

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

GLENDALÉ UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015100106

DECISION

Student, by and through his Parents, filed a Due Process Hearing Request on September 18, 2015, with the Office of Administrative Hearings, State of California, naming Glendale Unified School District.

Administrative Law Judge Clifford H. Woosley heard this matter in Glendale, California, on January 26, 27, 28, 29, February 4 and 5, 2016.

Attorney Mark Woodsmall, with Associate Attorney Max Goldman, appeared on behalf of Student. Mother and Father attended the entire hearing. Attorney Melissa Hatch represented District. Assistant Superintendent, Amy Lambert, and Coordinator of Special Education, William Gifford, 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 February 22, 2016. Upon timely receipt of written closing arguments, the record was closed and the matter submitted for decision on February 22, 2016.

ISSUES¹

1. Did District deny Student a free appropriate public education by failing to assess her in all areas of known or suspected disability, in the areas of:

- (a) psycho-education by (i) performing an inappropriate initial assessment in September 2013, and (ii) failing to re-assess following Student's December 2013 hospitalization;
- (b) behavior;
- (c) educationally related mental health services;
- (d) and/or social skills?

2. Did District deny Student a FAPE for the 2013-2014 and 2014-2015 school years by:

- (a) offering educational placements that were not reasonably calculated to provide Student a FAPE;
- (b) proposing deficient programs that were not based upon research-based interventions;
- (c) failing to place Student in an environment that was free of harassment and bullying?

3. Did District commit procedural violations by failing to state accurate present levels of performance and craft appropriate and measurable goals in Student's individual educational programs for the 2013-2014 and 2014-2015 school years and, if so, did such procedural violations deny Student a FAPE?

4. Did District fail to provide adequate prior written notice in response to

¹ The issues have been reorganized for purposes of analysis. 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.)

Parent's February 2015 request regarding Student's residential treatment placement that impeded Parents' right to participate in the IEP development process and, if so, did such procedural violation deny Student a FAPE?

SUMMARY OF DECISION

Student did not prove District failed to assess Student in all areas of suspected disability. Qualified District personnel properly employed standardized instruments in assessing Student in District's psychoeducational assessment. Student failed to demonstrate that subsequent circumstances warranted another psychoeducational assessment. A behavior assessment was not warranted because Student's conduct had already been identified to be the consequence of her diagnosed anxiety and mood disorder. Student did not establish that Student's social emotional status warranted an educationally related mental health services assessment. A social skills assessment was not appropriate because Student's struggle with peer relationships was not related to poor social skills. District assessed Student in all areas of known or suspected disability.

Student failed to demonstrate that District's offered educational placements at Crescenta Valley and Magnolia Park failed to provide Student a FAPE; the relevant IEP's services and goals conferred some educational benefit upon Student. Student also failed to meet her burden of proof that District's offer of placement at Heritage residential treatment center denied Student a FAPE. Heritage serviced a population with Student's profile and provided a program that met Student's needs. Further, Student did not demonstrate that District placed Student in environments where she was bullied; Student did not submit credible or persuasive evidence that Student was the target of bullying.

Student did not demonstrate that District's IEP's had inaccurate present levels of performance or inappropriate unmeasurable goals. Finally, District's February 2015 prior written notice adequately complied with governing law. District prevails on all issues.

FACTUAL FINDINGS

1. Student was a 17-year-old high school senior who was eligible for special education services as a student with an emotional disturbance. She attended New Haven Residential Treatment Center in Utah and was scheduled to graduate and receive a regular high school diploma by the end of March 2016. At all times relevant herein, Parents resided within District boundaries.

CRESCENTA VALLEY HIGH SCHOOL

2. Student started attending Crescenta Valley for her ninth grade in the fall of 2012. Student was under the care of private psychiatrist Linda Woodall, M.D. Student was diagnosed with adjustment disorder and anxiety, which prompted District to create a section 504 plan on September 3, 2012.² As the year progressed, Student started to miss assignments and struggled with regularly attending school. Student scored proficient on the ninth grade California Standard Testing for both English language arts and math. Her grades declined during ninth grade because of her attendance issues. For second semester ninth grade, Student failed English and received D's in physical education and world affairs.

3. Mother contacted Crescenta Valley school psychologist Lea Howell in spring 2013. Student had been receiving counseling and Mother wanted Student to have another resource on the school campus. Ms. Howell met with Student and Mother.

4. On May 24, 2013, Mother and Ms. Howell discussed how Student's ongoing emotional difficulties were increasingly interfering with her school

² Section 504 of the Rehabilitation Act of 1973 ensures that a qualified child with a disability has equal access to education. The child may receive appropriate accommodations and modifications tailored to the child's individual needs.

performance. They agreed to refer Student for assessment. Ms. Howell found out that Student suffered from anxiety, but was unaware of Student's school refusal. She knew that Student had somatic behaviors and physical symptoms associated with her anxiety. Ms. Howell did not know of any suicidal ideation by Student.

5. Toward the end of the school year, in spring 2013, Parents took Student to the hospital because she had overdosed on medication. She was placed on a "5150 hold."³

6. Ms. Howell prepared an assessment plan dated June 3, 2013. Ms. Howell learned of the "5150 hold" when preparing the assessment plan. The plan proposed assessing Student's social and emotional development, motor ability, and general ability by a school psychologist. A special education teacher would evaluate academic achievement and the school nurse would assess educationally relevant health, developments and medical findings. Mother signed the plan on June 6, 2013, returning it to District on June 7, 2013. The school year had already concluded.

District's September 25, 2013 Initial Psychoeducational Assessment Report

7. Ms. Howell started assessing Student with standardized instruments on July 3, 4, and 11, 2013. She wanted to conduct the planned psychoeducational evaluation first and, if warranted, thereafter would request a more extensive educationally-related mental health assessment.

8. Since the beginning of her 10th grade in August 2013, Student's anxiety

³ Welfare and Institutions Code, section 5150, allows a qualified officer or clinician to involuntarily confine a person deemed to have a mental disorder that makes them a danger to him or herself, and/or others and/or is gravely disabled, for up to 72 hours for evaluation. Related provisions allow for an extension of the confinement under certain circumstances.

had interfered with her attendance. Therefore, Ms. Howell and the high school counselor Kierstin Cabalka had been working with Student, encouraging her to gradually attend classes, before the assessment's completion. Ms. Howell concluded her testing and prepared an initial psychoeducational report dated September 25, 2013.

9. As part of the September 2013 psychoeducational assessment, school nurse Kym Jarnot completed a health assessment and found Student to be alert, active, ambulatory, physically intact, and generally healthy.

10. Ms. Howell had been a fulltime psychologist with District for five years and a school psychologist for seven years. She possessed a pupil personnel services credential. Ms. Howell's duties included conducting initial psychoeducational evaluations, reevaluations, crisis intervention, threat assessments, manifestation determinations, and behavior support plans. She did 50 to 75 assessments per year. Ms. Howell's education, experience, and credentials qualified her to conduct a psychoeducational assessment of Student.

11. Ms. Howell reviewed Student's records and interviewed Student and Parents. Student was taking Propranolol and Lexapro to treat her anxiety and depressive symptoms. At the time of the report, Student was comfortable in attending all of her classes, but still occasionally missed school because of difficulties with emotional regulation. Student was completing more classwork but was still behind in assignments in most classes due to her absences. However, Student's attendance and work completion had improved since the beginning of the year.

12. Ms. Howell observed Student in English class on September 23, 2013. Student worked steadily on her assignment, but appeared to need more time than most of her peers. When the teacher asked if anyone needed more time, Student timidly raised her hand. Student listened to the teacher's lecture and followed directions; she did not participate in the discussion. Student's participation varied. Teacher reported

that Student's lack of homework completion was most detrimental to her grade.

13. Ms. Howell utilized various standardized instruments. She administered, scored, and interpreted the test and scale results according to the manufacturer's protocols. She completed her testing on September 13, 2013.

14. The tests and other evaluation materials used by Ms. Howell in assessing Student were selected and administered so as not to be racially or culturally biased, and given for the specific purpose for which the standardized tests were validated. Ms. Howell concluded that the testing results were valid estimates of Student's abilities.

15. In the first testing session on July 3, 2013, Student chose to be nonverbal, which was later explained to be due to the death of her cat. She was willing to complete tasks that did not require a verbal response. Therefore, Ms. Howell administered the Test of Nonverbal Intelligence, Fourth Edition. Student's nonverbal cognitive score was in the superior range.

16. Student willingly spoke at the next testing session on July 4, 2013, and became increasingly open with Ms. Howell as the testing progressed. Student was aware of, and working to overcome, her emotional challenges. Student made a good effort in completing the testing tasks; she was focused and attentive.

17. Student completed the Wechsler Intelligence Scale for Children, Fourth Edition, with had four composite areas. Student scored in the average range for verbal comprehension, in the high average range for perceptual reasoning, average for working memory, and in the borderline range for processing speed. Ms. Howell noted that Student required additional time to complete "paper and pencil tasks." Per the test's protocols, Ms. Howell did not report a full scale intelligence score because of the variability between Student's processing scales and the other composites. Student did not have processing deficits. The Wechsler's processing speed component consisted of timed tasks that produced anxiety in the Student, consistent with her struggles to

regulate emotions, thus resulting in a low score. Student's processing skills test performance, however, confirmed that Student did not have a motor coordination processing deficit or other processing deficits which required further testing.

18. With the Developmental Test of Visual-Motor Integration, Sixth Edition, Ms. Howell measured Student's visual-motor integration as being within the average range, with legible handwriting throughout the testing. Student's results were consistent with her overall abilities. Since the cognitive testing determined that Student's visual learning skills were an area of strength, Ms. Howell did not give Student the supplemental visual perception test. The Test of Auditory Processing Skills, Third Edition, measured Student's auditory skills for the development, use, and understanding of language commonly utilized in academic and everyday activities. The test's auditory memory and auditory cohesion indices were used to assess in areas of concern.

19. Ms. Howell evaluated Student's social, emotional, and behavioral functioning. She used the Behavior Assessment System for Children, Second Edition. Student completed the self-report of personality rating scale questionnaire on July 3, 2013. Her responses were in the clinically significant range for atypicality, depression, somatization, self-esteem, and self-reliance. She rated herself in the at-risk range for attitude to school, locus of control, anxiety, and interpersonal relations. Mother completed the parent response questionnaire, on September 16, 2013, rating Student's behavior in the at-risk range for depression, somatization, withdrawal, attention problems, leadership, activities of daily living, and functional communication. Mother had no responses in the clinically significant range. Ms. Howell did not use the teacher scales because the test's protocols indicated that too much time had passed since ninth grade teachers worked with Student and the tenth grade teachers did not yet qualify as reporters because of insufficient time with Student, which was exacerbated by absences.

20. Student completed the Reynolds Adolescent Depression Scale, Second

Edition, which was a self-report measure of the severity of depressive symptomology in adolescents. The Reynolds was not a diagnostic measure but rather provided an indication of the clinical severity of depression reported by the adolescent, screening those who might be at risk for more serious, diagnostic forms of depression. Student rated herself to be in the mild to severe range of clinical depression in all four of the test's subscales. She indicated critical items in the areas of self-injurious, self-deprecation, self-reproach, helplessness, loneliness, and social withdrawal. This was consistent with Student's diagnoses of anxiety, depression, and mood disorder.

21. Student completed the Revised Children's Manifest Anxiety Scale, Second Edition, which was a 49-item self-report instrument designed to assess the level and nature of anxiety in children. The report scores in areas of physiological anxiety, worry, and social anxiety, with a defensiveness and inconsistency index. Student's responses indicated she was currently experiencing moderate to extremely problematic anxiety, with a total anxiety scale score of moderately problematic. She was typical in her defensiveness. This self-report showed improvement since July 2013, when Student rated herself to be in the mild to severe range in all areas of clinical depression. At the time of the report, Student had recently outwardly demonstrated a more enthusiastic disposition, though Ms. Howell noted Student still had "ups and downs" since the beginning of 10th grade.

22. Ms. Howell interviewed Dr. Woodall on September 23, 2013. Dr. Woodall had been adjusting Student's medication, which was a regimen of Propanolol and Lexapro, which she felt was helping Student's anxiety. Her diagnoses at the time were: School Phobia, Generalized Anxiety Disorder, and Mood Disorder, not otherwise specified. No mention was made of Student being suicidal. Mother would later report to Carlos A. Flores, a psychologist retained by Parents, that Student had been prescribed Prozac the previous year, which made her "volatile and suicidal."

23. Student did not exhibit any difficulties or concerns related to speech, taking care of her personal belongings, basic personal needs, and appropriate hygiene skills. She had difficulty with work completion, especially in returning homework. She also had significant attendance problems, which were related to her pervasive anxiety and emotional regulation. When in class, however, Student had good focus and attention skills

24. Special education teacher Tiffany Hirdler conducted the academic portion of Student's evaluation and recorded her findings in the District's psychoeducational assessment report. Ms. Hirdler had assessed more than 100 students, 15 to 20 of whom had needs similar to Student. Ms. Hirdler's education, experience, and credentials qualified her to conduct, score, and interpret the academic assessment of Student.

25. Ms. Hirdler interviewed Student's teachers. The English teacher reported that Student had good attention and focus in class, had a great attitude, engaged in classroom discussion, and had positive interactions with a fellow student. Student's classroom grade average was an A, but Student did not turn in homework. In Chemistry, Student had a good attitude, was organized, and got along well with the teacher and her peers, but had only turned in some homework. The teacher felt that Student's regular attendance would help her grade. The Design teacher reported that Student was well-focused in class and not afraid to ask questions or seek help from the teacher or peers. Student was polite, respectful, had a great attitude, and was talkative and friendly with her peers. However, she was missing assignments, had 15 class absences, and was often tardy. As a result, Student had a Design grade of C minus.

26. Ms. Hirdler first met Student for the academic assessments on September 12, 17, and 19, 2013. Student was conversationally proficient and cooperative throughout the testing, with an age-typical activity level. During testing, Student was attentive to tasks, but would at times appear tense or worried. Though on occasion she

responded too quickly to some questions, Student generally persisted with difficult tasks. Ms. Hirdler concluded that the test results were valid and an accurate assessment of Student's academic achievement. Parents did not tell Ms. Hirdler about Student's prior year's struggles.

27. Ms. Hirdler administered the Woodcock-Johnson Tests of Achievement, Third Edition, Normative Updates, which were a standardized measure of Student's current levels of academic achievement. Student's oral language skills were superior for her age level. Her academic skills and ability to apply academic skills were in the high average range. Her fluency with academic tasks was within the average range. Student had high average scores in broad reading, brief reading, and brief mathematics. Her standard scores for broad mathematics, math calculation skills, broad written language, written expression, and brief writing were average.

28. Ms. Howell summarized the assessment findings and recommendations. She found that Student's processing speed difficulty did not meet the criteria for the eligibility of specific learning disability. However, Ms. Howell concluded that Student met the eligibility criteria for emotional disturbance. She reviewed the legal requirements for emotional disturbance eligibility, finding that Student demonstrated two of the five eligibility characteristics, over a long period of time and to a marked degree, which adversely affected Student's educational performance. Student exhibited a general pervasive mood of unhappiness or depression and a tendency to develop physical symptoms or fears associated with personal or school problems.

29. Ms. Howell did not request or conduct an educationally related mental health services assessment (commonly referred to as an ERMHS). District conducted ERMHS assessments for students whose social emotional status and services could not be adequately evaluated with a psychoeducational assessment. ERMHS assessments addressed behavioral and emotional dysfunctions that were more frequent, longer in

duration, and/or of greater intensity. District utilized ERMHS assessments to consider more intense services, such as residential placement, therapeutic educational placement, and family therapy, which were not otherwise evaluated.

30. Ms. Howell's assessments, interviews, and observations did not cause Ms. Howell to conclude that Student's social emotional status required an ERMHS assessment. Student had shown improvement from the previous year and her psychiatrist Dr. Woodall stated the new medication had improved Student's anxiety. District appropriately determined that an ERMHS assessment was not necessary at that time.

September 26, 2013 Initial IEP

31. District timely convened Student's initial IEP team meeting on September 26, 2013. Parents and District IEP team members discussed, reviewed, and accurately documented Student's present levels of academic achievement and functional performance. The IEP team agreed that Student qualified for special education services under emotional disturbance.

32. Since Student would turn 16 years of age before the next annual IEP, the September 26, 2013 IEP also contained an individual transition plan. Student said she wanted to enter cosmetology school after graduation and have a part-time job working with animals, for which the IEP had two transition goals.

33. The IEP team created a third goal with objectives, related to work completion: by the following annual IEP in September 2014, Student would be turning in her assignments (homework, classwork, and projects) 90 percent of the time. The goal addressed the baseline issue of Student not doing her homework, which adversely affected her grades. Student and special education staff were responsible for working on the goal.

34. A fourth IEP goal was related to social-emotional and self-advocacy needs:

by the next annual IEP, Student would be able to identify at least three triggers to her anxiety at school and verbalize at least three strategies to use to mediate her anxiety in four out of five opportunities as measured by observation and self-report. This addressed Student's struggles to timely attend school and classes, due to her ongoing anxiety and school phobia. The school counselor and psychologist would support Student with this goal.

35. The IEP included accommodations and strategies. Student would be provided breaks between assignments, as needed, and given verbal or nonverbal cues to prompt her to complete assignments. She would use an assignment notebook planner, in addition to the online availability of all class homework and assignments. Student would have extended time to complete assignments, to a following Monday, without penalty as prearranged with her teachers.

36. The IEP offered continued placement in general education classes at Crescenta Valley. The IEP offered related services of 15 minutes a month of specialized academic instruction. Ms. Hirdler explained that Student did not require specialized instruction but it was provided for purposes of monitoring Student. The IEP provided individual counseling of 15 minutes a week with the school psychologist, following an IEP team discussion about the amount.

37. Parents consented and signed the IEP.

Remainder of Fall Semester at Crescenta Valley

38. District implemented Student's IEP placement, accommodations and services for the remainder of the semester. Not long after the IEP, the location of Student's study hall was changed; she was with other pupils near the counseling offices. This was near Ms. Howell or Ms. Cabalka, with whom Student had formed collaborative relationships. This enabled Student to easily check-in with Ms. Howell and Ms. Cabalka, who regularly observed Student. They would determine how Student was progressing,

provide prompting on tasks and assignments, and confirm Student's use of her notebook planner. They confirmed that Student was using the accommodations.

39. Student had weekly therapy with Ms. Howell. Ms. Howell felt the 15 minutes a week of formal therapy was sufficient because Student had made progress, was receiving outside mental health support, was self-advocating, would receive more therapy if requested or needed, and received regular additional support from Ms. Howell and Ms. Cabalka regarding her goals and anxiety. Ms. Howell involved Mother in therapy a number of times.

40. Ms. Howell and Ms. Cabalka worked together in servicing Student. Some days, Student was doing well, timely attending class and working on assignments. Other days, Student struggled. They worked with Student on her social emotional goal of identifying emotional triggers, which would enable Student to fashion responsible strategies and avoid debilitating anxiety. One trigger reported by Student was that, despite her high intelligence, Student had great fear of performing badly. This caused great anxiety, which resulted in poor attendance and assignment completion.

41. In late October 2013, Ms. Howell learned that Parents were having Student evaluated by Carlos A. Flores, Psy.D. Dr. Flores completed his report on November 29, 2013.

November 29, 2013 Psychoeducational Evaluation, Carlos A. Flores, Psy.D.

42. Dr. Flores conducted a psychoeducational evaluation of Student. He took a history from Parents, interviewed Student, reviewed Student's records (including District's assessment and IEP), observed Student during four testing sessions from September through mid-November 2013, and used various standardized instruments to measure Student's scholastic achievement, attention and concentration, memory, and emotional and adaptive functioning. He issued a report dated November 29, 2013. In the Beck Youth Inventories' self report, Student denied suicidal/homicidal ideation or

signs suggestive of thought disturbance. On the Thematic Apperception Test, Student exhibited themes of frustration, vulnerability, and optimism. Student's thematic test and Rorschach responses did not reveal any psychotic themes or suicidal/homicidal ideation. Dr. Flores referred to the District's September 2013 Wechsler test scores for Student's intellectual functioning.

43. Dr. Flores agreed with District's finding of Student's emotional disturbance eligibility. His observations of Student's social communication and patterns of behavior were generally consistent with that of the District's evaluation. He observed that Student struggled with certain tasks that required writing or challenged her abilities, causing Student to engage in maladaptive coping strategies, such as not continuing. In Dr. Flores' view, understanding Student's coping mechanisms was key to providing her tools to manage her stress and anxiety. He opined that Student's difficulty in writing was multifactorial in nature, related to performance anxiety, slow processing of information, planning and organization, and writing skills.

44. Dr. Flores recommended a specialized school placement that would support her academic and psychiatric difficulties, with a small student-teacher ratio, with teachers and staff trained to work with emotionally disturbed students with depression and anxiety. He suggested additional accommodations, such as time and half on standardized and timed tests, perhaps administered in quiet, non-distracting environments. He also suggested supports for transitioning and coordinated exam schedules.

45. Dr. Flores recommended weekly individual psychotherapy sessions, from a cognitive-behavioral perspective, to assist Student in developing effective stress and frustration management to decrease impulsive responses. Student should be periodically assessed for suicidal ideation, levels of frustration, apathy and weak impulse control.

46. Parents did not give Dr. Flores' report to District until January 2014

UCLA Resnick Neuropsychiatric Hospital Partial Hospitalization

47. On December 26, 2013, Student was admitted as an inpatient to Resnick Neuropsychiatric Hospital due to worsening mood and suicidal ideation. Student had told her Parents that she engaged in self-injurious behavior and did not feel safe. After one week of stabilization, Student transitioned to the Adolescent Partial Hospitalization Program in the Resnick Neuropsychiatric Hospital. The UCLA partial hospitalization program was between four to eight weeks, depending on a student's individualized program. The students lived at home but attended a therapeutic treatment program at UCLA Resnick each school day, which included classes by Los Angeles Unified School District's Carlson Home Hospital School. Students had individual, group, weekly family, and recreational therapies. The UCLA program developed educational, behavioral, and social intervention plans for the child.

48. In a January 7, 2014 email, Mother thanked Ms. Howell and Ms. Cabalka for their time, energy and efforts to help Student be successful at Crescenta Valley. She informed them that Student was in the UCLA partial hospitalization program. Mother said she had Dr. Flores' completed report, which she would forward as soon as possible. She asked that an IEP team meeting be scheduled, with the hope of transitioning Student to a nonpublic school, which would address her educational needs with appropriate emotional supports. Ms. Howell forwarded the email to Ms. Hirdler to schedule the IEP team meeting.

49. Student's interdisciplinary UCLA treatment team authored a January 9, 2014 summary letter, outlining Student's situation, diagnoses, treatment, and recommended placement and services. Psychiatrists Hannah Roggenkamp and Michael Enenbach signed the letter. Student's diagnoses were major depressive disorder and anxiety disorder, not otherwise specified. Her medication regimen included Ability,

Lexapro, and Lamictal, to treat mood instability.

50. Colleen M. McCord was a licensed social worker at UCLA Resnick and was Student's social worker during the in-patient and partial hospitalizations. She was involved in Student's various therapies throughout the week and was very knowledgeable regarding Student's struggles. She helped write the January 9, 2014 letter. She testified at the hearing and was insightful and credible regarding Student's emotional condition and needs.

51. Ms. McCord provided individual and family therapy during Student's UCLA hospitalizations. Ms. McCord taught Parents how to contain and safely manage Student at home, by decreasing her anxieties. Ms. McCord continued to provide Student and Parents with group therapy over the following year.

52. The UCLA Resnick summary letter recommended that Student be placed in a small, contained, and supervised school setting throughout her day because her functioning would deteriorate within a larger educational setting, without supports. Student should receive therapeutic support on an on-going basis in order for her to maintain safe and adaptive school performance, perhaps at a nonpublic school. There, Student should get instructional adjustments to promote her ability to complete her work and sustain attendance. She should have increased and regular contact with a counselor or other designated individual to provide guidance and support for identifying and implementing adaptive coping skills related to school. UCLA Resnick provided detailed recommendations regarding Student's proposed educational environment. UCLA recommended an educationally related mental health services assessment and an IEP team meeting as soon as possible. The UCLA letter recommended an educationally related mental health assessment to enable the IEP team to implement UCLA's recommendations, not to garner additional needed information.

53. At time of the letter, Student remained in the UCLA partial hospitalization program and would not be discharged until the third week of February 2014.

January 27, 2014 IEP Amendment

54. District convened an IEP team meeting on January 27, 2014. All requisite IEP team members attended. Also, by way of a conference phone call, UCLA treatment team members Ms. McCord, Dr. Roggenkamp, and education specialist Elaina Bloom participated for a substantial portion of the meeting.

55. The IEP team updated Student's academic and functional performance, noting that Student had ongoing difficulties with anxiety and mood regulation that interfered with her class attendance and work completion. Student had 38 absences (missed three or more periods) in the first semester. She was failing or receiving Ds in most of her classes. Though her teachers generally stated that Student was courteous and participated in class, Student did not turn in homework and was excessively absent. Student often came to school in the morning, but did not attend class, sometimes calling to be picked up and taken home. Three or four times a week, Student talked to Ms. Howell or Ms. Cabalka, who supported and encouraged Student to attend class.

56. The team reviewed the UCLA summary report and Dr. Flores' assessment. District agreed with UCLA's and Dr. Flores' placement recommendations and proposed Magnolia Park School as an appropriate placement for Student. Magnolia Park was part of the Foothill Special Education Local Plan Area's program for emotionally disturbed students, designed to address the needs of students who were faced with emotional and behavioral challenges that significantly impacted the ability to function at school. Magnolia Park was located on a Burbank Unified School District campus, with a small, structured, therapeutic setting. For the 2013-2014 school year, Magnolia Park served students from 6th through 12th grades, with a total of 27 students, 22 of which were in high school. On site educationally related mental health services included individual,

group, and family therapy. District and Burbank were both members of the Foothill SELPA.⁴

57. District offered placement at Magnolia Park, with 60 minutes of weekly individual therapy, 60 minutes of weekly group counseling, and 120 minutes of monthly parent counseling. The UCLA team inquired about extended school year for Student. The IEP team added extended school year as part of the placement offer. Accommodations included reduced and shortened assignments, note taking support by making copies of the teacher or peers notes, verbal and nonverbal cues and prompts to accomplish tasks, use of the assignment notebook planner, written directions on all assignments, extended time to complete assignments, and flexible settings and scheduling for tests, as needed. The IEP team did not modify Student's goals and transition plan because the goals continued to properly and adequately address Student's needs.

58. District did not offer an emotionally related mental health services assessment or another psychoeducational assessment. District reasonably concluded that additional assessment was unnecessary and would have only delayed appropriate placement. A mental health services assessment was unnecessary for purposes of making an informed and appropriate offer of placement and services.

59. Parents agreed to the offer and signed the IEP.

⁴ All school districts and county school offices are mandated to form consortiums in geographical regions of sufficient size and scope to provide for special education service needs of children residing within the region's boundaries. Each consortium is a SELPA charged with developing a local plan describing how it would provide special education services.

MAGNOLIA PARK SCHOOL

60. Magnolia Park had two fulltime clinicians, with the support of Foothill SELPA's program specialist Avra Warsofsky. Ms. Warsofsky was a credentialed school psychologist and a crisis prevention institute coordinator and trainer. She worked for the Foothill SELPA since 2007. She coordinated SELPA programs for students with emotional disturbance eligibility. She testified at the hearing, demonstrating an in-depth knowledge of the Magnolia Park program.

61. Magnolia Park had about 10 students per classroom, with two staff members and one floating behavior aide. The campus was physically small and the staff was able to closely observe and monitor each student. Magnolia Park students had internalized emotionally disturbed behaviors, such as anxiety, depression, and fear of school attendance. Proposed attendees were carefully reviewed to maintain a nonthreatening population.

62. Dialectical behavior therapy was a modified form of cognitive behavior therapy, used for various conditions, including eating disorders and mood disorders. The purpose was to help people change inappropriate patterns of behavior, by learning the triggers that led to reactive mood states and developing coping skills, such as mindful awareness. Magnolia Park employed various behavior methodologies, depending on the needs of a student, including components of dialectical behavior therapy.

63. About a week before Student started at Magnolia Park, Ms. Warsofsky spoke with Ms. McCord and Magnolia Park's school-based therapist, Rita Avedissian, by phone and discussed Student's needs, such as the nature of Student's school phobia and refusal to attend class. Student was noted to have some gender identity issues. Ms. Warsofsky wanted to assure that the Magnolia Park team was properly informed and prepared when Student arrived.

Student's Spring 2014 Semester

64. Student exited the UCLA Resnick partial hospitalization program and started at Magnolia Park on February 19, 2014. During the first few weeks, Student had difficulty transitioning from the car. It initially took 10 to 30 minutes to get Student into the classroom. Student's social anxiety was deeply rooted in frantic fears of not being accepted. Sometimes Student would come into school, but would resist going to class. Once, Ms. Avedissian went to the car, affirmed Student, and enabled Student to come into school.

65. Student's willingness to come to school improved over time. Her school attendance anxiety became less and less intense. Student almost always attended her class. When Student occasionally struggled, only 10 to 15 minutes were required to get Student into class. Once there, Student remained and participated.

66. On March 3, 2014, Student's IEP was amended to include roundtrip transportation, a service the Parents initially declined when offered at the January 2014 IEP.

67. Ms. Warsofsky formed a good relationship with Student. Parents reached out to Ms. Warsofsky with questions and concerns. Parents often stopped by Ms. Warsofsky's office to chat.

68. Ms. Avedissian testified at hearing. She was the school-based therapist at Magnolia Park since 2013. She was a licensed marriage and family therapist, with a master of arts in career counseling and a second master's degree in marriage and family therapy. She was certified in domestic violence training and possessed various clinical certifications, including dialectic cognitive behavior therapy, aggression replacement therapy, and child-parent psychotherapy. She was informed and understanding of Student's struggles in school.

69. Ms. Avedissian attempted to implement the parent counseling to Parents.

Mother informed Ms. Avedissian that Parents did not have time for the parent or group sessions and that the family was dealing with family issues in private family therapy. Parents did not want the family issues addressed in school-based therapy. Ms. Avedissian, Mother, and Father regularly communicated regarding school issues.

70. Ms. Avedissian provided Student's individual and group therapy, per the IEP. She gave additional therapy as needed by Student. Therapy included a mindfulness technique program, stress management, and reading exercises and scenarios. Student had difficulty managing her anxiety and stress.

71. Ms. Avedissian implemented Student's social/emotional IEP goal of identifying triggers to her anxiety at school and verbalizing strategies to mediate her anxiety. The goal was appropriate because Student's anxiety had affected Student's ability to attend class and complete her work. Unless Student was able to identify triggers, she would not have an opportunity to manage her emotions. When struggling with anxiety during school, Student would seek out Ms. Avedissian. After about 15 to 20 minutes, Student would recover and return to class.

72. Student's medication caused her to gain weight, which created eating disorder issues. Private therapist Erin Conley provided Student with therapy for her disordered eating behaviors. Mother instructed Ms. Avedissian not to address Student's weight gain or eating disorder in school therapy.

73. Magnolia Park staff held regular case management meetings, in which they devised strategies to address Student's anxieties. If Student required a break for anxiety, and she did not want to be alone, the aide would contact Ms. Avedissian, who would go see Student. Ms. Avedissian developed a close relationship with Student at Magnolia Park.

74. Randall Badders was Student's teacher for all academic classes. He testified at the hearing. Mr. Badders had a master of arts in special education and had a special

education credential for teaching learning handicapped and severely handicapped students. He was a special education teacher for more than 25 years and was employed by Burbank Unified School District since 1988 to teach at Magnolia Park.

75. Mr. Badders considered Student to be very bright and academically capable. All of her classes used general education core materials. She participated in classroom discussions, was very verbal and social. Mr. Badders used a positive behavioral system with five different levels. Student was seldom below the third level on the behavior reward system.

76. He implemented the January 2014 IEP, including the accommodations, and specialized academic instruction. He reminded Student to use her planner. Mr. Badders reviewed and convincingly explained how Student was supported in working toward her IEP goals and transition plan. He implemented and monitored Student's work completion goal.

77. For her March 14, 2014 10-week grade report, Student earned A's in English Criminal Law, World History, and Physical education; she got a B in Careers. In her elective Business Math class, Student received an incomplete grade because she was working on an ongoing contract to complete a series of assignments at her own pace.

78. On March 15, 2014, Ms. Warsofsky, Mr. Badders and Mother met to discuss Student's gender issues. Student was identifying as a male and, when given the choice, opted to use the boy's bathroom. Magnolia Park reassured Mother and supported Student's choice. Student's bathroom choice lasted about three weeks. Neither Mr. Badders nor Ms. Warsofsky recalled Student ever using the boy's bathroom.

79. District held an April 22, 2014 IEP amendment meeting. Father was pleased with Student's progress, but had some concerns related to Student getting to school on time. Student had multiple tardies following spring break, but had been timely the previous week.

80. Student requested that she be considered for dual enrollment, which was a program where a student would spend part of the day attending a comprehensive high school campus and the remaining part at Magnolia Park. To qualify, a student needed 90 percent attendance record (including tardies), a C or better grade in all classes, and no behavior issues on either campus. The team discussed dual enrollment and determined that Student was not emotionally prepared to manage a large campus. Her social emotional struggles were managed at Magnolia Park, but still existed. Returning Student to a large campus would have set her up for failure. The team agreed to meet in the summer about dual enrollment.

81. Student struggled in her relationships. Student had little sense of self and would mirror other students. This was related to Student's constant need for approval and validation, not due to diminished social skills. Student's anxious behaviors pushed others away. She wanted to be popular and accepted by those whom she perceived as having power in school. When they did not respond to her overtures, she emulated unsavory behaviors, such as being cruel to other students. Student teased and picked on weaker students.

82. In Mr. Badders' class, Student said shocking things, like "white boys are stupid" and "I hate Americans." She once verbally attacked another Student, calling him a "fucking retard." Ms. Warsofsky worked closely with Mr. Badders to evaluate how Student's social emotional needs were impacting her education in the classroom. Despite these outbursts, Mr. Badders believed that Student was doing well in class during the spring 2014 semester.

83. During the spring 2014 semester, Student formed a good relationship with a female student with issues similar to Student. This student was better at managing her anxieties and was a good role model and friend to Student.

84. Ms. McCord provided private family therapy to Student and Parents,

usually twice a week, after the UCLA partial hospitalization program. Each therapy session was 60 to 90 minutes. Despite the intense private therapy, Ms. McCord concluded that Student was paralyzed by her anxiety, depression, and interpersonal relationships, even in a structured setting. In May or early June 2014, Ms. McCord decided that Student required a residential treatment center placement. Student's emotional state and fragility caused Student to make poor decisions. She was having frequent meltdowns in the home, increased cutting, and difficulty relating to peers. Any minimal or perceived slight caused Student to become deregulated. Student regularly said she wanted to go to the hospital.

85. Parents did not want to place Student at a residential treatment center but, instead, wanted her to improve in the home setting. Ms. McCord agreed to give the family and Student that opportunity. Ms. McCord entered into an informal contract with Student and Parents to see if Student improved over the next six months. Ms. McCord arranged for Student to attend a six-month dialectical behavior therapy program at UCLA. However, Ms. McCord believed Student was very high risk.

86. Parents never told District or Magnolia Park about Ms. McCord's late spring 2014 conclusion that Student required a residential treatment center in order to improve. Ms. McCord did not tell Ms. Avedissian, even though they had subsequent conversations. If District or Magnolia Park had been made aware of Ms. McCord's conclusion, District would have conducted an educationally related mental health services assessment of Student.

87. Parents did not share with Magnolia Park what occurred in family therapy. Student often told Ms. Avedissian that Mother and Ms. McCord were working on an issue, indicating that the issue was to be addressed in private family therapy, not school-based therapy.

88. In May 2014, Student took the California High School Exit Examination,

with no accommodations. Student passed both the English-language arts and mathematics sections with scores that substantially exceeded the minimum passing scores. Student's final grades for the spring 2014 semester were A's in all five classes and an incomplete for her ongoing contract in Business Math. Student had been enrolled for 68 days; she was absent once and had 12 tardies.

Extended School Year – Summer 2014

89. Student attended the summer 2014 extended school year, where she completed her Business Math contract, took English 9B for credit recovery, and chose a Science Elective.

90. On July 15, 2014, Magnolia Park convened an IEP team meeting for purposes of discussing Student's progress and the possibility of dual enrollment. All requisite IEP team members attended, including Parents and Student. The IEP team agreed that dual enrollment would not be appropriate because Student continued to require a high level of support to attend her classes and complete her work.

91. Student said she wanted to take the California High School Proficiency Exam, which would allow her to leave high school. The IEP team discussed community college requirements, the importance of Student being socially and emotionally prepared, and how Student could build skills toward attending college. Student requested more enrichment in her academic classes and a period for studying for the proficiency exam; the IEP team granted her requests. Mr. Badders would later work with Student in essay writing and research, to further enrich her studies. Student was also provided a study period. Student did not utilize the study time and never took the proficiency test.

92. Parents signed and agreed with the IEP.

93. Ms. Avedissian provided Student with therapy during the summer 2014 extended school year session. One day, Student came to school with bandages rolled on

both hands. When Ms. Avedissian inquired, Student said that she wanted to die and that she deeply cut herself, claiming the bathroom at home was full of blood. Student said that Father ignored her and did not help. Ms. Avedissian had Student open the bandages and examined the wounds; they were superficial. Ms. Avedissian called Father.

94. Ms. Avedissian was aware that Student sometimes cut herself, which was discussed and addressed in private and school-based therapy. Student's cutting was a symptom of Student's depression, anxiety, and mood disorder. Cutting was a form of self-injury but was not a suicide attempt. Student cut herself when in extreme emotional pain, perhaps providing a sense of control.

95. Student's July 17, 2014 final grades for the summer were three A's, with no reported absences or tardies.

Fall 2014 Semester

96. Student started 11th grade in August 2014 and continued to perform well academically. On her five-week report card, Student earned grades of A in Child Development, Geo Science, US History, Algebra 2B, and Physical Education; she had a B in English 11A. Student had no absences, but had been tardy three times.

September 30, 2014 Annual IEP

97. Magnolia Park convened an annual IEP team meeting on September 30, 2014.⁵ The IEP team discussed Student's present levels of performance. Ms. Avedissian updated Student's emotional functioning. Student continued to struggle with anxiety and mood regulation, although school attendance was no longer a significant issue. Some weeks, she required daily support from Ms. Avedissian and staff. Student shared

⁵ The IEP document has the meeting date as September 24, 2014, but the meeting was rescheduled for September 30, 2014.

her high levels of anxiety, but often refused to engage suggested positive coping mechanisms. This was consistent with Ms. McCord's conclusion that Student was not generalizing the coping strategies taught through behavior therapy.

98. The IEP was updated to reflect Student's additional issues with body image and unhealthy eating patterns and to document the individual, family, and UCLA behavioral therapies in which Student weekly participated. Student had reported hearing voices and seeing things in her head. Ms. Avedissian explored these reports with Student and determined that Student was not experiencing hallucinatory voices and visions. Student was, instead, employing coping mechanisms triggered by stressors.

99. Student had unhealthy patterns of interacting with peers and struggled with initiating and maintaining relationships. Ms. Avedissian explained that Student yelled if she perceived being slighted.

100. The IEP team reviewed the updated individual transition plan and its three goals. Student worked with Mr. Badders in preparing the plan. Student's post-secondary education goal was to attend college in Oregon; Student would research programs and the application process for two or more community colleges. Her employment goal was to have a part-time job; Student would develop a plan to promote a cat babysitting business, in which she expressed interest. Her independent living goal was to use the bus system to attend her college classes; Student would research the cost and schedule of bus, train, and subway systems. Student was on track to graduate with a regular high school diploma.

101. The IEP maintained the work completion goal. Student's attendance and assignment completion had improved, but with the substantial support of teachers, therapist, Parents, and staff. Mr. Badders explained that the IEP goal recognized that Student required the continued support to attend and complete work.

102. The IEP's social-emotional goal was for Student to identify and connect

triggers to her anxiety and depression at school and verbalize strategies to mediate her mood, four out of five times by the next annual IEP. The goal was measurable by Ms. Avedissian and others who worked with Student. Previously, Student's anxiety affected her school attendance. Here, the concern was with Student's social anxiety at school that negatively affected her functioning and relationships.

103. The IEP team reviewed the accommodations. These were similar to those from the January 2014 IEP. Many were part of Magnolia Park's general therapeutic supports, such as providing flexible time and settings for tasks and tests. District did not utilize or recommend further formal evaluations, such as a functional behavior or mental health services assessments, because the team was well aware of Student's emotional dysfunction and needs.

104. The IEP team again discussed Student's request for dual enrollment. Her attendance and work completion was good, but required regularly support. Her social anxiety created mood swings and depression, which the Magnolia Staff addressed during the school day, as needed. The team agreed that Student was not ready to be on a comprehensive campus, but would reconvene if Student met the requirement for dual enrollment as the end of fall semester.

105. The IEP offered continued placement at Magnolia Park, with extended school year. It offered 60 minutes a week of individual therapy and 60 minutes a week of group therapy. Because of the Magnolia Park placement, Student received substantially more therapeutic support than the two formal weekly therapy sessions. The IEP also provided for 120 minutes a month of parent counseling.⁶ Parents did not ask questions

⁶ The IEP document inadvertently indicated on the FAPE Offer page that Student's individual counseling was 120 minutes weekly and parental counseling was 60 minutes enough. However, the IEP's notes page correctly indicated the counseling durations.

about the offer and signed the IEP.

Remainder of Fall 2014 Semester

106. At the time of the annual IEP, missing school was uncommon. At school, Student went to Ms. Avedissian's office less often, about twice a week. Student had difficulty identifying the trigger for her mood. Student typically returned to class after about 30 minutes.

107. Student developed a relationship with a female student during the fall semester. Unlike the friendship in the spring 2014 semester, this relationship was unhealthy for Student. They spent time together outside of school. The other girl had a boyfriend. Ms. Avedissian learned of a couple of altercations outside of school and that Student let the boy harm her. Ms. Avedissian contacted Mother and expressed concern, especially about the boyfriend. Magnolia Park could not monitor or address this relationship when it was outside of school.

108. Student's need to be accepted caused her to make poor choices. She became sexually available to boys. This did not occur at school. She was also attracted to girls and would become deeply hurt when rejected. Ms. McCord described Student as a "walking raw nerve," quick to emotionally deregulate at any perceived slight.

109. Student started to believe another pupil was bullying her. This pupil asked people a lot of questions. Student wanted him to stop asking questions. Student complained that the boy continually looked at Student. However, the boy had an affect, which caused him to appear to be staring. Student perceived this as bullying. Ms. Avedissian talked to Mother about Student's misperception. Ms. Avedissian addressed the issue in Student's therapy and had Mr. Badders change the boy's seating.

110. Ms. Avedissian also talked to Ms. McCord about how Student misperceived conduct that caused her to be anxious or depressed as bullying. UCLA Resnick and private provider reports referred to Student's reports of being bullied.

However, there was no evidence that Student was ever a recipient or target of bullying.

111. Ms. Conley and Ms. Avedissian had a general conversation about Student's eating issues. Ms. Conley requested that Student not be allowed to go to the bathroom within 45 minutes after lunch, because of eating and purging concerns. Student, however, said that she did not want the school monitoring her. Ms. Avedissian informed Ms. Conley.

112. Ms. Avedissian regularly clinically assessed Student. Ms. Avedissian did not detect serious suicidal ideation and had not received any information from Parents or private providers that would have caused her to believe otherwise.

113. Student appeared happy and involved in class. Mr. Badders reported that Student made progress on her work completion goal by timely turning in some assignments. She still required supports to complete assignments and continued to work on her goal. Ms. Avedissian reported that Student was still working on her social emotional goal because she continued to struggle connecting her behaviors to her feelings.

114. For her final fall semester grades of December 18, 2014, Student had four A's and a B. In Algebra 2B, she had an ongoing contract with Mr. Badders to complete assignments at her own pace. Student had been absent two days and had 14 tardies.

Spring 2015 Semester

115. Student started the second semester of 11th grade on January 5, 2015, continuing with the same five classes. On her five-week report, Student received three A's and two C's. She continued to work on the Algebra contract. She had been absent four days, with one tardy.

RESIDENTIAL TREATMENT CENTER PLACEMENT

116. Student sent a text to Ms. McCord early in the morning on February 3,

2015. Ms. McCord called Student and found out that she had taken 180 Tylenol tablets, which she surreptitiously obtained from a drugstore. Ms. McCord called Parents who managed to stop the Student's school bus. They took her to Children's Hospital of Los Angeles, where Student was stabilized. On February 9, 2015, Student was transferred to UCLA Resnick Neuropsychiatric Hospital. She improved but UCLA Resnick believed she needed to be transferred to a residential treatment center.

117. On Wednesday, February 12, 2015, Father sent Cynthia Ferreira and Ms. Warsofsky an email, referring to an earlier phone conversation wherein Ms. Ferreira agreed to schedule an emergency IEP team meeting upon learning of Student's hospitalization. Ms. Ferreira was District's teacher on special assignment for 18 years. She held standard elementary teaching and learning handicapped credentials. Her duties included evaluating placement and case management of District students in alternative programs, such as residential treatment centers. Ms. Ferreira demonstrated a thorough knowledge of District's alternative placement process and had worked with residential treatment centers for almost 20 years.

118. Father said Student was available for further evaluation at UCLA. The email said that Parents had discussed Student's condition with her therapy and psychiatric team and concluded that Student required a residential treatment center, providing 24-hour therapeutic support. Parents, with Student's therapy team, evaluated available residential options. Father acknowledged that the choice of an RTC would ideally be made in consultation with the IEP team, but the urgency of the situation caused Parents to select a residential treatment center which met Student's educational needs. Father said that the ideal placement for Student was Sunrise residential treatment program in St. George, Utah. Sunrise had a strong focus on dialectical behavior therapy and excelled at developing coping skills that Student required in order to complete her education. Father concluded by stating: "We have reserved a place for [Student], and we expect her

to start there after discharge from hospital.”

119. Father emailed Ms. Ferreira and Ms. Warsofsky on Friday, February 13, 2015, stating: “This letter is to notify the district that we will be placing our daughter . . . in a residential placement per recommendations from professionals who have been working with her.” He also said: “We understand that the district is obligated to provide FAPE and as such we will be seeking reimbursement for all costs related to providing her the necessary services.” Father claimed that, after much research, the best fit was Sunrise. He concluded: “This notification is intended to be the 10-day notice to the district that we are required to send if we are seeking reimbursement.”

120. Ms. McCord wrote to District on February 15, 2015. She recommended that Student be placed in a long-term, residential facility where she could receive the external supports and therapeutic interventions to achieve educational benefit. Student would benefit from a dialectical behavior therapy based program, given her long standing difficulties with mood dysregulation and self-injury. Student might also benefit from therapy models other than just dialectical.

121. Ms. Conley wrote to District on February 16, 2015. She expressed concern that specific and weekly therapeutic structure had not altered Student’s patterns of self-harm and intense mood dysregulation at school, with friendships, and at home with the family. Ms. Conley recommended a dialectical behavior therapy based long-term residential treatment center placement, where she could learn to incorporate therapeutic intervention into her daily life.

122. Father emailed Ms. Ferreira at 10:00 p.m., February 17, 2015, stating that Parents wanted Student placed at New Haven residential treatment center in Saratoga Springs, Utah, because Sunrise was not certified by the California Department of Education. Father emphasized that if placement could not be resolved at the upcoming IEP team meeting, Parents would place Student and pursue a due process complaint.

Father clearly indicated the need for placement was urgent, having already reserved a place.

123. UCLA Resnick provided a February 18, 2015 letter, summarizing Student's hospitalization. UCLA noted that Student benefited from the highly structured, contained, supervised therapeutic environment. The UCLA team recommended placement at a residential treatment center and did not identify any particular method of therapy.

124. None of the private providers recommended a residential center that only treated adolescent girls. Similarly, Father did not indicate that the family chose Sunrise or New Haven because they only accepted adolescent girls.

125. Father's claims that Parents attempted to coordinate communication between relevant District personnel and Student's private providers are not supported by the email exchanges, which did not suggest that the District and the private providers communicate. Parents could have brought a private provider with them to the February 2015 IEP; they did not.

District's Residential Placement Center Review Process

126. On February 12, 2015, Ms. Ferreira contacted District's Coordinator of Mental Health Services, Karen Carlson. Ms. Carlson was a licensed California marriage and family therapist, and held pupil personnel service and administrative credentials. Her duties included case management of students in residential placement, which meant that she regularly visited the residential centers. She also went to residential placement centers to evaluate whether a center met District's standards for quality mental health care, education, and safety. At the time of hearing, District had four students in residential treatment centers, but the number had been as many as nine.

127. Ms. Carlson immediately started the process of evaluating Student's needs and searching for an appropriate residential treatment center, understanding Parents'

emphasis that placement needed to quickly occur. Whenever a residential treatment center placement was recommended, District commenced an evaluative process with a mental health coordinator, a school psychologist, and a teacher. This team reviewed Student's records (IEP's, District and private assessments, UCLA Resnick letters, letters from private providers), interviewed and included the Student's school team (Ms. Howell, Ms. Avedissian, Ms. Warsofsky, and Mr. Badders). The private providers' letters did not specify the amount of therapy or counseling Student required. The team considered Student's eligibility, cognitive ability, academic performance, clinical data, age, and gender. Ms. Carlson contacted her counterparts from other school districts and the Greater Los Angeles Area SELPAs. The goal was to identify a residential treatment center which met Student's clinical and educational needs.

128. Parents' insurance limitations required that Student needed to soon exit the UCLA hospitalization. Also, Father's letters to District repeatedly emphasized Student's exigent circumstances. District reasonably believed that Parents were in urgent need of immediate residential placement for Student. Assessment, even if accelerated, would have delayed the IEP team meeting and placement decision. Parents' proposed schedule did not provide time for District to conduct a mental health evaluation.

129. Initially, the team started to obtain waivers from Father in anticipation of doing an assessment. However, Ms. Carlson, Ms. Ferreira, and Dr. Khemichian agreed with the private recommendations for residential treatment center placement. They did not require further assessment to recommend residential placement. The team considered the letters from Ms. McCord, Ms. Conley, UCLA Resnick, and Father in searching for a residential placement center. Cost was not a factor in matching Student with an appropriate residential treatment placement. Ms. Carlson and Ms. Ferreira did not know the cost of the residential treatment centers chosen by Parents or those considered by District.

130. The residential treatment center team considered and dismissed many possible placements because they lacked one or more elements. The placement needed to have dialectical behavior therapy, strong clinical support from licensed therapists and social workers, a robust educational program because Student was very bright, and opportunity and therapeutic guidance to generalize her coping skills from the therapy room into real life. The search team agreed to recommend Heritage Treatment Center in Provo, Utah, to the IEP team. Ms. Carlson was very familiar with Heritage, had been to the center a number of times, and had visited just a few months before. Ms. Ferreira had visited Heritage the year before. Ms. Warsofsky had assisted in placing students with profiles similar to Student at Heritage; she was familiar with its program and student population. District had placed students with profiles similar to Student at Heritage; the students did very well, some returning to a District comprehensive campus.

131. Ms. Carlson spoke to Heritage and sent a packet of materials to Heritage after redacting Student's identifying information. Heritage responded with a letter of acceptance, reserved a bed, and provided a packet of material to be completed by Parents.

February 18, 2015 IEP Amendment

132. District convened an IEP amendment meeting February 18, 2015. Attendees included Father, Mother, Parents' advocate, Ms. Carlson, Ms. Ferreira, Ms. Warsofsky, Mr. Badders, and an administrative designee. Parents came with a large pile of papers from their on-line research. The IEP team heard Parents' concerns about how Student had become increasingly emotionally deregulated about school and that getting her to attend was progressively more difficult. The IEP reviewed each of the private providers' letters, including the UCLA Resnick summary.

133. The residential team discussed Heritage as a placement. Ms. Carlson explained the program, the campus, the counseling, the dialectical behavior therapy, the

safe and therapeutic structure, the equestrian program, the arts and music studio, and the specialty groups for students with like-minded needs. She described their research regarding the residential centers and explained why they believed Heritage addressed Student's needs, as described and recommended by the private therapists and UCLA.

134. Parents disagreed with Heritage. They believed that Heritage had students with severe mental illnesses and violent behaviors, utilized a solitary confinement room, and were convinced Student would not be safe. Ms. Ferreira and Ms. Carlson both explained how the Heritage student population had changed over the years and that Heritage no longer serviced such students. The Heritage program was designed to service students like Student, who had anxiety, depression, mood disorder and low self-esteem that prevented them from meeting their educational potential and develop healthy relationships.

135. Ms. McCord testified that Heritage was not a proper placement for Student because she understood that Heritage serviced a population of deeply disturbed young people, with serious behaviors and violent tendencies. Such an environment was not the safe therapeutic setting Student required and would be detrimental to Student emotionally. Similarly, UCLA Resnick attending psychiatrist Mark DeAntonio testified at hearing; he had helped author UCLA's February 18, 2015 letter. Dr. DeAntonio said that Heritage was designed for patients with oppositional conduct and behavior disorders, focusing on behavior programs to control acting out. He opined that an environment with such a population would overwhelm Student, increasing her anxiety and depression. Dr. DeAntonio's opinion was based on his 15 years of experience in referring student to residential treatment centers, including Heritage. Ms. McCord and Dr. DeAntonio had never visited Heritage; neither had any recent direct interaction with Heritage.

136. Ms. McCord and Dr. DeAntonio also testified that Student had some

history of promiscuity with men and that her interaction with males poses risks. However, neither testified that a suitable residential treatment center would have to be female only.

137. Heritage Executive Director Keven R. Downs and Clinical Director Eugene Marshall were both licensed social workers. Heritage's Elevate Academy program was for bright students with high potential who had emotional challenges and anxieties affecting their academic progress, social relationships, and family life. They took some students with oppositional defiance or substance abuse, but only when these were symptoms of internalized emotions and were not in any way violent or threatening. The Heritage for girls program catered to different themes to build self-esteem, self-worth, and confidence. The girls resided in their own houses. Heritage used a relationship model, connecting students and family. Specialty groups, individual and group therapy, and additional therapy were available when needed. Genders were kept separate for school and attend on different areas of the campus. Classes were direct instruction with about 8 to 12 students, depending on the subject. Heritage also had a Peers Academy which primarily services high functioning autistic teenagers. Peers Academy was physically separate from Heritage's Elevate program.

138. Heritage was more than 30 years old and was a California certified nonpublic school. At one time, Heritage accepted a different student population, consisting of those on probation, with legal issues, serious behaviors, and acting out. About 10 years before, Heritage moved away from that population and now only has students in the Elevate and Peers programs. Mr. Downs acknowledged that Heritage still carried a reputation related to the population it formally served.

139. Dr. DeAntonio and Ms. McCord were factually incorrect regarding the population Heritage served in February 2015. District's representations to Parents at the IEP about the Heritage program were accurate. Heritage provided a program that met

Student's needs, as outlined by her private providers and UCLA Resnick.

140. District offered placement at Heritage, with specialized instruction and a residential treatment program. District offered 60 minutes of weekly individual therapy, 120 minutes of weekly group counseling, and 60 minutes a week of parent counseling. District would provide a one-way ticket for Student and one round trip ticket for an accompanying adult. Ms. Ferreira said that District had previously provided two roundtrip tickets in the past, when requested by parents.

141. Ms. Wilson did not attempt to give the Heritage materials to Parents because she did not believe they would accept them. Parents said they were not going to place Student at Heritage. Father later contacted Heritage and talked to a couple of parents who had students at Heritage. He concluded that New Haven was a better placement for Student.

DISTRICT'S PRIOR WRITTEN NOTICE

142. By letter dated February 20, 2015, District's Coordinator of Special Education William Gifford wrote Parents. Earlier in the day, Parents stated they intended to unilaterally place Student at New Haven in Utah and, thereafter, seek reimbursement from District.

143. Mr. Gifford reiterated District's offer of FAPE to immediately place Student at Heritage. Mr. Gifford described District's process of evaluating suitable residential treatment centers for Student, and provided District's rationale for not placing Student at New Haven.

144. On February 23, 2015, Parents unilaterally placed Student at New Haven.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁷

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁸ 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 free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, 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 individualized education program (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

⁷ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁸ All subsequent references to the Code of Federal Regulations are to the 2006 version.

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)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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. 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.)

5. 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) & (f); 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, § 56502, 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].) Here, Student carries the burden of persuasion.

ISSUE 1: ASSESSMENT IN ALL AREAS OF KNOWN OR SUSPECTED DISABILITY

6. 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].) 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).)

7. 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).)

8. 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).) Persons knowledgeable of the student's disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

9. 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 team meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).)

10. 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.)

11. A school district's failure to conduct appropriate assessment 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.) A procedural violation results in liability for denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*).

Issue 1(a)(i). Initial September 2013 Psychoeducational Assessment

12. Student contends that District's September 2013 initial psychoeducational evaluation did not assess Student in all areas of suspected disability because the school psychologist did not talk to Student's private therapist Ms. Conley, failed to properly administer and interpret a standardized instrument, and did not fully consider Student's section 5150 hold. District asserts that the psychoeducational assessment was legally appropriate, considered all necessary relevant information, and properly administered the standardized instruments pursuant to controlling protocols. As discussed below, Student has failed to meet her burden of proof that District's psychoeducational assessment was not legally appropriate and did not assess in all areas of suspected disability.

13. District's September 2013 psychoeducational assessment was legally appropriate. Ms. Howell's credentials, education, and training qualified her to assess Student. She interviewed Parents, interviewed and observed Student, reviewed Student's

records, and acknowledged and considered Student's suicide attempt and 5150 hold in making her recommendations.

14. On September 23, 2013, Ms. Howell interviewed Student's treating psychiatrist Dr. Woodall who reported that Student's medication regimen was helping her anxiety; Dr. Woodall did not report any continuing suicidal ideation. Student failed to provide any evidence that Ms. Howell would have received any different and relevant information from Ms. Conley.

15. Student argues that Ms. Howell did not properly administer or interpret the Behavior Assessment System for Children. Student complains that her behavior assessment self-report was in July 2013 while Mother's corresponding report was in September 2013. This delay, however, did not violate protocols. As Ms. Howell reported and testified, the delay between the reports provided further insight into Student's condition. None of Parent's September 2013 responses were in the clinically significant range. Student's September 2013 responses to the Revised Children's Manifest Anxiety Scale demonstrated improvement in her anxiety since July. This was consistent with Student's more recent enthusiastic disposition.

16. Student claims her teachers should have completed rating scales. Ms. Howell did not have Student's ninth grade teachers complete the teacher's questionnaire because the testing protocols indicated too much time had passed since Student was in their classrooms. Similarly, Student had not been in her tenth grade classes long enough for her then present teachers to complete the assessment scales. However, as reflected elsewhere in the assessment report, Ms. Howell did obtain and consider Student's teachers' input. Student has not demonstrated that Ms. Howell improperly administered the Behavior Assessment System or any other standardized instruments.

Issue 1(a)(ii). Subsequent Failure to Re- assess After December 2013

Hospitalization

17. Student further asserts that District was required, but failed, to reevaluate Student when she was subsequently hospitalized and was denied "dual enrollment." District states there was no subsequent need for another psychoeducational assessment, because the many private and clinical assessments appropriately informed the District and the IEP team of Student's performance and needs.

18. A school district must conduct a reassessment if it "determines that the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reevaluation," or if the student's parents or teacher request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); see also Ed. Code, §56381, subd.(a)(1).) Here, Student has not presented credible evidence that another psychoeducational assessment of Student was warranted or that Student had requested further assessment.

19. Student was hospitalized in December 2013 and then participated in the UCLA Resnick partial hospitalization until February 2014. At the January 27, 2014 amendment IEP, the team reviewed Dr. Flores' November 29, 2013 psychoeducational evaluation and the UCLA's January 9, 2014 summary and recommendations for placement and services. Parents and the private providers wanted Student to enter a small, therapeutic school environment upon her exiting the UCLA program. The District agreed. UCLA and Ms. McCord agreed with the placement at Magnolia Park. District correctly concluded that further evaluations would have provided little additional information and would have only delayed placement. A psychoeducational evaluation was not warranted.

20. While at Magnolia Park, Student asked that the IEP team allow her to migrate to "dual enrollment," where about half her coursework would be on the Crescenta Valley comprehensive campus. The IEP team discussed this at meetings on

April 22, July 15, and September 30, 2014. On each occasion, the team concluded that Student was not prepared to return to a comprehensive campus. Student was performing academically and her attendance and work completion had greatly improved; however, as Mr. Badders emphasized, Student required consistent therapeutic support to complete her work, which would be unavailable at Crescenta Valley. The IEP team did not want to set Student up for failure. The “dual enrollment” decisions did not warrant reevaluation. The IEP team knowledgeably addressed Student’s request with the informed input of Ms. Avedissian and Mr. Badders.

21. Student was hospitalized in February 2015, following a suicide attempt. The IEP team assembled on February 18, 2015. The letters from UCLA Resnick, Ms. McCord, and Ms. Conley detailed the diagnostic need for residential treatment center placement. The District agreed. Though Father said Student was available for evaluation, Parents strongly emphasized the urgency of residential placement. The evidence fails to support a finding that another evaluation would have provided additional useful information; rather, further evaluation would have merely delayed the IEP team’s placement decision. A psychoeducational evaluation was not warranted.

22. Student has not met her burden of proving that District failed to assess in all areas of suspected disability because the District’s psychoeducational assessment was deficit or that District did not conduct another psychoeducational assessment.

Issue 1(b). Behavior Assessment

23. Student contends her conduct and presentation required District to conduct behavior assessments. Student failed to present convincing evidence in support of this contention. District and private assessments had already identified Student’s behaviors and determined they were the consequence of her diagnosed anxiety and mood disorder.

24. Cutting was a symptom of her emotional pain, bingeing and purging was

associated with her body image and low self-esteem, and her poor interpersonal decisions were related to her deep longing to be accepted. Ms. McCord did not testify or suggest in her written report that a behavior assessment would be beneficial. Ms. Conley addressed Student's eating disorder and did not suggest a behavior assessment. Student's behaviors were properly viewed as the consequence of Student's extreme emotionality and were therapeutically addressed in therapy and at Magnolia Park. Student did not present convincing evidence that a functional behavior assessment would have gathered any additional useful information.

25. Student has failed to meet her burden as to this issue because she did not present evidence that a behavior assessment was warranted.

Issue 1(c). Educationally Related Mental Health Services Assessment

26. Student contends that District repeatedly ignored the private providers' explicit recommendations to conduct educationally related mental health services assessments, arguing that the additional information would have enabled the IEP team to make a more informed decision regarding Student's placement and services. District contends that an emotionally related mental health services assessment was not warranted. For reasons discussed below, Student failed to meet her burden of proof as to this issue.

27. District conducted ERMHS assessments for students whose social emotional status and services were not adequately evaluated with a psychoeducational assessment or other available evaluations. ERMHS assessments addressed behavioral and emotional dysfunctions that were more frequent, longer in duration, and/or of greater intensity. District utilized ERMHS assessments, when warranted, to consider more intense services, such as residential placement, therapeutic educational placement, and family therapy.

September 2013

28. When conducting the September 2013 initial psychoeducational assessment, Ms. Howell did not request or conduct an ERMHS. When informed of Student's "5150 hold," Ms. Howell wanted to conduct the planned psychoeducational evaluation and, if warranted, would then request an ERMHS assessment. However, her assessments, interviews, and observations did not cause Ms. Howell to conclude that Student's social emotional status required an ERMHS assessment. At the time of the assessment report, Student had shown improvement from the previous year and her psychiatrist Dr. Woodall stated the new medication had improved Student's anxiety. District appropriately determined that an ERMHS assessment was not necessary at that time.

January 2014

29. Student suggests an ERHMS assessment should have been conducted for the January 27, 2014 IEP, which changed Student's placement to Magnolia Park. Student points to UCLA Resnick's January 9, 2014 summary letter recommending that District conduct an ERHMS assessment, in support of this contention. However, Student does not identify any additional information the ERHMS assessment would have provided over and above what the IEP team already had. The IEP team had Dr. Flores' independent psychoeducational evaluation. When District suggested Foothill SELPA's Magnolia Park program, three participating members of the UCLA team – Ms. McCord, Dr. Roggenkamp, and Education Specialist Elaina Bloom – agreed the placement was appropriate. Ms. McCord complimented the program in her testimony. Additionally, Ms. McCord was Student's UCLA social worker and participated in authoring the January 2014 UCLA letter. She was in agreement with UCLA's educationally related recommendations. Student did not present persuasive evidence that an ERMHS assessment was warranted for the January 2014 IEP and placement at Magnolia Park.

30. Although the UCLA letter recommended an ERMHS assessment, that recommendation was intended to assure the IEP team's consideration of its recommendations. UCLA Resnick did not recommend the ERMHS assessment to determine Student's placement and educational services; UCLA had already done so, and the IEP team considered UCLA's recommendations.

31. The UCLA letter was very specific regarding Student's emotional and educational needs. The letter identified the requisite educational environment, therapeutic supports, school program, needed school personnel, and accommodations that would promote Student's ability to complete her work and sustain attendance. No additional assessment was warranted.

32. Student asserts that the IEP team's denial of dual enrollment was due to Student's need for a higher level of social emotional support, thereby signaling a need for an ERHMS assessment. Student misconstrues the evidence. Student was regularly attending school, would still need support about twice a week to return to class, and completed her classwork. Her grades were predominantly A's, with a few B's. However, Student continued to need the therapeutic supports to attend class and complete work. This was why Student attended Magnolia Park and did not indicate a need for a higher level of care but consistent, steady therapeutic support. The "dual enrollment" decisions did not warrant an educationally related mental health services assessment.

May-June 2014

33. Following Student's placement at Magnolia Park, District was unaware of a change in Student's social emotional status that warranted an ERMHS assessment. In May or early June 2014, Ms. McCord decided that Student required a residential treatment center placement, but District was not told. Student's emotional state and fragility caused Student to make poor decisions. She was having frequent meltdowns in the home, increased cutting, and difficulty relating to peers. However, Parents would not

consider a residential treatment center and convinced Ms. McCord to continue with therapy, adding a UCLA dialectical behavior therapy, in an attempt to successfully treat Student while at home. Though she agreed, Ms. McCord considered Student a very high risk.

34. Parents attended multiple IEP team meetings thereafter and had frequent discussions with Ms. Avedissian and Ms. Warsofsky. Yet, inexplicably, Parents did not inform the District or Magnolia Park of Ms. McCord's conclusion that Student required residential treatment to improve. Ms. McCord also did not share her conclusion, despite contact with Ms. Avedissian. District first became aware of Ms. McCord's professional determination at the hearing. Further, the family affirmatively restricted the District from addressing certain issues in the school setting.

35. Had District been aware of Ms. McCord's professional conclusion, it would have scheduled an ERMHS assessment. However, the information was withheld. Otherwise, District was unaware of a change in Student's social emotional status that would have warranted an educationally related mental health services assessment.

February 2015

36. Finally, Student contends that District should have completed an ERMHS assessment for the February 18, 2015 IEP about residential treatment center placement. Student's argument does not comport with the evidence and Father's representations regarding Student's placement. Despite Student's contention to the contrary, Father did not allow time for additional assessment. Though he offered to make Student available, Father's letters unambiguously appraised District that he expected the placement to take place without delay. The evidence plainly demonstrated that Father would not have tolerated placement deferral for assessment.

37. Further, as discussed above, Student failed to present persuasive evidence that an ERMHS assessment would have provided useful additional information. UCLA

Resnick and the private therapists had identified Student's mental health and educational placement needs, with recommendations; District and Parents agreed.

38. Student has failed to meet her burden as to this issue because she did not present evidence that an educationally related mental health services assessment was warranted.

Issue 1(d). Social Skills Assessment

39. Student claims that her interpersonal difficulties warranted a social skills assessment. Student did not present evidence that Student's struggles with peers, and interpersonal relationship, were related to poor social skills.

40. Student struggled in her relationships. This was related to Student's constant need for approval and validation, not diminished social skills. She was overwhelmed by her anxieties and made poor choices. Ms. McCord referred to Student as a walking raw nerve. None of Student's private and public providers indicated that Student would benefit by a social skills assessment or services. Student has failed to meet her burden as to this issue.

41. The failure to assess in all areas of suspected disability is a procedural error. Even if Student proved that District's psychoeducational evaluation was deficit or that additional evaluations were warranted, the evidence does not support a finding that the IEP offers of placement and services would have differed or that Parents were denied an opportunity to participate in the decision making process. Therefore, Student was not denied a FAPE because of District's alleged failure to assess Student in all areas of suspected disabilities.

ISSUE 2(A): EDUCATIONAL PLACEMENT NOT REASONABLY CALCULATED TO PROVIDE A FAPE

42. Student contends that District failed to offer Student educational

placements and related services that were reasonably calculated to provide Student a FAPE. District asserts it had offered and provided placement which conferred Student with some educational benefit, during the 2013-2014 and 2014-2015 school years.

September 26, 2013 IEP

43. The September 26, 2013 IEP offered Student a general education placement at Crescenta Valley, with counseling and goals, supported by the high school counselor and school psychologist. Student asserts the September 2013 IEP failed to offer a placement that provided a FAPE because the offer of general education was inappropriate without additional related supports and services. There was too little individual counseling, no consultation plan with private providers, and a failure to appropriately document the reason for special academic instruction and the subsequent change in location of Student's study hall class. As a result, Student argues, general education placement was not appropriate. Student has not met her burden of demonstrating how these assertions resulted in a placement that was not calculated to confer upon Student some educational benefit.

44. In *Rowley, supra*, 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 458 U.S. 176, 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.)

45. The September 2013 IEP found Student eligible because of emotional disturbance; she did not require special education teaching. She was a bright and

capable student, in a general education placement and on track to receive her regular high school diploma. Student's placement included special academic instruction of 15 minutes per month, and individual counseling of 15 minutes a week. Ms. Howell explained that the 15 minutes of monthly special academic instruction was for purposes of monitoring Student's academic progress because she was a special education student. The monitoring merely assured that the special education staff were aware of how Student was functioning in her general education placement without special education support.

46. Student argues that District was taking advantage of Student's private providers by offering a placement with only 15 minutes a week of counseling. Student was being treated by Dr. Woodall and receiving private counseling of 60 to 90 minutes a week. If Student relied solely on District's publicly funded 15 minutes a week of counseling, she would have received less mental health services. Student's contention is unpersuasive because it misstates the purpose of school-based mental health services and also misconstrues the mental health services the IEP provided as part of the general education placement.

47. The purpose of school-based mental health services is primarily educational. The services provided by Ms. Conley and Student's psychiatrist Dr. Woodall were not focused on Student's educationally related emotional concerns. School based therapy is not designed to replace private therapy. Further, Student had a work completion goal and a social emotional goal regarding school attendance. These goals were supported by special education staff, the school psychologist and the school counselor. Ms. Howell and Ms. Cabalka invested substantial time, effort, and care in supporting Student with her goals. They had worked with Student since the beginning of the school year, encouraging her to gradually attend classes. The IEP goals further focused their efforts to support Student when anxious in her general education

placement. Ms. Cabalka and Ms. Howell consistently talked with Student, tried to assist her in identifying the triggers to her anxiety, reminded her of coping strategies, and encouraged her to remain at school and attend class. For example, when Student would become deeply anxious and unable to employ coping skills, Ms. Avedissian would spend about 30 minutes with Student before she returned to class. Therefore, Student's assertion that her IEP mental health services was only 15 minutes a week is inaccurate.

48. Student complains that the change in her study hall location to be near the counseling office was not properly documented in the IEP. Student was not alone in her study hall; other students were also there. The location assisted Student because Student could more easily access Ms. Howell and Ms. Cabalka, also enabling them to better monitor and encourage Student. The location change facilitated the support the IEP identified in Student's work completion and social emotional goals. The location was not a related service; the location enabled delivery of the service. Therefore, it was not required to be documented and explained in the IEP.

49. The failure to document a service is a procedural violation. Even if the study hall location change should have been in the IEP document, Student did not demonstrate that its absence from the IEP in anyway denied Student a FAPE. Parents were aware of the study hall location change and the location facilitated better delivery of services in support of Student's goals.

50. Finally, Student asserts that the absence of a consultation service plan, assuring regular consultation between Student's private mental health providers and the District, meant the placement was not designed to provide a FAPE. Student failed to provide evidence that such a consultation plan was appropriate or necessary. The mere absence of a suggested service is not evidence. Furthermore, Ms. Howell and Ms. Cabalka regularly communicated with Parents, personally and by email. If there was a need for school-based and private providers to talk directly, this would have been

addressed in such discussions. A consultation plan was not a necessary component of Student's general education placement.

51. Student has not met her burden in demonstrating the September 2013 IEP general education placement was not designed to confer Student with some educational benefit.

January 2014 Amendment IEP

52. The January 2014 IEP amendment offered Student placement at Magnolia Park, with 60 minutes a week of individual counseling, 60 minutes a week of group counseling, and 120 minutes a month of Parents counseling. For the January 2014 Amendment IEP, Student asserts that District did not properly consult with her private providers, and did not rely on sound, objective, educationally relevant evaluation data, in offering the counseling. Further, Student claims that District failed to explain crucial aspects of the proposed program, such as the distinction between group and individual therapy, and parent counseling. District also allegedly failed to address Student's continuing threat of suicide. Student's claims are not supported by evidence.

53. The evidence contradicts Student's assertion that District did not have educationally relevant evaluation data to determine and offer the appropriate levels of counseling and therapy. Both the UCLA Resnick summary letter and Dr. Flores' assessment recommended the modalities of therapy and counseling. The amount of time was a judgment of the IEP team that provided substantially more school-based counseling. Notably, the Magnolia School program was a therapeutic environment, with 22 high school students. The student to teacher ratio was ten. Special education teachers taught all classes. In supporting Student's goals, Ms. Avedissian and Ms. Warsofsky devoted daily therapeutic support to Student. Therefore, Student's focus on the two 60-minute weekly therapy sessions is misplaced. The entire placement offer conforms to the recommendations of Student's UCLA treatment team and private

assessor Dr. Flores. Student has failed to demonstrate, by sufficient evidence, District made an inappropriate offer of therapy services because it lacked relevant data.

54. Student's claim that the January 2014 IEP failed to address Student's ongoing threat of suicide is not supported by evidence. The IEP's placement of Student in an immersive therapeutic school was to assure her safety, monitor and support her emotionality, and regularly assess her mental health, while she pursued her education. Ms. Avedissian was the school's full-time, licensed marriage and family therapist who held clinical certifications in dialectic cognitive behavior therapy, child-parent psychotherapy, and aggression replacement therapy. She regularly assessed Student's suicidal ideation. Student offered no evidence that the IEP's placement offer failed to address Student's risk of suicidal ideation.

55. Student's claim that the IEP team did not appropriately consult in its placement decision is contradicted by the evidence. The IEP team updated Student academic and functional performance, noting that Student had ongoing difficulties with anxiety and mood regulation that interfered with her class attendance and work completion. The team reviewed the UCLA summary report and Dr. Flores' assessment; District agreed with their recommendation for a small, therapeutic educational environment. When the IEP team discussed Magnolia Park as a recommended placement, three representatives from Student's UCLA Resnick treatment team participated. Ms. McCord confirmed that she was aware of Magnolia Park, complimenting the program during her testimony. Student's private treatment team agreed with the placement. If Parents had any questions regarding Magnolia Park after the District's presentation, Parents could have asked and involved Student's UCLA treatment team. Student did not present credible or persuasive evidence that District did not adequately describe the Magnolia Park program or consult with private providers.

56. Student's claim that District failed to adequately explain the distinction between group and individual therapy is not persuasive. Student and Parents had participated in group and individual counseling at UCLA Resnick. No evidence supports an assertion that Parents were uninformed. Further, allegations of failure to consult and explain at the IEP team are procedural. Even if Student proved up such allegations, Student did not present evidence indicating such violations denied Student a FAPE.

57. Student has not met her burden in demonstrating the January 2014 IEP placement offer was not designed to confer Student with some educational benefit.

July 2014 Amendment IEP

58. The purpose of the July 15, 2014 amendment IEP was to discuss Student's request for dual enrollment, which the IEP team declined. The offer of placement and related services was unchanged. Student asserts the July 2014 IEP failed to offer a FAPE because it did not provide Student with behavioral or emotional support necessary for Student to meet the remaining criteria for dual enrollment, because it did not address Student's increasing difficulties with class attendance, bingeing and purging, and because District did not invite Student's private providers to the meeting. Student's arguments in this regard are unpersuasive. The IEP team agreed that dual enrollment would not be appropriate because Student continued to require a high level of support to attend her classes and complete her work. Student did not submit any evidence that increased supports would have been helpful to Student. As it was, Student received substantial, daily support from Ms. Avedissian and staff in managing her anxieties to encourage her to attend class and complete her work.

59. The IEP maintained the goal of addressing Student's attendance in having Student identify the triggers to her anxiety. Since starting at Magnolia Park, Student dramatically increased her school attendance. For example, at the time of the IEP, Student was finishing her summer extended school year classes. Her grades were three

As, with no reported absences or tardies. Therefore, the services adequately supported goal attainment.

60. Student generally asserts that the IEP offer was deficient because District did not invite any of Student's private providers to the IEP team meeting. Student has not cited any law requiring such an invitation. However, Parents could have invited Dr. Woodall, Ms. McCord, or Ms. Conley; they did not. The assertion suggests that Parents welcomed transparency and a full exchange of information. Father testified that Parents told District everything. However, the evidence indicates that Parents were guarded in what they shared with the District.

61. For example, Parents declined parent counseling, indicating that family matters would be addressed in private family therapy. Mother instructed Ms. Avedissian not to address Student's eating disorder at school; it was being addressed in private therapy. Student told Ms. Avedissian, when certain issues were brought up, that it was being addressed in private family therapy. And notably, as discussed in Legal Conclusions 33 through 35, above, Ms. McCord recommended residential treatment center placement for Student in late spring 2014, which Parents rejected. Parents did not tell the July amendment IEP team, any other IEP team, District, or Magnolia Park. Ms. McCord revealed her spring 2014 conclusion at hearing, but never told District or Magnolia Park. Parents suffered a grueling journey with their daughter as her emotional disturbance spiraled beyond their control. However, for whatever reason, Parents were not as transparent and open about Student's and family's struggles as depicted by Father in his testimony.

62. This July 2014 IEP team meeting was called to address Student's possible dual enrollment. The IEP sufficiently documents the team's reasoning as to why Student was not ready. Student then requested permission to take the state proficiency exam. The IEP team agreed, providing instruction as to the test's requirements and offering a

study period to prepare. Student has failed to demonstrate that this amendment IEP did not provide Student with a FAPE; the IEP clearly exhibited an intent to provide Student with educational benefit.

September 30, 2014 Annual IEP

63. The September 30, 2014 annual IEP offered Student placement at Magnolia Park, with 60 minutes a week of individual counseling, 60 minutes a week of group counseling, and 120 minutes a month of Parents counseling. Student's only assertion regarding the District's failure to offer a placement that was reasonably calculated to provide educational benefit at the September 2014 annual IEP team meeting is that the IEP contained a typographical error. The IEP document inadvertently indicated on the FAPE Offer page that Student's individual counseling was 120 minutes weekly and parent counseling was 60 minutes a month. However, the IEP's notes page correctly indicated Student's individual counseling was 60 minutes a week and parents counseling was 120 minutes a month. This is a clerical error. Student did not demonstrate that the typographical error caused any person to be confused as to the offer of placement and services and that, therefore, Student was consequentially denied a FAPE. Student has failed to demonstrate that this annual IEP did not provide Student with a FAPE.

February 18, 2015 Amendment IEP

64. District offered Heritage residential treatment center placement at the February 18, 2015 amendment IEP. Student asserts that Heritage was an inappropriate placement because Heritage's population included students with addictions, violent and aggressive behaviors, and ongoing criminal proceeding. Student further claims that District failed to address highly pertinent Parent concerns, failed to consider relevant and critical input from private providers, and failed to make calculated offers of services,

considering the substantial level of support required by Student. Therefore, District's offer was not calculated to provide Student with FAPE. As a result, Student argues, Parents are entitled to reimbursement for their unilateral private placement of Student at New Haven. Student has failed to meet her burden of proof, as explained below.

65. 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).)

66. Heritage's program was designed for adolescents with Student's profile. This was confirmed at hearing by Mr. Downs and Mr. Marshall. Heritage's Elevate Academy program was for bright students with high potential who had emotional challenges and anxieties affecting their academic progress, social relationships, and family life. The Heritage for girls program catered to different themes to build self-esteem, self-worth, and confidence. The testimony confirmed the District's representations to Parents at the IEP that the Heritage program serviced "internalizers" like Student. The evidence demonstrates that the Heritage program provided a nurturing environment, well suited for Student.

67. Heritage's program separated the girls from the boys. Not only did they have separate residences but the genders remained separated for school. Student offered no convincing evidence or argument that such an arrangement would pose a risk for Student. The evidence does not support the finding that a female only residential treatment center was necessary for an appropriate placement. Letters from

Ms. McCord, Ms. Conley, and UCLA Resnick similarly do not state that the chosen residential treatment center be female only. Ms. McCord and Dr. DeAntonio testified that Student's history indicated that her interaction with males posed risk; they did not indicate the residential treatment center had to be female only.

68. Heritage had not serviced a population of deeply disturbed young people, with serious behaviors and violent tendencies, for many years. Dr. DeAntonio and Ms. McCord were factually incorrect regarding the population Heritage served in February 2015. District's representations to Parents at the IEP about the Heritage program were accurate. Ms. Carlson told Parents that she had personal knowledge of Heritage's program, having visited District placed students at the facility on a number of occasions, the last just a couple months before the IEP. Ms. Ferreira also affirmed that Heritage did not service the population which caused Parents concern, having visited Heritage many times, most recently the prior year.

69. Student argues that District did not consider Parents' concerns and private provider input when it decided to offer Heritage. The evidence does not support the contention. The evidence convincingly demonstrated that District considered far more than just the private providers' letters. District started the process of searching for a suitable residential treatment center when, on February 12, 2015, Father first informed Ms. Ferreira of Student's hospitalization and need for residential treatment center placement. Ms. Carlson assembled the District's residential treatment center search team. They reviewed all of Student's records, private and District assessments, prior UCLA Resnick letters, and Ms. McCord's and Ms. Conley's recommendation letters. The team also interviewed and consulted with Student's school support team, including Ms. Howell, Ms. Avedissian, Ms. Warsofsky, and Mr. Badders. They considered Student's eligibility, cognitive ability, academic performance, clinical data, age, and gender. Ms. Carlson contacted her counterparts from other school districts and the Greater Los

Angeles Area SELPAs. The evidence demonstrated a thoughtful and thorough search for an appropriate residential treatment center which would meet Student's clinical and educational needs.

70. Student has not provided evidence that District failed to consider Parents' concerns. As discussed above, Father concluded that New Haven was a better placement. Parents chose not to believe District's representations regarding the type of students serviced by the Heritage program. Heritage did not in fact harbor a population of students with aggressive, violent, or criminal behaviors. District sufficiently explained how Heritage's program met Student's needs. Parents' beliefs may have been based on the opinions of private providers, websites, or anecdotal histories. Yet, if Father had asked Heritage about its student population, he would have been told it no longer included students with serious behaviors and violent tendencies. Here, District was truthful and accurate in its representations to Parents regarding Heritage, reflecting consideration of Parents' concerns.

71. Student did not demonstrate that District's offer at the February 2015 IEP, of placement and related services at Heritage residential treatment center, was not calculated to confer some educational benefit to Student.

72. Student has failed to meet her burden of proof, by a preponderance of the evidence, as to Issue 2(a).

ISSUE 2(B): ALLEGED DEFICIENT PROGRAMS NOT BASED ON RESEARCH-BASED INTERVENTIONS

73. Student contends that District's proposed Heritage placement at the January 2015 amendment IEP denied Student a FAPE because Heritage did not provide pure dialectical behavior programming. Student's argument is unpersuasive. Heritage offered dialectical behavior therapy. Student's contention that it had to be "formal DBT as part of its regular program" to meet Student's needs is unsupported by the evidence.

Also, Ms. McCord testified that Student did not require dialectical behavior therapy as her sole therapeutic methodology, acknowledging that various forms of therapy, including cognitive behavior therapy, were beneficial to Student. Student failed to demonstrate by a preponderance of the evidence that Heritage's dialectical behavior therapy would not benefit Student.

ISSUE 2(C): ALLEGED HARASSMENT AND BULLYING

74. Student asserts that District failed to provide Student with a placement that was free of harassment and bullying. The evidence does not support the assertion. Student had negative peer interactions. Student claims that such ongoing negative interactions amounted to bullying. This argument misconstrues bullying and, additionally, inaccurately characterizes Student's social relationships.

75. Student regularly sought affirmation and acceptance because of her low self-esteem and need for approval. However, she became emotionally deregulated at the slightest perceived slight. As Ms. Avedissian noted, Student misperceived these social strains as "bullying." As discussed in the factual findings, there is no convincing evidence that Student was bullied. Student has failed to meet her burden of proof as to this issue.

ISSUE 3: ACCURATE PRESENT LEVELS OF PERFORMANCE AND APPROPRIATE, MEASURABLE GOALS

76. Student asserts that District failed to record accurate level of performance and craft appropriate, measurable goals, which were procedural errors that denied Student a FAPE. District generally contends, as to all the IEP's at issue, that Student's levels of performance and goals were appropriate. For the reasons set forth below, Student did not meet her burden of proof on this issue.

77. An IEP must contain a statement of measurable annual goals related to

“meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum” and “meeting each of the child’s other educational needs that result from the child’s disability.” (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd.(a)(2).) The IEP must also contain a statement of how the child’s goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd.(a)(3).) The IEP must show a direct relationship between present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) The IDEA does not require a particular number of goals nor does it require goals for every particular manifestation of the Student’s disability.

78. Student generally asserts that District was unable to accurately ascertain Student’s present levels of performance in key areas because District failed to appropriately conduct all requisite assessments. Student does not identify a present level of performance that was inaccurate. Further, as determined in analyzing Issue 1, above, District assessed in all areas of suspected disability with legally appropriate assessments.

79. Student claims that the social emotional goal of the September 2013 initial IEP was not measurable because the goal required Student to identify triggers to her anxiety, even though District could not identify the trigger at the time of goal creation. The assertion is unpersuasive. As Ms. Howell judiciously explained, the purpose of the goal was to develop Student’s ability to identify the triggers to her anxiety, which was something only she could do. The District relied on the Student to identify the triggers, which changed over time. The goal was measurable by the school psychologist and counselor.

80. Student asserts that additional social emotional goals should have been added at the January 2014 IEP team meeting that provided the Magnolia Park placement, because Student had been hospitalized and participated in the UCLA Resnick

partial hospitalization. At the time of the IEP team meeting, the primary educationally related concern remained Student's resistance to attending school and class, which was primarily caused by her deep anxiety and consequential emotional deregulation. Therefore, the existing social emotional goal for Student to identify triggers to her anxiety continued to address the Student's failure to attend school and class, as identified in her level of performance. Student's school attendance and work completion dramatically increased at Magnolia Park. Student provides no evidence or persuasive argument that additional goals were necessary for Student's educationally related social emotional needs at the January 2014 IEP.

81. Student claims that the transition goals from the September 2013 IEP were dropped in the September 2014 IEP document; this is incorrect. Transition goals had been revised based upon Mr. Badders' interview of Student. Three new transition goals were clearly stated in the September 2014 annual IEP's Individual Transition Plan.

82. The February 2015 amendment IEP added a social emotional goal regarding self-esteem. Student argues that the new goal demonstrated that more than one social emotional goal was necessary in previous IEP's. However, in February 2015, Student was at UCLA Resnick hospital following a suicide attempt. Her social emotional needs had changed and the IEP team believed an additional goal was warranted. This does not demonstrate that prior IEP's required an additional social emotional goal.

83. Student claims that Student's work completion goal, from the September 2013 IEP, was useless in the IEP's after Student started at Magnolia Park, because she no longer had homework. Evidence indicates otherwise. The work completion goal did not merely address homework but was designed to also support Student in completing her class assignments and projects. Therefore, Student continued to need the goal at Magnolia Park, assuring support in doing her work.

84. Student has failed to meet her burden of proof by a preponderance of the

evidence that Student's IEP's had inaccurate present levels of performance or inappropriate and unmeasurable goals, which denied Student a FAPE.

ISSUE 4: PRIOR WRITTEN NOTICE REGARDING RESIDENTIAL TREATMENT CENTER PLACEMENT

85. Student claims that Mr. Gifford's February 20, 2015 letter to Parents was inadequate prior written notice and, therefore, denied Parents an opportunity to meaningfully participate in the IEP decision making process. Student's assertion is unpersuasive because District's prior written notice complied with legal standards.

86. A district must give prior written notice to the parents of a child with exceptional needs, and a reasonable time before proposing (or refusing) to initiate or change the identification, assessment, or educational placement of the child, or the provision of a FAPE. (Ed. Code, § 56500.4 subd. (a).) As discussed above, 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. (Ed. Code, § 56505, subd. (f)(2).)

87. Mr. Gifford's letter described the action proposed (immediate Heritage placement) and refused (District would not agree to a New Haven placement). He explained District's reason for District's action and described District's process of evaluating suitable residential treatment centers for Student.

88. Student complains that Mr. Gifford did not discuss how Heritage's frequency and duration of therapy would address Student social emotional needs, thus depriving Parent an appropriate description to make informed decisions. The assertion is unpersuasive. Mr. Gifford's letter adequately complied with legal requirements.

89. Further, Student has not established District was required to provide a prior written notice. As discussed above, the District thoroughly and adequately

discussed its offer of Heritage at the February 2015 IEP amendment team meeting.

90. Student has not met her burden of proof by a preponderance of the evidence as to Issue 4.

ORDER

Student's requests for relief are 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. District prevailed on all issues.

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: April 1, 2016

_____/s/_____
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings