failing History because he did not do the assignments.

#### April 2014 Mental Health Related Services Assessment

53. Sarah Delcrew is a licensed marriage and family therapist, as well as a registered play therapist, employed by the District's Mental Health Resource Center as a mental health clinician. She earned a bachelor's degree in psychology from the University of San Diego in 2002, followed by a master's degree in 2006. Ms. Delcrew conducted a mental health related services assessment of Student, generating an April 10, 2014 written report. She testified at the hearing. She characterized the assessment as a standard assessment, which she conducted many times. The only relationship she had with Student was the assessment.

54. Ms. Delcrew interviewed Student's English teacher Todd Miller, history teacher Ablalos Sortino, and Mr. Lehr. She consulted with licensed mental health clinicians Christian Schuhmann and Aidee Angulo. She reviewed Student's IEP's, assessments, and available school records. She utilized the Comprehensive Adolescent Severity Inventory (CASI) Assessment Tool, which is a comprehensive, semi-structured, clinical assessment and outcomes interview, with Mr. Hurl and chemistry teacher Todd Ferguson from the Met.

55. Ms. Delcrew did not review any records from Student's psychiatric hospitalization, did not talk to Student's Aurora psychiatrist Dr. Tata, and did not review

Dr. Tata's January 23, 2014 psychiatric evaluation or February 3, 2014 discharge summary. Ms. Delcrew knew that psychiatrist Trenton Moyer had been managing Student's medications since October 2013. She did not contact or interview Dr. Moyer nor review any of his records regarding Student. Ms. Delcrew did not ask Father for a release so she could talk to Student's private mental health providers, including Dr. Tata and the hospital. When asked why she did not seek information from Aurora or Dr. Moyer, Ms. Delcrew stated that Father did not offer it when she asked Father if there was any further information she should review.

56. Ms. Delcrew did not interview Mother. Ms. Delcrew never observed Student in the school setting. She interviewed Student and Father, together. She did not believe separate interviews were necessary, concluding that Student was transparent and comfortable during the interview in Father's presence. In documenting the interview, Ms. Delcrew quoted Student and occasionally stated that both Student and Father agreed as to a fact or observation. However, the interview summary was sometimes unclear if one or both of the interviewees provided or agreed on the information.

57. Ms. Delcrew reported that Student said he was depressed in Virginia before moving to San Diego because he broke up with his girlfriend of two years. Student said that his stepfather suggested that he go live with Father to get away from everything and have a fresh start. Therefore, Student moved to San Diego in the summer of 2013. Student's reasons for moving differed from those offered by Father and Mother.

58. Ms. Delcrew reviewed Student's mental health history. Between ages 14 and 15, Student began to experience an increase in mood related symptoms, including sadness, irritability, apathy, isolation, hopelessness, helplessness, and difficulty paying attention. Student reported more obsessive, racing thoughts and had difficulty sleeping.

Student said his doctor was considering diagnosing him as bipolar. He shared that he engaged in self-injurious behaviors (cutting) about a year before, but had stopped. Other than Student's statement in this interview, Student does not refer to self-injurious behaviors.

59. Father and Student agreed that symptoms had increased over the prior six months. In addition to discussing the January 2014 hospitalization, Student reported a suicide attempt, approximately four months before the interview, when he took 1200 mg of Seroquel. Student did not tell anyone about the attempt at the time. He told Father that he was sick; he slept for several days. He said the attempt was triggered by distorted perception and thinking about old memories. Ms. Delcrew opined at hearing that Father first learned of Student's reported overdose of medication at the interview. At hearing, Father confirmed that Student had spent several days sleeping in November 2013. Mother confirmed this timeframe, noting that Student told her about the alleged overdose when he was hospitalized at Aurora. Other than Student's statement, there is no evidence of a suicide attempt in November 2013. District was unaware of Student's alleged overdose until Ms. Delcrew's interview. Ms. Delcrew concluded the reported suicide attempt was not relevant to Student's current school functioning, especially because it did not occur at school, unlike Student's call to the suicide hotline in January 2014.

60. Ms. Delcrew reviewed Student's prescriptions, as managed by Dr. Moyer. Father reported finding pills in Student's bedroom that he should have taken. Ms. Delcrew was uncertain if the Student was taking the medication as prescribed. Student admitted to adjusting his medication.

61. Ms. Delcrew reviewed Student's educational background and current school functioning. She relied on statements from Student's teachers. At the time of the report, Student would present at school with depressed mood, flat affect, and an overall

lack of motivation to engage or follow through with academic tasks. Student was observed making unusual statements and being disconnected from what was going on around him. He was known for concocting elaborate excuses for incomplete assignments. He was generally described as a “quiet kid,” who did not have many friends. He had no behavioral outbursts or significant attendance issues. These observations were consistent with Student’s behaviors as reported in the Shenandoah records.

62. Student told Ms. Delcrew that he was doing better since he started at Twain and was motivated to do better academically; it was very important that he graduate from high school. He said that his anxiety and depression had increased over the past four months and were affecting his ability to sustain attention or feel motivated in school. Though resistant to therapy, Student reported that he would be interested in having a therapist who meets with him at school, focusing on how his mental health issues impact his functioning.

63. Ms. Delcrew concluded that Student’s mental health needs could be managed at school. She recommended that District offer Student 15 hours of Mental Health Related Services therapy until his next annual IEP in February 2015. The therapy might be group, individual, and/or family and would address the social emotional IEP goals. Ms. Delcrew proposed two additional IEP goals: the first was to address task avoidance and the other was for implementing positive coping strategies to address his emotions and feelings.

#### April 11, 2014 IEP Team Meeting

64. On April 11, 2014, District convened an IEP team meeting to review Ms. Delcrew’s mental health assessment and recommendations. Attending were Father, Student, Ms. Sortino, general education teacher Lisa Schenck, Mr. Lehr, school psychologist Oyuki Gonzalez, and Mr. Schuhmann.

65. Student completed a District form entitled "Person Centered Planning Interview Form." The completed form was attached to and made part of his IEP document. The questions affirmed that Student was aware of his educational and graduation status, and further explored Student's thoughts about future employment, post high school education, and independent living.

66. When asked about how he dealt with stress, Student said he programmed, smoked, and did other bad stuff. He acknowledged struggling with keeping a normal mood and structuring complex tasks. When asked about his dreams for the future, Student answered that he could not plan on the future and that "the light at the end of the tunnel" was closing faster than he could get to it. The IEP team did not review this form at the meeting. Father did not see the completed questionnaire before the IEP team meeting but, when he did, he was shocked and saddened at Student's statements about the future.

67. Ms. Delcrew presented her report. The IEP team determined that Student displayed emotional and behavior problems that impeded his ability to benefit from his educational services. The IEP team followed Ms. Delcrew's recommendation, adding 15 hours of mental health related services therapy for the year. The IEP was unclear as to the therapy's frequency, availability, and timeframe. Ms. Delcrew recommended the 15 hours until the next annual review of February 2015; however, the IEP set September 2014 as the end date. The team also adopted and added Ms. Delcrew's two additional goals. Otherwise, District's offer of placement and services was unchanged, including the absence of extended school year.

68. Father understood from the IEP that the therapy services were to be one hour per week and would be unavailable over the summer. Father was doubtful about the therapy offer because Student had repeatedly rejected therapy and former therapists acknowledged Student did not benefit. However, Father did not oppose

again trying therapy and signed the IEP.

69. After April 2014, Parents testified that Student's behaviors became increasingly erratic and dangerous at home. Student was sneaking out of the house at night after midnight; Father went out to find him twice. Father found marijuana in his backpack. Tension in the household grew. Student would sometimes call Mother when he slipped out in the evening. He would talk about how he would smoke marijuana and get high, which kept him from thinking about killing himself. Student said he would not call the suicide hotline again because it would bring the police. Student did not take his medication properly.

70. Parents did not inform the District of their concerns or about Student's behaviors in the home setting. Student's conduct at school was emotionally and behaviorally unchanged.

#### Parents Choose to Send Student to a Residential Treatment Center

71. Father and Mother were very apprehensive that Student would not be attending any school program over the summer, leaving Student without structure and unsupported throughout the day. District informed families at the beginning of the year that Twain students typically attend summer school because Twain students were in credit recovery. However, Mr. Lehr acknowledged at hearing he did not know how, or if, Parents were aware that Student would be attending summer school 2014. He was unable to refer to any information packet or letter sent to Parents. No one informed Father or Student of the summer program at the April 2014 IEP meeting. Also, District never explained to Parents that Mr. Schuhmann had the discretion to have therapy with Student over the summer. As a result, Mother and Father reasonably believed that Student would not be in any District program or receive any District therapy over summer 2014.

72. Dr. Moyer was a board certified psychiatrist who was managing Student's

medication at the time, beginning in October 2013. He testified at the hearing and confirmed Student's diagnoses of chronic, major depressive disorder, and obsessive-compulsive disorder. In Dr. Moyer's opinion, Student did not respond to treatment for depression and, therefore, required antipsychotic and antidepressant medication. Student had many mood swings, from high to low, with feelings of worthlessness and general disinterest. Though his main role was to treat Student's mental illness, he concluded that Student's condition and many medications affected his school performance. Dr. Moyer tried to keep abreast of Student's school performance because it affected his medication management.

73. As the school year progressed, Dr. Moyer did not see improvement. Changes in medication were not effective. Dr. Moyer suspected "self-sabotage," because Student was not properly taking his medication. He described Student as one of his "more challenging" patients due to the inability to find an effective medication regimen and establish an effective therapeutic relationship. Dr. Moyer described Student, as "an unhappy person who felt like nothing was working or helpful." Dr. Moyer concluded that the medication regimen was not going to help Student. Dr. Moyer opined that Student required other treatment, which Dr. Moyer could not provide; he did not identify what that treatment might be.

74. Mr. Schuhmann had been with District since 2004 and was a licensed marriage and family therapist. He first met Student at the April 10, 2014 IEP meeting. He reviewed all material available in Student's file before beginning therapy. Other than the IEP meeting, he did not communicate with Father. Mr. Schuhmann testified at the hearing.

75. Mr. Schuhmann started therapy with Student on April 15, 2014, meeting with Student six times. Mr. Schuhmann maintained a logbook of his therapy sessions. Student presented at therapy consistent with the description contained in the

assessments. Initially, Mr. Schuhmann allowed Student to speak about whatever he liked. Student stated he did not expect the sessions to be helpful. In the last two sessions, Mr. Schuhmann challenged Student; he believed Student started to engage. He emphasized the positive things in Student's life, such as his gift for computing. Mr. Schuhmann used positive behavioral therapy. He tried to help Student better understand his "self-concept," which affected his future outlook. Mr. Schuhmann sought to have Student be aware of the automatic thought and emotional patterns that were sabotaging Student's hopes and goals. If he suspected serious suicidal ideations, Mr. Schuhmann would have referred Student for more thorough assessment to determine the substantive nature of the suicidal thoughts. Mr. Schuhmann recognized that Student enjoyed "the contest" that therapy offered. Mr. Schuhmann concluded that Student's medication should have been more closely monitored. They did not discuss Student's suicide hotline call or hospitalization.

76. In Mr. Schuhmann's opinion, Student did not require a more restrictive environment. If Student continued the same level of treatment over the summer, the treatment would have been sufficient to meet Student mental health needs. Other than the IEP meeting, Mr. Schuhmann did not communicate with Father. Therefore, Father and Mother were unaware of Mr. Schuhmann's opinion until the hearing.

77. Student liked Mr. Schuhmann. However, Parents believed that Student's behaviors outside of school did not improve. Parents believed that, at school, Student was in a structured environment and he was able to keep his mind somewhat distracted from unsavory thinking. Outside of school, Parents testified that Student would perseverate on depressive and hopeless thoughts. Student would come home, immediately go to his room, put his head under a pillow, and not come out. Student's presence in Father's household was also causing increasing strain in the relationship between Father and Father's girlfriend. Student was caught going through some of the



personal effects of Father's girlfriend, who indicated she could not live with Student. Parents did not inform the IEP team of Student's conduct outside of the school setting.

78. Mr. Lehr acknowledged that Student continued not to do written work. From his perspective, however, he believed that Student was doing well emotionally. During testimony, Mr. Lehr was shown the statement Student had made on the April 11, 2014 Person Centered Planning Interview Form, referring to the inability to get to "the light at the end of the tunnel." Mr. Lehr said that this was contrary to the improvement he witnessed at the time Student made statement.

79. Parents concluded that District's services were insufficient. Despite Twain's report that Student was doing better academically, they observed a continual decline in Student's demeanor and behavior. They believed that Student's well being was in danger, especially with the approach of a summer without any District support. Parents, however, did not tell District.

80. By letter dated May 19, 2014, attorney Andrea M. Tytell notified District that Parents had retained her to represent Student in all matters relating to his education. Parents formally requested a complete assessment, including another mental health evaluation on an expedited basis due to Student's critical condition. Ms. Tytell notified District that Parents might be forced to engage in self-help measures, including unilateral placement. She also requested a copy of Student's complete file. Her letter did not affirmatively notify District that Parents were privately placing Student and seeking reimbursement from District.

81. Mr. Lehr did not see Student after May 21, 2014. A few days before, Student told Mr. Lehr that he wanted to go to a residential treatment center. Mr. Lehr was surprised; he had not received any reports from Father or any communication from Mother. Mr. Lehr talked to Father and confirmed Parents' decision to put Student in a residential treatment center. Father did not explain why.

82. At the time, Mr. Lehr believed Student was passing all his classes, connected socially and emotionally to four or five genuine friends, and was turning in his work. Student was putting in an effort. He was genuinely surprised at Parents' decision that Student required a residential treatment center because Student was doing well at Twain.

83. On May 23, 2014, Parents admitted Student to Discovery Ranch, an all boys residential treatment center, in Utah. Parents did not present any evidence that they searched for, or considered, a program closer to either of their residences, in California or Virginia.

84. By letter dated May 27, 2015, Ms. Tytell notified District that Parents unilaterally placed Student at Discovery Ranch, claiming that District had failed to offer FAPE to meet Student's unique needs and Parents were required to make the decision to unilaterally place. She sent a copy of her letter directly to Twain.

85. Mr. Lehr responded directly to Father by letter of June 3, 2014. He told Father that District was not required to pay for a nonpublic school if it had offered a free and appropriate public education. Mr. Lehr talked of the April 11, 2014 IEP and reviewed the offer of placement at Twain, along with the related services. He informed Father of his right to file for due process.

86. Also on June 3, 2014, District prepared a proposed assessment plan for a comprehensive assessment of Student. Evaluation areas included academic achievement by an educational specialist; health by a registered, credentialed school nurse or itinerant teacher; intellectual development and social/emotional/behavior by a school psychologist; and another mental health related services assessment by a mental health clinician.

87. On June 3, 2015, Student's attorney formally requested in writing that District hold an emergency IEP meeting.

## June 10, 2014 IEP Team Meeting

88. On June 10, 2014, District convened an emergency IEP team meeting. Father was present along with the required District personnel. Ms. Tytell, Mother and District's nonpublic school counselor Lyn Nelson attended the meeting by telephone.

89. Parents shared their worries regarding Student's mental health issues, including his behaviors outside of school, and expressed belief that District's current placement, with 15 hours of mental health counseling for the year, was not addressing Student's needs. This was the first time that Parents told an IEP team, or any District personnel, of their increased concerns regarding Student's mental health. District offered to complete a comprehensive assessment and to place Student in an unidentified alternative placement during the assessment process. District stated that it was unaware of the behaviors that Parents described, which were not observed in school. District reiterated its belief that the April 2014 IEP provided Student with a FAPE. District declined to fund Student's placement at Discovery Ranch.

90. Parents declined District's offer of an alternative placement. The District presented, and Father signed, the proposed assessment plan.

## DISCOVERY RANCH RESIDENTIAL TREATMENT CENTER

91. Discovery Ranch is located in Mapleton, Utah, about 55 miles south of Salt Lake City, near Uinta National Forest. Discovery Ranch's residential program was built upon the concept of experiential therapy, with the goal of building relationships that make students more open to the therapeutic process. Discovery was on more than 20 acres, with indoor and outdoor facilities that support equine and ranch therapy. Therapy took place in multiple settings so that students were involved in therapeutic learning virtually all day long.

92. Mother believed that Discovery Ranch offered a program that uniquely

addressed Student's rigid resistance to therapy because experiential therapy did not feel like therapy. A student's treatment team included clinicians, horse professionals, teachers and residential staff. She hoped that the setting and support would keep Student safe, enabling him to become emotionally stable and plan a future.

93. All Discovery Ranch students were required to participate in equine assisted psychotherapy, with the purpose of teaching students about themselves by forming relationships with several horses. Students were also assigned a newborn baby calf, giving them responsibility for a life other than their own. Discovery Ranch used the calf program to help students understand grief and loss, attachment and detachment.

94. The residential component aimed to model modern family life by living with others, all of whom had specified chores, such as preparing and cleaning up breakfast, laundry, housecleaning, homework, and caring for dogs, cats and chickens. Students started each day with a goal-setting group. They gathered again at night to evaluate their success at achieving those goals.

95. In addition to the unique therapy strategies, Mother chose Discovery Ranch because of its academic structure. The academic program was competency based and focused on learning outcomes. Licensed educators used core curriculum in classes with an average of 12 students and 1 mentor to support the teacher. Subjects were concept based and at stratified levels. Students had to demonstrate competency before moving to the next concept. Mother thought this would give Student a chance to move through subjects he liked more quickly than the subjects he resisted. Academics and therapy were connected and divided into levels. Mother said that Student had to demonstrate academic progress as well as therapeutic progress in order to receive level advancements.

96. Upon Student's enrollment, Discovery Ranch conducted psychosocial and psychiatric evaluations, which stated that Student was referred to the residential center

due to “depression, anxiety, suicidal ideation and marijuana use.” On May 29, 2014, psychiatrist Derry Brinley reported the diagnosis was: Mood Disorder Not Otherwise Specified; Bipolar, type 2 by history; oppositional defiant disorder, cannabis abuse; and social anxiety disorder. Discovery Ranch noted Student’s history of family discord in both of Parents’ households, resulting in increasing symptoms of anxiety, depression, suicidal ideation, self-harm, noncompliance with medication, started smoking cigarettes, and then marijuana.

97. Parents participated in weekly family therapy, usually by conference calls. Student had a treatment team, which conducted regular reviews of Student’s academic, residential, and clinical status.

98. Mother acknowledged that Discovery Ranch’s evaluations were consistent with Student’s long history of therapeutic resistance, manipulation, and academic ambivalence. During his first month at Discovery Ranch, Student did not cooperate in therapy and did little academic work, focusing his efforts on persuading Parents to remove him from the program. Student used many of his documented manipulative tactics. Parents, however, refused to withdraw him. Student continued to resist therapy and academics, announcing that he was going to leave when he turned 18 years of age on September 27, 2014.

99. In July 2014, Student no longer required Seroquel. In August 2014, Student reported doing better, was more focused and motivated during class, had completed multiple concepts in geometry and physics, and would ask for help if he did not understand something. However, he had completed only one English concept and resisted non-preferred academic work and therapy.

100. In August 2015, therapist Jeanette Brown started working with Student; she became his individual therapist the first week of September 2014. Ms. Brown was a licensed clinical social worker and a first tier certified substance use disorder counselor.

She testified at the hearing. Ms. Brown found Student to be struggling with hopelessness and unexcited about a dim future, complaining of issues related to his eyes. Student had not worked well with staff, tried to manipulate by arguing or forcing intellectual debates, had little respect for authority, and was not social. Ms. Brown concluded that Student had recurring thought distortions, primarily about himself. Student tried to “fix” his struggles intellectually, as opposed to dealing with the truth about himself. Ms. Brown employed thought pattern management and established a close bond with Student on the ranch. Ms. Brown opined that Student had engaged with the experiential therapy, which helped him address his general, negative demeanor and view.

101. As Student’s 18th birthday approached, he threatened to “walk away.” Ms. Brown told Student that she would worry about him if he walked out; she would be concerned about whether he was safe and had enough to eat. Student appeared shocked that someone other than his Parents would care. Ms. Brown told Student to write a letter, explaining his decision. The next day, Student told Ms. Brown that the letter was not a good idea. Thereafter, Student participated in therapy. They discussed the GED tests, instead of a diploma, and came up with a plan. Ms. Brown stated that this was when things turned around for Student. Ms. Brown and Student agreed that he would stay after his 18th birthday. He was at level one, almost at level two. When Student reached level two, he would start the process of passing the GED tests. Discovery Ranch and Student would then work up a contract about going home, getting a job, and attending college.

102. Ms. Brown thought that Student made the most progress in October and November 2014. Student became hopeful and achieved his plan. He reached level two, passed his GED tests, agreed to a “go home” contract, and left Discovery Ranch on November 23, 2014.

103. During Ms. Brown's time working with Student, she saw no sign of suicidal ideation. In her opinion, when Student left Discovery Ranch, he would continue to need therapy.

#### District's Comprehensive Assessment

104. District commenced its comprehensive assessment while Student remained at Discovery Ranch, producing a Psychoeducational Reevaluation Report and a Mental Health Related Services Assessment report.

#### MENTAL HEALTH RELATED SERVICES ASSESSMENT

105. Yolanda R. Hiller, District's mental health related services residential coordinator since 2012, conducted the mental health related services assessment, producing a report dated September 17, 2014. Ms. Hiller was a licensed marriage and family therapist and had worked for District since 2003. Her duties included placement and monitoring of students in residential treatment centers, as well as auditing contracted residential centers to assure compliance with IEP's and special education federal and state standards. Ms. Hiller's assessments typically concern three levels of mental health placement: outpatient, day treatment, and residential.

106. In preparing for assessment, Ms. Hiller ensured that she had access to all relevant documents and providers. She knew that Student had been under the care of Dr. Moyer and was hospitalized at Aurora in January 2014 following a suicide threat. She therefore contacted Parents and obtained full releases, allowing her to interview Student's psychiatrist and obtain Dr. Tata's Psychiatric Evaluation and Discharge Summary. The releases also assured full access to Discovery Ranch documents and personnel.

107. In Ms. Hiller's opinion, she would not have been doing her job if she failed to interview Dr. Moyer and review Student's Aurora hospitalization records. She opined

that her professional duty required her to affirmatively seek the releases from Parents. The Aurora reports and Dr. Moyer were valuable in her assessment, particularly Dr. Moyer's expressed concerns for Student that influenced her final recommendation.

108. Ms. Hiller also interviewed Student, Mother, Father, Mr. Schuhmann, and Mr. Lehr. At Discovery Ranch, she interviewed therapist Lynn Nelson, academic director Victoria Fielding, geometry and physics teacher Lindsey Cracroft, and English and history Teacher Nicole Holley. She reviewed Discovery Ranch's treatment team reports, courses in progress reports, Ms. Nelson's psychosocial evaluation, and Dr. Brinley's psychiatric evaluation. She reviewed Twain's progress monitor teacher checklists by Mr. Lehr and three of Student's teachers. Ms. Hiller reviewed Ms. Delcrew's mental health assessment, District's April and June 2014 IEP's, and all of Student's Shenandoah records.

109. Ms. Hiller traveled to Discovery Ranch and interviewed Mr. Nelson on June 25, 2015. He reported that Student continued to be resistant to therapy and academics. Mr. Nelson noted that Student was very adept at manipulation and was passive resistant. He told Ms. Hiller that Student presented differently when his Parents were present. For example, during telephonic sessions with Parents, Student would "revert to old behaviors and reports having mood swings, denies gaining any skills, and reports and presents with depression."

110. Ms. Hiller then interviewed Student for about two hours, in order to obtain the most reliable, usable information. Student talked about his attempted overdose with his prescription medication, his call to the suicide hotline and subsequent hospitalization, and minor thoughts about "leaving life and not living." When Ms. Hiller further inquired about these thoughts, Student did not know how or why they occur. Ms. Hiller concluded that Student was not presenting with serious suicidal risk. Student said he wanted to go back home where he had friends at Twain. He wanted to get a GED or possibly graduate from Twain. Student was talkative, easily engaged, and



maintained good eye contact.

111. Ms. Hiller observed Student for about 45 minutes in a class with 10 other students. She found Student to be focused while reading and taking notes on a history concept. He was distracted periodically, but not for more than 30 seconds, before returning to his work. He generally remained on task. While Ms. Hiller was at Discovery Ranch, teachers reported Student to be resistant to doing written work, disorganized, and manipulative.

112. In August 2014, Ms. Hiller conducted follow-up interviews with Discovery Ranch personnel by telephone. She learned that Student was more engaged in doing schoolwork and therapy. Parents unambiguously informed Student, during a family therapy session, that Student could not come home until he completed the treatment at Discovery Ranch. Student thereafter reduced his persistent efforts at trying to find a way to leave the residential treatment center.

113. Ms. Hiller concluded that Student did not require a residential treatment center in order to access and benefit from his education. She considered Student's presentation and performance at both Twain and Discovery Ranch. However, Ms. Hiller determined that Student required a therapeutic environment and recommended a placement that could provide intensive day treatment. These services would be provided at a separate school site and offer structured education, a therapeutic milieu, with training and support services to address Student's mental health needs. Pupils in day treatment placements attend during the summer. The recommended services would include: daily rehabilitation groups and/or psychotherapy groups; daily living skills building groups or activity; structured community meetings twice a day; and weekly individual therapy. Proposed adjunct services would include collaboration, consultation, case management and parent counseling as needed. Ms. Hiller recommended an additional emotional regulation goal to supplement those added at the April 2014 IEP.

114. In Ms. Hiller's opinion, if Student returned to District from Discovery Ranch, District's Mental Health Related Services could provide a transition service, such as a "step-down" process, diminishing the difficulties associated with the change and increasing the chances of success after the move. However, Ms. Miller did not recommend or discuss the services in her report or at the subsequent IEP.

#### PSYCHOEDUCATIONAL REEVALUATION REPORT

115. Ms. Gonzalez prepared a psychoeducational reevaluation report, dated September 18, 2014. She is a nationally certified school psychologist and holds an educational specialist degree.

116. Ms. Gonzalez reviewed all school records, IEP's, and assessments. She obtained written input from Student's special education and general education teachers from the Met and Twain. Ms. Gonzalez had five Met teachers, four Twain teachers, and father complete the Behavior Assessment System for Children, 2nd Edition (BASC-2) rating scales. Father also completed the Structured Developmental History scales, Behavior Assessment System for Children, 2nd Edition (BASC-2-DPH), which Ms. Gonzalez used in conjunction with the records, to gather information regarding Student's health and developmental history.

117. District contracted with licensed psychologist Bruce C. Poulsen, in Utah, to give two standardized instruments to Student at Discovery Ranch. On August 2, 2014, Mr. Poulsen administered the Wechsler Adult Intelligence Scale, Fourth Edition, and the Woodcock Johnson Tests of Achievement, Third Edition. He reported the results, which Ms. Gonzalez used in her reevaluation.

118. In looking at Student's social-emotional and behavioral functioning influencing learning, Ms. Gonzalez compared the input of the Met teachers with that of Twain teachers. She concluded that Student's social-emotional functioning improved at Twain, after he left the Met. At Twain, teachers reported that Student: accepted

assistance with gratitude; interacted with friends with similar interest; did not isolate himself, though he did not participate a lot during class; and was generally polite, focused, and positive. Student displayed high interest in preferred subject matter. The Twain teachers reported Student was pleasant, attentive, and generally on task during class. Twain staff believed that Student was increasingly fitting in at school as the semester progressed.

119. Ms. Gonzalez found that Student's behaviors also improved as Student transitioned to Twain. She contrasted the Met's teachers' BASC-2 scale scores with those of Twain teachers, which indicated that five areas of at-risk or clinically significant concerns at the Met had decreased to one major concern of somatization at Twain. Student frequently complained of headaches. The teacher reports showed that Student continued to struggle with preparedness and organization at Twain, which the IEP goals had already been designed to address.

120. Student was consistently well behaved and respectful, demonstrating good rapport with his teachers. Teachers confirmed that various accommodations and supports benefited Student, such as the option to type, visual supports and scaffolding, preferential seating, small class size, extended time for completing assignments, and repetition and review.

121. Using the standardized scores from the intelligence and achievement instruments, Ms. Gonzalez confirmed that Student was eligible for special education services due to a specific learning disability, in the areas of executive functioning and academic fluency, with average to high average overall cognitive functioning. Student struggled with general school readiness, as demonstrated by a lack of initiation and follow-through with assignments. Ms. Gonzalez's analysis included consideration of the statutory elements for a specific learning disability eligibility.

122. Neither Ms. Gonzalez nor Ms. Hiller found any behavioral or emotional

basis for finding Student to be eligible as a student with a serious emotional disturbance. No one reported observing the behaviors upon which Parents relied as the basis for their deep concerns, resulting in the unilateral placement, in the classroom or at school.

123. Neither Ms. Gonzalez nor Ms. Hiller discussed or proposed a transition plan for removing Student from Discovery Ranch and returning him to a District school. Also, the two reports were silent as to how to address Student's stated intent of removing himself from school when he turned 18 years of age in late September 2014.

#### September 2014 IEP Team Meeting

124. On September 18, 2014, District convened an IEP team meeting to review the assessments and recommendations. Father, Mother (by telephone), Ms. Tytell, Ms. Brown (by telephone), and the required District personnel attended.

125. Ms. Gonzalez and Ms. Hiller presented their reports. Parents disagreed that specific learning disability was the primary eligibility, advocating that emotional disturbance was the proper eligibility. Mother stated that changing schools was not going to solve Student's larger emotional problems. District team members noted that Parents did not tell the District about the emotional and behavioral issues that caused them such grave concern. Additionally, these emotional and behavioral issues were not observed or encountered at the District schools.

126. The District IEP team members adopted Ms. Gonzalez's and Ms. Hiller's recommendations. The District agreed with Ms. Hiller's conclusion that Student needed a therapeutic environment and recommended a placement with intensive day treatment, at a District school. District offered Ms. Hiller's recommended related services and additional IEP goal. The team added a positive behavior support plan for task avoidance and included a transition plan for post-secondary goals. Student's eligibility remained specific learning disability, with a secondary eligibility of visual impairment. The offer

included extended school year and transportation.

127. The IEP team did not discuss transition services for Student if District's offer was accepted. District did not offer any transition services as part of its offer of FAPE.

128. If the District had made this offer in April 2014, Parents would likely have accepted because it addressed their concerns regarding lack of support throughout the summer. Mother testified, however, that District's September 2014 offer did not address the Parents' concerns for Student's mental health or education at that time. Student was making progress, emotionally and academically, at Discovery Ranch. However, as Ms. Brown told the IEP team, Student was just beginning to engage in therapy and still struggling with school. Student would turn 18 years old just two weeks after the IEP. District did not address how it would keep Student in school and meet his mental health needs if Student was immediately removed from Discovery Ranch and returned to District.

129. Parents rejected District's offer and stated their intent to seek reimbursement for the unilateral placement. Parents also specifically declined visual impairment services because Student was self-advocating regarding accommodations and needs; Father later confirmed this in writing. In rejecting the District's offer, Mother wrote that issues regarding emotional disturbance eligibility were not addressed in the assessments or IEP.

#### PARENTS' REIMBURSEMENT CLAIM

130. Parents seek compensatory remedies in the form of reimbursement of monies paid to Discovery Ranch, as well as associated travel expenses. Discovery Ranch's monthly tuition was \$11,500, plus a separate enrollment fee of \$1,550. Parents were able to obtain a \$900 per month discount. They incurred incidental expenses, such as a tablet. Some of the incidentals were associated with copays on medication and a

doctor visit, a water bottle, haircut, and face wash. The documented amount billed by Discovery Ranch for Student's attendance was \$66,826.84. The amount which Parents paid Discovery Ranch, and for which they seek reimbursement, was \$63,437.24.<sup>3</sup> The incidental expenses not associated with the tablet were \$91.04.

131. Parents submitted billing for expenses related to travel. Some of these were related to family travel to and from Discovery Ranch, such as mileage for driving, airfare, lodging, car rental, and parking. However, some of the expenses were associated with Mother's attendance at this due process proceeding's mediation and hearing. The travel expenses associated with Discovery Ranch were \$1,503.70 and those associated with prosecuting this due process were \$1,458.51. Parents total travel reimbursement claim is \$2,962.21.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>4</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20

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<sup>3</sup> Parents submitted a computation that the reimbursement claim consists of \$34,368.62 for Mother and \$29,068.62 for Father. Though the various proofs of payment may support this apportionment, the respective interest each Parent had in a line of credit or account is unknown. Therefore, the factual findings do not include a determination regarding apportionment of the Discovery Ranch reimbursement claim of expenses between the two Parents.

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

U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; 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 for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme

Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. 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); Ed. Code, § 56505, subd. (l).) 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. 49, 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].) Student is the petitioning party and has the burden of proof on all issues.

#### ISSUE 1(A): EMERGENCY IEP MEETING

5. In Issue 1(a), Student contends that District did not convene an emergency IEP meeting between September 2013 and November 2014, as Student's mental health needs became increasingly apparent. District contends that the statutory requirement for an emergency assessment and IEP did not apply. Further, District asserts that it was unaware of mental health concerns, or any change of circumstance in the educational setting, which would have warranted it to further assess or hold an IEP meeting. For the reasons set forth below, Student did not demonstrate by a preponderance of the evidence that District was required to, but failed, to hold an emergency IEP meeting.

6. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and District agree otherwise, but at least once every three years unless the parent and District agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) A district must also convene an IEP meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).)

7. Education code, section 56521.1, provides for an emergency process to assure that appropriate behavioral intervention plans are in place for special education students, upon whom emergency intervention was used.

8. When a student with an IEP comes to a district from another state, the new district is required to hold an IEP within 30 days and adopt the previously approved IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law. (20 U.S.C. § 1414(d)(2)(C); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); Ed. Code, §56043, subd. (m)(1).)

9. Here, from the time Student started attending the Met in September 2013 through his time at Twain to May 2014, District was not obligated to call an emergency IEP meeting because it was unaware of any unaddressed mental health concerns. Parents did not inform District about, and Student did not present with, any behaviors that suggested he had mental health concerns, before the January 2014 hospitalization, that justified an emergency IEP meeting; District then commenced a mental health related services assessment. Also, District did not see the need for or utilize any form of emergency intervention with Student. Therefore, the emergency assessment and IEP process of section 56521.1 is inapplicable.

10. Although Parents testified that Student's mental health substantively deteriorated as the school year progressed, Parents did not tell the District. Student's presentation and behavior at school did not give District a reason to seek reassessment or call an emergency IEP team meeting.

11. Mother stated that Parents decided to move Student from Virginia to California for the purpose of enrolling Student in the Met program, believing that the program's structure would motivate Student to academically perform. Parents' statement of the reasons for the move to California and enrollment at the Met was incomplete, if not suspect. Other motivating factors for the move came to light after the January 2014 hospitalization. For example, Student told Ms. Delcrew that he had been very depressed and had obsessive thoughts about a break-up from a girlfriend after a two-year relationship. Student said his stepfather suggested that he move to California

to live with his Father and get a new start. The Discovery Ranch reports revealed that Student had a history of sowing disharmony in his divorced Parents' subsequent marriages. Student did not get along with his stepfather in Virginia, created discord in his Father's second marriage, and had – as stated by Father at hearing – almost destroyed the relationship of Father and his girlfriend. Parents did not provide District with this history.

12. When Father enrolled Student at the Met, he checked two boxes, indicating that Student was not emotionally or socially disabled. District obtained Student's records and IEP from his prior school district, Shenandoah in Virginia. Shenandoah had fully assessed Student and held an IEP on January 23, 2013, and found no mental health issues that needed to be addressed. Parents had agreed with Shenandoah's placement, special education support, and accommodations.

13. District convened a September 18, 2013 IEP meeting for purposes of complying with its statutory duty of adopting Student's previously approved IEP. District's IEP carefully crafted an IEP consistent with Shenandoah's assessments, which confirmed Student's primary special education eligibility as specific learning disability, with a secondary eligibility of visual impairment. Neither Parent provided additional documentation, evaluations, or assessments. Neither Parent provided information that would have caused District to question the Shenandoah assessments and IEP. Father was present and approved the District's IEP.

14. The evidence does not support Parents' assertion that District failed to recognize and address Student's increasing mental health needs justifying an emergency assessment. Before Student's January 2014 hospitalization, Parents regularly represented that Student's refusal to complete academic tasks and focus on his studies was consistent with long-established patterns of conduct. Also, after the January 2014 hospitalization, neither Parent told District that Student was displaying unusual

behaviors, even though later assessment and Parents' testimony cite to incidents that generated Parents' concern for Student's mental health and safety.

15. Mother and Father characterized Student as manipulative and apathetic, regularly encouraging and affirming the Met teachers and staff in their efforts to get Student to do his schoolwork. Father was often exasperated by Student's lack of motivation, concluding the school and family were wasting their time. He said Student simply did not appreciate a good education. Mother told the Met staff to persevere in their efforts, hold Student accountable, and not be manipulated by Student's excuses. Father articulated frustration with Student, not increased concern for his emotional health. Father decided he was not going continue to transport Student to the Met each day because his son was not making any effort. He told Student that he could go to his local home high school. Anxious about whether Student would graduate, he talked to Ms. Hosking and decided that Twain and its credit recovery program was the proper placement for Student. These were not reasons for District to consider convening an emergency IEP meeting.

16. Parents claim that Student's comment to Mr. Hurl while at the Met about feeling worthless should have put the Met on notice of Student's increased emotional needs and depression. Yet, this one statement was insufficient to put the District on notice, especially absent additional information from Parents. Otherwise, the Met teachers and staff did not observe unusual behaviors.

17. Student was taken on a 5150 hold and hospitalized at Aurora between January 21 through 29, 2014. District properly and timely responded by preparing an Assessment Plan for a mental health related services assessment on February 4, 2014. Father initially declined the assessment plan, which indicated Parents were not substantively worried about Student's mental health needs. Though Father thereafter

agreed to the assessment, neither Parent provided additional information about Student's emotional state or behaviors.

18. After Student exited the hospital and returned to school, in or around the first week of February 2014, Father pursued the transfer to Twain. Father and Mother considered removing Student from special education in order to have Student attend the closer Twain Mesa campus, because of the burden in transporting Student to the Twain Main campus. District personnel persuaded Parents to keep Student's IEP so he could get special education support and accommodations. This willingness to exit Student from special education was another indication that Parents were not troubled about Student emotional needs.

19. The February 18, 2014 IEP changed Student's placement to Twain Main. Though Parents did not request additional services, District recognized that Student might require some added support while Ms. Delcrew conducted her mental health related services assessment. The District added eight hours of specialized academic instruction in a separate classroom and two hours a month counseling and guidance services. The IEP noted that a mental health assessment was in process. District sought to provide for Student's emotional well-being and academic support needs.

20. The evidence confirms that District was unaware of Student's emotional health and behavior from the time of Student's enrollment until Ms. Delcrew's April 2014 mental health assessment. After the April 2014 IEP, Student participated in regular therapy with Mr. Schuhmann for six weeks. Student's conduct, demeanor, or performance at school did not put District on notice Student was suffering from unaddressed mental health concerns. Student failed to meet his burden of proof. District was not obligated to call an emergency IEP meeting to address Student's emotional health needs. Thereafter, Student stopped attending in May and enrolled at Discovery

Ranch, where he attended through November 2014, the balance of the time frame presented by this issue.

#### ISSUE 1(B): CONSIDERATION OF INDEPENDENT THERAPISTS' FINDINGS

21. Student claims that District denied Student a FAPE by not considering the findings of Student's independent therapists when District assessed Student in April 2014, or in connection with the April 2014 and June 2014 IEP offers. District contends its assessment was appropriate. For the reasons discussed below, Student met his burden of proof by the preponderance of the evidence as to Issue 1(b).

22. Legal conclusions 1 through 20 are incorporated by reference.

23. For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) An assessment tool must "provide relevant information that directly assists persons in determining the educational needs of the child." (34 C.F.R. § 300.304(c)(7).) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

24. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental

factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessment materials must be used for purposes for which they are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii)); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).)

25. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3); 56322 [assessment shall be conducted by persons competent to perform the assessment, as determined by the school district, county office, or special education local plan area]; 56324.) Persons knowledgeable of the student's disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

26. California law requires a district to consider the results of an assessment obtained by a parent at private expense. (Ed. Code, § 56329, subd. (c).) The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 and 56329.)

27. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) In matters alleging procedural violations, the denial of a FAPE may only be shown if the procedural violations impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

28. Here, Student met his burden by the preponderance of evidence that the District's April 10, 2014 mental health related services assessment was not legally appropriate because District failed to consider relevant information from Student's

private providers Dr. Tata and Dr. Moyer. The IEP team did not have sufficient or proper information which impeded Student's right to a FAPE and, further, significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE. District denied Student a FAPE at the April 2014 and June 2014 IEP meetings.

29. Although Ms. Delcrew had information available to her regarding Student's medical history, Ms. Delcrew did not contact Student's private doctors or review their records. Ms. Delcrew testified that she did not do so because she did not have a release. Yet, she never sought a release so she could contact Student's private providers; she merely asked Father if he had anything else he wanted to provide.

30. District's failure to seek a release is especially troubling because District unilaterally proposed the mental health assessment following Student's nine-day psychiatric hospitalization. Yet, the assessor made no effort to talk to Aurora's Dr. Tata or review Dr. Tata's January 23, 2014 psychiatric evaluation and February 3, 2014 discharge summary. Further, though fully aware of Student's prescription history, the assessor similarly did not contact Dr. Moyer, the psychiatrist who managed Student's prescriptions for his various mental health diagnoses.

31. In contrast, Ms. Hiller's testimony was particularly persuasive. She stated that she was obligated to seek a release from Parents so she could contact private providers and review their records as part of her assessment. She did so, obtained a release, interviewed Dr. Moyer, and reviewed Dr. Tata's reports. Ms. Hiller said that if she had not done so, she would not have been doing her job. The information was valuable to her assessment, especially the interview with Dr. Moyer, which affected her decision to recommend a therapeutic day placement.

32. In addition, Ms. Delcrew inappropriately interviewed Student and Father together and never interviewed Mother. Ms. Delcrew reviewed Student's records, which



indicated that Student had therapy since a child, was therapy resistant, considered therapy an intellectual debate, and was a manipulator. Though the assessor thought Student was transparent and comfortable talking, it was reasonable to expect Student to act differently and not be as authentic in Father's presence. Ms. Hiller confirmed this when she talked to Student's Discovery Ranch therapist who stated that Student presented differently in Parent's presence during family therapy sessions. Ms. Hiller interviewed Student alone for almost two hours.

33. Interviewing Father and Student together compromised Father's ability to frankly express his feelings and fears regarding his son's emotional health. Mother was deeply involved in Student's school life and educational decisions and also should have been interviewed. Properly and fully interviewing Father and Mother was the District's chance to ascertain the basis of Parents' fears for Student's wellbeing and mental health. For example, Mother might have explained her fears for Student's safety that were generated by Student's late-night calls when he said he would not again use the suicide hotline because the police would come. However, the opportunity was lost. In contrast, Ms. Hiller interviewed Mother and Father, individually.

34. Ms. Delcrew did not observe Student in the school setting. She said that Student happened to be absent when she went to observe. She did not return to observe. Since the purpose of the assessment was to evaluate Student's need for mental health related services to benefit from his education, observation of Student in the school setting was vital to a comprehensive assessment. Ms. Hiller observed Student in class at Discovery Ranch in Utah.

35. Based on the evidence, Ms. Delcrew's assessment was not comprehensive because it failed to seek information from Dr. Moyer and Dr. Tata, did not conduct proper interviews of Student, Father and Mother, and failed to observe Student in his school setting. The assessment was not legally appropriate.

36. The inappropriate April 10, 2014 assessment was a procedural violation that constituted a denial of FAPE. First, the procedural violation significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE. The assessment's failure to interview Mother and properly interview Father meant that their concerns were not considered by the assessor, significantly hampering their ability to provide input for the sole assessment used in the April 2014 IEP offer. Further, at the IEP meeting, Parents did not have the benefit of the assessor's evaluation of reliable interviews, a report of Student's observed classroom behavior and demeanor, and consideration of Student's private providers' evaluations of Student.

37. Second, the procedural violation impeded Student's right to a FAPE. Ms. Hiller unequivocally affirmed the assessment value in reviewing Dr. Tata's reports and interviewing Dr. Moyer. The same information was available to Ms. Delcrew and should have been considered in determining Student's special education needs. As Mother testified at hearing, had Ms. Hiller's recommended therapeutic day placement been made in the April 2014 IEP, Parents would likely have accepted; unilateral placement would not have been considered. Consequently, the inappropriate assessment impeded Student's right to a FAPE.

38. Here, the assessment was not appropriate and was a procedural denial of FAPE. The primary reason for the assessment's legal inappropriateness was the failure to contact and consider the Student's private provider's findings. The April 11, 2014 IEP did not offer a FAPE. Further, the June 2014 IEP meeting did not consider any additional assessment or report. Since the June 2014 IEP merely restated the April 2014 IEP offer, the District's June 2014 IEP offer similarly failed to provide FAPE.

39. As to Issue 1(b), Student met his burden of proof by the preponderance of the evidence that District failed to provide Student a FAPE at the April 2014 IEP and June 2014 IEP.

## ISSUE 1(C): ELIGIBILITY AS EMOTIONALLY DISTURBED

40. Student contends that District denied Student a FAPE from September 2013 through November 2014 by failing to find him eligible under the category of serious emotional disturbance. District asserts that Student did not manifest conduct that would support such eligibility. Student has failed to meet his burden of establishing by a preponderance of the evidence that District denied Student a FAPE by not finding him eligible as a pupil with severe emotion disturbance.

41. Legal conclusions 1 through 39 are incorporated by reference.

42. The decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a FAPE. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f)(1).) In matters alleging procedural violations, the denial of a FAPE may only be shown if the procedural violations impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f)(2).

43. A district's determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district is not held to a standard based on "hindsight." (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

44. Here, Student has failed to present evidence that he exhibited the legally required characteristics to qualify for emotional disturbance eligibility during the relevant time frame. California Code of Regulations, title 5, section 3030, subdivision (b), paragraph (4), describes the criteria for determining whether a child qualifies for special education under the category of emotional disturbance. Because of serious emotional disturbance, a pupil must exhibit one or more specified characteristics over a long

period of time and to a marked degree, adversely affecting educational performance. The five characteristics are discussed below.

45. First, there was no evidence that Student had an inability to learn that could not be explained by intellectual, sensory or health factors. The evidence established that Student had the ability to learn but, due to his specific learning disability and visual impairment, struggled to perform at his capabilities. Specific learning disability was the reason Student was first found eligible for special education. Ms. Gonzalez confirmed this as the appropriate primary eligibility in her September 2014 psychoeducational reevaluation. Additionally, Parents and teachers viewed Student's apathy and disorganization as contributing factors to his poor academic performance. On one occasion, Student commented to Mr. Hurl while at the Met about feeling worthless and was a failure; he really did not care about his schoolwork. Though informed of this, Parents expressed no concern. Significantly, this was not an attitude that was exhibited over a long period of time and does not support a finding of severe emotional disturbance.

46. Second, Student established satisfactory interpersonal relationships with peers and teachers. Although a loner, Student was pleasant in class, not a behavioral challenge, interacted with other students, and formed bonds with some students based upon common interests in technology. Additionally, Student formed relationships with teachers, like Ms. Badger, Mr. Hurl, and Mr. Lehr, as well as therapist Mr. Schuhmann. The evidence demonstrates that Student built and maintained satisfactory interpersonal relationships.

47. Third, Student did not exhibit inappropriate types of behavior or feelings under normal circumstances, except allegedly at home, as generally discussed in greater detail in the analysis of Issue 1(a). Once, Student defiantly told a Met teacher to go ahead and tell his Dad he did not do his work. Otherwise, the evidence demonstrates

that Student did not exhibit inappropriate behaviors in the school setting during the relevant time frame from September 2014 through May 2014.

48. Fourth, Student did not have a general pervasive mood of unhappiness or depression that adversely affecting educational performance. Long before coming to District, Student was diagnosed with depression for which he took medication. When initially comprehensively assessed in 2011, the IEP found Student's eligibility to be specific learning disability, with severe visual impairment secondarily. In 2012, Shenandoah again comprehensively assessed, affirming the eligibility. Though aware of Student's depression diagnosis, neither district found such depression to affect his educational performance. Dr. Moyer was puzzled regarding Student's demeanor, never quite finding the correct prescription regimen. Student's call to the suicide hotline, and subsequent "5150" hospitalization, indicated a need for mental health assessment. Despite this, all therapists and assessors came to the same conclusion: Student was not a serious suicide risk. At school, Student did not display general and pervasive unhappiness and depression. Student was generally pleasant and respectful. He did not present evidence that his depression adversely affected his educational performance.

49. Fifth, Student did not have a tendency to develop physical symptom or fears associated with personal or school problems. Student neither displayed nor reported physical symptoms or fear, other than his recognized visual deficits that were addressed by his secondary visual impairment eligibility. Student presented no evidence regarding this characteristic.

50. Instead of a serious emotional disturbance, the evidence indicates that Student demonstrated voluntary patterns of action and an ability to control his behavior. This behavior was in conflict with established value systems; for example, Student did not value educational achievement. Student demonstrated the ability to function in school, while choosing to ignore accepted standards, such as timely work

completion. Student exhibited a talent for manipulation, which required an understanding of the system within which he functioned, such as when he would timely invoke headaches because of his visual deficits, thus avoiding class work. Student's conduct was consistent with a student who was socially maladjusted, not seriously emotionally disturbed. (34 C.F.R. § 300.8(c)(4)(ii) (2006); see also Ed. Code, § 56026, subd. (e).)

51. During the timeframe of September 2013 through May 2014, neither Ms. Gonzalez nor Ms. Hiller discovered any behavioral or emotional basis for finding Student to be eligible as a student with a serious emotional disturbance. Student did not present persuasive or credible evidence that would have supported such eligibility. Therefore, Student did not meet his burden of proof that District denied Student a FAPE by not finding him eligible as a Student with a serious emotional disturbance.

#### ISSUE 1(D): OFFER OF APPROPRIATE PLACEMENT

52. Following completion of its comprehensive assessment of Student in or around September 2014, District convened an IEP team meeting on September 18, 2014. Student contends District continued to deny Student a FAPE, by failing to offer an appropriate placement. District contends that the IEP provided Student with a FAPE by offering a therapeutic intensive day treatment placement at a District school, with Ms. Hiller's recommended related services and additional IEP goals. Student demonstrated by a preponderance of the evidence that District's September 18, 2014 offer of placement did not constitute a FAPE.

53. Legal conclusions 1 through 51 are incorporated by reference.

54. Ms. Gonzalez's psychoeducational reevaluation report used multiple instruments to assess Student's special education needs. She was qualified to administer and interpret the assessment instruments, and did so appropriately. She compared the Met raters' BASC-2 scale scores with those of the Twain raters. She also obtained written

input from both the Met and Twain teachers. By comparing the data, she creatively demonstrated that Student made progress socially and academically after moving to Twain.

55. The District contracted Dr. Paulson in Utah to administer the Wechsler intelligence and Woodcock-Johnson achievement tests. Dr. Paulson was properly credentialed and experienced in administering such tests. Ms. Gonzalez appropriately reevaluated Student's eligibility, finding him eligible as a student with a specific learning disability in executive functioning and academic language.

56. Ms. Hiller was uniquely qualified to evaluate Student. She conducted a comprehensive evaluation of Student's mental health. Her recommendation of an intensive day treatment placement was well reasoned. She understood Student's mental health needs, further recommending supportive mental health related services at a therapeutic placement. She also crafted a goal for emotional regulation. The District IEP team members agreed with Ms. Hiller. The District offered the therapeutic placement in a District school, with Ms. Hiller's recommended related services. The District IEP team members also affirmed Ms. Gonzalez's conclusion regarding eligibility. Ms. Hiller properly considered the findings of Student's independent or private therapists.

57. The offer of an intensive day treatment placement probably would have provided FAPE if made in April 2014, as acknowledged by Mother at hearing. However, the September 2014 placement offer failed because District made it without consideration of the consequences to Student of changing placement at the time it was offered. As discussed below, the placement offer lacked integral components rendering District's placement offer inappropriate.

58. District failed to consider how to effectively transition Student from the residential program back to a District therapeutic program. Neither Ms. Gonzalez nor Ms. Hiller discussed or proposed a transition plan for removing Student from Discovery

Ranch and returning him to a District school. The two reports did not address Student's stated intent of removing himself from school when he turned 18 years of age in late September 2014. Also, the District IEP team members did not discuss transition at the IEP meeting.

59. Ms. Brown told the IEP team that Student was just beginning to engage in therapy and still struggling with school. Immediately transferring Student would be harmful. Mother told the team that changing placement when Student was still at risk was unacceptable. Without an offer that included a transition plan proposal, Parents could not evaluate District's offered placement and make an informed decision.

60. Ms. Hiller testified that District's mental health resource center had experience in transitioning students from residential placement into a District program. She provided some examples of such transitions at the hearing. Ms. Hiller testified that District could provide a "step-down" transition service, diminishing the difficulties associated with the change and increasing the likelihood of success after the move. Therefore, since District acknowledged the necessity of such transition plans from residential treatment, District should have included the transition proposal in its placement offer and discussed the transition at the IEP. District did neither, resulting in an offer of placement that failed to address Student's educational needs and failed to provide a FAPE.

61. In conclusion, Student demonstrated by the preponderance of evidence that District failed to offer an appropriate placement at the September 2014 IEP and has met his burden on Issue 1(d).

#### ISSUES 1(E), (F) AND (G): APPROPRIATE GOALS, SERVICES, AND BEHAVIOR SUPPORT PLAN

62. Issues 1(e), (f) and (g) assert District failed to provide FAPE because District did not offer appropriate goals, services, and behavior support plan, in its IEP offers.



However, since the analysis herein has determined that District did not offer FAPE at the April, June, and September 2014 IEP's, for other reasons, these three issues are unnecessary and are not discussed herein.

## REMEDIES

1. Legal conclusions 1 through 62 are incorporated by reference.
2. Student prevailed on Issues 1(b) and 1(d) by demonstrating that District failed to offer Student a FAPE.
3. Student asserts he was entitled to a unilateral private placement from and after April 2014 because District denied him a FAPE. As a remedy, Student requests reimbursement of all costs paid to Discovery Ranch, in the amount of \$63,437.24, and all travel related expenses associated with the Discovery Ranch placement, in the amount of \$2,962.21. District disagrees and contends that Student is not entitled to reimbursement because Student did not provide notice of Parents' intent to unilaterally place Student at the last IEP or at least 10 business days prior to the Discovery Ranch placement. District also asserts reimbursement should be denied or reduced because Parents placed Student in an inappropriate private residential treatment center, in another state, though the evidence indicates Student did not require residential placement. Finally, District asserts that the reimbursement sum includes expenses for which District would not be responsible, such as travel for mediation and hearing and personal incidental costs.
4. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district did not make a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996,

85 L.Ed. 2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE).) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, pp. 11 & 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress].)

5. Reimbursement may be reduced or denied if, at the most recent IEP team meeting the parents attended prior to removing the child, the parents did not inform the IEP team they were rejecting the proposed placement, and state their concerns and intent to enroll their child in a private school at public expense; or at least 10 business days prior to the removal of the child, the parents did not give written notice to the public agency of this information. (20 U.S.C. § 1412(a)(10)(C)(iii)(I); 34 C.F.R. § 300.148(d)(1).) Reimbursement may also be reduced or denied if, prior to the parents' removal of the child, the public agency provided the required notice to the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation. (20 U.S.C. § 1412(a)(10)(C)(iii)(II); 34 C.F.R. § 300.148(d)(2).)

6. Reimbursement must not be denied for parents' failure to provide the required notice if the school prevented them from providing notice, the district did not comply with its notice requirements, or compliance with the notice requirement "would likely result in physical harm to the child." (20 U.S.C. § 1412(a)(10)(C)(iv)(I); 34 C.F.R. § 300.148(e)(1).)

7. Reimbursement may also be reduced or denied if the actions of parents were unreasonable. (20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(3).) For example, in *Patricia P. v. Board of Educ. of Oak Park* (7th Cir. 2000) 203 F.3d 462, 469 (*Patricia P.*) the Seventh Circuit Court of Appeals held that a parent who did not allow a school district a reasonable opportunity to evaluate a child following a parental unilateral placement “forfeit[ed] their claim for reimbursement.” In *Patricia P.*, the court denied reimbursement where the parent had enrolled the child in a private school in another state and at most offered to allow an evaluation by district personnel if the district personnel traveled to the out-of-state placement. (*Ibid.*)

8. Here, Parents did not inform the IEP team they were rejecting the District’s offer and would be privately placing Student; in fact, Father signed and accepted the April 2014 IEP. Parents elected at some point after the April 2014 IEP meeting to place Student privately. Subsequently, a few days before Student’s May 21, 2014 departure, Student told Mr. Lehr that he was going to go to a private residential placement. When Mr. Lehr later called Father, Father confirmed the residential placement, but provided no information as to the reasons.

9. Parents also failed to give District the required 10-day notice before removing Student from District and privately placing him at Discovery Ranch. On May 19, 2014, their attorney alluded to the possibility of private placement in a letter to District but did not affirmatively notify District that Parents were privately placing. Student stopped attending Twain on May 21, 2014. Student enrolled at Discovery Ranch on May 23, 2014. The first time Parents notified District of the private placement in writing was through their attorney on May 27, 2014. District then offered to further assess Student on June 3, 2014, when it provided Father with an assessment plan.

10. The statutory notice provisions are intended to give a district a reasonable opportunity to respond to parents’ concerns before parents exercise their right to

unilateral placement. Here, Parent did not provide notice or opportunity to District in accordance with this policy. As discussed in the analysis of Issues 1(a) and 1(c), Parents did not inform District of their concerns regarding Student's mental health and behaviors at home. Parents' conduct generally affirmed District's services and support. Therefore, Parents' lack of timely notice of private placement justifies denial or reduction of the reimbursement claim.

11. Mitigating total denial of reimbursement is District's failure to offer FAPE at the April 2014 IEP. District's April 10, 2014 mental health related services assessment was insufficiently comprehensive and did not give District or Parents proper or adequate information to make an appropriate offer of FAPE. District squandered the opportunity to gain valuable data and insight that would have empowered the IEP team to make an informed offer of placement and services.

12. Further mitigating a complete denial of reimbursement is that Parents reasonably believed Student would be without a District program or therapy over summer 2014. District did not tell Parents that Mr. Schuhmann had the option of providing therapy over summer 2014 or that Twain students go to summer school for their credit recovery. Parents' fears for Student's wellbeing were primarily fueled by the lack of District program or support over summer 2014. Therefore, private placement by Parents was not unreasonable.

13. Weighing the equities and determining an appropriate reduction of Parents' reimbursement requires balancing the parties' respective duties and responsibilities. Here, District was obligated to appropriately assess. Failing to do so, District significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE, as well as impeding Student's right to a FAPE. Here, Parents were statutorily required to provide District with timely notice at the IEP or at least 10 days before private placement. Parents did neither and denied District

the opportunity to address Parents' concerns before private placement, as contemplated by IDEA. Both parties failed to meet their respective obligations and equally bear the consequences. A reimbursement reduction of 50 percent properly reflects each party's culpability.

14. Parents seek reimbursement of travel expenses associated with the out-of-state placement in Utah. This claim is denied because Parents did not search for a placement closer to their homes, or establish that a residential placement in Utah was necessary for Student to receive educational benefit. The right to unilaterally place is not a *carte blanche* for any placement, regardless of location. Unilateral placement must be appropriate, and have some demonstrated, logical nexus to meeting the special education needs of the student. Parents acknowledged that they would have accepted District's offer of therapeutic day treatment if offered in April 2014. Therefore, by their own admission, residential placement was not a requisite for meeting their concerns in spring 2014. Parents offered no evidence that they sought a non-residential placement closer to either of their homes and did not explain why Discovery Ranch was the only appropriate private placement. Although the evidence established that Student academically and emotionally benefited from the Discovery Ranch placement, Parents failed to establish that a highly restrictive residential treatment center in Utah, as opposed to a private educational placement closer to home, was needed to address their concerns. For this reason, Parents' claim for travel expenses associated with Discovery Ranch, in the amount of \$1,503.70, is denied.

15. Parents are not entitled to travel expense related to the prosecution of this due process proceeding. Therefore, the reimbursement claim of \$1,458.51 for attending mediation and hearing is denied.

16. Parents request reimbursement of \$63,437.24, which is their documented payment to Discovery Ranch. Fifty percent is \$31,718.62. This sum is reduced by the

\$91.04 of incidental expenses paid to Discovery Ranch which were not related to Student's education and for which Parents may not be reimbursed. Therefore, District shall reimburse Parents the sum of \$31,627.58.

## ORDER

1. Within 60 days of the date of this Order, District shall reimburse Parents \$31,627.58.
2. All other requested relief 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 Issues 1(b) and 1(d). District prevailed on Issues 1(a) and 1(c). Since Student prevailed on Issues 1(b) and 1(d), Issues 1(e), 1(e), and 1(g) were unnecessary and not addressed herein.

## RIGHT TO APPEAL THIS DECISION

This was 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 ninety (90) days of receipt.

DATED: May 26, 2015.

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CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearing