

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016100466

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT, et al.

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2017030402

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

DECISION

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings on October 4, 2016, in OAH Case No. 2016100466, naming Capistrano Unified School District and Charter School, a school chartered by Capistrano Unified (collectively referred to as District). OAH continued the matter for good cause on November 9, 2016. Student filed a second request for due process on March 6, 2017, in OAH Case No. 2017030402, naming only Capistrano Unified. Hearing in Student's first case began on April 18, 2017. On April 24, 2017, OAH issued an order granting the

parties' joint request to consolidate Student's two cases and designating Student's first case as the primary case.<sup>1</sup>

Administrative Law Judge Darrell Lepkowsky heard this matter in San Juan Capistrano, California, on April 18, 19, 20, and 21, 2017, and on May 2, 3, 4, and 12, 2017.

Parent appeared on behalf of Student and testified at the hearing. Student did not attend the hearing.

Alefia Mithaiwala, Attorney at Law, appeared on behalf of District. Allison Jacobs from District's Compliance Division attended the majority of hearing days. Sara Young, Capistrano's Executive Director for Informal Dispute Resolution or either Capistrano Legal Specialists Kim Gaither or Linda Koo attended when Ms. Jacobs was not present.

The parties presented oral closing arguments on the last day of hearing. OAH continued the matter for the parties to file a list of cases cited in their oral closings. The record closed on May 15, 2017, upon receipt of the parties' case citations.

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<sup>1</sup>District filed its response to Student's first case on October 14, 2016, and to Student's second case on March 16, 2017, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir., May 30, 2017, No. 14-56344) \_\_ F.3d \_\_ [2017 WL 2330662, \*\* 6-7].)

## ISSUES<sup>2</sup>

### I. Case number 2016100466:

1. Did District deny Student a free appropriate public education by failing to meet its affirmative "child find" obligation to identify and evaluate Student's needs between October 4, 2014, and February 2016?
2. Did District deny Student a FAPE for the 2014-2015 school, after October 4, 2014, by failing to assess her during that school year?
3. Did District deny Student a FAPE for the 2015-2016 school year, by failing to do any of the following:
  - a. assess Student in the fall of 2015;
  - b. assess Student in all areas of suspected disability, specifically in the area of traumatic brain injury;
  - c. provide Student with appropriate and sufficient services for specialized academic instruction; counseling; cognitive retraining; cognitive rehabilitation and counseling; transportation to and from Student's medical appointments and privately provided counseling; and vision; and
  - d. find Student eligible for special education and related services under the category of traumatic brain injury?

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<sup>2</sup> An 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.) Any changes to the issues from those in Student's requests for due process or the Orders Following Prehearing Conference were made pursuant to notice to, and agreement by, both parties, except as to the ALJ's minor changes in the numbering of the issues.

4. Did District deny Student a FAPE by violating Parent's due process rights by failing to do the following:

- a. provide an assessment<sup>3</sup> plan within 15 days of when Parent orally requested an assessment in early September 2015, or within 15 days of Mother's written request for assessment in early October 2015;
- b. provide sufficient prior written notice for the March 14, 2016 individualized education program team meeting;
- c. predetermining services and placement in Student's IEPs of February 2016, March 14, 2016, May 18, 2016, and May 25, 2016;
- d. denying Parent meaningful participation in the IEP process during the statutory period; and
- e. failing to provide Parent with a copy of the IEP at the conclusion of the May 18, 2016, and/or May 25, 2016 IEP team meetings?

5. Did District deny Student a FAPE by failing to provide her with independent educational evaluations in the following areas, or to timely file for due process to prove the two evaluations were not required:

- a. a medical evaluation by a licensed medical doctor; and
- b. a neuropsychological evaluation?

II. Case number 2017030402

6. Did District deny Student a FAPE at the August 8, 2016, November 10, 2016, February 1, 2017, and February 16, 2017 IEP team meetings by failing to do the following:

- a. make services and placement decisions based on an appropriate assessment;

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<sup>3</sup> The terms "assessment" and "evaluation" are synonyms and are used interchangeably in this Decision. (Ed. Code, § 56302.5.)

- b. provide Student with appropriate and sufficient services for specialized academic instruction; counseling; cognitive retraining; cognitive rehabilitation and counseling; transportation to and from Student's medical appointments and privately provided counseling; and vision;
- c. develop sufficient goals in all areas of Student's unique needs; and
- d. address Student's needs in mathematics by assigning her to an online math class in the August 2016 IEP; removing the math class without providing another one in the November 10, 2016 IEP; and adding a math class in the February 2017 IEP without assessing Student's math needs?

7. Did District deny Parent the right to meaningfully participate in Student's IEP process by: at the August 8, 2016, November 10, 2016, February 1, 2017, and February 16, 2017 IEP team meetings by

- a. failing to provide Student with an appropriate initial assessment; and
- b. predetermining Student's placement;
- c. failing to consider Student's private mental health therapy when determining her placement; and
- d. interfering with the independent educational evaluation process by, including but not limited to, not timely finalizing the contract with the private assessor; giving Parent conflicting information about the independent evaluation process; and failing timely to provide Parent with a copy of the independent assessor's assessment report?

8. Did District deny Parent the right to meaningfully participate in Student's IEP process by failing to provide prior written notice with regard to changing Student's math placement and/or placing Student at Fusion Academy for math pursuant to Parent's request?

## SUMMARY OF DECISION

Student sustained a concussion due to a sports injury in fall 2014. She thereafter began experiencing emotional difficulties that initially manifested only at home. Student was hospitalized due to mental health crises three times between May 2015 and October 2015. District assessed her for special education eligibility after her October 2015 hospitalization and found her eligible under the category of emotional disturbance in February 2016. Student contends that District should have assessed her when she first suffered the concussion in fall 2014, or that it should have assessed her after her first or second hospitalizations. Student also contends that District should have found her eligible primarily under the category of traumatic brain injury, with emotional disturbance as a secondary classification. Student contends that because District did not, it failed to assess her properly, and failed to provide her with an appropriate IEP because its offers did not address all her needs. Student also contends that District committed several procedural violations with regard to the development of her IEPs and the provision of independent educational evaluations requested by Parent.

This Decision finds that Student met her burden of proof that District should have assessed her after Parent's request for assessment on September 18, 2015. Student has also met her burden of proof that District denied her a FAPE by failing to provide prior written notice of its refusal to fund the private math class Parent requested. Student has failed to meet her burden of proof as to all other issues she raised in this consolidated case.

## FACTUAL FINDINGS

### JURISDICTION AND BACKGROUND

1. Student was a 15-year-old girl who lived with Parent within District's boundaries at all relevant times. Student began attending one of District's elementary

schools in September 2013 when she was in sixth grade. Parent enrolled her in Charter school, which is a District school, sometime in January 2014 where Student finished sixth grade. She was a happy-go-lucky, friendly, social girl who enjoyed life. Her teachers found her to be a conscientious and motivated student who tried her best at everything, would ask questions, and was highly motivated.

2. When Student was in eighth grade and attending Charter, District found her eligible for special education and related services under the category of emotional disturbance at an IEP team meeting held on February 3, 2016. Student graduated from eighth grade at the end of the 2015-2016 school year. Charter does not have a high school. Student enrolled in her high school of residence, a high school in Capistrano Unified's boundaries, for the 2016-2017 school year. Student was enrolled at her high school of residence at the time of this hearing. She continued to be eligible for special education under the classification of emotional disturbance.

#### 2014-2015 SCHOOL YEAR: SEVENTH GRADE

3. Charter's 2014-2015 school year began on September 3, 2014. On September 24, 2014, Student suffered a sports related head injury during a sports practice not affiliated with District. Student did not lose consciousness and did not feel nauseous or vomit. However, she had some blurred vision, felt dizzy and fatigued, and began sleeping almost 22 hours a day. Parent took Student to the doctor at Kaiser Permanente after two days. The doctor diagnosed Student with a concussion, and referred her to the emergency room for a possible imagining scan of her head. The doctor also prepared a note excusing Student from any physical education, and noted that Student needed to avoid watching television or other such media, using a computer, or engaging in sports.

4. Parent did not provide Kaiser's medical report to District at the time of Student's hospitalization. Parent did not provide any medical reports from Kaiser to

District before this hearing. None of the reports included a description of a CT scan. It is unclear if Kaiser ever performed the CT scan.

5. Parent emailed the office administrator at Charter on September 29, 2014, to inform the school about Student's injury and that Student would be out of school for at least a week and a half. Charter placed Student on independent study due to the injury and Student's resulting school absences, as it did with all students who missed school for medical reasons. Student was not able to do the schoolwork because she was sleeping all the time. Student was admitted to the hospital for a night on October 6, 2014, because she became dizzy and nauseous again.

6. On October 16, 2014, Parent emailed Charter to let the school know that Student was probably ready to start doing some schoolwork although her doctors were still evaluating her for possible effects of the concussion. At home, Student appeared to have difficulty with some short-term memory loss, but there is no evidence that any medical personnel diagnosed any permanent memory loss or any permanent effects of Student's concussion. None of the doctors who treated Student for her concussion suggested that she had a traumatic brain injury or that she would have any permanent effects of the concussion.

7. Student slowly began sleeping less. She returned to school toward the end of October 2014, after being out of school about a month. At school, the only effect of the concussion she demonstrated was a sensitivity to light that did not affect her ability to access her education. Student continued doing well in class. At school, she was the same person she had always been: she was social, had friends, interacted well with teachers and peers, friendly, participated in class, and received good grades. She did not appear sleepy and did not evidence any cognitive or intellectual changes or any changes in her personality.

8. At home, however, Student continued to sleep a lot. She also demonstrated personality changes at home. She became mean and irritated with her siblings, to such an extent that it affected her younger brother, with whom she previously had a good relationship. District began to assess Brother for special education eligibility in December 2014. It held an IEP team meeting for him in February 2015. Parent mentioned the deteriorating relationship between Student and Brother at this meeting. However, Parent did not ask District to assess Student at this time, and did not indicate that she felt Student's education was suffering because of the concussion some five months before this meeting. None of Student's teachers noted any change in Student's personality or ability to access her education during seventh grade.

9. Charter's Director attended the IEP team meeting for Brother in February 2015. Parent believed she had a discussion with him about the possible negative effects of concussions on things such as people's personalities because Director told her his wife was an attorney working on cases involving the effects of concussions on football players. However, it is unlikely that this conversation, if it occurred, happened during Brother's IEP team meeting in February 2015. Parent candidly acknowledged during her testimony that she did not begin to believe that Student had suffered a traumatic brain injury until after District convened Student's initial IEP team meeting on February 3, 2016. If she had the conversation with the Director as early as the previous year, Parent, who by then was well-versed in the IEP process because of District's assessment of Brother, would have brought the possibility of a possible traumatic brain injury to District's attention at that time. Instead, Parent did not raise the issue with District until after it assessed Student and found her eligible for special education as emotionally disturbed on February 3, 2016, a year after Brother's initial IEP team meeting.

10. Student continued to do well at school throughout seventh grade. In spring of 2015, Student took the California Assessment of Student Performance and

Progress, a statewide, standardized test that measured a student's progress in English Language Arts and Literacy and Mathematics. Student scored 2669 on the language arts portion of the test, which indicated she was just between the "standard met" and the "exceeded standard" grading levels of the test. In mathematics, Student scored 2603 points, which placed her in the middle of the "standard met" level of the test.

11. However, at home, Student demonstrated increasingly serious emotional problems. She had severe mood changes, a low level of tolerance for things that bothered her, and was not tolerating her own emotions. She was irritable with Brother. She also started having an eating disorder. At some point, Student began cutting herself. However, none of these behaviors were apparent at school. None of the behaviors affected Student's ability to access her schoolwork, or affected her relationships with peers or her teachers. No one at school was aware that Student was having emotional difficulties.

12. Student's medical insurance covered mental health counseling. In early May 2015, Parent obtained a referral to a therapist for Student. In spite of the therapy, Student's emotional instability at home increased. During therapy, she expressed anger that her parents had divorced and Father was not living with them, and that she had to share her room with her sister. On May 16, 2015, Student expressed suicidal ideation. Parent took her to the hospital, which admitted her for psychiatric evaluation. Student transferred to another hospital two days later.

13. Parent contacted Charter to let them know Student was hospitalized. She did not inform anyone at Charter that the hospitalization was for psychiatric reasons. Parent did not give anyone at Charter any specific information about what was happening with Student. Parent did not request that Charter assess Student. Staff at Charter, including all of Student's teachers, believed Student had had another sports-related injury. Charter placed Student again on independent study status.

14. Student was hospitalized until approximately two days before the end of Charter's 2014-2015 school year, June 17, 2015. Parent initially planned to meet with Director to discuss Student's hospitalization, as well as how Student would transition back to school and make up her schoolwork. However, Student did not want to go back to school for the last few days of the semester because she was embarrassed about her hospitalization and anxious about how her peers would react. Parent agreed not to make Student return to school for the remaining days of the semester. Parent there for never met with Director at the end of the 2014-2015 school year to discuss Student.

15. Student did not complete any of her missing assignments during her hospitalization or the two remaining days of the school year. Charter's student report cards divided each subject matter into units. Students received a letter grade for each unit of study (for example, in language arts, one unit was "analyzes author's structure and techniques") and then received an overall letter grade for each subject of study, such as math, science and language arts.

16. For subject areas in which the missing assignments affected Student's grades, such as portions of the mathematics grade, Student's teacher gave her an "incomplete" rather than a failing grade. For those subjects in which Student had already produced sufficient work for her teacher to determine a grade, such as language arts, Student received a letter grade. Her language arts grades were primarily "As." For the sub-parts of mathematics, social science, and science classes in which Student did receive a letter grade, her grades fluctuated between "As" and "Cs."

17. Student engaged in cutting behaviors and demonstrated an eating disorder even while in the hospital. The doctor treating Student during her hospitalization in May and June 2015 diagnosed her with major depressive disorder, and an eating disorder. Because Student was not losing weight, she was never hospitalized specifically for her eating disorder. Her doctor recommended that Student get further

hospital care after her discharge to address these issues. The doctor did not suggest that Student's mental health issues or eating disorder were related to her September 2014 concussion. Parent did not provide District with the doctor's discharge report or inform District of what was in the report until this hearing.

18. Student received therapy twice a week after her discharge from the hospital on approximately June 15, 2015. In spite of the high level of counseling services, Student's mental health at home continued to deteriorate. She continued cutting herself and expressing suicidal ideation. Student was readmitted for a psychiatric hospitalization on July 29, 2015, and hospitalized for 12 days. Parent did not contact District during the summer to discuss Student's hospitalization or her mental health issues.

19. Parent wanted to have Student admitted to an intensive outpatient eating disorder program. However, Parent had difficulty getting her insurance to cover the recommended therapy. Different medical programs she contacted to get help for Student were fighting over whether Student's eating disorder was a medical problem or a mental health issue. The county told Parent that to get services Student would have to leave the therapist who was being funded by medical insurance. Student did not wish to leave her therapist, so Parent did not pursue the county services. Parent also rejected the county services because although they were supposed to be more intensive than those she had obtained through medical insurance, the services the county programs offered did not appear to be any different than those Parent had already obtained through Student's medical insurance.

20. Parent also contacted the county mental health department after Student was hospitalized on July 29, 2015. The county conducted a brief mental health assessment of Student the next day. The county mental health assessor did not make any specific recommendations for mental health services nor was Student referred to

any other programs. However, the assessor did recommend in her report that Parent ask Student's school district to assess her, based on the fact Student had been hospitalized for the last month of school, and because Parent told the assessor that Student's eating disorder was affecting her education. However, there was no evidence that Student's eating disorder had any effect on her ability to access her education or on her interaction with peers or teachers at school.

21. None of the medical personnel who treated Student for her hospitalization in July 2015, nor the county mental health assessor, stated or implied in their reports or conversations with Parent that Student's mental health problems were related to her concussion the previous September. None of these professionals suggested that Student needed further testing to determine if such a relationship existed.

22. Parent did not provide District with any of Student's paperwork from the July 2015 hospitalization or with the county assessment report, until the middle of this hearing. None of Student's treating physicians, therapists, or the county mental health assessor testified at the hearing.

#### BEGINNING OF EIGHTH GRADE – STUDENT'S THIRD PSYCHIATRIC HOSPITALIZATION

23. Charter's 2015-2016 school year began on September 2, 2015. Student started school as scheduled. Although she told Parent that she was having difficulty concentrating on her schoolwork, her teachers did not note anything unusual at school. Although Student had missed a month of math at the end of the previous school year, she did not have any difficulty with eighth grade math at the start of the new school year. Student did not demonstrate any difficulty relating to peers or teachers at school at the beginning of the year. She did not appear withdrawn, depressed, unhappy, or troubled. She participated in class and did her work without incident.

24. On September 16, 2015, Parent emailed Director's assistant and asked to meet with him about Student and Brother. She stated she wanted to discuss issues that did not involve her children's teachers.

25. Parent met with Director on September 18, 2015, in part to discuss Student's hospitalization. Parent was primarily concerned about Student's eating disorder. She believed that District was responsible for providing some type of mental health intervention to address the eating disorder. She told Director about Student's hospitalization and the mental health assessor's suggestion that she ask District for an assessment. Director told Parent that they (the District) were not doctors and they therefore could not do anything to address Student's problem.

26. During his testimony, Director denied having this conversation with Parent. Director was not persuasive. He was arrogant, defensive, and dismissive during his testimony. In contrast, Parent was candid and forthright during her testimony, and more credible than Director. There was no other reason for Parent to have asked to meet with Director so soon after the start of the school year, when Student was not having any particular difficulty at school. The only reason Parent would have to meet with him was to discuss Student's recent hospitalization and the mental health assessor's recommendation that Parent ask District to assess Student.

27. Director did not ask Parent to put her request for assessment into writing and did not offer to assist her to put the request into writing. Nor did he state that he would start the process of assessing Student by providing Parent with an assessment plan. District did not offer to assess Student at this time.

#### October 6, 2015 Hospitalization

28. Teacher A was Student's math teacher for seventh and eighth grade. She had established rapport with Student and gained her trust. On the morning of October 6, Student went to Teacher A and asked to talk to her. Teacher A left a student teacher

in charge of her class and walked out of the classroom with Student. Student told her that she had been cutting herself for a couple of years; Teacher A had never seen signs of the cutting. Student also told Teacher A that she felt like she wanted to commit suicide.

29. Teacher A walked with Student to Director's office. Teacher A informed staff there that Student had a problem. Director called School Psychologist, who was across campus, to come to assist. Teacher A also asked Teacher B, who was in the office, to stay with her and Student until School Psychologist arrived.

30. School Psychologist arrived within a half hour. School Psychologist spoke with Student, who she had not previously met, to assess the situation. School Psychologist determined that Student was at risk for harming herself. She then followed District policy in situations involving student mental health emergencies by calling law enforcement. An officer arrived shortly thereafter and spoke with Student, who asked that he contact Father. Father quickly arrived. The officer then escorted Student, accompanied by Father, to the hospital, where she was admitted.

31. Student remained hospitalized for three days. Rather than sleeping all the time, Student had now developed insomnia. The doctor who discharged her prescribed several medications, including one for the insomnia, and another to address her mental health issues. He did not correlate Student's mental health issues with her concussion the previous year nor suggest further testing to determine if there was a connection. He did not testify at hearing.

32. Student returned to school approximately October 12, 2015. District did not offer to assess her at that time.

33. Student had difficulty once she returned to school. Friends and teachers kept asking her how she was doing, which bothered her. Student had been able to maintain control of her emotions and behavior at school when no one was aware of her

problems. Once they became aware, she had a harder time keeping up the appearance of normalcy. She began telling Parent that she did not want to go to school.

34. Parent met with Director on or about October 22, 2015. She asked him to have Student assessed for special education eligibility. Director orally agreed to begin the assessment process. Parent followed up with an email the following week requesting the assessment. However, District did not provide Parent with an assessment plan until November 20, 2015. Parent did not ask District to assess Student for a traumatic brain injury. She did not mention Student's September 2014 concussion in any of her correspondence requesting the assessment.

35. While Student was still hospitalized between October 6 – 9, 2015, her therapist researched possible mental health programs she believed would help Student. She referred Parent to a program at Harbor UCLA hospital, located in Torrance, California, 47 miles from Student's home. The program used a methodology called dialectical behavior therapy. This therapy was developed to treat chronically suicidal people who have a diagnosis of borderline personality disorder. Harbor UCLA accepted Student into this outpatient program, which included individual therapy, group therapy, and family therapy, as well as medication management. Student was assigned a psychiatrist, Dr. G, who prescribed and managed her medication, and a psychologist, Dr. A, who provided therapy. Student attended the program three to five times a month. She began the program on October 21, 2015, and was still in the program as of this hearing. Student's health insurance paid for the entire cost of the program, except for the cost of transportation to and from the clinic.

#### DISTRICT'S FEBRUARY 2016 INITIAL ASSESSMENT

36. The assessment plan School Psychologist provided to Parent on November 20, 2015 proposed assessing Student to determine her current academic skills and current intellectual abilities. It also proposed assessing her social, emotional, and

adaptive strengths and weaknesses and her perceptual processing strengths and weakness. Finally, the assessment proposed assessing Student's physical health conditions that might be affecting her education. School Psychologist would do the majority of the assessment, assisted by a special education teacher and school nurse.

37. The assessment plan included wording that District might also need information about Student's medical history and behavior patterns. The plan also included room for Parent to provide her input, including names and locations of persons or agencies who had completed testing on Student that Parent wished District to consider.

38. Parent signed and returned the assessment plan on November 20, 2015, the same day she received it. She wrote on the plan that she needed to track down information but would provide evaluations and reports from different treating therapists and doctors after the upcoming Thanksgiving break. District closed for a full week for the Thanksgiving holiday.

39. The only documentation Parent provided District after the break was the discharge papers from Student's last hospitalization and a report from the hospital where Student was examined after her concussion in September 2014. The latter report was dated October 23, 2014. The report stated that Student should not engage in physical contact activities and should do eye exercises. The report did not state that Student had a traumatic brain injury or that she needed further testing to determine if she had one. Parent did not provide these documents to School Psychologist until February 2, 2016, the day before District convened Student's initial IEP team meeting.

40. Parent also failed to give School Psychologist a copy of an intellectual assessment Parent had obtained for Student when Student was nine years old. Parent was curious about her children's intellectual capacities and paid for a private assessment. The assessment only tested intellectual capacity. That assessment

determined that Student, at the time, had a full-scale intelligence quotient of 115. Parent, at one time, had given a copy of the assessment to a District clerical staff member, but the test was never placed in Student's school file. Parent never mentioned the test to School Psychologist, never asked if School Psychologist had seen it, and did not provide her or any other District assessor with a copy during the assessment process or at Student's initial IEP team meeting.

41. Parent did not provide any input into the assessment process on the space available for her input on the assessment plan. She did not ask District to assess Student for any particular issues, and specifically did not discuss concerns relating to Student's concussion the previous year.

42. School Psychologist provided another form with the assessment plan for Parent to complete, a Child Health and Development Questionnaire. In the section asking Parent to describe her concerns about Student's problems, Parent stated that Student had presented emotional, sensitive, and depressive symptoms for a year that fluctuated in intensity. She stated Student had problems sleeping, and had problems with anxiety and difficulty regulating her emotions. She also stated that Student was impulsive and engaged in self-harm.

43. Parent did not mention Student's concussion from the previous year. She did not mention any symptoms associated with the concussion the previous year, such as Student's need to sleep for excessive hours. She only mentioned Student's sensitivity to light. Parent did not state any concern that Student was experiencing ongoing symptoms of the concussion. She did state that Student sometimes had headaches, was sensitive to light, and had aggressive behaviors. She also stated that Student had difficulty getting along with others when her emotions were high, and that her greatest challenge with Student was self-regulation of emotions. Although Parent saw these

issues at home, none of these issues had presented at school until Student expressed her suicidal thoughts to Teacher A on October 6, 2015.

#### Psycho educational Assessment

44. At the time of the hearing Teacher C was a District special education teacher with a masters' degree in special education and another masters' degree in learning technologies. She had worked for District as a special education teacher, education specialist, and program specialist since 2012. She was forthright and candid during her testimony. Her training and experience, as well as her concern for Student, was notable in her demeanor and in her answers to questions.

45. Teacher C assessed Student's academic achievement as part of District's psycho educational assessment January and February 2016. Teacher C administered the Woodcock-Johnson IV Tests of Achievement. This test measures broad reading, broad mathematics, math tests, and broad written language.

46. The broad reading portion of the Woodcock-Johnson contained subtests measuring letter-word identification; passage comprehension; sentence reading fluency; oral reading; word attack; reading recall; and word reading fluency. Student's scores on these subtests ranged from a low of 90 in reading recall, which was on the low end of average, to a high of 131 in word attack (where student was required to read a list of nonsense words.) Student's score on the word attack subtest was in the very superior range. Her overall broad reading score was 102, in the mid-average range.

47. The broad mathematics portion of the Woodcock-Johnson contained subtests in the areas of applied problems, calculation, and math facts fluency. Student's scores ranged from a 99 (mid-average) in math facts fluency, to a high of 117 in applied problems. Student was able to solve problems quickly and without difficulty. Her overall broad mathematics score was 109, at the top of the average range.

48. The math tests portion of the Woodcock-Johnson measured Student's quantitative reasoning abilities. Student scored a standard score of 112, in the high average range.

49. The broad written language portion of the Woodcock-Johnson contained subtests in writing samples, sentence writing fluency, and spelling. Student's scores ranged from a low of 93 in spelling, to a high of 128 in sentence writing fluency. Her score in the latter subtest was in the superior range. Student's overall broad written language score was 108, at the upper end of the average range. Student demonstrated no deficits in academic achievement.

50. School Psychologist assessed Student's intellectual, social, emotional, and adaptive development, as well as her perceptual and processing abilities, using a variety of assessment tools. School Psychologist has three masters' of arts degrees: one in educational psychology; one in school counseling; and one in psychology of marriage, family, and child counseling. She had almost 20 years of experience as an educational psychologist. She had worked for District since 2001. Her concern for Student was evident during her testimony.

51. For her assessment, School Psychologist reviewed Student's school records and all information Parent provided to her. She also interviewed Student and Parent, and received written input from Student's teachers. She observed Student at school and during the assessment process, and administered several testing instruments. The tests included rating scales completed by Parent, Student, and Student's teachers. She also reviewed Student's health history, including all of her hospitalizations and all medical information Parent had provided District to the date of the assessment.

52. School Psychologist observed Student once during Student's science class and once during her math class. Student was attentive and worked independently

during both observations. She followed instructions, and was social and interacted appropriately with peers.

53. School Psychologist met with Student four times during her assessment. During two of the meetings, Student showed School Psychologist recent cutting injuries that Student had self-inflicted. Student used a razor blade, her fingernails, or any other sharp object to cut herself. She cut herself to dull emotional pain of sadness and anxiety following events that upset her. These events included things such as Student having an argument or disagreement with Parent.

54. Based upon her interviews and observations of Student, School Psychologist concluded Student presented as being happy, typical, polite, social, and a good student, in the school environment. However, this façade masked internal feelings and emotions of sadness, hopelessness, anger, anxiety, and thoughts of death.

55. Parent told School Psychologist that Student's emotional levels fluctuated at home, but they had been a concern for over a year. At home, Student had difficulty sleeping, which was possibly a reaction to some of her medications; had anxiety; difficulty regulating her emotions; and was impulsive and engaged in self-harm. Parent described Student's strengths as a sweet nature; she was sensitive, empathetic, funny, and athletic; and she had a great sense of humor.

56. Student's language arts teacher was not aware of any emotional issues with Student either in or out of school. In his class, Student abided by the rules and was productive in class. She did not demonstrate any aggressive or inappropriate behavior. Student had only been upset a few times in his class. She had friends and appeared to be thriving at school. She appeared to have solid relationships with teachers and peers. Her schoolwork was at grade level and her abilities were increasing, as was her productivity.

57. Teacher A, Student's math teacher, was Student's closest confidant at school. Student would sometime leave physical education class to go talk to Teacher A about how she was feeling; District had permitted this as an accommodation for Student after her October 2015 hospitalization. Outside of the few occasions when Student went to talk to Teacher A when she was not feeling well mentally or physically, Teacher A found Student's behavior at school to be typical of a girl her age. Student interacted well with peers and had many friends, paid attention in class, completed all her classwork, and was productive at school. Student was at grade level in math, and whatever her emotional state, it was not impeding her ability to participate in class.

58. School Psychologist administered the Wechsler Intelligence Scales for Children – Fifth Edition, to assess Student's intellectual capacity. The test assesses intellectual functioning in five cognitive areas consisting of the verbal comprehension index; the visual spatial index; the fluid reasoning index; the working memory index; and the processing speed index. The assessment produces a full-scale intelligence quotient composite score that represents a child's general intellectual ability. Average scores fall approximately between 90 and 110 points, with 100 points being mid-average on a bell curve.

59. The verbal comprehensive index is composed of subtests in similarities and vocabulary, which measures a child's ability to access and apply acquired word knowledge. Student's standard score on this index was 92, placing her in the 30th percentile for children her age, which was in the average range.

60. The visual spatial index is composed of visual puzzles and block design subtests, which measures a child's ability to evaluate visual details and to understand visual-spatial relationships to construct geometric designs from a model. Student's standard score on this index was 105, placing her in the 63rd percentile. Although this score was also in the average range, it was much stronger in comparison to Student's

verbal comprehension index, which showed she had strengths in the area of visual-spatial reasoning.

61. The fluid reasoning index measures a child's ability to detect the underlying conceptual relationship among visual objects and to use reasoning to identify and apply rules. This index is composed of subtests in the areas of matrix reasoning and figure weights. Student scored 97 points on this index, which was in the 42nd percentile, placing her in the mid-average range.<sup>4</sup>

62. The working memory index is composed of subtests called picture span and digit span. This index measures a child's ability to register, maintain, and manipulate visual and auditory information. The test requires attention, auditory and visual discrimination, and concentration. Student scored 97 points on this index, which was in the 42nd percentile, placing Student in the mid-average range relative to same-aged peers.

63. The processing speed index is composed of coding and symbol search subtests. It measures a child's speed and accuracy of visual identification, decision-making, and decision implementation. The score on this index is related to visual scanning, visual discrimination, short-term visual memory, visual-motor coordination,

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<sup>4</sup> In the body of her assessment report, School Psychologist properly described Student's results on the fluid reasoning, working memory, and processing speed indices as being in the average range. However, she inadvertently designated the scores as being either low average or extremely low average in the chart of the scores that she included in her report. Her mistake on the chart did not invalidate the assessment since the proper description of the scores was included in the written portion of her report. School Psychologist also discussed the proper description of the scores with Parent at Student's initial IEP team meeting.

and concentration. Student scored 108 points on this index, which was in the 70th percentile, placing Student on the high end of the average range.

64. Student's full-scale intelligence quotient was 96, in the 39th percentile, which was in the mid-average range. Although this score was 19 points lower than Student's full-scale score when she was tested over four years previously, School Psychologist was not aware of the earlier testing at the time she assessed Student.

65. To further test Student's visual motor and visual perceptual processing skills, School Psychologist administered the Beery-Buktenica Developmental Test of Visual Motor Integration – Sixth Edition. Student's score of 93 was in the average range, and commensurate with scores she received on the Wechsler.

66. School Psychologist used several testing instruments to assess Student's emotional and behavioral needs. The Behavior Assessment System for Children – Second Edition consists of several behavior rating scales that School Psychologist asked Parent and two of Student's teachers to complete. The scales consist of clinical scales and adaptive scales. On the clinical scales, scores between 41 and 59 means a child falls in the average range. Scores between 60 and 69 means the child is at-risk in that particular area. A score of 70 or over places the child in the clinically significant range.

67. Adaptive scales are scored differently than were the clinical scales. While scores between 41 and 59 on the adaptive scales also place the child in the average range, scores between 31 and 40 mean the child is at-risk in that particular area. Scores below 30 means the child's adaptive behavior is clinically significant in that area.

68. The clinical scales score behavior in the areas of hyperactivity, aggression, conduct problems, anxiety, depression, somatization,<sup>5</sup>a typicality, withdrawal, learning

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<sup>5</sup> Somatization is present when someone's psychological concerns turn into physical symptoms without an underlying physical cause.

problems, and attention problems. Only a student's teachers score a child in the area of learning problems.

69. On the clinical scales, Parent scored Student as at-risk in the area of withdrawal. She scored Student in the clinically significant range for anxiety, depression, and somatization. Her scores demonstrated she found Student had many internalizing behavior problems, but no externalizing or behavioral problems. Student's language arts teacher did not score her as at-risk or clinically significant in any of the clinical areas. Conversely, Teacher A, Student's math teacher in whom Student confided on a regular basis, scored Student as clinically significant for anxiety, depression, and somatization, as had Parent. Based on Teacher A's close relationship with Student, School Psychologist found that Teacher A's scores were more accurate than those of Student's language arts teacher.

70. The adaptive scales score a student's adaptability, social skills, leadership, functional communication, study skills, and activities of daily living. Only parents score the student in activities of daily living and only teachers score a student in the area of study skills. Neither Parent nor Student's teachers scored her as at-risk or clinically significant in any area covered by the adaptive scales.

71. Student also completed the Behavior Assessment scales. The student portion of this assessment determines how individuals see themselves in their environment. The adaptive scales score the areas of attitude to school, attitude to teachers, a typicality, locus of control, social stress, anxiety, depression, sense of inadequacy, attention problems, and hyperactivity. Student scored herself as being at-risk in the clinical areas of locus of control, social stress, and sense of inadequacy. She scored herself in the clinically significant range for anxiety, depression, and attention problems.

72. The student adaptive scales measure the areas of relations with parents, interpersonal relations, self-esteem, and self-reliance. Student rated herself at-risk in the area of relations with parents, and in the clinically significant range for self-esteem.

73. School Psychologist also administered a test called the Kovacs Children's Depression Inventory – Second Edition. This instrument assesses depressive symptoms in children. One portion of the test assesses functional problems that a child might have in the areas of negative mood, physical symptoms, and negative self-esteem. The other portion of the test assesses emotional problems a child might be having in the areas of ineffectiveness and interpersonal issues. Like the Behavior Assessment System, the Kovacs consisted of rating scales, which Parent, Student's teachers, and Student completed. The test is used in conjunction with other sources of information to aid in the identification and diagnosis of depression and related disorders, and to monitor efficacy of treatments.

74. Parent's scores placed Student in the average range for functional problems, but in the "elevated" range for emotional problems, signifying the high probability Student had emotional issues. Teacher A also scored Student in the average range for functional problems, but her scores indicated that Student's emotional problems were in the very elevated range. Student's language arts teacher did not see any of the behaviors observed by Parent and Teacher A in his class. School Psychologist surmised this was because Student did not discuss her feelings or problems with him.

75. The Kovacs self-reporting scales also assesses emotional problems, with subsets in negative mood, physical symptoms, and negative self-esteem; and functional problems, with subsets in ineffectiveness and interpersonal problems. Student rated herself as elevated in the area of ineffectiveness, and very elevated in the areas of negative mood; physical symptoms; and negative self-esteem. Student's self-reported scores demonstrated that she was experiencing very elevated depressive symptoms.

Student was able to suppress her emotional and functional problems during the school day because she felt safe and happy at school and with her friends. This is why her teachers and other District staff had not observed Student to be emotionally fragile or depressed at school.

76. School Psychologist also had Student complete the Piers-Harris Children's Concept Scale – Second Edition. This test is a self-report questionnaire designed to assess how children and adolescents feel about themselves. Student's composite score on this test was 40, which was in the low-average range for her self-concept.

77. Another rating scale School Psychologist used to assess Student's level of anxiety was the Reynold's Childhood Manifest Anxiety Scale – Second Edition. Student's total anxiety score was 70, which was in the extremely problematic range. This meant that Student recognized she had a high level of anxiety.

78. School Psychologist also had Student do a sentence completion test. The test provided Student with the beginning of a sentence, which Student completed in a way meaningful to her. The test looked at the areas of school coping and attitudes; relationships; emotional state; fantasy; and aspirations. Student's responses provided indications of attitudes, beliefs, motivations, or other mental states. Student's responses showed that she was a troubled 13-year-old girl who had trouble with her relationship with Parent and teachers, that she had difficulties with her emotional state and the stressors in her life, with school and coping, and trouble with fantasy as it pertained to thinking about death. Student's responses indicated that the most positive aspects in her life were her relationship with Father and with her friends, as well as the future aspirations she had.

79. The Scales for Assessing Emotional Disturbances – Second Edition is a rating scale designed to assist in identifying students who may be experiencing emotional and/or behavioral difficulties at school. The test is comprised of 52 items

covering five subscales: inability to learn; relationship problems; inappropriate behavior; unhappiness or depression; and physical symptoms or fears. The five subscales are designed to correspond to the five characteristics that might identify a child as having an emotional disturbance as defined by the Individuals with Disabilities Education Act.

80. Both Parent and Teacher A scored Student as not having indications of emotional disturbance in the areas of inability to learn, relationship problems, or inappropriate behavior. They both scored Student as having indications of emotional disturbance in the area of unhappiness or depression. They both scored Student as having high indications of emotional disturbance in the area of physical symptoms or fears. The scores given by Student's language arts teacher were not indicative of emotional disturbance in any area.

81. School Psychologist administered the Connors' Rating Scales – Third Edition, which assesses and identifies attention deficit and hyperactivity disorders. Parent and Student's teachers completed the rating scales. Their scores demonstrated that it was highly unlikely that Student had an attention disorder.

82. Overall, School Psychologist found that Student demonstrated clinically significant difficulties with anxiety, depression, and self-injurious behaviors. Student had difficulties emotionally dealing with change, and with suicidal thoughts and ideation. Student was not able to monitor her emotional responses and feelings when she perceived a situation to be stressful. Although Student had not demonstrated any perceptible difficulty accessing her education, and had managed to control her emotions at school, she expressed a general pervasive mood of unhappiness or depression at school. She also had significant levels of anxiety, worry, and feelings of ineffectiveness, which were symptomatic of a tendency to develop physical symptoms or fears associated with school problems.

83. Student's emotional state was evident at home but not at school. Her emotional state had not affected her education as of the time District assessed her. However, School Psychologist believed that an increase in Student's symptoms at school was highly possible because Student probably would not be able to continue internalizing her emotions within the school environment. Once she was no longer able to do so, she would most likely lose the ability to function at school. For this reason, although Student's schoolwork had not been affected at this time, School Psychologist ultimately recommended at Student's initial IEP team meeting that the IEP team find Student eligible for special education under the classification of emotional disturbance.

#### FEBRUARY 3, 2016 INITIAL IEP TEAM MEETING

84. District convened Student's initial IEP team meeting on February 3, 2016, which was 60 days from the date Parent signed the assessment plan, excluding Charter's two-week winter break. Parent was given appropriate notice of the meeting and attended. The team members consisted of Parent, Teacher C, School Psychologist, Director, another administrator, and Student's language arts teacher. All required team members were present.

85. District provided Parent a copy of her procedural safeguards; Parent waived reading or reviewing the safeguards during the meeting. The team reviewed Student's present levels of performance. Since this was an initial IEP team meeting, the review was primarily of Student's academic levels and her present emotional state.

86. At the time of her initial IEP team meeting, Student had completed the fall semester of eighth grade. Her grades were similar to those she had received in seventh grade. Student had "As" and "A-s" in all areas of math. Her language arts grades fluctuated between "As" and "Cs." Her overall language arts grade was a "B." Student's grades in science fluctuated between "As" and "Bs." Her overall science grade was a "B."

Student's grades in social science, which included history, fluctuated between "Cs" and "As." Her overall social science grade was an "A."

87. Charter's report card also contained a teacher reflection component where the teacher reviewed the student's overall approach to study, and a student self-reflection component where the students had an opportunity to address their strengths and weaknesses in each area of study. Student stated she was proud of the hard work she was doing. She acknowledged that she needed to work harder on getting her work in on time. She wanted to work harder on believing in herself as well. Student felt that she did not understand history, but her grades for the fall semester of eighth grade did not reflect a lack of understanding.

88. Student's homeroom teacher noted that Student had shown growth in her level of engagement in her work and developing her leadership role in class. The teacher noted Student needed to pay greater attention to detail in her schoolwork. Student was aware of this, so he felt that she would be able to do so in the future.

89. None of the IEP team members, including Parent, had concerns about Student's academic abilities at this time. However, Parent was taking Student to her therapy at Harbor UCLA three to five times a month during school hours. During eighth grade, the therapy sessions were in the afternoon. Parent took Student out of school early and Student's schoolwork suffered somewhat as a result.

90. Teacher C and School Psychologist then reviewed their psycho educational assessment. Although Student's emotional crises had not impeded her access to her education, School Psychologist believed there was a potential for Student's emotional issues to affect her at school and felt that a special education safety net would help prevent any deterioration in her academics. School Psychologist also felt that Student would benefit from counseling to help stabilize her moods. Based on her assessment

and recommendations, the IEP team determined Student was eligible for special education and related services under the category of emotional disturbance.

91. District developed six goals for Student to address her anxiety and depression. The goals all addressed Student's daily suicidal thoughts and weekly self-injurious behavior of cutting herself. The object of Goal 1 was for Student to be able to identify five situations where she experienced anxiety from social interactions, and to identify and implement strategies to deal with her anxiety, by the end of 12 months. District designed Goal 2 to be implemented in counseling sessions, with the objective of having Student learn to practice and demonstrate five ways to decrease personal anxiety associated with school activities and peer interactions. Goal 3 was also to be implemented primarily in counseling sessions. The objective of Goal 3 was for Student to learn to identify different coping skills.

92. The objective of Goal 4 was to address Student's suicidal ideation and cutting by having her learn to identify five enjoyable activities to engage in that would lessen her feelings of depression. The objective of Goal 5 was for Student to learn to identify five personal positive attributes, strengths, and accomplishments. Based upon input from Parent, District added a sixth goal of having Student check in with her special education teacher any time she had emotional issues that were bothering her. All the goals were measurable and addressed all of Student's unique needs known to her IEP team at the time of the meeting.

93. District's offer of a FAPE consisted of the following: 1) specialized academic instruction for 15 minutes a week to address Student's need to learn better organization of her schoolwork; 2) individual counseling three times a month for 35 minutes a session, to be provided by an outside agency; and 3) two hours a month of parent counseling, to be provided to Parent outside of the school setting by an outside agency. District added Parent counseling because Student had expressed to several

teachers and to School Psychologist that she believed many of her emotional problems were due to conflicts she had in her home. District also developed two accommodations for Student. One accommodation was to permit her to have her cell phone with her at all times and to be able to contact her private therapist whenever she needed. The second accommodation was to permit Student extra time to finish assignments, on an as-needed basis.

#### PARENT'S RESPONSE TO FEBRUARY 2016 IEP OFFER

94. Parent did not agree with the offer of FAPE. When School Psychologist presented her assessment, with the scores from the Wechsler cognitive testing, Parent realized that Student's full-scale intelligence quotient score was much lower than the score Student achieved on the testing done when Student was nine. Something clicked with Parent when she saw the scores, and made her begin to think that perhaps Student's concussion might have affected her more than Parent initially believed, and that Student had a traumatic brain injury resulting from her September 2014 concussion, which caused her emotional disturbance. However, at the time of the February 3, 2016 IEP team meeting, Parent did not give the previous testing to the other team members, and she had no concrete evidence that Student had suffered a traumatic brain injury that had somehow affected her cognition. None of Student's medical reports indicated such an injury, and none of her treating physicians or therapists correlated Student's emotional issues to her September 2014 concussion.

95. Parent believed that District's assessment was deficient because it did not include measures that assessed for traumatic brain injury. Parent did not tell District what assessment measures it should have used during its assessment. As discussed below, District agreed to fund the independent neuropsychological assessment Parent requested. Parent requested the independent assessor specifically to determine if Student had a traumatic brain injury. The independent assessor used testing instruments

similar to those District used in its assessment. Student put on no persuasive evidence as to what other assessments District should have used to determine if Student had a traumatic brain injury for purposes of special education eligibility.

96. Student presented as evidence a report from the Centers for Disease Control and Prevention, a division of the United States Department of Health and Human Services. The report states, in pertinent part, that the combination of someone suffering a blow to the head who presents signs and symptoms of traumatic brain injury, such as severe mood disturbance, is enough to classify that person as having sustained a traumatic brain injury. However, the report does not address traumatic brain injury from the perspective of special education eligibility. No one from the Centers for Disease Control testified at hearing. The only evidence Student presented at hearing regarding her belief that she is eligible for special education under the classification traumatic brain injury, was the independent assessment District funded. As discussed below, the independent assessor did not testify at the hearing, and District contested the validity of her assessment and conclusions.

97. Parent also disagreed with the counseling services District offered. At the time of the initial IEP team meeting, Parent had been taking Student to Harbor UCLA for over three months. Parent had researched the dialectical behavior therapy methodology Harbor UCLA provided. Her research showed that the therapy was considered the “gold standard” for treating people with suicidal ideation who had borderline personality disorder. Parent had discussed this with School Psychologist during Student’s assessment. School Psychologist had originally included a note in her draft assessment stating that dialectical behavior therapy was the gold standard of treatment for people with borderline personality disorder who were suicidal, but removed the statement from her final report.

98. Parent did not want to discontinue Student's therapy at Harbor UCLA because it was benefiting Student and Parent felt that it was the best type of therapy for her. Parent also did not want to accept District's offer of counseling because District would not and could not assure her that the contracted therapist would use the dialectical therapy or even have training in it.

99. Student did not put on any evidence from any witness to address her therapy needs. None of her past or present treating physicians, therapists, or counselors testified. Student presented no evidence that dialectical behavior therapy was the only therapy methodology that could address her emotional or psychological needs. Student put on no evidence as to the amount of therapy that she needed to make progress on her emotional or psychological needs. Student put on no evidence that the amount of therapy District offered at any time between the date of her initial IEP offer and the hearing was not sufficient to address her needs. Nor did Student put on any evidence that the therapy District offered would somehow conflict with the dialectical behavior therapy she received from Harbor UCLA and interfere with the progress she was making there.

100. District presented evidence from its Intervention Specialist, a school psychologist who worked primarily as a therapist at District providing direct therapy to students. As discussed below, Intervention Specialist provided as-needed therapy to Student after she started ninth grade.

101. Intervention Specialist has a master's of science degree in clinical psychology and pupil personnel services credential as a school psychologist as well as a license in marriage and family therapy. He had worked for District since 2013 as an intervention specialist, and provided therapy to students and counseling to parents. He was extremely knowledgeable about the area of psychology, and gave thoughtful and precise answers to questions during his testimony.

102. Intervention Specialist explained that he, as well as most therapists, used a methodology called cognitive behavior therapy. Cognitive therapy focused on retraining distorted thought patterns that interfered with a person's ability to function. The object of the therapy was to decrease negative behaviors and improve the person's emotional state. Cognitive therapy used Socratic questioning to challenge irrational thought processes. Cognitive retraining, which retrained thought processes, was part of cognitive behavior therapy.

103. Intervention Specialist was familiar with dialectical behavior therapy, which he said focused more on mindfulness and having a person acknowledge and accept their mental health issues. He opined that nothing about cognitive behavior therapy contradicted or interfered with dialectical behavior therapy. Student provided no evidence that refuted Intervention Specialist's testimony.

104. At the February 3, 2016 IEP team meeting, Parent discussed Student's ongoing dialectical behavior therapy with the District team members. She explained that she wanted Student to continue with the therapy. She also requested District to fund the mileage costs she incurred to take Student to the therapy. She did not request District to fund the therapy because Student's health insurance covered the full cost.

105. The District team members participated in the discussion with Parent and considered her input. However, they would not commit to using a particular psychological methodology in the counseling services they offered Student. District generally did not identify methodology in an IEP. Further, District was offering counseling services through a contracted agency. That agency would determine the counseling methodology. District also declined to pay for Student's transportation costs to her private therapy because it was offering her appropriate counseling services during school time. Since it was able to provide appropriate counseling to Student, there was no reason to fund her private services.

106. Parent did not sign the IEP document at the end of the February 3, 2016 IEP team meeting. She took it home to consider it. She signed it on February 19, 2016, and returned it to District, along with a letter she wrote to District to attach to the IEP. The letter explained Parent's concerns.

107. Parent only gave partial consent to the IEP. She agreed to the 15 minutes of specialized academic instruction. Parent did not agree to the counseling because she believed that Student needed dialectical behavior therapy rather than cognitive behavior therapy. She also felt that the amount of counseling services District offered were insufficient because Student received more hours from Harbor UCLA and was demonstrating progress in the program. Parent felt that Student's lack of hospitalization in the four months since she started the Harbor UCLA program demonstrated that she was making progress and that it was the only way for her to continue that progress. Parent also declined the parent counseling services District offered because she had unlimited phone access to Student's therapist at Harbor UCLA when needed. Other than Parent's testimony, Student provided no evidence that District's offer of placement, programming, services, and/or accommodations failed to offer Student a FAPE.

108. In her letter, Parent asked District to add a goal that Student would refrain from her cutting behavior. Since all of the goals District developed were designed to address the cutting behavior, it was not necessary to add the wording Parent requested.<sup>6</sup> Parent also requested that Student's third goal be re-worded. District did not re-word the goal. The suggested re-wording did not affect the objectives of the goal and was therefore unnecessary.

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<sup>6</sup> Student did not raise the issue of whether the goals offered in the February 3, 2016 IEP were measurable, so this Decision does not address that issue.

109. Parent requested an accommodation that Student would use a predetermined signal to her teacher that would permit Student to leave class and go to safe place on campus, such as the psychologist's office, if Student felt the need to leave. District added this accommodation per Parent's request. Student was permitted to leave class when she felt overwhelmed.

110. Parent checked off the portion of the IEP agreeing that she had the opportunity to participate in the IEP process and help develop the IEP. Although Parent later contended District predetermined Student's IEP and did not permit her to participate in the IEP process, the preponderance of the evidence does not support her contention. Rather, Parent wanted District to accept a certain psychological methodology. Because District did not agree to Parent's request, Parent interpreted that as impeding her participation. District implemented the parts of the IEP to which Parent had consented.

111. In her February 19, 2016 letter, Parent stated she disagreed with District's assessment because it did not assess the effects of Student's traumatic brain injury. She requested District fund a neuropsychology independent educational evaluation to ensure that all of Student's deficits were identified and addressed. District's response and subsequent related events are discussed below.

#### MARCH 14, 2016 IEP TEAM MEETING

112. In spite of the ongoing therapy from Harbor UCLA, Student had another psychiatric hospitalization in February 2016, after her initial IEP team meeting. After learning of the hospitalization, District contacted Parent to convene an addendum IEP team meeting with the purpose of discussing whether Student's needs had changed. Teacher C and Parent corresponded through several emails, beginning on March 7, 2016, to arrange a date and time convenient to Parent. Parent agreed to meet on March 14, 2016, at 1:00 p.m. Teacher C confirmed the date and time in an email to Parent on

March 10, 2016; Parent confirmed her attendance in an email the same day. District also provided Parent with a formal IEP meeting notice dated March 10, 2016, with the date and time of the IEP, as well as the purpose for the meeting.

113. It is not clear from the record how long Student's February 2016 hospitalization lasted. However, Student transitioned seamlessly back to school when she returned. School Psychologist had spoken with Student after she returned school. Student appeared happy overall.

114. District team members were concerned that Parent had not consented to the counseling services offered in the initial IEP. District had designed Student's goals to be implemented in whole or in part during counseling sessions since it was Student's emotional state that needed to be addressed, rather than any academic deficits. Since Parent had not consented to the counseling services, District was concerned that it could not fully address Student's goals.

115. District believed that Student's hospitalization demonstrated that she was regressing rather than progressing with regard to her mental health issues. Based on that belief, it increased its offer of services to Student and Parent. It offered to increase Student's individual counseling sessions to one time a week, for 60 minutes a session, through a non-public mental health agency. It offered to increase parent counseling to once a week, for 60 minutes, also through a non-public agency. District based its offer to increase parent counseling on Student's statements to School Psychologist that many of Student's emotional issues stemmed from problems she felt she had at home.

116. District also added an offer of social work services for Student and Parent once a week, for 90 minutes a week, also through the non-public agency, as well as intensive behavior intervention services once a week for 120 minutes a week through the same agency. These latter services were considered "wrap-around" services because they could be provided in the home.

117. District believed the services it offered would create a productive, efficient home environment that would assist Student's progress at school. District hoped that the increased services would alter the pattern of Student being hospitalized for psychiatric reasons. The non-public agency would provide both therapeutic and behavioral staff.

118. As Parent had at Student's initial IEP team meeting, the only issues Parent raised at the March 14, 2016 meeting were her request that District reimburse her for the cost of transporting Student to Harbor UCLA and her desire that Student only receive dialectical behavior therapy. District would not and could not guarantee the methodology the non-public mental health agency would choose to utilize. Parent did not request any other type of services, intervention, programming, or placement for Student. She did not dispute the amount of services District offered, and did not ask District to increase the amount of services it was now offering. Parent did not consent to the amended IEP.

#### MAY 2016 TRANSITION IEP TEAM MEETINGS

119. Parent requested that District convene an IEP team meeting to discuss whether Student required extended school year services or instruction. District convened the meeting on May 18, 2016. Although Parent believed Student would benefit from summer school instruction, District declined to offer it because Student, at the time, was not demonstrating any academic deficits. There was no evidence that Student would not recoup any academic losses over the summer break when she returned to school for the fall 2016-2017 semester. District did inform Parent that the counseling and wrap-around services it had offered at the March 14, 2016 IEP team meeting, if Parent accepted them, would also be provided during the summer and the following school year. Parent still declined to accept the services.

120. District did not immediately provide Parent a copy of the May 18, 2016 IEP because Teacher C, who took the meeting notes and was Student's case carrier, was ill after the meeting. Parent received a copy on May 31, 2016, after Student's May 25, 2016 transition IEP team meeting. District did not offer any changes to Student's IEP at the May 18 meeting for Parent to consider. Student provided no evidence that Parent's delay in receiving the IEP significantly impeded her ability to participate in the process of developing Student's IEP.

121. District convened an addendum IEP team meeting on May 25, 2016, to consider changes that might be needed to Student's programming when she transferred from Charter to a district comprehensive high school for ninth grade for the 2016-2017 school year. All required participants were present at the meeting. Participants included staff from Charter as well as staff from Student's high school of residence. Teacher C, who was Student's present case carrier, was present at the meeting. Intervention Specialist, who worked at Student's high school of residence, was also present.

122. District had prepared an electronic proposed draft of the IEP for discussion at the meeting. The team first discussed Student's present levels of performance. Student, at the time, was making academic progress. Her teachers did not have any present concerns about her academic abilities.

123. Based on input from Parent and Teacher C, who was Student's case carrier and who participated in this meeting, the IEP team agreed to modify some of Student's accommodations to better meet her needs in high school. The team clarified that Student would have two additional days to complete assignments and additional time as needed for classwork. Parent did not request any further accommodations. Student presented no evidence that she required additional accommodations as of the time of this meeting.

124. District continued to offer the same counseling services, the same parent counseling services, and the same wrap around services that it offered in the March 14, 2016 IEP. Student presented no evidence that those services would not have met her needs at the time. Parent again declined the services. However, after discussion with Intervention Specialist, Parent said that she would consider Student accessing counseling services through him. District therefore added individual counseling for 30 minutes, three times a month, which Student would be able to access on an as-needed basis.

125. Parent again stated that she would not accept District's offer of non-public agency counseling for Student, or any of the wrap-around services, because she continued to insist that District commit to providing dialectical behavior therapy. She again also requested District to fund the transportation costs for Student's private therapy. District again declined the request.

126. District also reviewed freshman class requirements for ninth grade students. Student's high school operated on a block schedule. Students attended periods one, three and five on Wednesdays and Fridays. Students attended periods two, four, and six on Tuesdays and Thursdays. On those days, each class lasted for about an hour and 45 minutes. On Mondays, students attended all six periods. General education freshman were required to take algebra, English, biology, physical education, a semester of health and a semester of a college preparedness class, and an elective.

127. Parent asked what math classes District offered other than Algebra. Teacher C informed Parent that Charter offered a test for students to take to determine if they could skip algebra and go straight into geometry, based on whether they already knew all the algebra skills. Teacher C said she would follow up with Parent over the summer regarding the testing. Teacher C did not contact Parent. Parent did not pursue the issue during the summer before Student began ninth grade.

## SPRING 2016 GRADES AND TEST SCORES

128. Student received her grades for the spring 2016 school semester after her May 25, 2016 addendum IEP team meeting. Student's grades in math declined somewhat; her grades fluctuated between "A+" and "B-" in the different components that made up her overall math grade; her overall math grade was a "B-." Student's overall language arts grade had improved from a "B" to an "A." However, in science and social science, Student's grade had declined. She went from an "A" to a "C-" in social science, and from a "B" to a "C-" in science. Her grades in the subsections of each of these subjects showed substantial fluctuation. For example, while Student received a "D" in the "constitution and government" unit for social science, she received an "A" in the unit entitled "western divergent paths." Other than Student's increased emotional instability, evidenced by her hospitalization in February 2016, there was no evidence as to what caused the fluctuations in grades.

129. Student also took the California Assessment of Student Performance and Progress at the end of eighth grade. Student scored 2617 on the English Language Arts and Literacy portion of the test. She scored in the near standard range in writing and research, and in the above standard range in reading and listening. Her score was 52 points lower than her score the previous year, which represented a two percent decline.

130. Student's score on the math portion of this test at the end of eighth grade was 2630 points. This was 27 points higher than her score the previous year, an increase of about one percent. Student scored near standard in the areas of concepts and procedures, and in problem solving, and above standard in communicating reasoning.

131. Student argued that the decline in her English language arts score was substantial and was indicative of an overall cognitive decline, supporting her contention that she had a traumatic brain injury. However, Student presented no evidence that a 50-point decline on a test with possible scores of some 2700 points amounted to a

substantial decline in cognitive ability. No one testified as to how the test was scored and what a decline in the scores over a year period signified.

132. More significantly, Student did not acknowledge the increase in her math scores. If Student was in fact experiencing a cognitive decline, there should have been a corresponding decrease in Student's mathematical abilities. Yet, Student's scores on the standardized math test increased, as did her English language arts grades at school. Because of the inconsistency in Student's ability to receive high grades in one area, yet receive low grades in another subject, the evidence does not support a finding that a decline in Student's cognition was the basis for her some of her grades being low, or for the lower standardized English language arts score.

#### AUGUST 8, 2016 IEP TEAM MEETING

133. District's 2016-2017 school year started on August 15, 2016. Parent contacted District in early August and requested an IEP team meeting to discuss concerns she had about Student's math class. District was not required to convene an IEP team meeting during the summer, but agreed to do so on short notice to address Parent's concerns.

134. District convened the meeting on August 8, 2016. Parent; Resource Teacher, who worked at the high school; and High School Assistant Principal attended the meeting. Parent agreed to waive the attendance of a general education teacher.

135. Student's schedule for ninth grade originally had her placed in an honors English class for first period, algebra for second period, Spanish for third period, Health for fourth period, Biology for fifth period, and physical education for sixth period.

136. Student had expressed anxiety to Parent about attending her algebra class. Many of her friends had tested out of algebra and were going to take geometry instead. Additionally, Student had generalized anxiety about the math class. It is unknown why she had this anxiety given her good grades and good test scores in the

subject. However, based on this anxiety, Parent researched alternatives and decided that she would request District to permit Student to take an online math class rather than attend her algebra class.

137. District had an online program called Cal Prep. It was a rigorous general education academic program for students capable of working independently. Parent asked that District enroll Student in the Cal Prep algebra 1 course. At the August 8, 2016 IEP team meeting, the IEP team discussed Student's ability to access the online class. Based on her past math grades and test scores, Student's IEP team felt that she was capable and motivated to take the online class. The Cal Prep class was not a special education class. It was a general education class District offered to all students who qualified for it. District's IEP team members agreed that Student would enroll in the class.

138. During eighth grade, Parent had scheduled Student's therapy sessions at Harbor UCLA for Wednesday afternoons. The sessions started at approximately 3:30 p.m. Parent picked Student up from school about 1:00 p.m. The drive was almost 50 miles and took considerable time both getting to the clinic and returning because of traffic. The traffic made the trip very inconvenient. It also increased the friction between Student and Parent because of the time they spent together in the car. Parent therefore decided to change the time of Student's therapy to the early morning. She avoided much of the traffic by doing so. Parent proposed having Student have therapy on Thursday mornings. Student would miss the first period of the day, which was second period on the District's block schedule. Student would arrive in time to attend her fourth period Health class. She would attend her private therapy at Harbor UCLA on Thursday mornings. On Tuesdays, Student would either arrive late to school, or go to the library and use the computer to work on her math.

139. Parent's decision to change the timing of Student's private therapy was motivated by convenience, not necessity. In approximately March 2017, in response to Dr. A's written request to District that it try to accommodate Student's ability to continue therapy with her, Intervention Specialist called Dr. A and spoke with her on the telephone. Dr. A told him that she could see Student at any time during the day and that it was not necessary for Student to miss math to access the therapy, though she realized that Parent had difficulties with the traffic.

140. Parent agreed at the meeting to add counseling sessions with Intervention Specialist but requested that the counseling be listed as an accommodation rather than a service on Student's IEP. She wanted Student to be able to access the services on an as-needed basis. District agreed to Parent's request.

141. Parent continued to decline the other counseling services District had proposed. She continued to request that District fund the cost of transporting Student to Harbor UCLA and that dialectical behavior therapy was the only method that could address Student's mental health issues. Parent did not request any other type of services, programming, accommodations, or placement for Student. She did formally state that she did not feel that she was part of Student's IEP process. However, her feeling of exclusion was based solely on District's refusal to commit to a methodology or agree to partially fund the private services Parent wanted for Student. District spent much time during the course of Student's several IEP team meetings discussing Parent's concerns, making suggestions, and considering alternatives proposed. Parent had decided on the course she wanted to take to address Student's mental health issues and did not want to consider any alternative. It was Parent rather than District that was wedded to one position.

## FALL 2016 SCHOOL SEMESTER

142. District continued to attempt to address Student's mental health issues informally as well as through those portions of Student's IEP to which Parent had consented. As a high school freshman, Student was required to take a health class. Subject matter in the class included units on teen mental health issues such as suicide, depression, and eating disorders. District agreed to excuse Student from class any time the teacher discussed a subject that caused her emotional distress. The health teacher provided Parent with syllabus so that she would know the general content of the class. District permitted Student to go to the library during those discussions. In spite of her non-participation in all units of the health curriculum, Student received a "B" in the class by the end of the semester.

143. On October 5, 2016, Intervention Specialist wrote to all of Student's ninth grade teachers to let them know that Student's IEP permitted her to meet with him on an as-needed basis. Student had told him that she was feeling increased stress at school, and Intervention Specialist wanted Student's teachers to be aware that she might need to leave more than she had been doing.

144. Student was not successful with the online Cal Prep math course, even though she had access to a teacher to discuss any difficulties she was having. She had difficulty concentrating and working independently. Student informed Resource Teacher that she did not find the math material difficult. Rather, she acknowledged that it was her lack of organization and motivation that caused her difficulties with the class.

145. In mid-October 2016, Parent asked District for tutoring help for Student because Student was falling behind in math. District provided Parent with two lists. One list was of students who were available to offer tutoring during fifth and sixth periods. Student had class those periods and therefore could not access anyone on the first list. District provided a second list of potential tutors. Some of the tutors charged for their

services. Many more had volunteer hours. It is unclear why Parent did not access any of the volunteer tutors on the second list. Parent wrote to Assistant Principal on October 21, 2016, asking if Student could drop the online math course.

#### NOVEMBER 10, 2016 IEP TEAM MEETING

146. District convened an IEP team meeting on November 10, 2016, to discuss Student's difficulty with the online math course. District was concerned about Student's difficulties because algebra was a graduation requirement. Student was on track to receive a regular high school diploma and District wanted to keep her on track. Parent, Resource Teacher, Assistant Principal, an algebra teacher, and student's English teacher attended the meeting. Student attended as well.

147. Other than her difficulties with the online math class, Student had transitioned well to high school. She was doing well in her other classes. She sometimes missed honors English because she was tardy due to not having slept well the night before; however, even with her absences Student was able to sustain at least a "C" in the honors class. Her English language arts skills were advanced and, even with her struggles, her English teacher believed that Student was capable of doing the advanced work.

148. At the November 10, 2016 IEP team meeting, District suggested Student move from the Cal Prep online math course, where she was struggling, to a regular general education algebra class. The algebra teacher reviewed the course material and processes. Parent rejected the suggestion because she believed the regular algebra course would not be any different from the Cal Prep course.

149. District discussed another online course it offered called APEX. The course was less rigorous than the Cal Prep course. Additionally, APEX offered two after-school instructional sessions a week with a math teacher. Student could attend the sessions

without interfering with her ongoing therapy. Parent rejected the offer. She felt that Student would not be able to access any type of online class.

150. Based on Parent's concerns that Student had difficulty accessing math coursework, District then offered to place Student in a special education directed algebra class. The directed algebra class was a two-year course of study. It was taught at a much slower pace than was general education algebra, which was a one-year class. Although designated a special education class, directed algebra still met District's requirement for graduation with a diploma. Parent refused this class as well.

151. District suggested that Student enroll in math during the summer, which would also provide her with credits toward graduation. However, the summer class was also online. Although it too provided direct teacher support, Parent did not want Student to attempt another online course so she rejected this suggestion as well.

152. Parent had researched alternative math programs for Student during the summer of 2016. She found Fusion Academy, a private educational institution that offered one-on-one instruction in a variety of subjects, including algebra. Fusion was accredited by the Western Association of Schools and Colleges, but was not certified by the California Department of Education as a non-public school. Parent asked District to fund a math class at Fusion for Student so that Student would have one-on-one instruction and so Student's private therapy could continue on Thursday mornings. Student presented no evidence that she required a restrictive one-on-one instructional setting to make progress in math.

153. The District IEP team members stated that they would discuss Parent's request for funding for the Fusion class with District's special education staff. Because of Parent's refusal to accept another math class, and because Parent believed Student needed to continue her private therapy, the District IEP team members did not add another math class for Student at this time.

154. Student did not need one-on-one instruction in math. Parent's preference for Fusion was due primarily on her desire for Student to continue her private therapy at Harbor UCLA. Parent also wanted her to continue the therapy on Thursday mornings because it was more convenient than taking Student there in the afternoon.

155. District did not want to place Student at Fusion because it offered a variety of math courses that were available for Student, that were appropriate for her academic skills, and would permit Student to make academic progress in math. All were in a less restrictive environment than the one-on-one setting Fusion offered. In any case, District could not legally place Student at Fusion because the California Department of Education had not certified Fusion as a non-public school.

156. Although several District staff members conveyed this information to Parent orally in bits and pieces during the course of the 2016-2017 school year, District never provided formal prior written notice to Parent either by letter or in Student's IEP documents that it refused to fund Fusion and the reasons for its refusal.

#### FEBRUARY 1 AND FEBRUARY 16, 2017 ANNUAL IEP TEAM MEETINGS

157. Student regularly went to counseling sessions with Intervention Specialist the first few months of the 2016-2017 school year. She discontinued her sessions in November 2016. She did not tell anyone why she no longer wanted to see him and never accessed the sessions again although her depressive symptoms increased at home and at school. For example, on December 9, 2016, Student left her biology class to talk with her homeroom advisor. Student told the advisor that she had had a couple of difficult days, but could not or would not state what specifically was bothering her. As of the hearing in this matter, Student had not returned to see Intervention Specialist although her ability to see him as needed remained on her IEP as an accommodation.

158. Student had suffered another concussion in December 2016 while playing a sport. She had not been as injured as she had been in September 2014. Her doctors

cleared her to return to sports-related activities some time before this IEP meeting convened.

159. District convened an annual IEP team meeting for Student on February 1, 2017. District gave Parent sufficient notice of the meeting. Parent, Student, a special education teacher, Intervention Specialist, Assistant Principal, and the general education teacher from the college preparedness class attended the meeting.

160. Student was doing well in all her classes. She had an "A-" in college preparedness, a "B+" in Spanish, and a "C" in honors English. Student worked well on a computer, was respectful, and had good relationships with her peers and with teachers. In honors English, Student had a good attitude and accepted advice willingly. Student's late arrival some days had affected her grade in English but the teacher was accommodating late work. He continued to feel that Student should remain in honors English because she was capable of keeping up with the rigors of the class. Student was keeping up with her Spanish class.

161. The only service on her IEP Student continued to access was time in the specialized academic instruction class. She went to the class on an as-needed basis to check in with the teacher, and wanted to continue to do so.

162. The IEP team reviewed Student's progress on her goals. Although she had not accessed any of the counseling sessions previously offered, and had discontinued meeting with Intervention Specialist, Student had met her coping goal and depression goal as well as one of her goals to address her anxiety. She was making progress toward the goal of practicing and demonstrating five ways to decrease personal anxiety associated with school activities and peer interactions. She was also making progress on her positive thoughts goal.

163. District proposed four new goals for Student. The first goal, to address Student's anxiety, was an update of the anxiety goal she had failed to meet. The object

of the goal was for Student to practice and demonstrate five ways to decrease her anxiety with school activities and peer interactions. The second goal was an update of Student's unmet goal to address her depression. The objective of the goal was for Student to redirect feelings of sadness by identifying five enjoyable replacement activities that would lessen those feelings. District also updated Student's positive thought goal. The object was for Student to identify her positive attributes. District also again included a goal that directed Student to check in with her case manager when she was feeling stressed.

164. The goals were clear, met Student's needs, and were measurable. Student provided no persuasive evidence that the goals were not appropriate, that they were insufficient, or that they failed to meet her needs. Nor did Student provide any persuasive evidence that District should have developed other goals for her. The only evidence concerning the goals from someone other than District staff came from Intervention Specialist's conversation with Student's therapist Dr. A. He telephoned her about a month after the February 16, 2017 IEP team meeting. During their conversation, he read the goals to her and asked for her input on their sufficiency. Dr. A told him that the goals appeared to meet Student's needs. She had no suggestions for modifications or additions to the goals or Student's educational program.

165. The team also discussed the fact that Student was not taking a math course and needed one for graduation. Parent declined placing Student in an alternative online math course. She also declined the summer school course because it was online as well. Parent also declined placing Student back in a general education algebra class. Based on Parent's expressed concern that Student's math abilities were declining and that she would not be able to access even the less rigorous online class, District offered to place Student in a collaborative algebra class. Although still a general education class, both a general education teacher and a special education teacher taught the class. The

class was composed of typical students and students with IEPs. It offered more support to those students who needed it. The collaborative class met District's graduation requirements.

166. Parent declined putting Student in the collaborative class. She again asked District to fund a math class at Fusion Academy. Parent also asked District alternatively to fund a class at a school called Hallstrom.<sup>7</sup> Parent believed Student required the structure of a one-on-one class and the flexibility of a private school to be able to continue her private therapy. Parent expressed her frustration that District was denying Student access to math by refusing to fund a private program. The meeting adjourned for lack of time without a final discussion of goals and services.

167. District re-convened Student's annual meeting on February 16, 2017. A special education teacher, Resource Teacher, Assistant Principal, Intervention Specialist, a general education teacher, Student's case carrier, and Parent attended the meeting. Student did not attend.

168. Although District's stated purpose for the meeting had also been to review Dr. Johnson's assessment, she was not available for the meeting. District deferred discussion on her assessment to a later date when she could attend.

169. District offered Student counseling three times a week, for 35 minutes a session. Parent again declined the counseling and asked that it continue to be offered on an as-needed basis as an accommodation rather than as a related service. Although District felt that Student would benefit from formal counseling, it agreed to add the as-needed counseling as an accommodation for Student. Student had not accessed the counseling since November 2016; she did not access it after the February 16, 2017 IEP team meeting either.

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<sup>7</sup> No one discussed Hallstrom at the hearing.

170. Parent continued to request District to permit Student to leave school to attend her therapy at Harbor UCLA. District stated that Student had to have a math class. District suggested placing Student in a fourth-period math class and switching the class with Student's college preparedness class because it would be easier for her to make up work in that class than in algebra. Parent rejected the suggestion because Student had many friends in the college preparedness class.

171. District's offer of FAPE was continued enrollment in specialized academic instruction for 15 minutes a week, and individual counseling three times a week for 35 minutes a session. District did not offer the wrap-around services it had previously offered because Student had made progress on her goals and because Parent insisted they were unnecessary. Student presented no evidence that District's removal of these services from its IEP offer denied Student a FAPE.

172. As accommodations, District continued to offer Student extra time to finish assignments; permission to have her cell phone with her at all times to access her private therapists; use of predetermined signal to her teachers so Student could leave class at any time to go to either a counselor's office or to the school psychologist's office when Student felt overwhelmed; and permission to access school counseling staff on an as-needed basis.

173. Student provided no evidence that District's offer of FAPE was insufficient, failed to meet her needs, or should have been modified in any way.

174. Parent rejected every alternative for math offered by District. Since Student was a student on regular diploma track, and needed to have a math class, District enrolled Student in a second period algebra 1 class as of the February 16, 2017 IEP meeting. As of the hearing in this matter, Student had never attended the class. She therefore had a failing grade in the class. District considered her truant as a result of her failure to attend the class.

## REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

175. In a letter dated March 15, 2016, Sara Young, District's Director of Informal Dispute Resolution, agreed on District's behalf to fund a psycho educational independent assessment. District did not initially agree to fund a neuropsychological assessment since it had not done one itself. Therefore, there was no District neuropsychological assessment with which Parent could disagree. District provided Parent with a list of assessors with whom it had previously contracted, but informed her she was free to select another assessor, as long as the assessor met District criteria. If Parent selected her own assessor, District would need to review that person's qualifications. Then, if the assessor did not have a present contract with District, District's school board would need to approve the contract.

176. Parent wrote to District on April 13, 2016, and requested a medical evaluation for Student as a related service. She wanted District to assess Student's head injury because she felt Student's emotional disturbance stemmed from the injury. Parent did not state what she meant by a medical evaluation or what type of tests she thought such an evaluation would contain.

177. Ms. Young responded on behalf of District in a letter the same date agreeing to fund the independent neuropsychological assessment Parent requested. District declined to fund the requested medical evaluation because it was not necessary to determine Student's educational programming or her eligibility for special education and because District had never done a medical assessment.

178. Parent selected Dr. Deborah Ely Budding to conduct the independent neuropsychological evaluation. Dr. Budding had not previously contracted with District. Parent submitted her name and contact information to District. District contacted Dr. Budding and asked her to provide information to start the process of arranging a contract with her. Although District's normal maximum for payment of psycho

educational evaluation was \$4,000, it agreed to fund Dr. Budding's requested fee of \$5,000.

179. Dr. Budding submitted her information to District by May 2016. District submitted a contract for her services to its school board in May. However, the paperwork it submitted was incorrect, and District had to re-submit it to the school board for approval. The school board approved the contract at its June meeting.

180. It is unclear what happened next because Student did not call Dr. Budding to testify and did not call anyone from District's purchasing department, which handled the contracting process, to testify either. However, at some point after the school board approved the contract and agreed to pay Dr. Budding's \$5,000 requested fee, a District staff member sent the contract to Dr. Budding for her signature. Someone from Dr. Budding's office thereafter called someone at District and explained that Dr. Budding had incorrectly stated her fee; it was actually \$5,500 for the evaluation.

181. District agreed to fund the added cost. It then had to re-submit Dr. Budding's contract to the school board. It re-submitted the contract sometime in September or October 2016. The board approved the additional costs. District then re-sent the contract to Dr. Budding for her signature so the assessment process could begin.

182. Dr. Budding refused to sign the contract. She did not tell District why she would not sign it; Parent believed that it was because District required the independent assessors to carry certain insurance that Dr. Budding did not want to pay. District informed Parent that she needed to select another independent assessor. She selected Dr. Julia Johnson, a licensed educational psychologist who was a member of the American Board of Neuropsychology. Dr. Johnson administered a neuropsychological assessment of Student in December 2016 and January 2017. She completed an assessment report on January 30, 2017. Dr. Johnson emailed the report to District on

January 31, 2017; that same day, District requested that Dr. Johnson also email it to Parent, which Dr. Johnson did a few days later.

183. District had scheduled Student's annual IEP team meeting for February 1, 2017, in a notice mailed to Parent on January 23, 2017. Because Dr. Johnson had not completed her report until just before the meeting, she was not available to attend it. District continued the IEP meeting on February 16, 2017, to review Dr. Johnson's assessment and to complete Student's annual IEP. Dr. Johnson was also unavailable on February 16. She did not testify at the hearing so it is unknown why she was not available. District thereafter scheduled a continued IEP team meeting on March 20, 2017, which Dr. Johnson attended and at which she discussed her independent assessment. That IEP team meeting is outside the scope of this hearing.

#### Dr. Johnson's Independent Neuropsychological Assessment

184. Parent asked Dr. Johnson to assess whether Student's primary special education eligibility category should be traumatic brain injury. For her assessment, Dr. Johnson interviewed Parent and Student, reviewed Student's records, including prior assessments, and administered several testing instruments.

185. Dr. Johnson's report stated that Student had difficulty problem solving, with school skills, with attention at school, with memory and learning, with motor and coordination, and with vision problems. However, Dr. Johnson failed to observe Student at school and failed to either interview Student's teachers, or get any written input from them. Dr. Johnson's findings regarding Student's attention, abilities, and concentration at school were based solely on input from Student and Parent. Her findings as to Student's needs in school were therefore not persuasive. Since Dr. Johnson did not testify at the hearing, it is unknown why she failed to observe Student in the school setting or contact Student's teachers for input. The only input she had from anyone at

school was a rating scale from one of Student's teachers, who Dr. Johnson did not identify in her report.

186. Dr. Johnson administered the Woodcock-Johnson IV Tests of Cognitive Abilities to Student to determine her cognitive levels and abilities. This test is similar to the Wechsler that School Psychologist administered to Student the previous year, and tests similar areas. The scores Dr. Johnson obtained were similar to those School Psychologist obtained on her administration of the Wechsler, with one exception. The Woodcock-Johnson Cognition test Dr. Johnson administered contained a subtest called "story recall." Student's score of 72 on that subtest was below average and meant she had limited proficiency in that area.

187. Dr. Johnson administered an academic achievement test to Student in which she only tested Student's reading comprehension and ability in numerical operations. Student's scores were similar to those she had obtained on District's academic testing the previous year. Student scored in the average range in reading comprehension and in the above-average range in numerical operations.

188. Dr. Johnson also administered the Behavior Assessment Scales for Children – Third Edition by having Parent and Student fill out the rating scales. Dr. Johnson indicated that one of Student's teachers also completed the scales, but Dr. Johnson did not identify the teacher. As Parent had when District administered this test the previous year, Parent's responses found Student clinically significant for internalizing problems. Parent also rated Student at-risk in the clinical areas of attention problems, adaptability, and functional communication. Dr. Johnson's administration of the Behavior Scales included a section called "Content Scales." Parent rated Student at-risk in several areas and clinically significant in several others. Notably, Parent rated Student at-risk for attention deficit disorder, although none of Student's teachers had ever found her to have significant deficits in that area. Student's self-ratings and the teacher's ratings were

similar to those in Student's self-ratings and Teacher A's ratings from District's assessment the previous year.

189. Dr. Johnson administered other testing instruments to determine Student's emotional state. The tests addressed how Student saw her world, managed her feelings, and coped with her environment. As had District's assessment the previous year, Student's results on these tests demonstrated she had painful emotions, anxiety, and was depressed.

190. Based on her testing Dr. Johnson reached the same conclusion as had District. She found that Student exhibited pervasive feelings of unhappiness and depression, and had a tendency to develop physical symptoms or fears associated with personal or school problems. Dr. Johnson acknowledged that Student's academic abilities were commensurate with her cognition, and that Student's depression and fluctuating moods did not negatively affect her schoolwork.

191. However, Dr. Johnson concluded that Student had a traumatic brain injury and qualified for special education primarily under that category. Dr. Johnson based this conclusion on Student's low score in story recall. She also stated that Student had difficulty with attention, following verbal directives, and with recall, and that she could not remember information unless it was presented visually or kinesthetically.

192. Dr. Johnson did not testify so it is unclear why she came to these conclusions based primarily on test results on one sub-section of one cognitive assessment. Dr. Johnson also stated in her conclusions that Student had deficits in auditory processing, attention/memory, language acquisition and retrieval, sensory motor processing speed, and in other undefined areas. However, Student's results on Dr. Johnson's assessments do not indicate deficits in those areas. Other than her score on story recall, Student's only other below average score was an 87 in visualization on the Woodcock-Johnson Cognition test, which was low average. All of Student's other scores

on previous assessments, including those on an assessment done by Children's Hospital in June 2016, which Dr. Johnson referenced in her report, were in the average to high average range. Children's Hospital had tested Student's working memory in June 2016, five months after District assessed Student and six months before Dr. Johnson's assessment. Student scored a 110 on the working memory sub-test, which was at the top of the average range.<sup>8</sup>

193. Intervention Specialist questioned Dr. Johnson's results. He took issue with her basing a finding of a traumatic brain injury on just one sub-test of her cognitive testing, particularly when Student's previous scores in the areas of memory had been so much higher. Intervention Specialist also opined Dr. Johnson's conclusions were questionable because she did not consider teacher input or observe Student at school.

194. Intervention Specialist also took issue with other portions of Dr. Johnson's report, in particular her finding that Student had difficulty with visualization. He had provided therapy to Student and observed her in class; Student had no difficulty using a smart cell phone or using a computer for any of her classes.

195. As stated above, Dr. Johnson did not testify at the hearing. Nor did Student present the testimony of any expert witness that agreed with Dr. Johnson's conclusions. Intervention Specialist and School Psychologist found that Student did not have a traumatic brain injury that was the source of her emotional disturbance. Their testimony was uncontroverted by any expert or any District witness.

196. Notably, even though Dr. Johnson found that Student was eligible for special education under category of traumatic brain injury, she did not recommend further medical testing of Student. Further, Dr. Johnson did not recommend dialectical

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<sup>8</sup>There is no evidence that District was aware that Children's Hospital had assessed Student until it received Dr. Johnson's assessment report.

behavior therapy. Rather, she recommended cognitive behavioral therapy and cognitive retraining strategies, which was the type of therapy that Intervention Specialist stated he eventually used with Student and which he said was the most common type of therapy utilized by therapists in treating people with mental health issues, such as those Student suffered.

197. Dr. Johnson referenced the intelligence testing done on Student when she was nine, where Student's full-scale intelligence quotient had been scored almost 20 points higher than what Dr. Johnson's testing found. However, Dr. Johnson did not use that discrepancy as a basis for determining that Student had suffered a traumatic brain injury.

198. Additionally, Student put on no evidence of what goals, services, programming, or placement she required to address her traumatic brain injury, assuming that was her primary eligibility category. Student presented no evidence of how District's offer of FAPE needed to be modified to address a traumatic brain injury.

199. Dr. Johnson made several recommendations for accommodations in her report. District already was implementing many of them, such as giving Student extra time for assignments, letting her leave class when stressed, and allowing her to have immediate access to her therapist. There was no support for many of the Dr. Johnson's recommended accommodations, such as the need for Student to use an audio recorder in class. Dr. Johnson made the recommendation without speaking with any of Student's teachers to determine if such an accommodation was necessary. Dr. Johnson made no specific recommendations for goals, specialized academic instruction, related services, programming, or placement she felt Student required to receive a FAPE. Student put on no evidence of how an eligibility classification of traumatic brain injury would have changed the placement, programming, services, or accommodations she required to receive a FAPE.

## REMEDIES

200. As remedies for District's alleged violations of her rights, Student requested reimbursement of Parent's costs in transporting Student to all of her hospital stays, medical appointments, and therapy appointments. She also requested compensatory education in the areas of academics, rehabilitation counseling and psychological services, and prospective transportation to and from school.

201. Student did not put on any evidence to support her request for compensatory education or counseling and psychological services. No witness testified regarding Student's needs in any of those areas. Nor did Student provide any support for her request for transportation to and from school. There was no evidence that Student had any unique need that required transportation as a related service.

202. Student did put on competent evidence, through Parent's testimony and supporting documentation, of the costs Parent incurred in transporting Student to medical and therapy appointments.

## LEGAL CONCLUSIONS

### INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA<sup>9</sup>

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

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<sup>9</sup>Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

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

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

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE

requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

4. The Supreme Court recently clarified and expanded upon its decision in *Rowley*. In *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. \_\_\_ [137 S.Ct. 988, 997-1002; 197 L.Ed.2d 335] (*Endrew F.*), the Court stated that the IDEA guarantees a FAPE to all students with disabilities by means of an IEP, and that the IEP is required to be reasonably calculated to enable the child to make progress appropriate in light of his or her circumstances. The Court re-affirmed its earlier findings 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. 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.* at 1001.)

5. The Ninth Circuit further refined the standard delineated in *Endrew F.* in *M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir., May 30, 2017, No. 14-56344) \_\_ F.3d \_\_ [2017 WL 2330662, \*\* 6-7]. The court stated that that 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.

6. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the

issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

7. To assist courts and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947 (*Mercer Island*)). "First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (*Rowley, supra*, 458 U.S. at pp. 206-207.) "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." (*Id.* at p. 207.)

8. 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.*) 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 in hindsight. "An IEP must take into 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 F.3d 1141, 1149 (*Adams*), citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

DISTRICT'S CHILD FIND OBLIGATIONS BETWEEN OCTOBER 4, 2014, AND FEBRUARY

## 2016 (ISSUES 1, 2, 3(A), AND 4(A))

9. Student contends that District should have assessed her and found her eligible for special education primarily under the category of traumatic brain injury, at one of three times prior to her initial IEP team meeting of February 3, 2016. Student contends District had notice she might be a child with a disability after her September 2014 concussion and her resulting month-long absence from school. Student next contends that District should have suspected she might be a child with a disability after her four-week hospitalization in May 2015. Student then contends that Parent orally requested an assessment on September 18, 2015, in a conversation with Charter's Director, but he failed to act upon her request. Finally, Student contends that after Parent made a formal written request for assessment on October 28, 2015, District delayed providing Parent with an assessment plan within 15 days of her request as required by statute. Student contends that this failure significantly impeded her rights to a FAPE and significantly impeded Parent's right to participate in Student's IEP process.

10. District responds that it had no notice that Student might be a child with a disability until after Student's psychiatric hospitalization on October 6, 2015. District acknowledges the delay in providing Parent an assessment plan after her request, but contends that the delay was not significant because it provided the assessment only a week after it was required to, and therefore there was no significant impediment to either Student's or Parent's rights.

### Applicable Law

11. School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may be in need of special education and related services. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56171, 56300 et

seq.) This ongoing duty to seek and serve children with disabilities is referred to as “child find.” California law specifically incorporates child find in Education Code section 56301. (Ed. Code, § 56301, subds. (a), (b).)

12. A school district’s child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. A disability is “suspected,” and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21 (*Timothy O.*); *Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194 (*Cari Rae S.*)) That notice may come in the form of concerns expressed by parents about a child’s symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child’s behavior. (*Timothy O., supra*, 822 F.3d at 1119-1120 [citing *Pasatiempo by Pasatiempo v. Aizawa*(9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)The threshold for suspecting that a child has a disability is relatively low. (*Cari Rae S. supra*, 158 F.Supp.2d at p. 1195.) A school district’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

13. California Code of Regulations, tit.5, section 3021, subdivision (a) requires that “all referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, staff of the school district, special education local plan area, or county office shall offer assistance to the individual in making a request in writing, and shall assist the individual if she requests such assistance.”

14. Education Code section 56321, subdivision (a) requires a school district to provide a parent with a written assessment plan within 15 days of a referral for assessment. This section also states that if a referral is made 10 days or less before the end of the school year, the district must develop an assessment plan within 10 days of the start of the next school year.

15. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park, ex rel. Park v. Anaheim Union High School Dist.*, 464 F.3d, 1025, pp. 1032-1033 (*Park*); *Timothy O., supra*, 822 F.3d at pp. 1120-22.) A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. §1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479,1484 (*Target Range*).

16. Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 C.F.R. § 300.8(c)(12); Cal. Code Regs., tit. 5, § 3030, subd. (b)(12).)

17. Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational program: (A) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) inappropriate types of behavior or feelings under normal circumstances; (D) a general pervasive mood of unhappiness or depression; and/or (E) a tendency to develop physical symptoms or fears associated with personal or school problems. (34 C.F.R. § 300.8(c)(4)(i); Cal. Code Regs., tit. 5, § 3030, subd. (b)(4).)

#### Analysis

18. Student failed to meet her burden of proof that District should have assessed her in October 2014, after it had notice that she had suffered a concussion. There is no evidence that Student's concussion adversely affected her school performance at any time during the 2014-2015 school year, other than the fact that she needed time to recover from the injury before returning to school. Student's doctors did not note any long-term effects of the injury. The only cautions they had were that Student not engage immediately in contact physical activities, such as contact sports. Student cited no cases where the mere fact that a child suffered a head injury in and of itself required a school district to assess the child for a disability.

19. Student demonstrated no adverse effects of her injury when she returned to school. Her personality at school did not change. She continued to maintain the same positive relationships with peers and teachers. She continued to be a social child. She continued to participate in class and school activities. Although at home she continued to sleep more often than she had before the accident, it did not affect her education. Student continued to do all schoolwork on time, and her ability to access her education was unaffected. While Student became more angry, aggressive, and withdrawn at home,

showing signs of significant mood fluctuations, at school she showed no signs of the emotional and personality changes Parent saw at home.

20. At Brother's February 2015 IEP team meeting, Parent did comment on Student's emotional challenges at home and how her personality changes were affecting Student's relationship with Brother. This comment did not trigger District's child find obligation. An adolescent's deteriorating relationship with family members, unless it affects the child's educational performance in any way, is not a basis for a school district to believe that a child might have a disability, even under the minimal standard defined in *Cari Rae S., supra*. If that were the case, school districts would be required to assess the majority of adolescents enrolled in their schools.

21. To qualify for special education under the categories of traumatic brain injury or emotional disturbance, both state and federal statutes and/or regulations require that the condition adversely affect the child's educational performance. Here, Student failed to provide any persuasive evidence that her educational performance was adversely affected during the 2014-2015 school year.

22. Student's May 2015 hospitalization did not trigger District's obligation to start the assessment process either. Student's argument is that a district's child find obligation is triggered any time a child is hospitalized for psychiatric reasons. Student cited no persuasive case law in support of that contention.

23. First, there is no persuasive evidence that Parent informed District that Student's hospitalization was for mental health reasons. All District witnesses credibly testified that they were under the impression that Student had injured herself again playing a sport. The evidence substantially supports this claim. All of Student's teachers for seventh grade who testified thought Student had a sports injury. They all presented as credible and sincere during their testimony. They responded to Student's hospitalization by making accommodations for her to receive homework and other

assignments while she was away from school, and did not lower her grades based on assignments missed during the hospitalization. Had District staff been aware that Student was suicidal and not functioning emotionally, they would not have prepared assignments for her to complete.

24. Even if District were aware that Student's hospitalization was for psychiatric reasons, that factor alone would not have been cause to suspect that Student might have a disability that warranted assessment. There was no evidence that Student had exhibited any condition over a long period of time and to a marked degree that adversely affected her educational program. Between the time Student suffered the concussion in September 2014, to the time of her May 2015 hospitalization, Student did not exhibit any change in personality, grades, emotional state, personal relationships, or attitude at school. The only notice District had of Student's difficulties at home was a comment Parent made during the IEP team of one of Student's siblings that Student's changed behavior at home was affecting the other children in the household. There was no nexus between the difficulties Student had at home and her behavior or performance at school during the 2014-2015 school year.

25. The fact that a child experiences a psychiatric hospitalization is not grounds for assessment unless the child's problems have affected her educational performance. For example, in the case of *L.J. v. Pittsburg Unified School District* (9th Cir. 2016) 835 F.3d 1168 (*Pittsburg*), the Ninth Circuit found that a district should have found a child was eligible for special education. The court noted that the child's mental health issues, including suicidal ideation and severe disruptive behavior at school, had occurred over a long period of time, and were affecting his school performance to such a degree that his school district had provided counseling, instructional accommodations, and one-on-one services outside the IEP process. Here, Student did not evidence any

behaviors at school that interfered with her access to her education, or interfered with her socialization, until she expressed suicidal ideation at school on October 6, 2015.

26. The case of *Student v. Escondido Union High School District* (June 8, 2009) Cal. Offc. Admin. Hrngs. 2009030297, *passim*, (affirmed, Southern District of California (Jan. 4, 2011, Case No. 09-CV-1948 W (CAB)) is also instructive. There, the district was not found to have been under notice that a student had an emotional disturbance until after the student had attempted suicide, had begun receiving therapy from a psychiatrist, was taking psychotropic medication for many months, and had a history of absences from school over several months. Student also stopped associating with friends, was caught cheating and stealing at school, and had demonstrated falling grades over three quarters of the academic year. Therefore, both the ALJ and the District Court found that the school district had reason to suspect the student might have an emotional disturbance disability approximately nine months after the parent notified the school district of the student's first suicide attempt.

27. Therefore, even if Parent had notified District in the instant case that Student had been hospitalized in May 2015 because of her suicidal ideation or other mental health issues, District was not on notice that she might be a child with a disability. Student's academic performance was not suffering and she had not evidenced any social or emotional changes at school that should have prompted District to offer an assessment.

28. However, Student met her burden of proof that District should have developed an assessment plan when Parent requested it on September 18, 2015. Parent was more credible than was Director in her assertion that she requested an assessment on that date. Director portrayed as arrogant, defensive, and dismissive during his testimony. Parent was thoughtful, direct, and believable. By the start of the 2015-2016 school year, Student had been hospitalized twice for suicidal ideation. Parent did not

believe that either Student's health insurance or the county mental health programs were addressing Student's mental health needs. The county mental health assessor had specifically directed Parent to request an assessment from District. There was no other reason for Parent to have requested to meet with Director on September 18, 2015, to discuss Student other than Student's mental health state.

29. Once Parent orally requested the assessment, District was required to help her put the request in writing and then, within 15 days, present her with an assessment plan. Within 60 days from Parent's written consent to the assessment plan, District was required to assess Student and hold an IEP team meeting to discuss the results of the assessment. (Ed. Code, § 56302.1, subd. (a).) Director failed to tell Parent to put her assessment request in writing and failed to offer her assistance in putting the request in writing. He failed to offer her an assessment plan. This was a procedural violation of Student's right to a FAPE.

30. However, as stated above, the violation is only actionable if it impeded Student's right to a FAPE or caused her a deprivation of educational benefit, or significantly impeded Parent's opportunity to participate in Student's IEP process. Here, Student has demonstrated that she met two prongs of this standard by District's failure to start the assessment process on September 18, 2015.

31. Had Director told Parent to put her oral assessment request in writing on September 18, 2015, District would have had 15 days, or until October 3, 2015, to provide Parent with an assessment plan. When finally presented with an assessment plan on November 20, 2015, Parent signed it the same day. There is no reason to believe she would not have done the same had District provided her with a plan on an earlier date. District would then have had 60 days from October 3, 2015 – until December 2, 2015 – to assess Student and convene an IEP team meeting for her.

32. Student had a mental health crisis at school on October 6, 2015, for which she was hospitalized. It was this crisis that eventually prompted District to assess her and then find her eligible for special education at an IEP team meeting on February 3, 2016. There is no reason to believe that Student's mental health conditions would have been different or that she would not have had the crisis that prompted her to seek the help of Teacher A on October 6, 2015, if District had started the assessment process sooner. It is reasonable to conclude that District would have found Student eligible for special education under the category of emotional disturbance on or about December 2, 2015, had it assessed her two months earlier than it did. Student would have been entitled to an IEP and to mental health services at that time. Student required mental health intervention after she discharged from the hospital on October 9, 2016. District had not yet begun its assessment process at that time. Parent therefore had to obtain private mental health services for Student through Student's insurance, and pay for transporting Student to the therapy. Had District begun the assessment process on September 18, 2015, Parent might not have felt it necessary to access private services for Student, and might have waited to see the results of District's assessment.

33. In any case, District's delay caused Student a deprivation of educational benefit and deprived her of a FAPE for the two months between December 2, 2015, when District should have convened an IEP meeting for her, and February 3, 2016, when District finally convened Student's IEP meeting pursuant to Parent's November 20, 2015 consent to assessment.<sup>10</sup>

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<sup>10</sup>Because District should have started Student's assessment process on September 18, 2015, it is unnecessary to address whether District's short delay in providing Parent an assessment plan until November 20, 2015, after Parent orally requested an assessment on or about October 21, 2015, constituted a FAPE violation.

FAILURE TO ASSESS IN ALL AREAS OF SUSPECTED DISABILITY; ASSESS FOR TRAUMATIC BRAIN INJURY; APPROPRIATELY ASSESS STUDENT; FIND STUDENT ELIGIBLE UNDER THE CATEGORY OF TRAUMATIC BRAIN INJURY (ISSUES 3(B), 3(D), 6(A), AND 7(A))

34. Student generally contends that District failed to assess her in all areas of suspected disability because it did not specifically assess her in the area of traumatic brain injury. Student contends that District's February 2016 multidisciplinary assessment was therefore flawed. Student also contends that District should have found her eligible for special education primarily under the category of traumatic brain injury. Student contends that her mental health issues are the result of her September 2014 concussion, and that District's failure to acknowledge that has deprived her of a FAPE.

35. District contends that it had no reason to assess Student for traumatic brain injury at any time. It contends that it appropriately assessed Student, and appropriately found her eligible for special education under the classification of emotional disturbance.

#### Applicable Law

36. Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child in all areas of suspected disability. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) The school district must assess a student in all areas, including, if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).)

37. In conducting an assessment, a school district must follow statutory guidelines that prescribe both the content of the assessment and the qualifications of

the assessor(s). The district must select and administer assessment materials in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must also be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent district personnel must administer special education assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.)

38. In performing an assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student, and to decide whether modifications or additions in the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).) In performing an assessment, an educational agency cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability and in preparing the appropriate educational plan for the pupil. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).) Persons who conduct assessments shall prepare a written report, as appropriate, of the results of each assessment. (Ed. Code, § 56327.)

39. California special education law does not require that a child be classified by his or her disability as long as each child who has a listed disability and needs special education and related services as a result of the disability, receives the special education and related services he or she needs in order to access her education. (Ed. Code, § 56301, subd. (a).)

#### Analysis

40. Student failed to meet her burden of proof that District's initial assessment was inappropriate because it did not assess in the area of traumatic brain injury. The assessment met all statutory requirements. The assessors conducted it in Student's native English language. There is no evidence the testing instruments were biased in any manner. There is no evidence that the testing instruments used were not age-appropriate for Student. The assessors chose a wide variety of testing instruments; there is no evidence that District conducted the tests improperly or scored them improperly.

41. School Psychologist used several methods of assessing Student. She reviewed Student's records, interviewed Student and Parent, received input from Student's teachers, and observed Student in class. School Psychologist also used several different tests to determine the extent, if any, of Student's mental health issues and how they might be adversely affecting Student's educational progress.

42. At the time District assessed Student, it had no information that Student's September 2014 concussion had a negative impact on Student's ability to access her education or was interfering with her educational performance. District knew Student had the concussion, but Student returned to school successfully after the injury. Student did not demonstrate any adverse effects on her education or on her social/emotional progress. Her grades remained constant, her friendships did not suffer, and she participated in class. She did all her schoolwork, maintained her relationships with peers and teachers, and did not evidence any lasting physical effects of the injury.

43. Nothing in Student's school history over the year prior to District's assessment indicate that Student's emotional disturbance stemmed from her September 2014 concussion. School Psychologist reviewed the medical record Parent provided; none of records reflected any medical concern that Student had lasting effects of the concussion or concern that her mental health problems might be the result of the concussion. School Psychologist did not have all of Student's medical records; even if Parent had provided them, they offered no further information that Student might have a traumatic brain injury.

44. Parent filled out several forms as part of the assessment process. None of the information she provided reflected a concern that Student's concussion had lasting effects that might be adversely affecting Student's education or might be causing her emotional deterioration. The only significant information District had at the time it assessed Student was that she had three psychiatric hospitalizations over a six-month period, with only the last one stemming from any issues arising at school. Even under the low standard stated in the *Cari Rae S.* decision, District was not under any notice that Student might have a traumatic brain injury and that the injury was contributing in whole or in part to Student's mental health issues.

45. Student failed to meet her burden of proof that District should have assessed her between October 2014 and February 2016, to determine if she had a traumatic brain injury.

46. It was not until Parent saw the results of School Psychologist's cognitive testing of Student that Parent made a connection in her mind between Student's September 2014 concussion and her mental health issues, which Parent contends arose only after the injury. Parent had Student's cognition tested in 2011, when Student was nine. Student's full-scale intelligence quotient was 115 points at that time. Student's full-scale intelligence quotient on District's February 2016 assessment was 96, 19 points

lower. Parent believed that the discrepancy could only be the result of Student's concussion in 2014. Parent informed District of the discrepancy. She believed that District's assessment was somehow invalid because the assessment had not looked for signs of traumatic brain injury. Parent then requested that District fund an independent neuropsychological assessment to determine if a traumatic brain injury was the source of Student's emotional disturbance.

47. Even assuming that the discrepancy in Student's intelligence quotient scores should have been enough information for District to believe that there was a possibility Student had a traumatic brain injury, Student has not proven that District should have done additional testing after February 2016. First, District agreed to fund a neuropsychological assessment as Parent requested. District's agreement to do so cured any failure to do its own assessment.

48. Second, and perhaps more significant, is that the independent assessment Dr. Johnson administered,<sup>11</sup> irrespective of her conclusions, did not contain any elements or assessment methods that District did not use or do. Both assessments

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<sup>11</sup>District objected to referencing or admitting into evidence Dr. Johnson's assessment report on hearsay grounds and because District had not had the opportunity to review the report at any IEP team meeting covered by the issues in this case. Although IEP's are generally viewed as a snapshot, and not in hindsight per the decision in *Adams, supra*, later acquired information is properly considered under the "snapshot rule" for the limited purpose of determining the reasonableness of an IEP offer. (*E.M. ex rel. E.M. v. Pajaro Valley Unified Sch. Dist.*(9th Cir. 2011) 652 F.3d 999, 1006 ("[A]dditional data, discovered late in the evaluation process, may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date."))

contained a review of Student's records, educational history, and medical. Both District's and Dr. Johnson's assessment contained interviews with Student and Parent; District also included input from Student's teachers and observations of Student in class. Both assessments included standardized cognitive testing. Both assessments included several measures, including rating scales, to determine the extent of Student's emotional issues. Student put on no evidence as to what other types of tests District should have done. Dr. Johnson specified the reason for her assessment was to determine whether Student had a traumatic brain injury that was adversely affecting her education. It is unreasonable to conclude that District should have done other unspecified tests when Student's chosen independent assessor, who specifically assessed for traumatic brain injury, did basically the same testing as District.

49. Finally, Student has failed to meet her burden of persuasion that Student should have found her eligible for special education under the category of traumatic brain injury between October 2014 and February 16, 2017, the time covered by the two consolidated cases in this matter. District did not receive Dr. Johnson's report until January 31, 2017. Dr. Johnson was not available to attend Student's annual IEP team meetings on February 1, 2017, or February 16, 2017. She did not review her report with Student's IEP team until March 20, 2017, which is outside the scope of this hearing. It would not be reasonable to find District obligated to change Student's eligibility classification before her IEP team had an opportunity to review and discuss the assessment recommending the change.

50. Even assuming that District should have reviewed Dr. Johnson's report without her present to discuss it, Student failed to meet her burden of persuasion that District should have changed her eligibility classification based upon the report. Dr. Johnson's report has some deficiencies. She did not observe Student in class. She did not interview Student's teachers or otherwise get their input, other than having one

unidentified teacher complete a rating scale. Significantly, Dr. Johnson based her conclusion that Student's emotional problems stemmed from her concussion solely on the Student scoring below average in the story recall subtest of one standardized assessment. Dr. Johnson did not reconcile that score with the mid-average scores that Student had obtained on all memory subtests of District's assessment just a year earlier, and on testing done at Children's Hospital only six months before Dr. Johnson assessed Student. These deficiencies are significant, as noted by School Psychologist and Intervention Specialist in their testimony. Student put on no evidence that addressed the deficiencies in Dr. Johnson's report, or corroborated her conclusions.

51. Additionally, as stated above, California special education law emphasizes that it is not a child's eligibility classification that determines whether a district has offered a child a FAPE. Rather, it is whether a school district has met the child's entire needs. (Ed. Code, § 56301, subd. (a).) Student contends that her emotional disturbance is the result of a traumatic brain injury. Even were that true, Student failed to put on any evidence of how her goals, placement, programming, services, and/or accommodations would have or should have been different had District found her eligible under the classification of traumatic brain injury.

52. For these reasons, Student failed to prove by a preponderance of evidence that District should have found her eligible for special education under the category of traumatic brain injury, at any time at issue in this case.

FAILURE TO PROVIDE APPROPRIATE OR SUFFICIENT SPECIALIZED ACADEMIC INSTRUCTION; COUNSELING; COGNITIVE RETRAINING; COGNITIVE REHABILITATION AND COUNSELING; TRANSPORTATION; OR VISION SERVICES (ISSUES 3(C) AND 6(B))

53. Student contends that her IEP's were substantively deficient because they failed to provide her with sufficient specialized academic instruction or related services. District responds that the IEP's it offered met all of Student's unique needs.

Applicable Law

54. A student's unique educational needs are to be broadly construed to include academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1501, abrogated in part on other grounds by *Schaffer v. Weast, supra*, 546 U.S. at pp. 56-58.) In addition, educational needs include functional performance. (20 U.S.C. § 1414 (d)(1)(A)(i)(I); Ed. Code § 56345, subd. (a)(1).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*).

55. The IEP must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee* (1st Cir. 1993) 998 F.2d 1083, 1089.) A school district is required to provide educational instruction, specially designed to meet the unique needs of a child with a disability, supported by such services as are necessary to permit the child to benefit from the instruction. (*Rowley, supra*, 458 U.S. 176, 188-189; *Andrew F., supra*, 137 S.Ct. 988, 997-1002; *San Diego, supra*, 93 F.3d at p. 1468.)

56. The IDEA does not require that an IEP identify the specific methodology that a school district will use for a student. The methodology used to implement an IEP

is left up to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Mercer Island, supra*, 592 F.3d at p. 952; *Adams, supra*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F.Supp.2d1213, *E.B. v. Warwick School Com.* (1st Cir. 2004) 361 F.3d 80, 84.)

### Analysis

57. Student failed to present any testimonial or documentary evidence in support of her contention that District failed to provide her with sufficient specialized academic instruction. Each of the IEPs at issue in this case offered Student 15 minutes of specialized academic instruction a week. The instruction was not in response to any academic deficit Student demonstrated because she had none. Nor was the instruction in response to Student's need for an instruction method different from those used in her general education classes. Rather, the specialized academic instruction time was to permit Student time to check in with a special education instructor and assure the person that she was not experiencing any emotional difficulties that a counselor, school psychologist, or other District staff needed to address. Student presented no evidence that she required more time than what District offered. Nor did she present any evidence that she required specialized academic instruction in any of her academic subjects in order to make educational progress.

58. It is unclear what issue with her vision Student contends District failed to address. To the extent she contends that she had a unique need in the area of vision of which District was aware but failed to address, Student also failed to put on any evidence to support that contention. The only evidence at hearing regarding Student's vision was that her vision was blurred somewhat after her September 2014 concussion. Student presented no evidence that she had a vision problem that could not be addressed by prescription lenses. She presented no evidence that she had any problem

that required vision therapy of any sort. Nor did she present any evidence that District was aware of a vision problem that District needed to accommodate at school but failed to do.

59. Student also contends that District denied her a FAPE by failing to provide her with adequate or sufficient counseling, including cognitive retraining and cognitive rehabilitation, and by failing to provide her with transportation to her medical appointments and private counseling sessions.

60. The crux of this issue is Student's position that District was required to fund and/or support Parent's choice of counseling methodology for Student. After Student's October 2015 hospitalization, Parent felt she needed to find a more intensive therapy for her. Student's therapist recommended the program at Harbor UCLA. That program, designed for suicidal adolescents with borderline personality disorder, utilized a method called dialectical behavior therapy, which focused on getting the patient to understand and acknowledge the depth of his or emotional or behavioral issues. Parent believed dialectical behavior therapy to be the "gold standard" for treating adolescents with mental health and other behavior issues such as the ones Student had.

61. As stated above, the inquiry is not whether the program Student wanted was better than what District offered. Neither *Rowley* nor *Endrew F.* requires a school district to provide a program that maximizes a child's educational progress. Rather, the inquiry is whether the district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP.

62. Here, District first offered Student three, 35-minute sessions of individual counseling a month, along with two, 60-minute sessions a month of parent counseling for Parent, both to be provided by a non-public mental health agency. After Student had another hospitalization in February 2016, District increased the services it offered

by adding an hour a week of in-home individual counseling for Student by the non-public agency, increasing parent counseling to once a week, and adding social work services for Student and her family in the home for 90 minutes a week. District would not and could not define what type of therapy the non-public agency would utilize, although Intervention Specialist testified that the most common type of therapy used was cognitive behavior therapy. Parent rejected all counseling District offered in Student's IEPs because she wanted Student to continue with the Harbor UCLA therapy.

63. Assuming for the sake of argument that dialectical behavior therapy is the "gold standard" for treating people with Student's mental health challenges, Student presented no evidence that dialectical behavior therapy is the only therapy that could address her issues and permit her to make progress on her goals. She presented no evidence that District's offer of counseling was insufficient, or that whatever other therapy method the non-public agency might use would be insufficient to meet her needs. She presented no evidence that another therapy methodology would somehow conflict with the private therapy she was receiving from Harbor UCLA to the extent that her progress on addressing her mental health needs would be adversely affected. None of Student's therapists testified at hearing, nor is there any documentary evidence supporting the contention that Student's preferred therapy was the only manner in which her mental health issues could be addressed.

64. The only evidence addressing the benefits of dialectical behavior therapy Student presented at hearing was through the hearsay letter Dr. A wrote on March 16, 2017 asking District to accommodate Student's schedule so that she could continue to attend the therapy sessions. The letter does not state that Student would only respond to dialectical behavior therapy and it does not state that Student would be harmed by receiving a different type of therapy from District. Intervention Specialist spoke with Dr.

A after receiving the letter. Dr. A did not tell him that Student would be adversely affected by receiving therapy from District.

65. Student therefore failed to meet her burden of persuasion that the counseling and other related health services District offered at any time relevant to this case were inadequate to meet her needs, and therefore did not offer her a FAPE. Because Student failed to demonstrate that she required dialectical behavior therapy to receive a FAPE, or that District's offer of placement and services could not meet her unique needs, she has also failed to prove that District was required to fund her transportation costs to the private therapy.

FAILURE TO TIMELY FUND NEUROPSYCHOLOGICAL OR MEDICAL INDEPENDENT EDUCATIONAL EVALUATION, OR FILE FOR DUE PROCESS; PROCEDURAL ISSUES RELATING TO THE ASSESSMENTS (ISSUES 5(A), 5(B), AND 7(D))

66. Student contends that District did not timely provide her with the neuropsychological independent assessment Parent requested on February 19, 2016, and that District failed to either provide her with an independent medical assessment, or file to prove that the evaluation was not required. District responds that it provided the neuropsychological assessment pursuant to Parent's request. District contends it was not required to provide an independent medical evaluation because there was no District medical evaluation with which Parent disagreed.

Applicable Law

67. Under certain conditions, a student is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to

include information about obtaining an IEE.) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

68. When a student requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or ensure that an IEE is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

#### NEUROPSYCHOLOGICAL INDEPENDENT ASSESSMENT

69. On February 19, 2016, Parent wrote a letter to District rejecting District's initial IEP offer and disagreeing with District's psycho educational assessment. Parent requested an independent neuropsychological assessment.

70. Although District had not conducted a neuropsychological assessment with which Parent could disagree, within a month it agreed to Parent's request and agreed to fund the assessment. District sent Parent a list of District requirements for independent assessments, as well as a list of assessor's with whom District had previously contracted. District explained that Parent could select an assessor of her choice, but that the assessor would have to be vetted to determine if their fees met District criteria, and that the assessor would have to provide necessary supporting paperwork. Finally, the District's school board would have to approve the proposed contract. District advised Parent that it would therefore take longer to process an assessment from someone who did not presently have a contract with District. Parent chose to pursue an assessor of her choice, neuropsychologist Deborah Ely Budding.

71. Dr. Budding initially informed District that her fee for a neuropsychological assessment was \$5,000, a thousand dollars more than the maximum amount District generally approved for psycho educational assessments. District approved the excess amount. It submitted Dr. Budding's contract to its Board in May 2016, after Dr. Budding had provided all necessary documentation to District. There was an error in the paperwork, and District had to re-submit it to the Board in June 2016. The Board approved the contract.

72. It is unclear when Dr. Budding's office thereafter contacted District; however, after the Board approved the contract in June 2016, a support staff person from Dr. Budding's office called District to say that they had been mistaken about the fee for the assessment. It was \$5,500, rather than the \$5,000 originally stated to District. District had to re-submit the contract to its Board. District did this sometime in September or October 2016. The Board approved the contract for the higher amount. District then sent the contract to Dr. Budding. Dr. Budding refused to sign the contract.

73. District informed Parent that she would have to select another assessor. Parent chose neuropsychologist Dr. Julia Johnson. District rapidly submitted the contract with Dr. Johnson to its Board. The Board approved the contract. Dr. Johnson conducted her assessment in December 2016 and January 2017. She provided her report to District on or about January 31, 2017. District had Dr. Johnson provide the report to Parent as soon as District received it. Dr. Johnson was not available for Student's scheduled annual IEP team meeting on February 1, 2017, and was not available for the continued meeting on February 16, 2017. She finally presented her report at the IEP team meeting convened on March 20, 2017.

74. District was not responsible for most of the delays associated with the process of completing Student's requested independent neuropsychological assessment. It started processing Dr. Budding's contract when it received the

information from her, and re-submitted her contract to its school board when Dr. Budding's office changed the amount it charged for a neuropsychological assessment. The only evidence of a delay directly attributable to District is the fact that it had to re-submit the contract to its board in June 2016, because the one it submitted in May was deficient. There is no evidence that District deliberately created the delay. Nor is there evidence that District interfered in any way with the process. It finalized the contracts as soon as it could. It agreed to extra fees above what Dr. Budding had originally requested. It resubmitted the contract promptly when told the fees would not be sufficient. District agreed to have Student select another assessor when Dr. Budding refused to sign the contract. Student has failed to prove any of her allegations regarding any procedural improprieties with the process to finalize her requested independent neuropsychological assessment. Since District agreed to fund the assessment, approved Student's chosen assessor, and approved the amount of fees requested, it was not obligated to file for due process to defend its psycho educational assessment

#### MEDICAL INDEPENDENT ASSESSMENT

75. Student contends that District was required to either provide her with an independent medical evaluation when she requested it, or file for due process to prove that it did not have a legal obligation to provide it.

76. The right of parents to an independent evaluation is intended to equip them with a competing expert opinion to counter an assessment with which they disagree, and to ensure that both assessments are considered in developing an IEP for their child. (*Lafayette Sch. Dist. v. Student* (2009) Cal. Offc. Admin. Hrngs. No. 2008120161, p.16) (*Lafayette*.)

77. Per *Schaffer* and *Lafayette, supra*, the purpose of a publicly funded independent evaluation is to provide the parent with a second opinion that may be weighed against that of the school district's assessor. An evaluation in a different

professional field, by assessors with different credentials and licenses and looking at different information, is not a second opinion. Student's contention that District was required to provide her with an independent medical assessment although it had never done one, disregards the purpose of an independent assessment.

78. Student cited to *Letter to Baus*(OSEP, February 23, 2015 65 IDELR [115 LRP 8855] (*Baus*)), to support her argument. *Baus* stated that when an evaluation is conducted by a school district, and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has a right to request an independent educational evaluation in that area. The purpose of the independent evaluation is to determine whether the child has a disability and the nature and extent of the special education and related services that child needs. *Baus* did not expand the obligation of school districts to fund independent assessments in one or more fields beyond those assessed by the district. Rather, *Baus* clarified that a parent may seek a publicly funded independent evaluation in the same field assessed by the school district, if a particular area within that field was not appropriately included in the district's assessment. The IDEA unequivocally requires that a parent seeking an independent evaluation at public expense disagree with an assessment "obtained by the public agency." (34 C.F.R. § 300.502(b)(1).) Where no assessment was performed, or the school district refused to initiate an assessment on request, the parent's recourse is to file for due process (Ed. Code, § 56501, subd. (a)(2)), as a result of which the parent may be awarded an independent assessment as an equitable, rather than statutory, remedy. (See *Los Angeles Unified Sch. Dist. v. Student* (C.D.Cal 2008) 548 F.Supp.2d 815,821-822.)

79. Further, Student failed to present any evidence of the fact that District should have done a medical evaluation as part of its initial assessment in February 2016. Student did not display symptoms of any medical condition at school. The only issues Student presented at school were related to her emotional and mental health. Even

assuming that her emotional issues resulted from her September 2014 concussion, District thoroughly assessed those emotional issues as part of its February 2016 initial assessment. District also reviewed Student's medical history as part of the assessment.

80. A district is required to review a child's diagnoses, health history, and the specific health needs a child has in school which are necessary to assist a child with a disability.(Cal. Code Regs., tit. 5, § 3021.1) District did this as part of its assessment. A District is required to inquire about possible medical side effects and complications of treatment that could affect a child's ability to function at school. (*Ibid.*) Student presented no evidence that she had a health issue, other than the mental health problems that were the basis of her emotional disturbance, that District was legally required to assess. (*Pittsburg, supra*, 835 F.3d at p. 1179). None of Student's doctors stated in any of her medical documents that Student required further medical assessment. None of Student's private mental health providers recommended further medical assessment to treat her mental health needs. Nor did Dr. Johnson, in her independent evaluation, assess any area District failed to assess or recommend that further medical assessment was necessary. For these reasons, Student failed to meet her burden of proof as to this issue.

#### FAILURE TO DEVELOP SUFFICIENT GOALS IN ALL AREAS OF UNIQUE NEEDS (ISSUE 6(C))

81. Student contends District failed to develop sufficient goals to address all her unique areas of need at her August 8, 2016, November 10, 2016, February 1, 2017, and February 16, 2017 IEP team meetings. District responds that all goals met Student's needs.

## Applicable Law

82. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.) By this standard, Student's February 2017 annual IEP was required to contain a statement of measurable annual goals.

83. Student alleges that District denied her a FAPE by failing to offer goals at her August 8, 2016, and November 10, 2016 IEP team meetings. District was not obligated to offer goals at either of those meetings because they were amendment IEP team meetings convened to address the particular purpose of discussing Student's math class. District had no obligation to offer new goals within an amendment IEP. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

84. To the extent Student contests the four goals District offered at her annual IEP team meetings on February 1 and February 16, 2017, Student failed to present any evidence to support her objections to the goals. Student presented no evidence as to

how the goals were deficient, why they did not meet her needs, why they might not have been measurable, or why she may have required additional goals. All four addressed Student's social/emotional needs known to District at the time. Student put on no evidence of any other unique need that required a goal. District's witnesses testified to the sufficiency of the goals. In his telephone conversation with Student's therapist from Harbor UCLA, Intervention Specialist asked her opinion of the February annual IEP goals. Dr. A had no critique to offer about them and no suggestions for additional goals.

85. Student has failed to prove by a preponderance of the evidence that the goals proposed by District in the February 2017 IEP failed to offer her a FAPE.

#### FAILURE TO ADDRESS STUDENT'S NEEDS IN MATHEMATICS(ISSUE 6(D))

86. Student contends that District failed to address her needs in mathematics because District assigned her to an online math class in August 2016; dis-enrolled her from the class in November 2016 without providing an alternative; and added a math class in February 2017, without assessing Student's needs in math.

87. Student has failed to meet her burden of proof as to this issue because District had already assessed Student's possible unique needs in math through its February 2016 psycho educational assessment. The results of the assessment demonstrated Student had average to high average abilities in math. Student had no unique needs in math that required special education programming, placement, services, accommodations, or modifications.

88. Parent requested that Student take an online math course. Student presented no persuasive evidence that she required the course to receive FAPE. She presented no persuasive evidence that she would not have been able successfully to pass the regular education algebra class, to which she was assigned as an incoming high school freshman. Parent's request for the online class was prompted by her desire to

have Student continue with therapy at Harbor UCLA. Taking Student to therapy in the morning, during the time algebra was taught, was a choice based on convenience, not necessity.

89. District agreed to enroll Student in the online class because of her past successes in math. Unfortunately, Student did not adapt well to the independent model of the online class. Parent asked District to dis-enroll Student from the class. District agreed to the request at Student's November 10, 2016 addendum IEP team meeting. However, as a regular education diploma bound student, Student needed to take a math class. At the November 10, 2016 IEP team meeting, and later at Student's annual IEP team meetings in February 2017, District offered numerous alternative math classes in which Student could enroll. It offered a less rigorous online class; it offered a collaborative general education class taught by a special education teacher in conjunction with a general education teacher; it offered a special education directed algebra class, and it offered Student an opportunity to take a summer school online math class. Parent rejected each alternative because none of the alternatives met her preference of District permitting Student to leave school to attend her private therapy.

90. District placed Student in a general education math class at the end of the February 16, 2017 IEP team meeting because it was required for Student's general education curriculum. Placing Student in the class did not require another assessment. Student has failed to meet her burden of proof as to this issue.

#### FAILURE TO PROVIDE MEANINGFUL PARENTAL PARTICIPATION IN THE IEP PROCESS (ISSUES 4(B), 4(C), 4(D), 4(E), 7(B), 7(C), AND 8)

91. Student contends that District significantly impeded Parent's ability to participate meaningfully in Student's IEP process by: 1) Failing to provide her with sufficient notice of the March 14, 2016 IEP team meeting; 2) Predetermining Student's placement and services in all IEPs at issue in this case; 3) Failing timely to provide Parent

a copy of the May 18 and May 25, 2016 IEPs; 4) Failing to consider Student's private mental health therapy when determining her placement; and 5) Failing to provide prior written notice with regard to changing Student's math placement and/or refusing to place Student at Fusion.

92. Special education law places a premium on parental participation in the IEP process. Parents must have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a); *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043 ["Parental participation ... is critical to the organization of the IDEA."].) Parental participation in the IEP process is considered "[A]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

#### Failure to Provide Sufficient Notice of the March 14, 2016 IEP Team Meeting

93. A district is required to provide sufficient written notice of IEP team meetings to ensure parents the opportunity to attend the meeting. Districts must schedule the meetings at mutually agreeable times and places. The written notice must contain the purpose, time, and place of the meeting, as well as who will be attending. (Ed. Code, § 56341.5, subds. (b) and (c).) Student contends that District gave her insufficient notice of the March 14, 2016 meeting.

94. District convened the meeting in response to notice that Student was hospitalized for the fourth time in February 2016 due to her mental health issues. District communicated with Parent through email starting on March 7, 2016, with the reason for the meeting as well as proposed dates. There were several emails between Parent and District to arrange mutually agreeable dates to Parent and the other IEP

team members. Parent agreed to meet on March 14, 2016. District sent her a formal written notice on March 10, 2016, which met all statutory requirements. Parent attended the meeting and participated in the discussion. Student has failed to meet her burden of proof as to this issue.

Predetermining Student's Placement and Services / Failing To Consider Student's Private Services

95. Student contends that District predetermined the placement and services it offered at each of Student's IEP team meetings convened between February 3, 2016, and February 16, 2017, thereby preventing her from having a meaningful role in developing Student's IEP. District responds that it assured Parent's participation, did not predetermine Student's IEP, and considered Parent's concerns, requests, and recommendations.

96. Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances where placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840; *Bd. of Educ. of Township High School Dist. No. 211 v. Lindsey Ross* (7th Cir. 2007) 486 F.3d 267.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 2007 WL 1989594 [107 LRP 37880, 48 IDELR 31]; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (superseded on other grounds by statute) ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification." (citing *Target Range, supra*, 960 F.2d at p.1484)].)

97. Additionally, school districts, as part of a special education local plan area, must have available a continuum of program options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a); Ed. Code, §56360.) In determining placement, a school district must consider a continuum of alternative placements. (34 C.F.R. § 300.116; Ed. Code, § 56342, subd. (b).) A school district is only required to consider those placements in the continuum that may be appropriate for a particular child. There is no requirement that the IEP team members discuss all options, so long as alternative options are available. (*L.S. v. Newark Unified School Dist.*, (N.D.Cal, May 22, 2006, No. C 05-03241 JSW) 2006 WL 1390661, \*6.)

98. Student's argument that District predetermined its offers of placement and services is prompted primarily by District's rejection of Parent's request that District fund Parent's choice of dialectical behavior therapy and fund Student's placement at Fusion so that Student could continue her therapy and still take a math class. Throughout the IEP team meetings at issue in this case, Parent insisted that dialectical behavior therapy was the only methodology that could successfully address Student's mental health issues. She insisted at every meeting that District reimburse her costs of transporting Student via automobile in an almost 100 mile roundtrip. Beginning at least with Student's November 10, 2016 IEP team meeting, Parent insisted that District fund Student's attendance at Fusion.

99. The fact that District declined to fund Parent's choice of private services does not mean that District predetermined its offers. The record contains many instances of Parent's participation in Student's IEP process. For example, District assessed Student in January and February 2016 based on Parent's request for assessment. The areas District assessed were based in part on information received from Parent. District asked for Parent's input at Student's initial IEP team meeting on February 3, 2016. It added an accommodation based upon Parent's request in her February 19,

2016 letter to District. District agreed to fund a neuropsychological assessment, although it had not done one itself, based upon Parent's concern that Student had a traumatic brain injury and that District's assessment was deficient. District called an IEP team meeting after Parent notified it that Student had been hospitalized again in February 2016. At the March 14, 2016 IEP team meeting, District added several levels of counseling services for Student and Parent based upon information received from Parent. District held an IEP team meeting on May 18, 2016, to address Parent's request for summer school for Student. Although District did not agree that Student required summer school, it discussed the issue with Parent and heard her concerns. District convened an IEP team meeting on August 8, 2016, a week before the start of the 2016-2017 school year, to discuss Parent's concerns about Student's math class. In response to those concerns, District investigated whether Student was eligible for an online class, and agreed to have her take the class. At the November 10, 2016 IEP team meeting, when Parent asked District to remove Student from the class because Student was having difficulties with it, District agreed to do so. It then offered several alternative methods for Student to meet the math requirement, all of which Parent rejected.

100. District tried to accommodate Parent's requests and preferences; the fact that it did not accede to fund the private services Parent desired is not evidence of predetermination or of impeding Parent's right to participate in the process of developing Student's IEPs. Student has failed to meet her burden of proof as to these issues.

Failing timely to provide Parent a copy of the May 18 and May 25, 2016 IEPs

101. School Districts are required to provide parents with copies of the student's IEP, at no cost to parents. (Ed. Code, § 56341.5, subd. (j).) There is no specific time after the IEP team meeting by which the district must provide the IEP document.

102. Parent asked District to convene an addendum IEP team meeting to discuss possible extended school year services for Student. District convened the meeting on May 18, 2016. Teacher C was supposed to give Parent a copy of the IEP document right after the meeting, but Teacher C became ill and could not complete the document. She did not have it finished before the second half of the addendum IEP team meeting convened on May 25, 2016, to discuss Student's transition to high school. Teacher C provided a full copy of the IEP document, with notes from both meetings, on May 31, 2016.

103. Student provided no evidence that the 12-day delay in Parent's receipt of the May 18, 2016 IEP, or her six-day delay in receiving the May 25, 2016 IEP, impeded Student's right to a FAPE, caused her loss of educational benefit, or significantly impeded Parent's ability to participate in Student's IEP process. The May 18 IEP meeting took place solely to address Parent's request for extended school year services. District did not believe Student met the criteria for extended services, and so did not offer any. There is no evidence that Parent needed the IEP document to take any further action on the issue before she received it on May 31, 2016. Nor did Student demonstrate any denial of FAPE by the six-day delay in Parent's receipt of the full IEP document. Student has failed to meet her burden of proof as to this issue.

#### Failure To Provide Prior Written Notice

104. A school district must provide written prior notice to the parents of a child whenever it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a).) By statute, the notice must contain the following: a description of the action the school district proposes or refuses; an explanation of why the school district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record or report used as a basis

for the proposed or refused action; a statement that the parents have procedural safeguards; if the notice is not an initial referral for evaluation, the procedure to obtain a copy of the procedural safeguards; sources the parents may contact to obtain assistance; a description of other options considered by the IEP team and the reason those options were rejected; and a description of the factors relevant to the school district's proposed or refused action.(20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

#### CHANGE IN STUDENT'S MATH PLACEMENT

105. At Parent's behest, District agreed that Student could take an online general education math class rather than enroll in the general education algebra1 class Student was scheduled to take as an incoming freshman for the 2016-2017 school. Taking the online class did not change Student's placement. Rather, it was a general education alternative offered to all eligible students in District, irrespective of whether they were eligible for an IEP. Likewise, District's agreement to dis-enroll Student from the class in November 2016, again at Parent's behest, was not a change in placement. Student simply dis-enrolled from a general education class, which left her missing a general education class required for graduation. District offered Parent several alternative math classes for Student, all of which would meet District graduation requirements. Parent declined each alternative. Because Student was on track to receive a diploma, and because Parent refused to select one of the alternative classes offered, District re-enrolled Student in general education algebra 1. There was no change in placement because Student had always been enrolled in general education math. District merely changed the type of general education math class from online to a classroom.

106. Had District unilaterally enrolled Student in the special education directed algebra class, which was one of the alternatives it presented to Parent, it would have

amounted to changing Student's placement because it would have increased the time she spent out of general education. Because the change from the online class to the brick and mortar class on campus did not increase or decrease Student's time in general education, it did not amount to a change in placement. District was not required to provide Parent with prior written notice of the change any more than it would have been required to provide prior written notice had it changed her physical education class from dance to track and field. Student has failed to meet her burden of proof as to this issue.

#### REFUSAL TO FUND FUSION ACADEMY

107. Parent was searching for alternative math classes Student could access off-campus. Her research led her to Fusion Academy, a private school that offered one-on-one instruction in a variety of academic subjects. At all relevant time periods, Fusion was accredited by the Western Association of Schools and Colleges, but not certified by the California Department of Education as a nonpublic school.

108. It is unclear exactly when Parent first requested that District fund Student's attendance at Fusion. Although testimony at hearing suggested that Parent had conversations with some District IEP members about her consideration of Fusion as early as summer 2016, the first reference in any of Student's IEPs was the one for her November 10, 2016 addendum meeting. District had convened the meeting to discuss Student's difficulties with the online math course.

109. District did not reject Parent's request for Fusion funding at the November 10, 2016 IEP team meeting. Rather, the District team members present at the meeting stated that they would have to discuss with District's special education department whether funding the class was feasible. District said that it would let Parent know. District never formally responded to Parent's funding request. Parent broached the subject again during Student's annual IEP team meetings on February 1, 2017, and

February 16, 2017. She also spoke informally with District team members outside the meetings. District informally told Parent that it *could not* fund the class because Fusion was not certified as a nonpublic school and District could therefore not contract with it. District also told Parent that it *would not* fund the class because Student did not require one-on-one instruction in order to receive a FAPE and because District had several alternative math classes in which Student could make meaningful progress in math.

110. There is no evidence that District stated its reasons for denying Parent's request for funding in any of Student's IEP documents. There is no evidence District ever provided formal prior written notice to Parent by letter or by email, as to the reasons it declined to fund Fusion, at least at any time between the start of the 2016-2017 school year and the time Student filed her due process complaint raising the issue of lack of prior notice. Fusion was not a District general education program or class. It was a private school where students received individualized instruction in a very restrictive environment. Student's attendance at Fusion would have decreased the amount of time she spent in general education. Therefore, her attendance at Fusion would have been a change of placement. District's rejection of Parent's request for funding constituted a refusal "to initiate or change...the educational placement of the child." As such, District was required to provide prior written notice explaining why it declined the change Parent requested.

111. There is no evidence that the failure to provide the prior written notice denied Student a FAPE or prevented her from gaining any educational benefit. Student did not require the class and District proved at hearing that it offered several alternatives that would have met her academic needs in math. However, the failure to provide the notice significantly impeded Parent's participation in Student's IEP process. The lack of notice resulted in Parent not fully understanding why District refused to fund a class she felt necessary for her child. The lack of formal notice caused Parent to raise

the issue on multiple occasions because she did not have a clear idea of why District refused to fund the class. The reason for the statutory requirement of notice is so that parents, who generally do not have expertise in special education, understand why a district makes a decision or refuses a parent's request.

112. For these reasons, Student has met her burden of proof that District's failure to provide prior written notice of its decision not to fund Fusion amounted to a denial of FAPE.

## REMEDIES

1. Student has asked that District reimburse her for costs incurred transporting Student to and from hospital stays, medical appointments and therapy session, an independent medical evaluation by a licensed medical doctor, and compensatory education in the areas of academics, rehabilitation counseling, and psychological services. District contends that Student is not entitled to any of the relief she has requested.

2. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

3. The IDEA does not require compensatory education services to be awarded directly to a student, so school district staff training can be an appropriate remedy. (*Park, supra*, 464 F.3d 1025 at p. 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher

appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy violations that may benefit other pupils. (*Ibid.*)(*Student v. Reed Union School District* (2008) Cal.Offc.Admin.Hrngs. No. 2008080580, p. 8. [requiring training on predetermination and parental participation in IEP's]; *Student v. San Diego Unified Sch. Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring training regarding pupil's medical condition and unique needs].)

4. District denied Student a FAPE by failing to offer Parent an assessment plan within 15 days of her oral request for one on September 18, 2015. District did not provide an assessment until November 20, 2015, which delayed for two months the ultimate determination that Student was eligible for special education. Because District had not even started the assessment process by providing Parent an assessment plan at the time Student was released from the hospital on October 9, 2015, Parent was compelled to seek out private counseling services for Student to address Student's increasing mental health needs.

5. Parent did not have to fund the private services she obtained from Harbor UCLA because Student's insurance covered the full cost of the therapy. However, Parent had to fund the cost of transporting Student to the private therapy. Parent is therefore entitled to reimbursement for those transportation costs from October 21, 2015, the first day Student received therapy at Harbor UCLA, until February 16, 2016, when District completed Student's initial IEP team meeting and formally offered Student a FAPE. Parent provided credible evidence that she took Student to therapy 14 times between those dates. Parent also provided credible evidence that the round trip from Student's home to Harbor UCLA is 94 miles. At the Internal Revenue's present mileage reimbursement rate of .535 cents a mile, Parent is entitled to reimbursement of \$704.06.

6. Student also met her burden of proof that District denied her a FAPE by failing to provide Parent with prior written notice of its refusal to fund Student's placement at Fusion. This refusal, as well as District's failure to timely assess Student, are procedural violations of the IDEA. It is clear from the facts of this case that Director did not understand his obligation to assist Parent in preparing a written request for assessment, as required by California regulations. It is also clear that District did not understand that a parent's request for a private placement required District to provide prior written notice if it refused the request. It is therefore appropriate to order District to provide training to staff at Charter and to Student's IEP team at her high school regarding its procedural obligations under the IDEA.

7. Student has failed to provide any persuasive evidence for the other remedies she has requested.

## ORDER

1. Within 45 calendar days of this decision, District is ordered to reimburse Parent \$704.06 for the cost of transporting Student 94 miles round trip to and from Harbor UCLA between October 21, 2015, and February 16, 2016. Student received 14 therapy sessions from Dr. A during that time. No further proof of payment is required as Student submitted sufficient proof at hearing.

2. By no later than one month after the start of the 2017-2018 school year, District shall provide three hours of training to special education staff and all administrators at Charter, and to all special education staff and administrators at Student's high school of residence. The training content shall include the following: the requirements of the IDEA to provide parents meaningful participation in the IEP process; the need to assess students upon request of a parent and/or the need to reduce an oral request for assessment to writing; and the need to provide prior written notice of any proposed changes to, or refusals to change, a student's placement or IEP. The training

shall be provided by qualified professionals from an educational institution, by qualified special education attorneys from an outside law firm, or other similar entity. Training shall not be provided by past or present District employees.

3. All other relief sought by Student is denied.

## PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student partially prevailed on issue 1, fully prevailed on issue 3(a), and partially prevailed on issue 8. District prevailed on all other issues heard in this matter.

## RIGHT TO APPEAL

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).)

DATED: June 14, 2017

/S/

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings