

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

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

OAH Case No. 2014120059

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT; SIMI VALLEY UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2014120530

DECISION

This matter came before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings, State of California, on remand from the United States District Court, Central District of California, Case No. 2:15-cv-05819-CAS-MRW.

Student filed her due process hearing request with OAH on November 21, 2014, naming Los Angeles Unified School District and Simi Valley Unified School District. On December 11, 2014, Los Angeles Unified filed a due process hearing request with OAH, naming Student. The matters were consolidated by order dated December 22, 2014.

Administrative Law Judge Elsa H. Jones heard the consolidated matters in Van Nuys, California on February 24, 25, and 26, 2015, and March 3, 4, 9, and 10, 2015, and rendered a Decision on May 4, 2015. In the May 2015 Decision, the ALJ decided against Student and in favor of Los Angeles Unified on several issues. Student sought review in the District Court on three of those issues: (1) Whether Los Angeles Unified denied Student a free appropriate public education by failing to discuss placement at a residential treatment facility at the October 21, 2014 individualized education program team meeting; (2) Whether Los Angeles Unified denied Student a FAPE by predetermining the question of placement at a residential treatment facility at the October 21, 2014 IEP team meeting; and (3) Whether District denied Student a FAPE by failing to offer placement at a residential treatment facility at the February 26, 2014 and October 21, 2014 IEP team meetings.

On September 12, 2016, the District Court, the Honorable Christina A. Snyder, Judge Presiding, issued a Memorandum and Order on Appeal from Administrative Law Judge's Decision, overturning the ALJ's May 2015 Decision as to those three issues. Judge Snyder remanded the case "to the ALJ for a determination regarding the appropriate relief in light of the Court's ruling here and the evidence in the record." (District Court Order, p. 24.)¹

¹ The District Court Order noted that the ALJ's May 2015 Decision contained "detailed and thorough factual findings. [Citation omitted.] With the exception of those factual findings that are more appropriately construed as conclusions of law, the Court concludes that the factual findings in the decision below are accurate, and adopts them as they are set out." (District Court Order, p. 3.) The factual findings in the ALJ's May 2015 Decision are incorporated by reference in this Decision.

ALJ Jones held the remand hearing on February 21-23, 2017, and March 1, 2017, in Van Nuys, California. Janeen Steele, Patricia Van Dyke, Devon Hein, and John C. Korevec, Attorneys at Law, represented Student and appeared on each day of hearing. Allison Holcombe, Attorney at Law, also appeared, along with the above-listed attorneys, on the last hearing day. Ms. H., Student's Educational Rights Holder and Court Appointed Special Advocate attended all but the last day of hearing.² Student did not attend the hearing, and did not testify.

Diane Willis, Attorney at Law, represented Los Angeles Unified. Juan Tajoya, a Los Angeles Unified due process specialist, attended all days of hearing as Los Angeles Unifier's representative.³

Sworn testimony and documentary evidence were received at the hearing. A continuance was granted until April 3, 2017, for the parties to file written closing briefs. The parties timely filed their written closing briefs on April 3, 2017, at which time the record was closed and the matter was submitted for decision.

² The Los Angeles Superior Court has changed Student's Educational Rights Holder twice during the pendency of Student's due process hearing complaint. By order dated January 30, 2015, the Superior Court appointed Ms. H. as Student's Educational Rights Holder, and she served in that capacity continuously through the time of the remand hearing. Ms. H. is designated only by her initials to preserve confidentiality.

³ Simi Valley's conduct was not involved in the issues on remand. OAH notified Simi Valley of all proceedings in this matter on remand, but Simi Valley did not attend any of them.

ISSUES

Based upon the District Court's Order, briefing by the parties, discussions with the parties during a trial setting/status conference held on October 31, 2016, and a prehearing conference held on February 13, 2017, the issues decided at the remand hearing were whether Student is entitled to the following remedies:

1. An order that Los Angeles Unified amend Student's February 26, 2014 and October 21, 2014 IEP's to offer Student a residential placement for educational purposes;
2. Compensatory education during the 39-day period starting on January 16, 2015 and ending on February 23, 2015, due to the failure of Student's IEP's of February 26, 2014, and October 21, 2014, to offer Student a residential placement for educational purposes; and
3. An order that Los Angeles Unified train its instructors and staff regarding their legal obligations to consider and offer residential placement for educational purposes to foster children who are eligible for special education from Los Angeles Unified.⁴

SUMMARY OF DECISION

This Decision finds that Student's February 26, 2014 IEP and her October 21, 2014 IEP should be amended to offer Student a residential placement. Furthermore, had these

⁴ Student independently and voluntarily selected the time period for the compensatory education in the trial setting conference brief that she filed on October 26, 2016, in response to an Order from the ALJ. This timeframe then raised an issue as to the scope of the evidence to be received at the remand hearing, and the parties briefed that issue prior to the remand hearing.

IEP's offered Student a residential placement, Los Angeles Unified should then have provided Student prior written notice and convened an IEP meeting to discuss the transition or other services Student would need when the Children and Family Services Department determined to transition Student from the locked Vista residence. Consequently, Student is entitled to compensatory education as set forth below. This Decision also finds that no basis exists to require Los Angeles Unified to conduct staff training.

FINDINGS OF FACT

BACKGROUND

1. At the time this remand hearing commenced, Student was a 17-year-old young woman who, at all relevant times, was a dependent child of the Los Angeles County Superior Court and eligible for special education and related services under the category of emotional disturbance. Student turned 18 years old while this hearing was in progress. After she reached 18 years of age, Student designated Ms. H., in writing, to be her Educational Rights Holder. At the time this hearing concluded, Student was residing in a foster home located within the boundaries of Los Angeles Unified.

2. When she was four years old, Student witnessed her mother's death from an aneurism. Student's father was not involved in her life. Student's emotional and psychological behavior problems began to manifest themselves when she was about six or seven years old. Her initial behaviors included stealing from teachers and peers. As she grew older, her behaviors included aggression, anxiety, hyper vigilance, irritability, temper tantrums, impulsivity, defiance, dissociation, suicidal and homicidal ideations, cutting herself, and blunted affect with social isolation. Her diagnoses over the years included bipolar disorder, psychosis not otherwise specified, post-traumatic stress

disorder, and attention deficit hyperactivity disorder. She was prescribed a variety of psychotropic medications.

3. Student was cared for by her grandparents after her mother died, but, in 2010, when she was 11 years old, the Department of Children and Family Services removed Student from her grandparents' care. Thereafter, Student resided in a succession of foster homes and group homes, as well as at Juvenile Hall, until April 2013. On April 19, 2013, when Student was 14 years old, Children and Family Services Department placed Student in the locked level 14 residence at Vista Del Mar Family and Child Services, located within the boundaries of Los Angeles Unified. The Vista Del Mar facility is a licensed children's institution, and its level 14 locked residential facility is a community treatment facility. Children and Family Services Department placed Student there because Student required intensive psychiatric care. She stayed there until she was discharged in January 2015. During her stay at the locked Vista residence, Student attended the locked Vista nonpublic school, pursuant to her IEP's. The Vista Del Mar facility also included an unlocked, or open, nonpublic school.

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

4. A child's admission to the locked Vista residence was determined by a screening committee, which included representatives of the Los Angeles County Department of Mental Health, Children and Family Services Department, the Los Angeles County Probation Department, and representatives from other level 14 facilities. The screening committee evaluated whether a particular child met the criteria to be in a locked level 14 facility.

5. Students in the locked Vista residence participated in a day treatment program, which provided regularly scheduled group therapy as well as milieu therapy throughout the day. All students in the locked Vista residence received 60 minutes per

week of group counseling in the locked Vista nonpublic school. School-based clinicians (counselors) were available to the students in the locked Vista nonpublic school throughout the school day. Student began to receive educationally related mental health services counseling in June 2013, to address anger management difficulties, oppositional behavior, mood swings, depression with psychosis, peer difficulties, and work avoidance.

6. Treatment teams for students at the locked Vista residence met regularly to review treatment plans and the student's needs. If a student was placed at the locked Vista residence by the Children and Family Services Department, the treatment team would collaborate with the Department regarding treatment, needs and services plans, whether the student was ready for discharge to a lower level of care, and preparation of the appropriate documentation, among other matters.

SUMMARY OF STUDENT'S BEHAVIORS AND PROGRESS AT THE LOCKED VISTA RESIDENCE AND LOCKED VISTA NONPUBLIC SCHOOL

7. Student exhibited a variety of behaviors during her stay at the locked Vista residence, some of which differed from those she exhibited while in class. A functional behavior assessment conducted in February 2014 listed 22 behaviors student engaged in during the 2013-2014 school year, ranging from 33 incidents of disrupting class to one instance of each of the following: assaultive behavior toward staff, Absent Without Leave (AWOL) off grounds, violating the dress code, inappropriate references to drugs, operating classroom equipment without permission, violating electronic policy, and throwing objects. (Vista Del Mar staff referred to Student's leave taking from class as AWOL behavior because Student was not at the point where she was able to ask for a break. She would simply leave if she felt stressed.) Student had 13 absences. She also had 22 days of psychiatric hospitalizations, which occurred at various times in August,

September, and November 2013. Due to truancies, hospitalizations and incidents of Student being AWOL, Student was absent from school 59 days out of 113 school days.

8. Disruptive, attention seeking and oppositional behaviors occurred within the classroom environment across all subject areas and throughout the school day. Student's inability to independently modulate her mood or unwillingness to use positive coping strategies resulted in Student's inability to maintain herself in the classroom.

9. Mary Large, Ph.D. performed a comprehensive neuropsychological assessment of Student in May 2014, and produced an assessment report dated June 8, 2014. She interviewed a variety of Student's service providers at the locked Vista residence as well as one of Student's teachers. Overall, Student's behavior had improved since her admission to the locked residence, and Student was highly motivated to move to a lower-level, less-restrictive facility. Ultimately, Student wanted to live with her grandparents and attend public school. Student displayed significantly less physical aggression, was better able to self-soothe by removing herself from situations, she could regulate her behavior and mood well when staff was available to talk to her and help her process her irritation, and better able to communicate her feelings. Her social interactions had improved. Her classroom behavior had also improved significantly, as she was calmer and better able to cope, and left the room less frequently. However, she rushed through her class work, made careless errors, and then refused to correct them. She did not take feedback, redirection, or criticism well.

10. Dr. Large's recommendations included continued placement in a locked, level 14 residence, because Student needed a high level of containment both residentially and educationally. Student required milieu therapy on a regular basis, and trained staff to respond to a range of situations. Student had made slow but steady gains in this setting. Dr. Large also recommended that Student remain in a nonpublic school. She concluded that it might be appropriate to move student to a less restrictive

placement, such as an unlocked level 12 facility, in three to six months, but Student would need more behavioral regulation before such a placement would be appropriate.

11. At Student's IEP team meeting in October 2014, when Student was 15 years old and in the ninth grade at the Vista locked nonpublic school, the IEP team learned that, due to Student's increased academic and behavioral improvement, the Department of Children and Family Services planned to move student to a less restrictive, unlocked level 14 residential facility. Vista staff was present at this meeting, but neither Student's prior educational rights holder, nor Student's educational counsel, all of whom were also present at the meeting, voiced any objection to the proposed move.

12. Student called attorney Craig Liu to testify at the remand hearing as to the procedures by which residential placement and other types of decisions are made when a child is under the control of the Children and Family Services Department. Mr. Liu received his bachelor's degree in criminology as well as education from the University of California, Irvine, and his law degree from Whittier Law School. Since 2010 he has been a named partner in a law firm specializing in representing special needs children. From 2005 through the present he has been involved in several capacities with the Children's Law Center of Los Angeles, which serves children in the dependency system, including children with special needs who receive special education. He co-authored a manual for dependency court judges on special education laws pertaining to foster youth. Prior to becoming an attorney, he was a special education classroom teacher. Mr. Liu was not a percipient witness. He did not have any role in the circumstances surrounding Student's life, her residence, her educational placement, or any matters that were the subject of Student's dispute with Los Angeles Unified.

13. Mr. Liu described the variety of personnel involved in issues surrounding foster children with special needs, including minor's counsel, parent's counsel, social

workers, educational rights holders, and education counsel. The minor's counsel's responsibilities involved ensuring that the best interests of the child were represented in all aspects of a child's life, including the child's residence, educational placement, and social/emotional well-being. If a child was in long-term foster care, as was Student, there would typically be a Dependency Court hearing every six months to review the case, until the child aged out or became a non-minor dependent. A social worker report would be presented at each of those hearings.

14. If an IEP team determined that a child needed a residential placement for educational purposes, the IEP would typically state "residential treatment center" without a more specific description, such as the level of placement. If a Student had an IEP calling for a residential placement, the Children and Family Services Department would review the IEP before deciding to change the child's residence, as well as therapist reports, and an internal review. Then, there would possibly be a team decision meeting, when all of the parties, including minor's counsel and the educational rights holder would meet to determine the level of care Student required. The school district would not be invited to this meeting. If the Children and Family Services Department wanted to move the child from the residential placement and the education rights holder disagreed, the Children and Family Services Department would likely report the dispute to minor's counsel, who would consult with the educational rights holder and the matter might be argued before the Dependency Court. Deference would be given to the educational rights holder's preference.

15. Additionally, if the Children's and Family Services Department placed Student in a locked level 14 or locked level 12 facility, the Department would meet once per week with its placement team to determine whether the student needed a different level of care. Often, minor's counsel and the Juvenile Court Mental Health Department would be included in those meetings. Minor's counsel would have input into decisions

regarding whether a student would be placed in, or be discharged from, a locked level 14 facility. Minor's counsel would be particularly interested if a student were placed in a locked level 14 facility, because such a placement would restrict Student's rights. If a child were placed in a locked level 14 facility and did not belong there, it would violate the child's rights. Additionally, children have a right not to be in a locked facility against their will. If the student advised minor's counsel that student did not want to be in a locked level 14 facility, and the minor's counsel was not certain that the child needed to be placed there, counsel could move the court for a determination as to placement. Similarly, if the minor's counsel disagreed with the Child and Family Services Department's decision to discharge the Student from a locked level 14 placement, then the minor's counsel could seek a court order to determine the issue. If the educational rights holder and/or the educational attorneys knew of, and disagreed with, the Department of Children and Family Services decision to discharge student from the locked level 14 placement and disagreed with it, they could also seek a hearing in dependency court to attempt to stop the discharge.

DISCHARGE FROM LOCKED VISTA RESIDENCE

16. By the end of the calendar year 2014, Student had progressed to the highest levels on the residential unit. Throughout fall 2014, Student had looked forward to being discharged from the locked Vista residence. Her transition out of the residence was delayed, however, at least in part because she was assigned a new social worker. During the delay, Student noticed that other girls, some of whom had not been at the locked Vista facility as long as she had been, were transitioning out, and new girls entered who could be provocative and who evoked Student's suspicions. As a result of the delay in her discharge, Student felt discouraged and hopeless, and her behavior began to deteriorate. Consequently, she had a brief psychiatric hospitalization on January 6, 2015.

17. Student's last day of attendance at the Vista locked nonpublic school was January 14, 2015. On Friday, January 16, 2015, Children and Family Services Department removed Student from the locked Vista residence and placed her at Crittenton Residential Treatment Facility, a level 12 facility located in Fullerton, California. Crittenton is located outside of the boundaries of Los Angeles Unified. On the evening of January 16, 2015, Student ran away from Crittenton and went to her grandparents' home. Student's grandparents called the police. On Tuesday, January 20, 2015, Children and Family Services Department picked up Student from a police station and placed her at Delilu Achievement Home, a level 12 temporary residential placement located within the boundaries of Los Angeles Unified. There was no specific evidence as to where Student resided from January 16, 2015 until January 20, 2015, when Children and Family Services Department picked Student up at the police station, and no evidence that Student attended school during that time.

18. Children and Family Services Department provided Student with a one-to-one aide at Delilu, but she did not have one-to-one assistance from the time she was removed from the locked Vista residence until she was placed at Delilu. There was no specific evidence that Student had any transition assistance with respect to her discharge from the locked Vista residence.

OPEN VISTA NONPUBLIC SCHOOL

19. While Student resided at Delilu, Los Angeles Unified placed Student at the open Vista nonpublic school, and she began to attend school there on January 30, 2015. On or about February 24, 2015, the Children and Family Services Department placed Student at Dimondale Adolescent Care Facility, a level 12 residential treatment center and licensed children's institution. Dimondale was located in Carson, California, located within the boundaries of Los Angeles Unified. Student received wraparound therapy services at Dimondale, and had a one-to-one aide there. The wraparound therapy

services consisted of mental health therapy and counseling provided to Student throughout the day outside of school hours. Student continued to attend the open Vista nonpublic school and Los Angeles Unified paid for Student's transportation to and from the open Vista nonpublic school and Dimondale.

20. The open Vista nonpublic school provided a therapeutic environment. Student received two hours per week of individual counseling and one hour per week of group counseling there. Trained counseling staff from the Vista level 12 residential facility were available, if necessary, to provide additional counseling throughout the school day.

21. When Student first started at Vista nonpublic school, she regularly attended classes and stayed in them for the entire period, except for math. In all classes but math, she was prepared for class, she did her class work, and participated in class. She did not like math, and therefore she did not stay in math class. When she left math class, or when she arrived there but did not enter, she sat on a bench outside of the class. Sometimes an aide or counselor would sit with her and help her with math.

22. In early February 2015, while Student was still residing at Delilu, Dr. Large began to obtain additional information regarding Student's functioning in her new residential and educational settings. She wrote a supplemental report on February 16, 2015, which updated her previous report. Dr. Large concluded that Student was making a mostly positive transition to her new academic placement, and was relatively stable at Delilu. Dr. Large recommended that Student continue her placement in a therapeutic residential facility. Such a placement was required to provide Student the level of emotional and behavioral containment necessary to facilitate interpersonal functioning and learning. Without it, she was unlikely to derive much, if any benefit from her educational environment. Provided Student could maintain some degree of self-regulation similar to what she had achieved at the locked Vista residence, Dr. Large

recommended that she continue to be placed at a level 12 residential facility, and that she have a one-to-one aide at the residence.

23. Subsequent to February 2015, Student's behavior and her attendance deteriorated somewhat. She consistently had conflicts with peers and displayed defiant behaviors when she resided at the locked Vista residence, and those problems again cropped up at Dimondale and at the open Vista nonpublic school. She also historically had difficulty keeping her emotions in check, and de-escalating her emotions when they were elevated. Those behavioral deficiencies again manifested themselves at Dimondale and the open Vista nonpublic school.

24. She was absent one day in February 2015, seven days in March, three days in April, nine days in May, two days in June (which had only 10 days of school), and five days in July. Many of her absences were due to "School Refusal" or "Truant." The records did not show whether her absences were all-day absences or partial-day absences. She had 32 time-outs for AWOL's during February and March. She also had a few time-outs from February through March for defiant/disrespectful behavior, and excessive profanity. The time-out summary during February and March showed time-outs for various behaviors that occurred only once, such as sleeping in class, class work refusal, provoking peers, and dress code violations. She had 39 time-outs for AWOL's from April through July. The counseling notes reflected several counseling sessions when Student discussed peer conflicts.

25. She was involved in physical altercations with a peer on March 16, 2015. She was involved in two additional physical altercations with peers on May 14 and on May 19, 2015. On May 13, 2015, she mentioned to Isabelle Rothbard, who provided individual counseling to Student on campus, "Oh, and by the way, I'm gonna kill you," but Student said it was a joke, and she did not act on the statement in any manner. Ms. Rothbard did not think Student was serious, but rather was just testing the relationship.

26. Student's last day of attendance at the open Vista nonpublic school was July 27, 2015. The documentation reflects a psychiatric hospitalization on that date, which was the only documented psychiatric hospitalization she had while she attended the open Vista nonpublic school.

27. Student's progress at the open Vista nonpublic school was mixed. Ms. Rothbard commented that Student made slow, steady progress in her ability to trust, in relationship building, in social skills with peers, and in relations with adult staff. She sometimes observed Student engage with peers in a positive way. However, later in the semester, Student ceased doing well at school. Student expressed that she did not like the open Vista nonpublic school, and wanted to go to public school and live near a relative. Student was receiving two hours per week of counseling from Ms. Rothbard at school, and Ms. Rothbard believed that was about as much counseling as Student could tolerate.

28. Lloyd Bronstein, who provided group counseling to Student for 45 minutes per week at the school, commented that Student made progress in counseling. Student developed a good relationship with him, and would seek out Mr. Bronstein or Ms. Rothbard when she had issues. Mr. Bronstein considered this as demonstrating growth. Student would also more often express the reasons for her feelings, and would smile a little more frequently.

29. Mr. Bronstein did not think that Student's absences and AWOL's were necessarily unusual for a student at the school. Danielle Aranda-Harris, an assistant principal at the school, stated that it was usual for student attendance to decline at the school over time.

30. Both Ms. Rothbard and Mr. Bronstein occasionally communicated and met with Dimondale's Director. Student and the Director had a good relationship at first, but Student's behaviors at Dimondale deteriorated. Student began to have trouble with her

peer relationships there. Eventually the Director concluded that Student needed more care than Dimondale could provide to keep Student safe and happy.

APRIL 22, 2015 IEP

31. On April 22, 2015, Los Angeles Unified convened an IEP team meeting to review Student's transition plan. The IEP team included Ms. H., Student, Student's educational attorney, an administrative designee, a special education teacher, Ms. Rothbard and Mr. Bronstein, an assistant principal for both Vista nonpublic schools, and a workability representative. Student made progress on her reading, math, and written language goals. She met her behavior support and transition goals. She made some progress on her social emotional goal, but had not met the goal. She made some progress in verbalizing her feelings and needs, but needed to continue working on identifying and implementing coping skills. The IEP included a behavior support plan, and a transition plan.

32. The behavior support plan addressed Student's off-task behavior, which consisted of provoking peers, destroying assignments, and refusing to work. The reactive strategies included reminding Student to use positive verbal interaction with her peers, requesting she take a short break to calm down when agitated, requesting she reintegrate into class and complete the assignment, and reminding Student of a loss of points for multiple redirections. The behavior goal that accompanied the behavior support plan required that, when frustrated by challenging peer interactions, Student would demonstrate appropriate responses by the use of conflict resolution, walking away, and seeking staff support in four out of five opportunities.

33. The transition plan described Student's interest in eventually transitioning to a comprehensive high school and attending community college to study child development. She wanted to work as a teacher's aide for eighth graders. Eventually she

wanted to move near her family. Her postsecondary goals included enrollment in a two-year or four-year college, employment, and living independently.

34. The IEP team determined that Student should remain in the nonpublic school setting. The team's offer of a FAPE included placement at the open Vista nonpublic school, with special education, accommodations, and educationally related counseling for 120 minutes per week. The team noted that efforts continued to monitor Student's return to a less restrictive environment.

35. Ms. H. and Student's counsel wanted to present Dr. Large's neuro psycho educational report of June 8, 2014, and Dr. Large's supplemental report of February 16, 2015, but, because a school psychologist did not attend the meeting, the team deferred discussion of the reports. Team members decided to review the report at the October 2015 IEP team meeting.

36. On May 7, 2015, Ms. H. agreed that Los Angeles Unified could implement the IEP, but did not agree that it constituted a FAPE, because the IEP did not discuss, offer, or provide what Dr. Large had recommended in her report and supplemental report. Ms. H. also requested that the remedies provided in the ALJ's May 4, 2015, Decision be addressed. Nobody recommended or requested that Student be returned to a level 14 residential treatment center.

JUNE 3, 2015 IEP

37. District convened another IEP meeting on June 3, 2015, to review Dr. Large's June 2014 and February 2015 supplemental report. The IEP team included Dr. Large, a representative from Dimondale, an administrative designee, a special education teacher, a school psychologist, Ms. Rothbard and Mr. Bronstein, two of Student's educational attorneys, and an administrator from the open Vistanon public school. Ms. H. was not present.

38. The team noted Student's progress on her goals. She made progress on all of her academic goals (reading, math, and writing), but her progress on her math goal was less than 50 percent and not sufficient to meet the annual goal. She made sufficient progress on her behavior support plan goal (using appropriate strategies when frustrated by challenging peer interactions) to meet the annual goal. She had not made sufficient progress on her social emotional goal (identifying and using positive coping skills when triggered by anger, frustration, and anxiety) to meet the annual goal. She met her objectives on her transition goal. She had not met any of her objectives with respect to her social-emotional behavior goal, yet the IEP reflected that Student was making progress sufficient to meet the annual goal.

39. The team reviewed Dr. Large's report. The team discussed Student's class refusals and a new behavior support plan to address that need. The team also agreed that Student's eligibility of emotional disturbance was the most appropriate eligibility category, even though Dr. Large diagnosed Student with a specific learning disability in reading comprehension.

40. The behavior support plan was directed at Student's behaviors of poor attendance, AWOL, destroying assignments, and refusing to work. The function of the behavior was to get a desired activity, and to avoid a too lengthy task. The team recommended as replacement behaviors Student seek staff assistance and ask for a break. Staff should clarify consequences and prompt Student to return to task. To avoid a lengthy task, Student should request a modified assignment and complete tasks in smaller parts, review work for accuracy, and request breaks. Reactive strategies to employ if the behavior recurred included reminding Student to use positive verbal interactions with her peers, ask to take a short break to calm down when agitated, ask to reintegrate into class and complete assignment, and to remind Student of consequences. There was much discussion among the team regarding Student's

behavior, and members of the team expressed concerns about whether Student's behavior affected her ability to access her education.

41. The team discussed whether Student needed a one-to-one aide at her group home, and whether such a service was needed at school, as Dr. Large recommended. Los Angeles Unified team members advised that a functional behavior analysis would be needed for this service to be considered. The team did not change Student's placement, and the offer of a FAPE remained the same as in the April 22, 2015 IEP.

42. Student did not request that Los Angeles Unified offer a residential placement for educational purposes at this IEP meeting, nor did Dr. Large suggest or recommend that Los Angeles Unified offer a residential placement. Rather, on June 15, 2015, Student's education attorney requested District convene an informal dispute resolution meeting. Student requested District offer a different nonpublic school placement, and a one-to-one aide. On June 22, 2015, District offered another nonpublic school, a one-to-one aide, and a functional behavior assessment. Student's educational counsel never responded to this offer.

43. Student remained at Dimondale and the open Vista nonpublic school. until July 2015. Student's grades at the end of the semester were a C in English, a D in Strategic Literature, a B in Biology, and Incompletes in World History, Algebra, Art, and Physical Education.

AFTER VISTA NPS

44. In July 2015, the Children and Family Services Department removed Student from Dimondale because she was not doing well in that placement. The Children and Family Services Department wanted to place Student in another therapeutic residential placement, but Student refused that level of service. Student promised to attend school if she were allowed to live with her grandfather. Student went

to live with her grandfather in Cerritos in the ABC Unified School District. ABC placed Student at Rossier Park School, a nonpublic school located in Buena Park, California. Student started to attend the 11th grade at Rossier in early September 2015. At no time did Student's education counsel or Ms. H. request ABC Unified to provide Student a therapeutic residential placement.

45. Student lived at her grandfather's home for only a few weeks, because Student and her grandfather had a serious altercation. In early September 2015, Student was hospitalized. Then, Children and Family Services Department placed Student in a group home, where Student engaged in an altercation with a peer and had to be moved after about three weeks. Thereafter, Student went to a series of placements, including a temporary shelter at the University of Southern California hospital site which was in Los Angeles Unified's boundary, and then to the Harbor Regional Center. Ultimately, in October 2015, Children and Family Services Department placed Student in a foster home in Compton, California. That same month, Compton Unified School District placed Student at Rossier.

46. The Children and Family Services Department provided wraparound services to Student while she resided in Compton, but they were delivered at the school site, because Student's foster parent did not want wraparound services to be delivered at the foster home.⁵

⁵ Wraparound services consist of a variety of programs and services to meet the needs of the child, which are provided at home or otherwise outside of the classroom setting.

NOVEMBER 20, 2015 IEP

47. Compton Unified convened a 30-day IEP team meeting on November 20, 2015. The IEP team included special education teacher, a therapist, a clinician, Rossier administrators, Ms. H., and Student's education attorney. Ms. H. excused, in writing, the presence of a general education teacher. The team discussed Student's present levels of performance, credits she needed to graduate, and classes she would take. She was completing tasks overall. She did not volunteer. She had social challenges in class, and could be rude to staff and peers. She used profanity in class, and did not advocate for her own needs in the presence of her classmates, but would advocate for her needs directly to a particular individual. The counselor was still building trust with Student, who advised that she would leave campus to go see her grandfather. The delivery of wraparound services at school impeded her education. The team mentioned that a functional behavior analysis was not completed. Ms. H. and Student's counsel agreed that a functional behavior analysis was not necessary at that time.

48. The team offered as a FAPE a one-to-one classroom aide, to assist with work, offer breaks, and re-direct Student; 120 minutes of individual counseling per week; 315 minutes per day of specialized academic instruction; and curb-to-curb transportation. Ms. H. consented to the IEP.

49. Neither Ms. H. nor Student's educational counsel requested at any time during the meeting that Compton Unified provide Student a therapeutic residential placement. Ms. H. thought the foster home was a wonderful placement for Student, and that Rossier was the least restrictive environment for Student. Indeed, at no time during Student's attendance in Compton Unified did Ms. H. or educational counsel request that Compton Unified provide a therapeutic residential placement for Student.

DECEMBER 11, 2015 IEP

50. On December 11, 2015, when Student was 16 years old and in 11th grade, Compton Unified convened Student's annual IEP team meeting. The IEP team consisted of Student, Ms. H., Student's educational attorney, a Compton Unified administrator, a special education teacher, a Rossier school therapist, the Director of Rossier, and a Rossier Program Coordinator. The IEP team reported Student's present levels of performance, largely by referring to scores on Rossier school screening tests. The descriptions of the tests and scores in the IEP document were not entirely reliable, as the IEP document referred at one point to the name of another student, and confused writing and reading scores. Moreover, as the tests were only screening tests, and not standardized tests, it was difficult for witnesses at hearing to evaluate their reliability or significance. Beyond the screening test scores, Student had begun to participate in class by reading aloud and answering comprehension questions, and she won a writing contest. The team identified reading, math, and writing as areas of need for Student.

51. In the social-emotional/behavior area, Student continued to do well at Rossier. She understood what was expected of her and enjoyed her classroom. Student had, for the most part, developed appropriate relationships with her classmates. She would engage in conversations about common interests and participate in group activities. However, at times she would become verbally aggressive when she felt frustrated or challenged by her peers. She shared her feelings with trusted staff, and continued to build rapport with her counselor. School staff perceived Student as shy, but she socialized with preferred staff. She would benefit if she expressed and identified her feelings and continued to develop her positive coping skills when frustrated or experiencing anger. Sometimes she needed redirection and prompts from staff. She consistently met levels 4 and 5 behaviorally, which were the higher (better) levels in Rossier's level behavior system. Social emotional was an area of need. The wraparound

services personnel were coming to school too much, because the foster mother did not want to allow the support in the home.

52. At Student's request, the team discussed the removal of Student's one-to-one assistant. Student was advocating for herself independently. She had two behavior incidents at school, one of which was a loud request to discontinue the assistant. The classrooms have multiple adults who were trained to handle student behaviors, and there were also multiple adults on campus. The IEP document was ambiguous as to the continuation of aide services. The notes stated that team decided to discontinue Student's one-to-one assistant, but the services page of the IEP still offered it.

53. In the vocational area, Student had struggled in the past with placements and had a lack of consistency in residential and educational addresses. Student was content with foster care and her placement at Rossier. She wanted to have a part-time retail job, and ultimately have a career as a pediatric nurse. The team developed a transition plan. The plan was based on a vocational interview, an interest inventory, and a pre-vocational questionnaire. Student wanted to go to college and get her driver's license. She could do her own laundry and cook, and did chores around the house.

54. Student was progressing on her previous reading, math, and social-emotional goals. She had not met her writing goal. The team established annual goals in all areas of need. The team discussed Student's course credits. She was taking a standard 11th grade modified curriculum, and was taking typical 11th grade classes. She would graduate with a high school diploma under the requirements of AB 216.⁶ The team anticipated Student would graduate by June 30, 2017.

⁶ AB 216 (Ed. Code, § 51225.1) provides an exemption from a school district's local graduation requirements for students in foster care who transfer between schools any time after the completion of the second year of high school. The exemption does not apply if the school district finds that the student is reasonably able to complete the

55. Ms. H. was concerned that the foster parent was not being notified of the IEP meetings. Student expressed a desire to travel to school by herself, as she was having a problem on the school van with another peer.

56. The team developed accommodations. Student needed a structured setting with specialized academic instruction and individual counseling to meet her IEP goals. The offer of FAPE consisted of placement at Rossier; curb-to-curb transportation; specialized academic instruction throughout the school day; two hours per week of counseling; group college awareness consultation for 90 minutes per year, 90 minutes of group vocational assessment, counseling, and guidance per year; 90 minutes of group transition services per year; and extended school year which included two hours of counseling per week. Ms. H. signed consent to the IEP on December 23, 2015.

STUDENT'S GRADES AND BEHAVIOR AT ROSSIER

57. Student's grades for the fall semester of 2015 were A's in English, Algebra 1, U.S. History, Physical Science, and World History. She earned a B in Physical Education.

58. Student had no notable behavior incidents during her early days at Rossier. Her behavior deteriorated somewhat beginning in early 2016, and resulted in staff completing Value Agreement Violation Forms and Incident Reports. On January 13, 2016, Student walked out of class because she was irritated, and her behavior was elevated for approximately an hour. During this time she defied staff members' directions, screamed obscenities at them, threw dirt and leaves in a staff member's face, threatened staff with part of a plastic sign, and threatened to sue staff or report them to the police. On January 15, 2016, Student threatened to punch another student who had

district's graduation requirements so as to graduate from high school by the end of the student's fourth year of high school.

bumped into Student's desk by accident. On March 2, 2016, Student engaged in negative comments during a discussion that did not involve her, she argued and cursed with a staff member before leaving class without permission, and she made inappropriate racial and other instigating remarks. On April 18, 2016, Student went AWOL within school grounds, after acting defiantly towards and cursing at, a staff member. The next day, she repeatedly called a peer names and challenged him to a fight. On May 6, 2016, Student became upset and walked out of class without permission. A staff member then directed her to go to the Learning Center. Student did not comply, but instead threatened the staff member. She finally went to the Learning Center at the direction of another staff member. On May 11, 2016, Student called a peer names, and continued to do so after a staff member asked her to stop.

MAY 20, 2016 IEP

59. On May 20, 2016, Compton Unified convened an addendum IEP team meeting to review the results of Student's functional behavior assessment. The IEP team consisted of a program specialist from Compton Unified, who participated by phone, the Rossier school therapist, a program coordinator, a special education teacher, Ms. H., and Rossier's director. Student joined the meeting briefly while it was in progress.

60. The functional behavioral analysis concerned two target behaviors. One behavior was assaultive/aggressive behavior, such as throwing items at staff, and the second behavior was AWOL or out of bounds, which was leaving the classroom or assigned area without staff permission. The problematic behavior was most likely to occur when others talked to her or staff tried to correct her. Student's assaultive behaviors appeared to be derived from difficulty self-regulating impulsive behaviors as well as a low tolerance for personal frustration. She also appeared to desire power and control in the school environment, resulting in aggressive, defiant, and assaultive behavior when limits were placed on her or when she felt threatened. Student's behavior

might also be influenced by internal stimuli and outside environmental circumstances. Her need for assaultive behaviors would likely be reduced if Student increased her ability to use appropriate coping skills to manage her frustration.

61. The team then considered the therapist's proposed behavior intervention plan. Student should increase her ability to use appropriate coping skills (appropriate verbalizing, self-calming, and asking for breaks) to manage her frustration, so as to maintain her level at level 4 or higher in Rossier's level behavior system. She would earn that level by following classroom rules and structure. The plan would be discontinued when Student did not display any physically assaultive behaviors for a period of six months.

62. The team also discussed eliminating Student's one-to-one aide. Student was earning a level 4 or higher on 11 out of 20 days. Based on the functional behavior analysis and Student's progress on goals, the team determined that Student no longer needed a one-to-one aide. Student was pleased that the aide would be discontinued.

63. The team also discussed the frequency and duration of counseling. Student was struggling academically, and in danger of not earning enough credits to graduate on time. The team believed that as Student spent time out of class in therapy, she was missing academic instruction. Therefore, the team decided that Student would continue receiving two hours of school-based counseling per week until the end of the semester. Then, starting in summer school, she would receive 90 minutes of counseling per week. In fall 2016, she would continue receiving 90 minutes of counseling per week. All other services remained the same as previously. Ms. H. consented to the IEP.

64. On May 25, 2016, shortly after this IEP team meeting, Rosier. suspended Student from school for one day for assaulting a school employee by spitting on her. During that behavioral event, she also made derogatory remarks to the school employee, and threatened and made derogatory remarks to a peer. On July 29, 2016,

she engaged in several incidents. She walked out of class and did not comply with staff's direction to return. She became angry at a staff member and called him derogatory names. She called other students names, spoke disrespectfully to staff, and threatened to assault other students.

65. Student's grades for the spring semester 2016 were A's in Art and U.S. History, and A- in another U.S. History course. She earned B's in English and Algebra 1, and B+'s in Physical Science, and Physical Education. Her special education summer school grades were B's in World History and Life Science, a C in Algebra 1, and a D in English.

SEPTEMBER 30, 2016 IEP

66. Student was involved in several behavior incidents in September 2016, when Student was 17 years old and in 12th grade. On September 7 and September 9, 2016, Student walked out of class. On September 20, she threw her math textbook and refused to do work. On September 21, Student pushed a staff member, spoke to her in derogatory terms, and threatened to punch her. On September 30, Student encouraged a peer to say inappropriate sexual remarks, and to demonstrate gang signs, in defiance of a staff member's instructions to stop the behavior.

67. On September 30, 2016, Compton Unified convened an IEP team meeting to discuss Student's behavior and progress. The IEP team included Ms. H., who attended by phone, two representatives from Bay front Youth Services, which provided wraparound services to student, the school therapist and school administrator, an IEP Coordinator, and a Compton Unified administrator.

68. Student was unable to deescalate when she had volatile behaviors. When she returned to school after negative behavior, Student's acted as though nothing had happened, but her peers remembered the negative behavior. Student's behavior impeded her learning and that of others. Ms. H. asked whether Compton Unified could

provide applied behavior analysis support at Rossier. The school administrator stated that Student “ran her own program,” and did not feel she had to follow rules. The school administrator wanted the team to consider whether Rossier remained an appropriate placement. The team discussed the use of incentives to improve Student’s behavior but incentives did not have much impact on Student. Neither Ms. H. nor anyone else acting on Student’s behalf requested a residential placement for Student.

EXPULSION FROM ROSSIER

69. Student continued to engage in maladaptive behaviors. On October 24, 2016, while serving detention in the Learning Center due to previous behavior, she threatened to hit a staff member. On October 31, 2016, she walked out of class. On November 3, 2016, she punched another student in the mouth, which cut the other student’s mouth. Later on the same day, Student had a verbal altercation with a peer, which caused Student to walk out of class. When Student saw the peer nearby later, she physically threatened the peer and staff. On December 8, 2016, Student cursed in class, in defiance of staff directions to stop, and walked out of class.

70. Students’ attendance at Rossier while she resided in Compton was very good, and her grades were good. However, Student’s stay at Rossier was not successful in terms of her behaviors. As part of Rossier’s attempts to manage her behaviors during her time there, Rossier changed Student’s classroom several times, but Student eventually exhausted the supply of available classrooms. Rossier expelled Student, and her last day there was December 9, 2016. Her grades up to that time were a B in Government, B-’s in Economics and Algebra 1, and C’s in another Algebra 1 class, Physical Education, Art, and Life Science. Her report card noted that she worked independently but needed to improve self-control.

71. As of January 18, 2017, through the time of the remand hearing, Student lived in a foster home in Los Angeles, within the boundaries of Los Angeles Unified. On

March 7, 2017, directly after the hearing concluded, Los Angeles Unified placed Student at Slausen Learning Center--Site # 1, which is a conditionally state certified nonpublic school. There was no evidence that Ms. H., Student's educational counsel, or anyone acting on Student's behalf requested Los Angeles Unified to provide Student a therapeutic residential placement.

STUDENT'S BEHAVIORAL/EMOTIONAL ISSUES

72. Dr. Large testified at the remand hearing regarding Student's behavioral and emotional issues and needs. She had not observed or assessed Student since the 2015 due process hearing. Since writing her previous reports, she had not interviewed Student, or any of Student's teachers, social workers, counselors, or staff at Student's various residences. Dr. Large's testimony was based solely on her previous reports and a review of documents that had been generated since the time of her previous reports.

73. Dr. Large noted that Student had a history of profound difficulties regulating her behavior and emotions, and these difficulties directly affected her ability to tolerate frustrations, remain in an environment when demands (such as school) were made on her, tolerate corrective feedback, and ask for help. Dr. Large affirmed that she testified at the 2015 due process hearing that Student's move from a level 14 to a level 12 residential setting was appropriate when it occurred in early 2015. She also referred to her opinion in her February 2015 supplemental report that her recommendation that Student's continued placement at a level 12 residential facility was contingent upon Student continuing to maintain some degree of self-regulation similar to what she had achieved at the locked Vista residence.

74. At the remand hearing, Dr. Large expressed that Student's functioning started to regress during her attendance at the open Vista nonpublic school and continued thereafter. She based this opinion on the documents she reviewed prior to and at the remand hearing from the open Vista public school and from Rossier. Her

review of the documents showed a number of incidents of actual or threatened aggression, refusing school or leaving class without permission, and a great deal of dysregulation. Dr. Large was concerned that Student had not maintained at the open Vista nonpublic school the progress that was reported at the end of her stay at the locked Vista residence, such as a significant reduction in personal aggression, attending school more regularly, and a reduction in some of her more overly dysregulated behavior. Therefore, she commented Student might have required a higher level of care than she received at the open Vista nonpublic school. Dr. Large considered Student's behavior at Rossier such as walking out of class, and a number of incidents of threats and some actual aggression to be similar to her behavior when she first entered the locked Vista residence, and thus also demonstrated regression relative to the progress she had experienced at that residence.

75. Additionally, based upon the time-out summary from January 2015 through April 1, 2015 from the open Vista public school, Dr. Large questioned whether Student actually had sufficient behavioral stability and equilibrium such that her transition in January 2015 to a level 12 placement was appropriate. Dr. Large believed she needed to perform further investigation, including obtaining a better understanding of the behaviors mentioned in the time-out summary and reviewing data from Student's living situation, to determine that issue. Dr. Large was unable to state whether Student received any educational benefit at the open Vista nonpublic school, because the documents were not clear as to how much of the school day she attended, but she stated Student's grades "could be" a result of Student's dysregulation.

76. Dr. Large's recommendations were not particularly specific. She believed Student needed significant emotional and behavioral support. Based upon the behaviors documented by Rossier, she recommended intensive interventions aimed at containing Student's behavior and helping her to develop the capacity to better regulate her

emotions to cope with frustration and seek help for or a means of exiting provoking situations. Dr. Large noted Student's difficulties in managing her behaviors in such situations was a long-standing challenge for her, and that Student must be able to contain her emotions and her behavioral dysregulation to participate in a structured learning setting. Otherwise, she became overwhelmed and unable to stay in that environment. Dr. Large recommended interventions to include wraparound services, perhaps a one-to-one aide at school and/or on the bus, a functional behavior analysis, a behavior support plan, and relatively short sessions of therapy multiple times per week. Student was unable to tolerate lengthy therapy sessions. Dr. Large did not provide an opinion as to how long the sessions should be. If Student's behaviors were so pronounced that they interfered with her ability to remain engaged in an educational environment, then consideration might be given to a more restrictive residential placement or educational setting. Dr. Large also recommended maintaining current support personnel.

77. Dr. Large recommended similar behavior supports to those described above when Student transitioned between schools, as Student had difficulty with transitions. She suggested that the staff be aware of Student's behavior challenges, that a behavior support plan be in place, and staff be trained in strategies that worked with Student in the past. Current support personnel should be maintained to the extent possible. Dr. Large had difficulty making recommendations regarding Student's current behaviors because she had not recently assessed Student. She also was unable to make any specific recommendations regarding Student's reading and math skills, as she had insufficient information about those skills.

CONCLUSIONS OF LAW

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.;⁷ Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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

⁷ Unless otherwise specified, all references to the Code of Federal Regulations are to the 2006 version.

that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S. Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to [a child with special needs].” *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, the *Rowley* court decided that the FAPE requirement of the IDEA was met when a child received access to an education that was reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The Supreme Court recently decided the case of *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S. Ct. 988] (*Endrew F.*) and clarified the *Rowley* standard. *Endrew F.* provides that an IEP must be reasonably calculated to enable “progress appropriate in light of the child’s circumstances.” (137 S. Ct. at 999.)

The Court recognized that this required crafting an IEP that required a prospective judgment, and that judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Ibid.*) Additionally, and of particular significance for this case, the Court stated, "for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, 'be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.' " (*Id.* at 999 [citing *Rowley*, *supra*, 458 U.S. at 203-204.].)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S. Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student has the burden of persuasion as to all issues decided.

REMEDIES

6. Under federal and state law, courts have broad equitable powers to provide "appropriate relief" for the failure of a school district to provide a 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].) (*Burlington*.) This broad equitable authority extends to an ALJ 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].)

7. Among other equitable remedies, school districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) An award of compensatory education need not provide a "day-for-day compensation." (*Id.* pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized determination, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524, citing *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497.) (*Reid*.) The award must be fact-specific and must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid, supra*, 401 F.3d 516, 524.) On remand, the ALJ can develop evidence of Student's present needs and consider to what extent those needs were affected by the services the school district provided and failed to provide during the of the denial of a FAPE. (*Cupertino Union School Dist. v. K.A.* (N.D. Cal. 2014) 75 F. Supp. 3d. 1088, 1107.) (*Cupertino*).⁸

⁸ Unless otherwise indicated, the legal citations in paragraphs 1 through 7 of the Conclusions of Law are incorporated by reference in the analysis of each issue decided below.

ISSUE 1: AMENDMENT OF IEP'S

8. Student contends that the February 26, 2014 IEP and the October 21, 2014 IEP should be amended to include an offer of a residential placement in the locked Vista facility for educational purposes, so as to give future assessors a complete picture of Student's educational history and needs. Student asserts that such amendments would also be helpful if Student requires a residential placement for educational purposes in the future. Los Angeles Unified contends that the only method by which a student's educational records may be changed is the process contained in Education Code section 49070. Los Angeles Unified contends that, if Student wants to amend her IEP's, she can file a request with the Superintendent of Los Angeles Unified. Additionally, Los Angeles Unified contends that the issue is moot, because the subject IEP's are no longer operative, and they have been superseded by subsequent consented to and implemented IEP's. Los Angeles Unified further notes that Ms. H. did not testify that the IEP's should be amended.

Applicable Law

9. An IEP can be ordered to be amended if the ALJ decides that the IEP team did not act in accordance with the law. As was stated above, ALJ's have broad equitable powers to provide "appropriate relief" for the failure of a school district to provide a FAPE. Moreover, the authority to order an IEP amended follows from the court's determination in *Reid, supra*, 401 F.3d 516, 526-527, that ALJ's may not delegate their authority to IEP teams, but rather must determine matters themselves. Similarly, here it would not be appropriate to leave the determination as to whether the IEP should be amended to an IEP team, or to leave it to Student to follow the procedure set forth in Education Code section 49070, as urged by Los Angeles Unified.

Analysis

10. An Order amending the previous IEP's is a particularly appropriate remedy in this case. First, such a remedy would be beneficial to Student and the Educational Rights Holder. In this regard, Student has not yet received her high school diploma, and is therefore still eligible to receive special education and related services. Amending Student's February 26, 2014 and October 21, 2014 IEP's to offer residential placement will provide accurate information to Student's assessors, IEP teams, and service providers about Student's historical educational needs.

11. Second, the District Court in this case found that Los Angeles Unified's failure to discuss a residential placement at the October 21, 2014 IEP team meeting, and predetermination of placement at that meeting, violated the IDEA and deprived Student of a FAPE. When such a violation is found, a typical remedy is to order another IEP to give parents an opportunity to participate in developing the IEP. Here, due to the length of time that has elapsed, and the number of superseding IEP's that have occurred since 2014, it would be a hollow remedy to hold another meeting to "do-over" the IEP team meeting. However, amending the February and October 2014 IEP's to include a residential placement provides a practical alternative to a "do-over" of the IEP's.

12. Therefore, the subject IEP's should be amended. However, no persuasive reason supports amending the IEP's to specify that placement was the unlocked Vista facility, and that the placement was "for educational purposes," as Student suggests in its closing brief. First, throughout these proceedings, Student's claims have only involved "residential placement"; she has not complained that the subject IEP's should have identified the unlocked Vista facility, and both PHC Orders in this matter only refer to "residential placement." Indeed, throughout both the 2015 due process hearing and the remand hearing, Student's counsel often only used the word "residential" as shorthand for "residential placement." Second, the District Court's Order also only

referred to "residential placement." Third, Student's witness, Craig Liu, testified without contradiction that a therapeutic residential placement in an IEP is generally designated as placement in a residential treatment center, without naming a specific facility. Finally, no need exists to specify "for educational purposes," as a placement designated in an IEP is, by definition, a placement for educational purposes.

ISSUE 2: COMPENSATORY EDUCATION

13. Student contends that, had Student's February 26, 2014 and October 21, 2014 IEP's included an offer of residential placement for educational purposes, she could not have been moved out of the locked Vista residence and locked nonpublic school without accounting for her educational needs. Student therefore requests compensatory education and services for the 39 days, commencing in January 2015, during which the Department of Children and Family Services moved her out of the locked Vista residence away from the locked nonpublic school until February 2015, when Student commenced residing at Dimondale. Student requests 474 hours of intensive therapeutic services, including training to develop independent living skills, individual and group counseling, social skills training, and guidance services; and social work services. Student also requests 150 hours of individual academic instruction in math, reading comprehension, study skills, or any other area of necessary academic remediation for Student, to be provided by a nonpublic agency, and round-trip transportation. Student justifies this request on the grounds that Student was unable to derive benefit from her educational environment due to her inappropriate living situation. Student also contends that the amount and type of compensatory education should be determined by considering the educational and emotional difficulties Student has endured from the time she began to attend the open Vista nonpublic school through her expulsion from Rossier.

14. Los Angeles Unified contends that Student's placement was changed in January 2015 by the Children and Family Services Department, and that even if Los Angeles Unified had offered the level 14 residential placement, it could not have stopped the Children and Family Services Department from changing Student's placement. Los Angeles Unified also contends that there was no evidence that Student required any compensatory education as a result of its failure to consider or offer residential placement at the subject IEP meetings.

Applicable Law

15. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Ed.* (3rd Cir. 1993)993 F.2d 1031, 1041.)The IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

16. An IEP team meeting must be held periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. (20 U.S.C § 1414(d)(4)(A)(ii); 34 C.F.R.§ 300.324(b)(1)(i); Ed. Code, §56343, subd.§ (d).) The school district must reconvene the IEP team meeting to revise the IEP, if appropriate, so as to address any of the following: a lack of expected progress toward the annual goals and in the general education curriculum; the results of a reevaluation; information about the child provided to, or by the parents concerning evaluation data; the child's anticipated needs; and other matters. (20 U.S.C. § 1414(d)(4)(A)(ii); 34 C.F.R.§ 300.432(b)(1)(ii); Ed. Code, § 56343, subds. (a)-(c).)

17. An educational placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of

public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) Making placement recommendations is the central function of an IEP team meeting. (Ed. Code, §§ 56342, subd. (a), (b); 56343, subd. (d).) A school district must ensure that the student's parent "is a member of any group that makes decisions on the educational placement" of the child. (Ed. Code, § 56342.5.) In general, an IEP meeting must take place before a proposal to change the student's placement can be implemented. The determination of whether there has been a change in placement so as to require the district to convene an IEP meeting is made on a case-by-case basis, and the following factors are relevant to the analysis: whether the educational program set out in the student's IEP has been revised, whether the child will be able to be educated with nondisabled children to the same extent, whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement offers the same option on the continuum of alternative placements. (Office of Special Education Programs, *Letter to Fisher*, July 6, 1994, 21 IDELR 992.)

18. A school district must provide written notice to the parents of a pupil whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the pupil, or the provision of a FAPE to the pupil. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) The notice must contain: (1) a description of the action proposed or refused by the agency, (2) an explanation for the proposal or refusal, along with a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposal or refusal, (3) a statement that the parents of a disabled child are entitled to procedural safeguards, with the means by which the parents can obtain a copy of those procedural safeguards, (4) sources of assistance for parents to contact, (5) a description of other options that the IEP team considered, with the reasons those

options were rejected, and (6) a description of the factors relevant to the agency's proposal or refusal. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4, subd. (b).)

19. Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a). This is referred to as "stay put." In *Burlington, supra*, 471 U.S. at p. 373, the Supreme Court stated that one purpose of stay put "was to prevent school officials from removing a child from the regular public school classroom over the parents' objection pending completion of the [due process hearing proceedings]." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

20. Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, *superseded by statute on other grounds*, 20 U.S.C. § 1414(d)(1)(B).) For example, progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade].)

Analysis

SIGNIFICANCE OF FAILURE TO OFFER RESIDENTIAL PLACEMENT IN IEP'S

21. The analysis of this issue focuses on Los Angeles Unified's failure to offer Student a residential placement for educational purposes in the February 26, 2014 IEP

and the October 21, 2014 IEP.⁹ This issue encompasses the other two issues that were the subject of the District Court's Order pertaining to the October 21, 2014 IEP: Los Angeles Unified's failure to discuss a residential placement for educational purposes, and its predetermination of placement. Under the circumstances of this case, the compensatory education that Student seeks flows from the failure of Los Angeles Unified to offer a residential placement for educational purposes in the February 26, 2014 and October 21, 2014 IEP's.

22. Student's argument that she is entitled to compensatory education because, had Los Angeles Unified included residential placement in her IEP, Department of Children and Family Services would not have been able to move her from the locked Vista residence is not persuasive. First, the evidence overwhelmingly demonstrated, as found in the prior Decision, that, at the time the Department of Children and Family Services removed Student from the locked Vista residence, Student no longer needed the level of care provided there. Second, Student desperately wanted to leave the locked Vista residence. Indeed, she was so distraught that her transition from the locked Vista residence was delayed that she required a psychiatric hospitalization. As Mr. Liu noted, a locked level 14 placement such as the locked Vista residence is voluntary, and it was such a restrictive placement that a minor's counsel would have considered whether it would have violated Student's civil rights to keep Student there against her will. This consideration would have been strengthened if, as happened here, the professional staff at the locked Vista residence agreed, in consultation with the Children and Family

⁹ In her closing brief, Student clarifies that she is not requesting any compensatory relief for the time period she was in the locked Vista residence. As was determined in the ALJ's May 2015 Decision, Student was receiving all appropriate services and education while she was in the locked Vista residence.

Services Department staff, that Student had recovered sufficiently so as to be discharged. Under these circumstances Student did not demonstrate that, had a residential placement been offered in Student's IEP, any effort by the Educational Rights Holder or by Los Angeles Unified to keep Student in the locked Vista residence, such as by petitioning the Superior Court under the authority of Welfare and Institutions Code section 362 would have succeeded.¹⁰

23. Third, the stay put doctrine does not apply if the parent consents to the new placement. Student did not demonstrate that her Educational Rights Holder would have actually filed a stay put motion to keep Student at the locked Vista residence. Indeed, after Student was discharged from the locked Vista residence, Student's Educational Rights Holder and her lawyers made no effort to have her returned there. In fact, none of those individuals ever requested at any IEP team meeting to have her returned to the locked Vista residence or to any other level 14 facility. Student did not include a request for such relief in her due process request, or in her complaint filed in District Court.

24. Fourth, the stay put doctrine operates to prevent *a school district* from changing a special education student's placement or services pending the resolution of a dispute between the Student and a school district. As the *Burlington* court noted, one of the purposes of stay put is to prevent the school district from moving a child from his current placement, over parental objection, during the pendency of a due process proceeding. (471 U.S. at p. 373.) However, Student's discharge from the locked Vista

¹⁰ Welfare and Institutions Code section 362 provides that the dependency court may make reasonable orders for the welfare of children under its jurisdiction. This authority includes joining agencies who have failed to meet an obligation to provide services to the child, which could include a school district.

residence was not due to any action of Los Angeles Unified. Rather, the Children and Family Services Department, which was under a court order to provide Student with a residential placement, and which also had a legal responsibility to care for her mental health needs, was responsible for her move out of the locked Vista residence. The decision to move Student, moreover, was based upon discussions with Student's treatment providers at the locked Vista residence, and, according to Mr. Liu's testimony regarding these types of decisions, upon discussions with minor's counsel. Student cited no legal authority that OAH, the agency to whom a stay put motion would be presented, had any jurisdiction to countermand a considered decision of Department of Children and Family Services, made pursuant to the authority granted to it by the Superior Court, to transfer Student out of the locked Vista residence.

25. Indeed, Student's theory that her Educational Rights Holder and her educational counsel would have moved for stay put or engaged in other actions to keep Student at the locked Vista residence is not supported by the following undisputed facts: (1) Student's mental health professionals at the locked Vista residence and at the Children and Family Services Department agreed that she was ready to be discharged from the locked Vista residence in fall 2014; (2) Student so desired to be discharged from the locked Vista residence at that time that she required a psychiatric hospitalization when her discharge was delayed; (3) Student's educational counsel and her then-Educational Rights Holder knew of the possibility that Student would be discharged from the locked Vista residence as of the October 21, 2014, IEP team meeting, but did not object to the proposed move at the meeting, and offered no evidence that they objected to the proposed move at any other time prior to the move; and (4) Student's educational counsel and Educational Rights Holder have never, since Student's discharge from the locked Vista residence, requested that any school district place Student in such a residence.

26. However, Student is entitled to compensatory education for a different reason. Had Los Angeles Unified offered Student a residential placement in the February 26, 2014, and October 21, 2014 IEP's, Student's Educational Rights Holder and Student's education counsel would have participated in any team decision meetings held to determine when Student was ready for discharge from the locked Vista residence. Had the team, as so constituted, decided to remove Student from the locked Vista residence (and there was no evidence that the team would not have so decided), Los Angeles Unified would have been required to provide the Educational Rights Holder with prior written notice of the change in placement. Los Angeles Unified would also have been required to convene an IEP team meeting to discuss the proposed change of placement, and to coordinate Student's educational services with the Department of Children and Family Services' decision to transfer Student from the locked Vista residence.

27. Convening an IEP meeting in these circumstances would be especially important if any decision to transfer Student to another residential placement would have required Los Angeles Unified to provide Student with additional or different related services. For example, Student historically had difficulties with transitions and changes in routines. These difficulties were referred to in Ms. Coleman's February 2014 psycho educational/educationally related mental health services assessment. Student's behavior support plan in her February 2014 IEP also mentioned that Student's behavior was adversely affected by changes in routines. Similarly, Dr. Large's initial report dated June 8, 2014 mentioned Student's struggles with changes in her residence. Essentially, had Student's February 2014 and October 2014 IEP's included a residential placement, Student's Educational Rights Holder and education counsel would have been included in the team decision meetings by which Student was discharged from the locked Vista residence. Further, Student might have avoided the rocky transition out of the locked

Vista residence if the IEP team had the opportunity to consider Student's transitional needs and offer transition services.

28. This analysis is not altered by the fact that the Children and Family Services Department ultimately decided to place Student in Crittenton, a facility outside of the boundaries of Los Angeles Unified. (Student stayed at Crittenton for approximately one day before eventually returning to the boundaries of Los Angeles Unified when the Children and Family Services Department placed her at Delilu.) The IEP team meeting should ideally have occurred when the Children and Family Services Department, after an internal review, and a team decision meeting with parties involved with the Dependency Court case, such as minor's counsel and the Educational Rights Holder, decided to discharge Student from the locked Vista residence. If the Department later moved Student out of the boundaries of Los Angeles Unified, then Los Angeles Unified would not have been responsible for providing services to Student. The new school district would have provided the services contained in the Los Angeles Unified IEP (or comparable services), until the new district held a transition IEP pursuant to Education Code section 56325 (a).

29. Consequently, since Los Angeles Unified did not include residential placement in her IEP and made no such offer of transition services, Student is entitled to compensatory academic and emotional/behavioral services.

COMPENSATORY EDUCATION

30. Student demonstrated that, after her discharge from the locked Vista residence, Student missed eight days of school. Student further demonstrated that during the subject 39-day period Student missed 11 days of math instruction, because she did not attend math class when enrolled in school. Further, Student demonstrated that during the 39-day period between her discharge from the locked Vista residence and her placement at Dimondale, her life was disrupted. Her whereabouts were

unknown for several days, and then she was placed at Delilu, a temporary placement. As was discussed above, if Los Angeles Unified had included residential placement in her IEP, it is likely that Student would have been offered transition services to assist her transition out of the locked Vista residence.

31. Student's request for compensatory education in her closing brief is based upon her theory that, if Los Angeles Unified had offered residential placement in her February and October 2014 IEP's, Student would have been in the locked Vista residence instead of spending 39 days as a transfer to Crittenton, as a runaway, and then as a temporary resident at Delilu before her permanent placement at Dimondale. She has calculated that she would have therefore spent 150 hours of instruction in a round-the-clock therapeutic placement, and received 474 hours of intensive mental health services. Those are, in general, the amounts and types of compensatory education she seeks.

32. However, Student did not demonstrate that she is entitled to all of the compensatory education she seeks. As was discussed above, Student did not demonstrate that, had she been offered a residential placement in her February and October 2014, IEP, she would have remained at the locked Vista residence or another placement more restrictive than the Level 12 placements at which she resided from January 2015 through approximately July 2015.

33. Student relies upon Dr. Large's testimony at the remand hearing to the effect that Student's behaviors at the open Vista school demonstrated that Student should not have been moved from the locked Vista residence. Significantly, the facts adopted by the District Court in the ALJ's May 2015 Decision reflected that Student's discharge from the locked Vista residence was appropriate at the time of the discharge, based upon the information available at the time. Dr. Large testified at the 2015 due process hearing that Student's discharge from the locked Vista residence and placement at Delilu and the open Vista nonpublic school were appropriate, based upon the facts

that she knew at that time. Her opinion was accepted by the ALJ in the ALJ's May 2015 Decision, as well as by the District Court. Dr. Large reaffirmed at the hearing on remand that she had rendered that opinion at the 2015 due process hearing.

34. At the hearing on remand, Dr. Large questioned whether Student should have been discharged from the locked Vista residence, based upon information she acquired prior to and during her testimony in the remand hearing, but her change of opinion is not relevant. The District Court's charge to the ALJ was to determine the appropriate relief "in light of the Court's ruling here and the evidence in the record." The record to which the District Court was referring included Dr. Large's opinion that Student's discharge from the locked Vista residence was appropriate, and that Student's placement by Department of Children and Family Services in the level 12 facilities represented by Delilu and Dimondale were also appropriate. The District Court did not order the ALJ to rehear any issue. Therefore, Dr. Large's recent change of opinion is not relevant to this sub issue.

35. Furthermore, Dr. Large's change of opinion at this late date is not persuasive. First, Dr. Large was present at and presented her opinions at the June 3, 2015 IEP team meeting, when Student was residing at Dimondale and attending the Vista open nonpublic school. At that meeting, the team discussed Student's present levels of performance, set goals, and discussed Student's educational placement and services. Dr. Large also recalled that quite a bit of discussion occurred at the meeting about Student's behavior and emotional dysregulation, and how to manage and understand those issues. Dr. Large thus had knowledge of at least some of the behavioral and emotional challenges Student faced at that time. However, no one offered evidence that Dr. Large advised the IEP team that Student had been prematurely discharged from the locked Vista residence, or that Dr. Large offered any other opinion regarding Student's situation as of the time of the June 2015 IEP team meeting. In short,

Dr. Large had an opportunity to express her opinion regarding Student's then-current residential and educational placement directly to Los Angeles Unified staff and Student's representatives prior to the remand hearing. She did not do so.

36. Second, Dr. Large's previous opinion that it was appropriate for Student to be discharged from the locked Vista residence was based upon her assessment of Student, including observing and interviewing Student, and her discussions with Student's counselors, teachers, and the staff at the closed Vista residence and the open Vista nonpublic school. The opinions she rendered at the remand hearing were not based on any such conversations, or on any assessments, or on any observations of Student. They were only based on inferences she drew from a review of some of Student's records from the open Vista nonpublic school and from Rossier. Therefore, her change of opinion regarding the appropriateness of Student's discharge from the locked Vista residence was not as credible as her initial opinion.

37. Third, Dr. Large's reconsideration of her previous opinion is retrospective and therefore largely irrelevant to the issue of whether Student would have been discharged from the locked Vista residence had Student's IEP included a residential placement, or whether she would have been placed at other than Delilu or Dimondale. As was discussed above, all of the evidence available at the time of Student's discharge from the locked Vista residence supported her discharge. Indeed, as the record in the initial 2015 due process hearing revealed, Student's education counsel at the October 21, 2014 IEP team meeting raised no objection to Student's proposed discharge from the locked Vista residence, even though representatives of the locked Vista residence were at the meeting to receive such input. Applying the "snapshot" rule described above, the IEP team's decisions regarding Student's transition from the locked Vista residence and her future placement (had Los Angeles Unified included residential placement in the February 2014 and October 2014 IEP's), must be evaluated by the

information known at the time of the IEP team meeting that Los Angeles Unified would have convened in late 2014 to discuss Student's transition from the locked Vista residence. The IEP's team's decisions on those matters cannot be retrospectively evaluated based upon Dr. Large's more recent opinion as expressed at the remand hearing.

38. Finally, it is significant that Student has been represented by educational counsel, as well as by an Educational Rights Holder, at all relevant times since November 21, 2014, when she filed her due process complaint in this matter. Yet, at the October 14, 2014 IEP team meeting, at which representatives from the locked Vista residence discussed their plan to change Student's residence to a lower level of care, neither Student's educational counsel or her Educational Rights Holder objected to the change. Furthermore, at no time since Student was discharged from the locked Vista residence through the time of the remand hearing did anybody acting on Student's behalf request that any school district place Student at a resident treatment center for educational purposes. To the contrary, Student's Educational Rights Holder believed that such a placement was too restrictive for Student.

39. Based upon the evidence, District and the other members of Student's IEP team would have convened to discuss her discharge from the locked Vista residence, and the IEP team would likely have agreed that Student's placement should be changed from the locked Vista residence to a lower level residential placement.

40. These facts also highlight that the amount and type of compensatory services Student is requesting, which would simply copy the services Student would have received if she were in a placement such as the locked Vista residence during 2015, bear little to no relationship to Student's current needs. Therefore, Student's request is inconsistent with *Cupertino, supra*, 75 F. Supp. 3d at 1088, which directs the focus to a consideration of Student's current needs.

41. Consequently, Student did not demonstrate by a preponderance of the evidence that she would not have not been discharged from the locked Vista residence had Student's October IEP included a residential placement, and that the amount and type of compensatory services she requests reflects Student's needs. To the extent Student's request for specific amounts of compensatory education and services in her closing brief is based upon the services she would have had were she in the locked Vista residence, Student's request is unmeritorious.

42. Nevertheless, Student has met her burden of demonstrating that she is entitled to compensatory education based upon the 39-day period discussed above, and based upon her current needs, as evidenced by her educational and behavioral experiences when she attended the open Vista nonpublic school and Rossier.

43. Student missed eight days of school during the 39-day period at issue, and a total of 11 days of math instruction, because she failed to attend her math class during the 39-day period. Student's academic needs at that time, based upon Dr. Large's reports of June 8, 2014, and February 16, 2015, reflected that Student had needs in reading and math. Turning to her more current needs, her December 11, 2015 IEP, which was her last annual IEP in evidence prior to the remand hearing, reflected that she had academic needs in the areas of reading, writing, and math. There was no evidence that Student received any additional services in these subjects beyond a typical class schedule, which the ALJ determines is approximately 45 minutes to one hour per day per each subject. Moreover, Student made progress on many of her goals in these areas, and achieved passing grades in these areas, which suggests that Student does not require anywhere near the number of hours of compensatory education Student has requested in these areas. Consequently, Student is entitled to additional academic assistance, to include eight hours of specialized academic instruction from a California certified nonpublic agency in reading, with an emphasis on reading comprehension;

eight hours of specialized academic instruction from a California certified nonpublic agency in writing; and 11 hours of specialized academic instruction from a California certified nonpublic agency in math.

44. Student's October 2014 IEP, which was the operative IEP at the time of her discharge from the locked Vista residence, provided that she would receive two hours per week of educationally related intensive counseling services. The evidence demonstrated that, at the time Student was expelled from Rossier, she was receiving 90 minutes per week of counseling, which had been reduced from two hours per week at the beginning of the fall semester 2016. She was also entitled to receive wraparound services from the Children and Family Services Department. The evidence demonstrated that, as of the time of hearing, Student still required school-based counseling services for educational purposes. Furthermore, given Student's deteriorating behavior at Rossier by late fall 2016, the wisdom of the IEP team's decision to reduce her counseling services was debatable. However, the evidence also reflected that Student could not handle a large quantity of counseling services. Therefore, Student is entitled to 90 minutes per week of counseling services for six weeks. These hours are designed to compensate Student for the transition services that District should have offered to her to ease her transition after her discharge from the locked Vista residence, had a residential placement been included in Student's IEP. Instead, she received no transition services, and for 39 days (nearly six weeks) after her discharge her life and education were disrupted. Pursuant to Dr. Large's recommendation that therapy should be delivered multiple times per week for short period of times, these counseling services should be so delivered, at Student's discretion, as ordered below.

ISSUE 3: STAFF TRAINING

45. Student contends that Los Angeles Unified should be ordered to train its staff because Los Angeles Unified does not fully understand its educational obligations

with respect to foster children, including its obligation to report to the juvenile court directly if Los Angeles Unified had notice that Student's access to a FAPE was being jeopardized. Specifically, Student requests an order that Los Angeles Unified should be ordered to train its staff to "actively and honestly engage with" a foster child's "myriad stakeholders" by (1) conveying accurate and relevant information regarding foster students' educational circumstances to those stakeholders with which District engages, and (2) reporting to the Juvenile Court directly if District has notice that a stakeholder is acting or planning to act in a manner that jeopardizes a foster's student's access to FAPE.

46. Los Angeles Unified contends that any order for training would be premature, because Los Angeles Unified has appealed the District Court's Order to the Ninth Circuit. Furthermore, Los Angeles Unified refers to other federal court and Ninth Circuit decisions that it asserts are not consistent with the District Court's Order, and contends that the law is not sufficiently clear to warrant a school district-wide training on the issues presented by this case.

Applicable Law

47. The IDEA does not require compensatory education services to be awarded directly to a student. Staff training can be an appropriate compensatory remedy. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit if his teacher were 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 procedural violations that may benefit other pupils. (*Ibid.*)

Analysis

48. Under the circumstances of this case an order that Los Angeles Unified train its staff regarding their legal obligations to consider and offer residential placement to foster children who are eligible for special education is not appropriate. As Student's counsel characterized the issue at the remand hearing, this is a matter of first impression. Los Angeles Unified has appealed the matter to the Ninth Circuit Court of Appeals. The District Court's decision is not settled law at this time, and therefore any staff training regarding it is premature.

49. Further, Student's specific suggestions that Los Angeles Unified should be ordered to train its staff to "actively and honestly engage with" undefined (but myriad) "stakeholders" in a foster child's life by "conveying accurate and relevant information regarding foster students' educational circumstances," as well as its obligations with respect to Juvenile Court, are particularly inappropriate. There was no evidence in this case that Los Angeles Unified acted dishonestly. The issues in this case did not involve the engagement of Los Angeles Unified with "stakeholders," or whether Los Angeles Unified failed to convey accurate or relevant information to any such "stakeholder" regarding Student's "educational circumstances," or its staff's obligations to the Juvenile Court. These matters are beyond the scope of the training topics Student designated in her Trial Setting Conference Brief as well as in her PHC statement, which were relied upon in preparing the PHC Order in this matter.

ORDER

1. Within 15 calendar days of the date of this Decision, Los Angeles Unified shall amend Student's February 26, 2014 IEP to include placement at a California certified residential treatment center.

2. Within 15 calendar days of the date of this Decision, Los Angeles Unified shall amend Student's October 21, 2014 IEP to include placement at a California certified residential treatment center.

3. Los Angeles Unified shall fund eight hours of specialized instruction in reading, with an emphasis in reading comprehension, from a California certified nonpublic agency selected by Student. This service shall be made available to Student within 15 calendar days of the date of this Decision. Los Angeles Unified shall fund this service through October 1, 2018. Student shall forfeit any unused hours after October 1, 2018. This service is not stay put.

4. Los Angeles Unified shall fund 11 hours of specialized instruction in math from a California certified nonpublic agency selected by Student. This service shall be made available to Student within 15 calendar days of the date of this Decision. Los Angeles Unified shall fund this service through October 1, 2018. Student shall forfeit any unused hours after October 1, 2018. This service is not stay put.

5. Los Angeles Unified shall fund eight hours of specialized instruction in writing from a California certified nonpublic agency selected by Student. This service shall be made available to Student within 15 calendar days of the date of this Decision. Los Angeles Unified shall fund this service through October 1, 2018. Student shall forfeit any unused hours after October 1, 2018. This service is not stay put.

6. Los Angeles Unified shall fund counseling services for 90 minutes per week for six weeks from a California certified nonpublic agency selected by Student. These services shall be made available to Student within 15 calendar days of the date of this Decision. Student shall have the option to access these services in increments of two to three weekly sessions, as may be mutually agreed upon between Student and the service provider. Los Angeles Unified shall fund these services through October 1, 2018.

Student shall forfeit any unused minutes after October 1, 2018. These services are not stay put.

7. Los Angeles Unified shall pay Student, by Student's choice of direct payment or reimbursement, for round-trip transportation at the Internal Revenue Service rate, as necessary for Student to access the services in items 3 through 6 of this Order. This service is not stay put.

8. All other relief sought by Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on Issues 1 and 2. Los Angeles Unified prevailed on Issue 3.

RIGHT TO APPEAL THIS DECISION

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

Dated: September 18, 2017

/s/

ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings