

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CHAFFEY JOINT UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2017091107

DECISION

Chaffey Joint Union High School District filed a request for due process hearing with the Office of Administrative Hearings on September 29, 2017, naming Parent on behalf of Student.

Administrative Law Judge Judith L. Pasewark heard this matter in Rancho Cucamonga, California on October 25, and November 7, 2017.

Tiffany Santos and Maryam Rastegar, Attorneys at Law, represented District. Royal Lord, Program Manager for the West End Special Education Local Plan Area, and Kelly Whelan, Director of Special Education, attended on behalf of District.

Mother attended the hearing on behalf of Student. Mother was assisted by Spanish interpreter Alma Villegas. Student attended each day of hearing.

At District's request, OAH continued the hearing for the parties to file written closing arguments. The record closed on November 28, 2017, upon receipt of District's closing brief. Student did not submit a closing brief.

ISSUE¹

Does District's offer of placement in a residential treatment center, as contained in the September 20, 2017 individualized education program, constitute a free appropriate public education in the least restrictive environment for Student?²

SUMMARY OF DECISION

Student's placement pursuant to his last agreed upon IEP was a residential treatment center in Utah. Student became unwilling to participate in his residential treatment program. On September 20, 2017, District held an IEP team meeting to discuss an alternate placement for Student. District believed Student required placement in a residential treatment center to receive educational benefit, and offered an alternate residential placement in Tennessee. Subsequently, on September 26, 2017, another residential treatment center, Provo Canyon in Utah, became available as placement and was offered to Student. Mother no longer believed an out-of-state residential treatment center was appropriate for Student. Therefore she removed Student from his residential placement, and returned him to her home.

District's offer of an out-of-state residential treatment center is an appropriate placement for Student and represents Student's least restrictive environment. Student's mental health issues, history of violence toward himself and others, need for a highly

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

² At hearing, Mother consented to the remainder of the September 20, 2017 IEP. Therefore, only placement is addressed in this Decision.

structured and restricted environment, and his failure to successfully adapt to other lesser restrictive placement options, necessitates continued placement in a residential treatment center such as Provo Canyon in Utah.

FACTUAL FINDINGS

BACKGROUND

1. Student was a 17-year-old young man in the 12th grade who resided with his mother within the boundaries of District. Since the 2014-2015 school year, Student has qualified for special education services under the category of emotional disturbance. At that time, District placed Student at Canyon View School, a nonpublic school. In 2015, District removed Student from Canyon View for threatening the principal and other students, and he was placed in juvenile hall, where the County Office of Education provided educational services. When released, District provided an interim placement for Student at Bright Futures, another nonpublic school, where Student was extremely oppositional, refused to go to class, and refused to cooperate with his teachers. At home, Student presented with behaviors which included symptoms of mood disorders, psychosis, hallucinations, and other high risk behaviors, such as running away, staying out all night, suicide attempts, and homicidal ideation. Student also faced repeated incarcerations in juvenile hall facilities due to his maladaptive behaviors, involvement in gang activities, graffiti tagging, and illicit drug usage. On rare occasions when he did attend class, Student's exhibited hyperactivity, inattentiveness, defiance, property destruction, and classroom disturbance, all of which impeded his ability to benefit from his academic setting.

2. Based upon information obtained from Mother, District knew that Student had a clinical diagnosis of bipolar disorder, and was hospitalized late in 2014 for two, separate suicide attempts. In response to this information, District conducted an

educationally related mental health services assessment (ERMHS) of Student. Maureen Pujols³, a clinical psychologist, conducted the ERMHS assessment and prepared a report, dated January 7, 2015. Ms. Pujols conducted her interview of Student at juvenile hall during his incarceration. Based upon her review of Student's educational and home histories, medical and psychiatric histories, including several inpatient and outpatient therapeutic interventions, interviews and observations, and Student's risk assessment scales, Ms. Pujols concluded that Student required a small, structured, and restricted nonpublic educational placement, which could also provide Student with psychiatric care, ongoing therapy, and a drug and alcohol program. Ms. Pujols recommended placement in a residential treatment center.

3. On January 7, 2015, District held an IEP team meeting to review the ERMHS assessment and consider a new placement for Student.⁴ The IEP team meeting was attended by all necessary parties, including Mother, nonpublic school representatives, and juvenile probation officers.⁵ The IEP team, including Mother, agreed

³ Ms. Pujols held a masters' degree in social work and a pupil personal services credential in school psychology. She was the ERMHS school psychologist for San Bernardino City Unified School District, and a behavior health counselor for the San Bernardino County Superintendent of Schools, West End SELPA, at the time of Student's assessment.

⁴ This IEP team meeting was technically, the 30-day review for Student's placement at Bright Futures, but Student had only attended a few days due to his refusal to attend school and intervening juvenile hall placement.

⁵ Although age 16, Student did not attend the IEP team meeting; when he was released from juvenile hall custody, he left home and had not returned.

to change Student's placement to an out-of-state residential nonpublic school. The IEP team selected Cinnamon Hills, a nonpublic school in Utah, as Student's placement. Student arrived at Cinnamon Hills in February 2015, where he remained until August 2016. After an initial period of resistance, Student responded well to therapy and complied with rules.

4. On March 8, 2016, District held Student's annual IEP team meeting. Student made progress on his goals. Mother shared that she had seen significant improvement in Student's behavior, including that he was more respectful, kind, and caring. The IEP team, including Mother, agreed that Student continued to require a nonpublic school with residential treatment services. Cinnamon Hills continued to be the least restrictive environment to meet Student's educational needs.

5. On August 2, 2016, District held an addendum IEP team meeting. Student had done well in the Cinnamon Hills program. His grades had improved dramatically. Student had earned 127.5 credits and had a 3.29 grade point average while attending Cinnamon Hills. He participated in therapy, and worked well on his goals to maintain a healthy lifestyle and cope with difficult situations. Student's August 29, 2016 Discharge Summary noted a very guarded prognosis for Student, as he had not yet been tested to maintain his gains and sobriety in the home or community. For him to succeed, Student required a structured and supportive academic setting, in-home therapeutic services, and weekly individual and family counseling. Cinnamon Hills recommended that Student participate in a sobriety oriented support group. District agreed that Student was ready to return to California. However, given the concerns regarding Student relapsing into substance abuse, District proposed placement in a lesser restrictive, "step-down" residential treatment program as a transition to support Student prior to his return home. Mother wanted Student home, and refused any further residential placement. Mother would access the community services available if she saw the need for it. As a

result, District reluctantly agreed to place Student at Spectrum, a nonpublic school in Chino Hills, California, which provided mental health services on campus. District also provided Student with wraparound services, which included counseling and support in the home for Student and Mother from a social worker. Student's placement at Spectrum commenced August 13, 2016.

6. On September 28, 2016, District held an addendum IEP team meeting to discuss another change of placement for Student. Spectrum, which specialized in emotional disturbance disabilities, determined it was unable to effectively educate Student. During the one month of his enrollment, Student exhibited seriously assaultive behavior toward both students and staff. He instigated numerous fights. Student targeted other students, and threatened his gang's involvement in violence towards others. Student often misread social cues, and his behavior escalated very quickly when he thought someone was disrespecting him. Student had seven incident reports for property damage, physical aggression and leaving supervised areas without permission. Mother indicated she was not aware of any gang involvement, nor was she aware of any behavior problems at school. Spectrum staff disputed Mother's claims as they contacted Parents regarding each incident. Mother further expressed concern that Spectrum staff members were unfair and targeted Student because of his racial background.

7. District offered to remove Student from Spectrum and place him at Stone Ridge, another nonpublic school, and provide him with increased wraparound mental health services. Stone Ridge, a behavior oriented nonpublic school, serviced more aggressive students. Its special day class setting was smaller and self-contained. Stone Ridge provided the highest level of non-residential support available in a nonpublic school placement. Mother consented to this placement and services.

8. Michael Plew, a neuropsychologist for District, conducted Student's 2016 triennial assessment and prepared a written report dated October 18, 2016. Dr. Plew

held a Psy.D. in educational psychology and was a school neuropsychology diplomat. He also held a pupil personnel services degree and a masters' degree in counseling/psychology. Dr. Plew worked with high-risk youth and provided psychotherapy services for students in alternative placements. Student's academic levels were found in the average-to-below average range. Dr. Plew reported that children with mental health disorders often demonstrated uneven performance on tests. Student's significant mental and emotional issues could adversely affect his academic performance. Additionally, learning English as a second language, along with cultural and environmental factors, were not causal as to Student's academic and behavioral struggles. Instead, Dr. Plew determined Student had a dual diagnosis which was difficult to treat. Student had both a mental health disability and criminal/anti-social behavior. Student could not control his emotions. His involvement in the criminal subculture was easier for him because no filters or regulatory behaviors were required. Student's behavior was not necessarily by choice, however, Student did not accept his mental illness. His continuing progression in behaviors contributed to his decline in function.

9. On October 18, 2016, District held Student's triennial IEP team meeting. Mother and Student attended. During the meeting, Mother expressed concern that Student was not learning. Although Student had been involved in another altercation just before the IEP team meeting, Student voiced his desire to return to a District high school campus, with some incentives to work towards this goal. The IEP team agreed that, given Student's present level of physical aggression, it was not appropriate to consider a District program. District required a period of six months without physical aggression to consider a return to a high school campus. Student did not like Dr. Plew's diagnosis of mental illness and emotional disorder. During the meeting, Student became agitated, threatened IEP team members, and stormed out of the room, requiring the intervention of security staff. It was necessary to continue the IEP team meeting to

November 10, 2016, for completion.

10. Dr. Plew reviewed his report with the IEP team at the November 10, 2016 IEP team meeting. Student, Dr. Plew, and Stone Ridge staff attended the IEP team meeting by telephone from Stone Ridge. Dr. Plew explained to the IEP team that Student needed a safe, structured environment to help him understand his disability; he needed treatment compliance. While Dr. Plew did not recommend specific placements, he determined that, from a mental health standpoint, Student required more intervention than could be provided at Stone Ridge. Student's mood swings were not normal. Student experienced or envisioned things which were not real, and which could be worsened with drug usage; and Student was involved in criminal gangs which led to his juvenile hall incarcerations.

11. The IEP team considered Dr. Plew's assessment report and reviewed Student's three-week history at Stone Ridge. Student's behavior was out of control. Student engaged in dangerous behaviors and harmed other students. The team determined that Student required a highly structured environment with high levels of supervision. District members of the IEP team recommended placement in a residential treatment center, and recommended Student return to Cinnamon Hills.

12. Mother disagreed with residential placement. Her primary concern was an incident in which Student was physically restrained. According to Mother, Student was choked by a member of the Stone Ridge staff which resulted in marks and bruising on Student's body. Student reinforced Mother's description of the incident, and felt Stone Ridge staff mistreated him. Stone Ridge staff reported Student had been grabbed by the shirt to prevent him from attacking the staff member with a clenched fist. Stone Ridge staff attempted to use de-escalation techniques, but Student did not respond, and he continued to charge the staff member. Professional staff at Stone Ridge determined that Student demonstrated a pattern of behavior where he would need to be restrained, and

then he would claim mistreatment.⁶ Mother did not consent to District's offer of placement on November 10, 2016, and did not return Student to school at Stone Ridge.⁷ On November 14, 2016, however, Mother contacted District and consented to the proposed IEP. Mother requested that Student return to Cinnamon Hills as soon as possible. She also reported Student would not go voluntarily.

13. District employed a private transport team to return Student to Cinnamon Hills. The security team was initially unable to transport Student, due to threats of violence, and gang member interference. Another attempt to transport Student was made with police assistance, and a loaded gun was found under Student's bed. The transport team was able to get Student to Cinnamon Hills with a police escort, although Student unsuccessfully attempted to elope during the transport. During the admission process at Cinnamon Hills, drugs were found in Student's system.

14. Student was reenrolled at Cinnamon Hills on December 2, 2016. He did not cooperate in his second placement at Cinnamon Hills. Instead, Student, aware that his behaviors had successfully gotten him removed from other placements, instigated extreme behaviors intended to get himself removed from the Cinnamon Hills program. The typical program at Cinnamon Hills took between 10-to-12 months to complete, however, Student refused to work the program or move up the behavior levels.

15. Email correspondence and progress reports from Cinnamon Hills were replete with documentation of Student's disruptive behaviors and refusals to participate in class or his therapy program. During this second placement, Student's behaviors escalated and increasingly required the initiation of emergency physical interventions,

⁶ When asked by the ALJ about the physical restraints, Student felt they were excessive, but admitted he initiated the incidents with his behaviors.

⁷ Student refused to attend school at Stone Ridge since October 18, 2016.

including the use of physical restraints. In September 2017 alone, two emergency physical intervention forms were completed for incidents within a two-week period. On one occasion, Student began harassing a peer. Student's behavior escalated and he punched the other student. In the melee which ensued, staff intervened and Student was placed in an emergency restraint transport hold (arms around neck), while Student continued to kick and elbow the staff member. The staff member reported Student intentionally bit down on his own lip. Student contended the staff member punched him in the mouth. Student was placed in seclusion. Another emergency intervention was required when Student initiated aggressive moves towards staff members with a clenched fist. Student swung at the staff member and was taken to the ground. Student insisted the staff member started the fight, however, a peer witness reported Student got in the staff's face, tried to intimidate him, and took a swing before the staff took control of the situation. Student was again placed in seclusion. Student insisted that his Mother be informed of each incident and injury he incurred.

16. The culmination of Student's continual maladaptive behaviors resulted in a request from Cinnamon Hills on September 5, 2017, that Student's placement at Cinnamon Hills terminate and he be placed in a more restrictive placement. The September 9, 2017, Investigative summary from Cinnamon Hills is telling, and provided insight into Student as follows:

"This program (Cinnamon Hills) has devoted exceptional time and manpower into investigating Student's numerous formal and informal allegations since his arrival to this program. The State of Utah has likewise devoted time and manpower for that same purpose. The allegations have become so frequent and so numerous that it is the investigators opinion that Student's future here would necessitate a full-time

investigator to handle claims originating from him alone. However, the specialty in resources devoted to Student does not end there. Staff members working with Student all report that they walk on eggshells or are otherwise fearful of false allegations that will come from his targeting them. When sent to time out for poor behavior it is reported that Student can no longer be kept amongst the other students in Time Out, as his attempts to incite, manipulate or encourage general chaos among them requires Student to be placed in a separate room, with a staff devoted to him with one-on-one supervision. For fear of false allegations by Student, no staff is willing to volunteer for this role. Staff must be ordered to do so, accepting the task with great justifiable anxiety on their part. Student has stated to his therapist months ago that he was "going to get this program's attention." He has proven an exceptional case in his absolute devotion to defeat his treatment in this program at any and all costs. He undoubtedly knows his mother has the ability to effect a premature discharge, but seems to have recognized that if she will not do so, he can still force this program into effecting a premature discharge by overwhelming the administrative efforts through poor behavior, violent outbursts, medication manipulation, false allegation, or any other means at his disposal. The past few months have seen an explosion in the severity and number of allegations Student is willing to make – despite efforts to wait out his

storm of accusations and allegations, he does not appear to be relenting.”

17. The above opinion was supported by the ALJ’s questions to Student at hearing. When asked about his possession of contraband, such as a cell phone and matches, Student admitted possessing the items, and emphasized his accusations that staff members provided them to him. Student avoided focusing on his own accountability for possessing the items, and failed to expand on how he got them, or why he needed them.

18. Student was in the 12th grade for the 2017-2018 school year, and remained on graduation track for June 2018. Student was short on graduation credits, however, Cinnamon Hills provided for credit recovery, and Student earned 160 of his graduation credits in the residential treatment program. Mother, however, viewed Student as the victim of abuse at Cinnamon Hills, and decided to remove him from that placement. In light of this collapsing placement, District requested that Mother refrain from removing Student until they could meet and discuss another placement for Student. District advanced Student’s annual and transitional IEP team meeting to September 20, 2017. Mother participated in the discussion regarding the proposed IEP. She agreed with the contents of the IEP, including goals and services, and consented to the IEP, except for placement. Mother emphasized her concerns for Student’s safety at Cinnamon Hills and wanted him removed from residential placement. Student was present for the summary portion of the IEP team meeting and provided his input. Student requested home school or placement in either a public school or a step-down nonpublic school. Student expressed his belief that the staff at Cinnamon Hills had gone overboard with restraints, and the program was no longer helping him. Student reiterated that everything he had told his Mother was true. In support of Student, Mother claimed Cinnamon Hills’ staff had provided Student with contraband; abused

him; encouraged fights; and exploited all of the students.

19. District's offer of placement in the September 20, 2017 IEP was in a residential treatment center. While District was willing to change Student's residential placement from Cinnamon Hills to accommodate Mother's concerns, Student was not yet ready to come home. Student had not succeeded in his home setting, and was an imminent danger to others in the home. District strongly believed a residential placement was necessary for Student to access his education. District offered Student a residential placement at Natchez Trace Youth Academy in Tennessee, which was initially the only facility which would accept Student. Mother did not consent to this placement.

20. On September 28, 2017, District sent Mother a letter of prior written notice expressing District's rejection of Mother and Student's requested placement options. District again expressed its belief that Student required a residential placement to receive educational benefit and make academic progress. In lieu of Natchez, however, District offered Provo Canyon as an alternate residential placement, which became available after the IEP team meeting. Provo Canyon, located in Utah, was closer to home, and certified by the California Department of Education. District offered to convene another IEP team meeting and have a representative of Provo Canyon present for the meeting to discuss this option with Mother.

21. Mother disagreed with the offers of both Natchez and Provo Canyon, and informed District that she would not consider any placement other than home. Mother felt she had been mistreated at the IEP team meeting and she wanted no more contact with District. As Cinnamon Hills was Student's last agreed upon IEP placement, Student remained there until October 21, 2017, when Mother unilaterally removed him from Cinnamon Hills and returned him home.

22. Trevor Embry, Clinical Counselor for West End SELPA provided the wrap around mental health services for Student and was also Student's case manager. Mr.

Embry held a master's degree in counseling psychology and a pupil personnel services credential. He was also a licensed marriage and family counselor.

23. Mr. Embry was instrumental in Student's initial placement at Cinnamon Hills, and managed his placement and progress during both placements there. Mr. Embry was also responsible for the residential treatment center placement search in September 2017. Mr. Embry contacted over 20 residential treatment centers in the United States. Based upon Student's redacted and anonymous profile, because Mother would not authorize release of Student's information to prospective placements, only Natchez and Provo Canyon were willing to accept Student as of September 2017.

24. Mr. Embry described Provo Canyon as an intense behavioral program, with individual, group, and family therapy. It was highly structured and highly supervised. Students earned "phases" or rewards which allowed them to move toward lesser restrictive settings. Psychiatric services and medications were available. Drug dependency programs and life skills programs were embedded in its programs. Student's IEP goals and services, along with his individualized transition plan, could be implemented at Provo Canyon. Given his involvement with Student treatment plans, as well as his familiarity with residential treatment centers, Mr. Embry found Provo Canyon to be an appropriate placement for Student.

25. Mother provided little information. She did not believe Student's behaviors were due to severe mental illness. Rather, Student behaved badly when he was using drugs. In spite of Student's incarcerations, she did not believe Student was a gang member. Mother steadfastly believed Student's versions of the incidents at each of his placements, and believed that Student had been beaten and violently restrained, as well as disrespected and mistreated by staff and other students. Mother also stated she wanted Student home because she was not well, and wanted all of her children at home. Mother also admitted she did not pursue the recommended supports and programs for

Student, including, drug/sobriety programs, when he first returned from Cinnamon Hills, as she saw no reason for them.

26. Student spoke on his own behalf, and answered questions when asked. He remained quiet and respectful throughout the hearing. Student viewed himself as the victim in each of the incidents reported. Student had no self-awareness; he did not provide reasons for any of his behaviors; he did not explain why he refused to attend school. Student stated that if the ALJ decided to send him back to Utah, he would go, but he would leave as soon as he reached age 18 in August 2018. He did not indicate he would cooperate or participate in the Provo Canyon programs and therapy.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁸

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq; 34 C.F.R. §300.1 (2006)⁹ et seq.; Ed. Code, § 56000 et seq.; Cal Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

⁸ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided herein.

⁹ All citations to the Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

"Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

3. Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not hindsight. "An IEP must take account what was, and what was not, objectively reasonable...at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F3d 1141, 1142, citing *Fuhrman, v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

4. 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.)

5. In *Endrew F. v. Douglas County School District* (2017) 580 U.S.____[137 S.Ct. 988], the Supreme Court reconsidered the meaning of the phrase "some educational

benefit” for a child not being educated in a general education classroom. The court rejected the contention by the school district that the IDEA was satisfied by a program providing “merely more than *de minimis*” progress, as well as parents’ contention that school district’s must provide an education that is substantially equal to one afforded to children without disabilities. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.*, 580 U.S.____, 137 S. Ct. at p. 1001.) The Court retained its earlier holding in *Rowley* that any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. While *Endrew F.* does not require an IEP to maximize educational benefit, it does require that “a student’s educational program be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” (*Id.*, 580 U.S.____, 137 S. Ct. at p. 1000.)

6. In so clarifying “some educational benefit,” however, the Court stated that it would not attempt to elaborate on what appropriate progress will look like from case to case. “It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Id.*, 580 U.S.____, 137 S. Ct. at p. 1001.) *Endrew* does not create a new legal standard for what constitutes a FAPE, but is a clarification of *Rowley*. (*K.M. v. Tehachapi Unified School Dist.* (E.D. Cal. Apr. 5, 2017, 1:15-cv-001835 LJO JLT) 2017 WL 1348807, **16-18.)

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

56505; Cal. Code Regs., tit. 5, § 3082.) 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].) In this matter, District had the burden of proof on the issue presented.

DOES DISTRICT'S OFFER OF RESIDENTIAL PLACEMENT IN STUDENT'S SEPTEMBER 20, 2017 IEP CONSTITUTE A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

8. District contends Student's placement at a residential treatment center was necessary to provide Student with an educational program that was tailored to his unique needs, and reasonably calculated to enable him to make appropriate progress in light of his unique circumstances.

Applicable Law

9. Determination of a FAPE begins with the program offered in the IEP. An IEP is a written document which details the student's current levels of academic and functional performance, provides a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with non-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).)

10. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not

required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) An IEP should be reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities to enable progress commensurate with non-disabled peers, taking into account the child's potential in light of his unique circumstances. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1201.) As such the IEP constituted a FAPE for Student.

12. Mother was in agreement with all aspects of the September 20, 2017 IEP, with the exception of placement. The IEP contents drive the determination of placement. Each of District's witnesses testified that Student required implementation of his IEP in a small, structured educational placement which could also address Student's mental health needs and maladaptive behaviors, which the evidence established were significant impediments to Student receiving an appropriate education. Provo Canyon was an appropriate selection. Provo Canyon provides an intense behavioral program, with individual, group, and family therapy. It is highly structured and highly supervised. Psychiatric services and medications are available. Drug dependency programs and life skills programs are embedded in its programs. Each of District's witnesses familiar with Student, and the contents of the September 20, 2017 IEP, acknowledged that Student's IEP goals and services, along with his individualized transition plan, could be implemented at Provo Canyon. Provo Canyon represented a residential treatment center which could meet Student's unique educational needs and implement an IEP which was reasonably calculated to allow Student to make progress in light of his unique

circumstances. Further, placement at Provo Canyon offered a program intended to remediate Student, and enable him to progress commensurate with his non-disabled peers.

13. District contends that placement in a residential treatment center represents the least restrictive environment for Student.

Applicable Law

14. Special education classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Ed. Code, § 56040.1, subd. (b).) Therefore, in addition to providing a FAPE, a school district must ensure that “[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled.” (20 U.S.C. § 1412(5)(A); see also 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) This “least restrictive environment” provision reflects the preference by Congress that an educational agency educate a child with a disability in a regular classroom with his or her typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (*Rachel H.*))

15. When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced: the educational benefits of full-time placement in a regular classroom; the non-academic benefits of full-time placement in a regular classroom; the effect the presence of the child with a disability has on the teacher and children in a regular classroom; and the cost of placing the child with a disability full-time in a regular classroom.¹⁰ (*Ms. S. v. Vashon Island School Dist.*, (9th Cir. 2003) 337 F.3d 1135, 1136-1137); *Rachel H.*, *supra*,

¹⁰ Cost of residential placement is not a factor in this matter.

F.3d at p. 404).

Analysis

16. After considering the *Rachel H.* factors in light of the evidence presented in the instant case, it is clear that the District met its burden of persuasion that a residential treatment center was and remains the least restrictive environment for Student. District considered a continuum of possible placements for Student. Student's history of continual physical aggression and violence against others prevented placement in a general education setting or even on a public school campus. District considered local, nonpublic school placements. Student's disruptive and destructive behaviors when attending non-residential nonpublic schools presented a physical danger to both teachers and students. Several nonpublic schools were utilized. Student initially attended Canyon View, which terminated his attendance due to aggression. Placement at Spectrum, which specialized in emotional and behavioral issues, lasted only a month before it was determined Student required more support than could be provided at Spectrum with wraparound services. Stone Ridge, the most restrictive non-residential placement available, coupled with increased wraparound services, lasted only a few days before Student refused to attend. When left to his own devices, Student failed to attend school at all. Student's inability to self-regulate also made Mother's request for home school unattainable. Teachers and educational staff were threatened and endangered in Student's presence. Mother appeared overwhelmed by Student, did not exhibit any ability to control his behaviors, and could not realistically be expected to monitor a home program.

17. Student suffers from mental illness which requires psychiatric treatment and therapy for him to make educational progress. As explained by Dr. Plew, Student's mental health issues, compounded by Student's preference for criminal subculture and drug usage, are difficult to treat. The fact that Mr. Embry contacted over 20 residential

treatment centers, and only two eventually agreed to accept Student, emphasized the complexity of Student's unique needs. Student's mental health issues could not be adequately addressed in a District placement or on a public school campus. The small, highly restrictive environment of residential placement was the only educational setting in which Student made academic advancement, as evidenced by Cinnamon Hills being the only placement in which Student attained any high school graduation credits. Further, Student's relapse after his first release from Cinnamon Hills, demonstrated Student's continuing need for structured therapy, medication, and mandatory sobriety which he could not attain outside of a residential program. Wraparound supports at home and in the community produced unsatisfactory results, and lacked Student's cooperation and family support.

18. In recap, District's offer of placement in a residential placement center, as contained in its September 20, 2017 IEP, constitutes a FAPE in the least restrictive environment. The residential treatment program at Provo Canyon is appropriate and capable of implementing the provisions of the September 20, 2017 IEP. District cannot force Mother to consent to placement in an out-of-state residential treatment center. She may unilaterally determine to place Student elsewhere. District, however, is not required to provide Student with services or placement other than those offered in the September 20, 2017 IEP. District has offered Student a FAPE; it need do no more. Should Mother desire to maintain special education and related services for Student, she must consent to the September 20, 2017 IEP, including placement in an out-of-state residential treatment center. Provo Canyon constitutes an appropriate placement for Student.

ORDER

District's requested relief is granted. Should Mother wish to continue receiving special education and related services for Student, she shall consent to his enrollment at

Provo Canyon.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d) the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In this matter, District prevailed on the sole issue heard and decided.

RIGHT TO APPEAL DECISION

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

DATE: December 14, 2017

_____/s/_____
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings