

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAKLAND UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2017110917

DECISION

Oakland Unified School District filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on November 14, 2017, naming Student.

Administrative Law Judge Rebecca Freie heard this matter in Oakland, California on December 14, and 19, 2017.

David Mishook, Attorney at Law, represented Oakland. Geri Baskind, Oakland's Director of Legal Support Services for Programs for Exceptional Children, attended the hearing on December 14, 2017, as Oakland's representative. Andrea Epps, Staff Attorney for Oakland, attended the hearing on December 19, 2017, as Oakland's representative.

Parent and Student did not attend the hearing. The hearing was set to begin at 9:30 a.m. on December 14, 2017. Shortly before the hearing was to begin, an attorney who does not represent Student in this matter filed a letter with OAH claiming Parent, who resides in Oakland, did not have sufficient funds to pay transportation costs to the hearing, and asked that the hearing not begin until January 2018. When Parent attended the telephonic prehearing conference with the undersigned ALJ on December 8, 2017, she did not request a continuance, nor tell the ALJ that she could not attend the hearing. After the ALJ reviewed the letter, an OAH staff member telephoned Parent and

told her that the hearing would be delayed to 12:00 p.m. Parent asked if she could attend telephonically, but that request was denied because there were several sudden disrupting interruptions during the telephonic PHC on December 8, 2017, when Parent spoke to other persons who were with her.

Oakland asked to file a written closing argument at the conclusion of the hearing and a continuance was granted until January 2, 2018, to allow the parties to do so. An order was issued and sent to the parties on December 22, 2017, giving them the parameters for written closing arguments. Oakland timely filed a written closing argument. Parent did not. The record was closed and the matter was submitted for decision on January 2, 2018.

ISSUE

Will Oakland's October 24, 2017 individualized education program offer, provide Student with a free appropriate public education in the least restrictive environment?

PROCEDURAL ISSUE

This is the fourth due process hearing concerning Student and Oakland since July 2017. The three previous hearings were conducted by ALJ Theresa Ravandi, and she wrote three separate Decisions regarding each of those hearings. At the beginning of this hearing, on December 14, 2017, Oakland asked that the ALJ take "judicial notice," of factual findings in each of those Decisions. In other words, Oakland asked that it not be required to present evidence about certain facts that were made as factual findings in the previous Decisions concerning the parties. The ALJ denied the request on the record, but allowed Oakland to file a written brief if it wished to renew the request.

Oakland filed its brief on December 15, 2017, citing the doctrine of collateral estoppel as grounds for making the request that the ALJ "take notice" of specific factual findings in the three previous Decisions issued by OAH involving Oakland and Student.

In the brief, Oakland recited the five conditions that must be met for the doctrine of collateral estoppel to apply. The conditions are: 1) the issue in both cases is the same; 2) the issue was actually litigated in the previous matter; 3) the issue was decided; 4) the issue in the previous matter was decided on the merits and is final; and 5) the parties in the actions are the same. (*People v. Garcia* (2006) 39 Cal. 4th 1070; 1077.)

On December 19, 2017, Oakland's request that the ALJ take notice of specific factual findings in three previous Decisions concerning the same parties issued by ALJ Theresa Ravandi, was denied on the basis that the issues in the three previous decisions concerning the parties were not the same as the issue in this case. The first Decision was an Expedited Decision and was issued on August 23, 2017, in OAH Case Number 2017030950. In that case, the issue was whether Oakland could place Student in an interim alternative educational setting for 45 days, which was described as an intensive counseling enriched special day class on a public elementary school campus. ALJ Ravandi found that it was substantially likely that Student could cause injury to herself or others if she remained placed in a general education classroom at an Oakland school. However, ALJ Ravandi rejected Oakland's proposed placement and a second expedited hearing was held to determine what would be an appropriate interim alternative educational setting for Student for 45 days. At that hearing Oakland proposed placing Student at Highland Academy. The Expedited Decision concerning this proposed placement was issued on September 21, 2017, and ALJ Ravandi found Highland to be an appropriate placement for Student for a 45-day interim alternative educational placement. ALJ Ravandi's third Decision was an unexpedited decision and was issued on December 7, 2017. The issue in that matter, also part of OAH Case Number 2017030950, was whether a psychoeducational assessment conducted by Oakland and discussed at an IEP team meeting on December 14, 2016, was legally compliant. ALJ Ravandi found that it was.

None of the issues in the three cases previously heard by OAH regarding Student were identical to the issue litigated in this Decision, which is whether Oakland's proposed IEP of October 24, 2017, is an offer of a free appropriate public education so that Oakland may implement it without Parent's consent. The IEP at issue in this decision recommends placement at Highland, not as an interim alternative educational setting but as an IEP placement which requires a different analysis than consideration of an interim alternative educational placement. As such, the issues Oakland asserted should be the subject of collateral estoppel were not the same as the issue to be determined in this Decision, and Oakland was required to present fresh evidence in this matter to prove its case, rather than relying on factual findings in the three previous Decisions. None of the factual findings and legal conclusions from these previous Decisions was considered by this ALJ. She made her own independent factual findings and legal conclusions in the instant decision.

SUMMARY OF DECISION

In this Decision, it is found that Oakland's IEP of October 24, 2017, is legally compliant, and offers Student a FAPE in the least restrictive environment. Student's dangerous behaviors, as described below, require a more restrictive placement than the placement offered in her last signed and implemented IEP from October 2016. Oakland's proposed IEP of October 24, 2017, places Student at Highland, and it is found that this placement is appropriate, and the least restrictive environment for Student at this time. Oakland may implement the IEP without Parent's consent.

FACTUAL FINDINGS

JURISDICTION

1. Student is nine years old, and at the time of the hearing and all other pertinent times resided with Parent within the boundaries of Oakland. Student began

attending an Oakland elementary school as a second grader at the beginning of the 2016-2017 school year, on August 22, 2017. At the time of the hearing, she was assigned to a third grade general education classroom for the 2017-2018 school year. Student attended a charter school before she became an Oakland student. She became eligible for special education in the fall of 2014, while a kindergarten student at the charter school.

2015 INDEPENDENT EDUCATIONAL EVALUATION – FIRST GRADE (CHARTER SCHOOL¹)

2. In September 2015, Kristin Gross, Ph.D. conducted an individual educational evaluation at the request of Parent. The charter school paid for this assessment. Student was in the first grade. As part of the assessment, Dr. Gross reviewed educational records provided by the charter school and Parent. She interviewed Student, Parent, Student’s classroom teacher, her behavioral aide, the charter school resource specialist, and the behavior analyst assigned to Student. She conducted testing that measured Student’s cognitive functioning, academic achievement, adaptive behavior, and social-emotional functioning. She also observed Student for nearly two-and-one-half hours at school.

3. Dr. Gross found that Student’s verbal intelligence was in the average range, and her nonverbal intelligence was in the high average range. Student demonstrated strength in the areas of visual-spatial processing, and visual-motor

¹ The information contained in Dr. Gross’s evaluation is relevant because it was referenced often in the testimony of Oakland’s school psychologist, Nina Garrovillo, and was relied upon by Ms. Garrovillo when she conducted her own psychoeducational assessment of Student in the fall of 2016.

construction. Dr. Gross found Student's math and reading skills to be close to grade-level (in the mid to late kindergarten range). However, Student had not made much progress in the time since the charter school's assessments the year before. She did not like to write, and was a poor speller and listener.

4. Student exhibited challenging behaviors at the charter school. She had difficulty staying on task for more than five minutes in the classroom, and following classroom rules. She struggled with transitions. When frustrated, she would cry and make noises, and crawl on the floor of the classroom. She had difficulty completing work independently. During Dr. Gross's classroom observation, Student was with a one-to-one aide. Dr. Gross saw that Student did not focus during circle time instruction. She fidgeted and pretended to be an animal, crawling on the floor. During physical education, Student was engaged and active. However, transition back to class was difficult for her. Back in the classroom, she took off her shoes, and again crawled around on the floor. She also climbed on furniture in class. Although not observed by Dr. Gross, Student's teacher and other staff reported that Student occasionally picked up and put inedible objects into her mouth.

5. Dr. Gross had a difficult time conducting formal testing of Student. Student either failed to become engaged when being tested, or if she was engaged, she could not pay attention to testing tasks for more than a few minutes at a time. She was easily distracted, and at times irritable and easily frustrated.

6. Dr. Gross found Student to have deficits in fine motor skills, attention, and executive functioning and organization. Student was impulsive, and easily frustrated as a result of these deficits. On the Behavior Assessment Scales for Children, Second Edition, completed by both Parent and Student's teacher, Parent rated Student as having elevations on scales that measured inattentiveness, hyperactivity, and behavior problems related to defiance and lack of agreeability. The teacher had many more

elevated scales than Parent, with elevated findings on most scales. The teacher found that Student had many more deficits, and more significant deficits, in the area of social-emotional functioning than Parent.

7. Parent completed a rating scale that measured adaptive behaviors, which indicated Student had some deficits functioning in the community, generalizing academics to her everyday life, transitioning from preferred to non-preferred activities without difficulty, and completing difficult tasks. In the area of social-emotional and adaptive functioning, Dr. Gross found that Student had friends with whom she played during recess.

8. In summary, Dr. Gross found Student to have deficits in the areas of self-regulation, sustaining attention when required, and executive functioning. She confirmed a previous diagnosis of attention deficit hyperactivity disorder, moderate, with combined presentation. Dr. Gross was concerned that Student's dysregulated behaviors exceeded those usually found in children with this diagnosis. She hypothesized that Student's great mood lability² could be due to a mood or affective disorder, such as disruptive mood dysregulation disorder, although not all criteria were met for this diagnosis. Although Dr. Gross could not definitively determine a cause for Student's behavior issues and other deficits, she hypothesized that her premature birth at 25 weeks gestation might be a cause, although other genetic or neuro-biologic factors might also contribute. Dr. Gross was very concerned that Student, although possessing average cognition, had made little if any educational progress in the past year.

9. Dr. Gross made several recommendations. These included either more training for Student's aide, to increase Student's ability to remain on task, or the

² Mood lability is defined as rapid and spontaneous changes in a person's mood.

assignment of an applied behavior analysis certified aide; and an evaluation for educationally related mental health services. Dr. Gross also recommended direct counseling for Student, and also for Parent. Dr. Gross recommended increased pull-out services for core academic instruction, and occupational therapy, and recommended that these occur at the same time each day due to Student's difficulties with transitions. In the alternative, Dr. Gross recommended a special day class for individualized academic instruction with some mainstreaming with an aide. She also recommended that the Zones of Regulation³ program be utilized at home and in the classroom, and that Parent consider putting Student back on previously prescribed medication to address her "impulsivity, hyperactivity and mood lability."⁴

10. Dr. Gross also made recommendations for Student's classroom that included consistent staffing and reinforcement, with a consistent daily routine, and positive reinforcement for Student, so that Student's negative behavior would not be reinforced by negative attention. Dr. Gross recommended that Student possibly transfer to a different school due to the strained relationships between Parent and school staff. Dr. Gross made further recommendations in case the above strategies were not effective in allowing Student to access her education, including placement at a nonpublic school

³ Zones of Regulation is a program where colors are used to identify a person's mental state, and activities that will help regulate the person are listed for each color. However, for both the 2016-2017 school year, and the 2017-2018 school year, Student was frequently not in class so an appropriate Zones of Regulation program could not be created.

⁴ Parent had reported to Dr. Gross that she had taken Student off medication a few months earlier because Student was not growing appropriately, and was already small in stature.

with therapeutic and behavioral support. Although Dr. Gross had recommended a change of school from charter school to another school for a fresh start in the fall of 2015, Student continued to attend the charter school for the rest of the 2015-2016 school year.

2016-2017 SCHOOL YEAR – SECOND GRADE

11. Student began school in Oakland on the first day of the 2016-2017 school year. She was placed in a general education second grade class taught by Melissa Catalano, an experienced second grade teacher. Student's previous IEP from the charter school called for her to receive behavior services from a one-to-one behavioral aide employed by a nonpublic agency. She also had a behavior support plan from the charter school to address elopement, tantrums (with some aggressive behavior), and mouthing non-food items. Almost immediately, Student began her elopement and tantrum behaviors. These were most likely to occur when she was presented with a challenging or non-preferred activity. Within a week after Student began school, Oakland contracted with a nonpublic agency, Educational Support Services (now called Juvo), so that Student would have a one-to-one aide with her for the entire school day. The aide was supervised by a board certified behavior analyst.

12. The charter school's IEP also called for Student to receive occupational therapy, and daily specialized academic instruction. Occupational therapy and specialized academic instruction (resource specialist services) were in place on first day of school.

IEP Team Meeting on September 12, 2016

13. The charter school belonged to the El Dorado Charter School Special Education Local Plan Area, so it was necessary for Oakland to convene an IEP team meeting no later than 30 days after Student began school. This was originally intended

to be a combination 30-day meeting, and annual IEP team meeting, but because IEP meetings for Student tended to take several hours, only the 30-day portion of the meeting was completed. In preparation for this meeting, the resource specialist assigned to Student, Mason McKinley, prepared an academic summary. Nina Garrovillo, school psychologist, conducted a record review and summarized findings from the 2014 charter school assessment, and the independent assessment by Dr. Gross in 2015. Occupational therapist, Michaelynn Woodrow, reviewed occupational therapy records, including an independent assessment from Children's Hospital in Oakland conducted in 2015. Monica Piedrahita, Educational Support Service's board certified behavior analyst assigned to Student, made some changes to Student's previous behavior plan based on Student's conduct at her Oakland school since the beginning of the school year.⁵

14. All of the required attendees were at the IEP team meeting, and the team included Parent; Student's aunt; Mr. McKinley; Ms. Woodrow; Ms. Piedrahita; and Ms. Catalano.⁶ Mr. McKinley presented Ms. Garrovillo's report and his own, and Ms. Woodrow reviewed her report with the team.

15. Ms. Piedrahita shared the revised behavior plan with the team. It addressed three behaviors: elopement, tantrums, and mouthing objects. Elopement entailed leaving the classroom and wandering the halls or playground. Tantrums included screaming in the classroom, pretending to be an animal, and sometimes involved aggression such as hitting or shoving, or throwing objects. Mouthing involved

⁵ Some of the forms attached to IEP's are titled Behavior Intervention Plan, while others are titled Behavior Plan. They will be called behavior plans in this Decision.

⁶ Notes for some of the IEP's admitted into evidence did not contain a list of the participants, so their identities could be discerned only by their signatures and titles (if listed) on the signature pages of those IEP's.

putting inedible objects such as thumbtacks or stones in her mouth.

16. Oakland offered an educationally related mental health services assessment for Student due to Student's maladaptive behaviors, as described above, which Parent declined. Parent asked that Student be assessed for autism, and was given an assessment plan. Student's academic progress was reviewed, as was her behavior. Sensory breaks and a sensory diet were discussed with Ms. Woodrow. There was concern that Student was frequently eloping from the classroom, and strategies to prevent this were discussed. A communication plan between home and school was initiated. Another IEP team meeting was scheduled for October 19, 2016. Parent was an active participant at this September 12, 2016 IEP team meeting.

IEP Team Meetings on October 19, 2016 and October 27, 2016

17. All required persons attended the October 19, 2016 IEP team meeting, and the team included Parent, Student's Aunt, Ms. Woodrow, Ms. Catalano, and Mr. McKinley. At this time, Student was eloping from class, and thus absent 70 to 80 percent of the time. When she was in class, her tantrum behavior was very disruptive for the other students in the class, and often interfered with her classroom teacher's instruction. Student often refused to attend occupational therapy and resource class. The behavior plan had been modified several times in an effort to contain Student in the classroom and to keep her from disrupting her class with tantrum behavior when she remained in the classroom. Parent believed that Student was eloping in order to escape writing tasks, which had been a challenge for her at the charter school. However, at the previous IEP team meeting, the occupational therapist, Ms. Woodrow explained that the physical act of handwriting was no longer an area of deficit for Student. At the October 19, 2016 IEP team meeting, Oakland members and the behaviorist explained that tasks requiring Student to write were not the only antecedents when Student eloped. Student had a two-year history of elopement when she attended the charter school, so this was not a

new maladaptive behavior.

18. Parent was concerned that Student was not being permitted to go on walking field trips, but evidence at hearing established that Student did not follow directions on field trips, and on one occasion lay down in the middle of Broadway, a four-lane, major Oakland thoroughfare. A goal was developed for field trips. The IEP team meeting did not conclude on October 19, 2016, and was continued to October 27, 2016. On October 19, 2016, Parent sent an email to Oakland asking that a special day class be considered for Student.

19. Ms. Catalano, the classroom teacher, and Ms. Woodrow, the occupational therapist were excused in writing by Mother from the October 27, 2016 IEP team meeting. The proposed annual goals were reviewed at the meeting, and Parent agreed to the goals. The behavior plan was also reviewed. Parent asked for another revision of the behavior plan, but Oakland team members declined the request since data supported the current version. Oakland agreed to have a functional behavior assessment completed in 30 to 45 days. Accommodations in the IEP were discussed. In response to Parent's request that a special day class be considered for Student, Oakland agreed to take her to observe some special day classrooms the following week. Parent signed consent for the IEP at the meeting, but did not agree with the offer of placement, which was 86 percent of the time inside a regular general education classroom, and 14 percent outside this environment. There was no evidence as to why Parent disagreed with this placement. Parent was an active participant at this IEP team meeting. At some point in October, Parent and Oakland agreed to have Oakland complete an early triennial assessment of Student in the areas of psychoeducation, academic achievement, and occupational therapy.

Triennial Assessments 2016

FUNCTIONAL BEHAVIOR ASSESSMENT

20. A functional behavior assessment is a formal assessment conducted by a behaviorist. The behaviorist collects data during multiple observations at different times concerning maladaptive behaviors. Other personnel, such as the teacher or an aide may also collect data. The purpose of the assessment is to determine what events or circumstances trigger maladaptive behaviors (antecedents), determine the true purpose behind each behavior (function), and to develop a plan to diminish the incidents of the behaviors and develop positive replacement behaviors.

20. One of the goals of a functional behavior assessment is to collect data that will inform the development of an effective behavior plan. The assessor will target a handful of behaviors to address. An effective plan will allow involved persons to create an environment that will decrease the frequency of the targeted behavior; determine one or more appropriate replacement behaviors; develop reinforcement strategies to encourage replacement behaviors; and also, (in the case of Student), develop appropriate consequences when Student has engaged in a target behavior. In addition, a crisis management plan can be developed if a targeted behavior endangers the child or others. An effective behavior plan will have a reinforcement system which calls for a reward to be given when the subject demonstrates appropriate behavior. Sometimes a token system will be used in which the number of positive behaviors is tallied over a period of time, and tangible rewards are earned in that manner.

21. Ms. Piedrahita conducted the functional behavior assessment of student in the fall of 2016.⁷ She observed Student between the hours of 8:30 a.m. and 2:30 p.m. on

⁷ Ms. Piedrahita has a master's degree in education and has been a board certified behavior analyst for nearly two years. For six years she was a behavioral

six separate occasions between October 13, 2016, and November 29, 2016, for a total of 14 hours. The longest observations were three hours each on October 19, and November 10, 2016. The shortest observation was one hour 15 minutes on November 16, 2016.

22. Ms. Piedrahita focused on the behaviors of elopement, tantrum, and mouthing. Elopement was defined as Student being more than 10 feet away from a designated room or area without receiving permission. Tantrum was an instance when Student engaged in at least three of the following behaviors in a period of three minutes: elopement, screaming, crying, crawling on the ground, kicking, throwing, grabbing, or hitting. Mouthing was an instance when Student placed a non-edible item in her mouth, and included putting it on her tongue, and/or swallowing the item.

23. Student demonstrated two of the three of the behaviors Ms. Piedrahita focused on when she conducted the functional behavioral assessment and was observing her. She eloped from the classroom and spent approximately 80 percent of each school day outside of her classroom, either in the halls or on the playground. It was the aide's responsibility to accompany her when she left class and keep her safe. Student also tantrumed, throwing herself to the ground, screaming and crying, crawling around on the floor growling and pretending to be an animal, or climbing on objects. At these times, she exhibited aggressive behaviors of hitting, kicking, and biting. Although Ms. Piedrahita did not observe mouthing behavior, it was reported to her that once or twice a week Student would put objects into her mouth, which included thumbtacks. At the end of the school year, Student was actively seeking thumbtacks, climbing on objects to retrieve them from heights, putting them in her mouth, and threatening to

technician in Boston. She currently is the clinical director at Juvo, a nonpublic agency, formerly called Educational Support Services.

swallow them.

24. Ms. Piedrahita found that Student was most likely to engage in one or more of the behaviors focused on in the behavior assessment when she was asked to do something that she did not want to do, was physically transitioning from one location to another, or when she was alone. Student was eloping approximately 11 times each week, averaging over five and one-half hours outside of the classroom each day. The function of elopement was escape and to gain attention. Student was tantruming an average of three times per week, again for escape and attention. Following spring break in April 2017, mouthing had become a very prevalent behavior, and elopement and tantruming also increased dramatically.

PSYCHOEDUCATIONAL EVALUATION

25. Ms. Garroville conducted a psychoeducational assessment in the fall of 2016 with the assistance of another school psychologist, Karin Laursen.⁸ Ms. Garroville focused on the following areas of possible eligibility for special education: other health impairment due to Student's previous diagnosis of attention deficit hyperactivity disorder, emotional disturbance, or autism.

26. Ms. Garroville used the Differential Ability Scales, Second Edition, and portions of the Developmental Neuropsychological Assessment, Second Edition to assess Student's cognitive abilities. For the most part Student's cognition was in the average

⁸ Ms. Garroville received her undergraduate degree from the University of California Santa Barbara in psychology, and her graduate degree as an educational specialist from California State University Sacramento. She previously worked for the Vallejo Unified School District, and this is her fourth year as a school psychologist with Oakland. Ms. Laursen did not testify but was identified in the assessment as a school psychologist, and Ms. Garroville testified that Ms. Laursen was an autism specialist.

range, with some weakness in social perception as measured by two subtests of the Developmental Assessment. Student was administered four subtests in the Developmental Assessment that measured attention and executive functioning. She had below average results on the Sorting subtest, and well below average results on the Rapid Naming subtest. Student was not very cooperative when these tests were administered, and the low results indicated deficits in the areas of attention and executive functioning, not surprising given Student's undisputed diagnosis of attention deficit hyperactivity disorder. These results were consistent with Dr. Gross's cognitive test results.

27. Parent and Student's aide were given the Behavior Assessment System for Children, Second and Third Editions to complete.⁹ The aide's results indicated that she was "excessively negative" in her ratings, which called into question the validity of her responses. The aide's results showed Student having more significant problems in several domains than were shown by Parent's results. Both raters found Student to have clinically significant results in the areas of attention and hyperactivity, again not surprising due to Student's undisputed diagnosis of attention deficit hyperactivity disorder.

28. Student responded to questions from the Beck Youth Inventory, Second Edition. Her responses showed "Extremely Elevated" scores in the areas of Depression, Anxiety, and Anger, with a "Much Lower than Average" score in the area of Self-Concept. Ms. Garrovillo also conducted a projective assessment of Student by engaging her in the "Guess Why?" game, in which Student responded to a series of open ended questions. Student's responses were indicative of challenging relationships with others,

⁹ There was no evidence as to why two different editions were used, but the appropriateness of the testing is not at issue in this Decision.

negative perceptions of how others treat her, and negative self-perception, which confirmed the Beck findings.

29. Parent and Ms. Catalano, student's teacher, were given the Social Communication Questionnaire to complete. This is a screening tool that may reveal a possibility that a child is on the autism spectrum. Parent's responses resulted in a total score of 11, below the threshold score of 15 which may indicate autism. Ms. Catalano's score was 18. Therefore, Ms. Garrovillo decided to have Student assessed using the Autism Diagnostic Observation Schedule, Second Edition. Because Ms. Garrovillo has not been trained to administer this assessment, Ms. Laursen administered the Observation Schedule. Some of Student's behaviors and expressions during the administration of this instrument were similar to those demonstrated by a child on the autism spectrum. However, Ms. Garrovillo and Ms. Laursen determined that Student did not meet the criteria for eligibility for special education as a child with autism. This opinion was based on all the results of the testing conducted by Ms. Garrovillo, including interviews of Student and Parent, observation of Student in class and at recess, a complete records review including the charter school's psychoeducational assessment of Student in 2014, and Dr. Gross's independent educational evaluation discussed above.

30. Ms. Garrovillo concluded that Student met the criteria for special education pursuant to the Individuals with Disabilities Education Act, and California implementing statutes and regulations as a child with other health impairment, due to her attention deficit hyperactivity disorder diagnosis and related behaviors. She also found that Student met the criteria for special education under the category of emotional disturbance, and recommended that the latter be deemed Student's primary disability. She recommended, among other things, that Student receive educationally related mental health services.

EDUCATIONAL EVALUATION

31. Mr. McKinley, Student's resource teacher, conducted an academic achievement assessment of Student to assist the IEP team in determining whether Student met the criteria for special education as a child with a specific learning disability.¹⁰ To do so, he administered subtests from the Woodcock-Johnson Tests of Achievement, Fourth Edition, and the Wide Range Achievement Test, Revision 4. Student generally scored in the average range, although there were a few subtests in the below average range due to Student being distracted and off-task, or refusing to cooperate with testing. Based on the results of testing, combined with his knowledge of Student as her resource teacher, Mr. McKinley determined that Student functioned academically in the average range. Ms. Garrovillo also found Student to be in the average range cognitively. Therefore, there was no indication that Student met the criteria for special education eligibility as a child with a specific learning disability.

OCCUPATIONAL THERAPY ASSESSMENT

32. Ms. Woodrow conducted the triennial occupational therapy assessment of

¹⁰ Mr. McKinley has been employed by Oakland for 34 years. He worked as a substitute teacher for a few years, and then moved into special education with Oakland. Mr. McKinley received his teaching credential from the University of Delaware, and his master's degree and special education credential from California State University Hayward (now known as California State University East Bay.) His special education credential allows him to work in both the mild-to-moderate setting, and the moderate-to-severe setting.

Student in the fall of 2016.¹¹ To do so, she reviewed records, and observed Student in her occupational therapy sessions and in her classroom. Observations were difficult as Student was usually not in class, but, rather, in the hallways or on the playground. Additionally, Student often refused to come to her scheduled occupational therapy sessions. Ms. Woodrow also administered the Bruininks-Oseretsky Test of Motor Proficiency, and had Ms. Catalano complete the Sensory Processing Measure, a questionnaire.

33. During her occupational therapy sessions with Student, and during testing sessions, Ms. Woodrow found her to be cooperative at times when she was asked to do preferred activities, and uncooperative when asked to do less preferred activities. Based on Ms. Woodrow's assessment, it did not appear that Student had gross motor deficits.

34. Ms. Catalano's responses to the Sensory Processing Measure showed some problems with Student becoming distracted by visual stimuli during instruction. She also was disruptive in class by yelling, screaming, and making noises and other sounds during quiet times in class. Ms. Catalano noted that Student did not clear her mouth of food or saliva, and also reported student's "mouthing" behavior. Student was reported to always be fidgeting, and frequently ran, jumped, and hopped instead of walking. All of these behaviors demonstrated sensory processing issues common for children with attention deficit hyperactivity disorder. Although Ms. Woodrow had sensory tools in a box by Student's desk, Student rarely accessed them. Other sensory strategies often failed to improve Student's behavior.

¹¹ Ms. Woodrow has been an occupational therapist since 1993. She received her degree from California State University San Jose. She was in private practice for five years and began working for Oakland in 1998. She specializes in pediatric occupational therapy.

35. Student's fine motor skills were within the average range in terms of manual dexterity, writing, cutting and other fine motor tasks. Her handwriting was legible and functional, and typical for a second grader. Her scores on the Test of Motor Proficiency were in the average range. Her self-care skills were age-appropriate.

36. In her summary, Ms. Woodrow opined that while sensory strategies may be effective for some students with attention deficit hyperactivity disorder, the overall applicability of these strategies to alleviate attention deficits had not been scientifically proven. Based on Student's average fine motor and gross motor proficiencies, Ms. Woodrow recommended discontinuing direct occupational services, but recommended continued consultation to find sensory strategies that would improve Student's focus and self-regulation.

December 14, 2016 IEP Team Meeting

37. On December 14, 2016, Oakland convened an IEP team meeting to review the triennial assessment reports. All required attendees were at this meeting, and included Parent, Ms. Baskind, Ms. Garrovillo, Ms. Woodrow, Mr. McKinley, Ms. Piedrahita, and Ms. Catalano. The triennial reports were reviewed. Student was eloping and outside the classroom for more than 80 percent of each school day. She was missing most of her general education instruction and time with Mr. McKinley to work on her IEP goals as either a push-in or pull-out service. When she was outside the classroom she sometimes tried to escape from the school grounds, which placed her in danger due to traffic and other safety concerns.

38. Based on the results of the assessments, Oakland suggested changing Student's primary disability category to emotional disturbance, with other health impairment as a secondary eligibility category. It also changed its offer from Ms. Catalano's general education second grade classroom, with the services of a one-to-one behavioral aide, to placement in an intensive counseling enriched special day class. The

offer also included 45 minutes per week individual counseling, and 90 minutes per week (three 30 minute sessions) of group counseling. Occupational therapy services were changed from direct weekly services to 20 minutes monthly consultation. Parent was an active participant at this IEP team meeting but did not consent to this offer.

Events after Winter Break 2016-2017 School Year

39. Winter break began December 19, 2016, and lasted two weeks. After winter break, Student had a new one-to-one behavioral aide. Oakland staff decided to try a different strategy in an attempt to encourage Student to remain in Ms. Catalano's classroom for more than 20 percent of the school day. To do so, academic demands were not made, and she was rewarded for staying in the classroom, whether or not she attempted or completed classwork, or attended to instruction. Her elopement attempts decreased, and she was spending a larger percentage of each day in the classroom. However, she was still not doing work, or attending to instruction. Attempts to increase her attention to instruction and encourage her participation in classroom activities were not very successful, and elopement and tantrums again increased, with Student absent from the classroom 70 to 80 percent of the time.

40. Student's elopement and tantrum behaviors increased markedly after spring break, which ended on April 10, 2017. Her school attendance decreased because of absences and Parent picking her up early. When Student attended school, she was almost always absent from class, roaming the halls or grounds of the school. She was often yelling or screaming as she roamed, disrupting instruction in nearby classrooms. It was estimated that she was out of the classroom for 90 percent of each school day following spring break. Student searched for thumbtacks. She climbed objects, such as a water fountain, to find them, and then put them in her mouth and threatened to swallow them. She climbed fences, attempting to escape the school grounds. She attempted to climb out windows. When her aide tried to restrain her, Student

responded aggressively, attempting to tear off the aide's clothing, and hitting and shoving her. The behavior plan was ineffective.

41. Donald Bertolo, the school's principal, was better able than other staff to calm Student when her behavior escalated to an extreme level, and he would take her to his office to help her de-escalate. On at least one occasion she attempted to climb out of the window in his office. Once paramedics had to be called, and another time police were called because it was thought that Student had swallowed a thumbtack, or was in danger of doing so.

Mr. McKinley's Log

42. During the 2016-2017 school year, Mr. McKinley kept a log concerning Student. Some of the information in it was cut and pasted into communications with Parent, but not all of it. In the log, Mr. McKinley reported on Student's behavior on some days, whether she came to resource class when she was supposed to, her general attendance, and interactions with Parent. Entries were made on the day an event occurred, although there were a few days where entries were not made. When Mr. McKinley testified, he answered questions thoughtfully, with a calm demeanor. He credibly testified that the log contained accurate reports.

43. Mother was not always supportive of attempts to keep Student safe and in class. On one occasion, Mr. McKinley was trying to get Student to come down from a play structure where she had climbed to the very top, and was standing in an area that was not intended to be accessed by children using the structure. When Mr. McKinley telephoned Parent to see if she could talk to Student and convince her to come down, Parent would not cooperate, argued with him, and repeatedly told him that he was not handling Student correctly. He finally had to hang up on her. On another occasion, Parent objected to adults attempting to physically block Student from leaving a room with their bodies, even though that was a strategy to prevent elopement that was in the

behavior plan Parent had approved.

44. Although no attendance records were admitted into evidence, based on the log and witness testimony, Student rarely came to the resource room to work with Mr. McKinley. When she did, it was often not productive. Parent often picked up Student early from school so she was not present when she was supposed to be in the resource room. There was some evidence that after the second week of May 2017, Student stopped attending school altogether.

45. Oakland filed a request for due process in March 2017 asking that it be permitted to place Student in the intensive counseling enriched special day classroom pursuant to the December 14, 2016 offer, and Student filed her own request for due process on April 28, 2017. The matters were consolidated, and Oakland filed an amended complaint on June 19, 2017, asking that it be permitted to place Student in an interim alternative educational setting in the intensive counseling enriched special day classroom for 45 days.

46. As previously discussed, OAH held an expedited hearing in July 2017, and issued an Expedited Decision on August 23, 2017, finding an interim alternative educational setting appropriate, but declining to place Student in the setting requested by Oakland. A second hearing was then held which resulted in another Expedited Decision issued on September 21, 2017, approving Highland as an appropriate interim alternative educational setting.

2017-2018 SCHOOL YEAR

47. Student returned to school at the beginning of this school year with a new one-to-one aide, and a new behaviorist, although the nonpublic agency providing these services remained unchanged. There was no change in Student's behavior from what it was after spring break of the 2016-2017 school year. Again, she was rarely in the third-grade classroom to which she was assigned, and most often could be found on the

playground or hallways. She continued to crawl on all fours making animal noises. She became physically aggressive if adults tried to intervene. Student was often quite noisy when she eloped which disrupted nearby classrooms and interfered with instruction and the other students' attention. When Student was in class, her behavior was disruptive and interfered with the teacher's instruction, and other children's ability to attend to instruction. Student stopped attending school altogether in mid-to-late September 2017. Although the OAH Decision allowing Oakland to place Student at Highland Academy had been issued, Parent refused to complete the documents Highland required for her to attend, and at the time of this hearing, Student had been out of school for approximately three months. Parent reportedly balked at signing consent for Student to be restrained at Highland if she became a danger to self or others.

IEP Team Meeting and Offer of October 24, 2017

48. An IEP team meeting was convened on October 24, 2017. All required attendees were there and included Parent, Student's Aunt, Ms. Woodrow, Mr. McKinley, Student's third grade teacher, the Juvo (formerly Educational Support Services) behaviorist now assigned to Student, and Ms. Garroville. Also attending were Ms. Baskind, and Oakland's attorney, Mr. Mishook. Parent presented the team with a psychological assessment of Student conducted by Liza Bathori, Ph.D. to determine if Student qualified for services from the East Bay Regional Center.¹²

49. Dr. Bathori had diagnosed Student with autism. She had administered several tests to Student, including the Observation Schedule, and observed Student at

¹² In California, people of all ages with developmental disabilities are entitled to receive a variety of services from state regional centers under the state Lanterman Developmental Disabilities Service Act, California Welfare and Institutions Code, section 4500, et seq.

school for an hour. Part of the reason for Dr. Bathori's autism diagnosis was based on Parent's responses to the Social Communication Questionnaire, which resulted in a score of 18, although Parent's responses to the same Questionnaire when given to her by Ms. Garrovillo a few months earlier resulted in a score of only 11. In response to Dr. Bathori's report, Ms. Garrovillo explained to the team that Dr. Bathori's diagnosis was based on the criteria from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, which are not the same criteria required to qualify a student for special education as a pupil on the autism spectrum as defined by Education Code section 56846.2, and California Code of Regulations, title 5, section 3030, subdivision (b)(1). Due to these legal requirements, the special education assessor is obligated to make a determination as to whether mental health issues, other than autism, are the cause of the behaviors that might otherwise lead to a finding that the student has autism spectrum disorder under the Diagnostic and Statistical Manual. Ms. Garrovillo was poised and thoughtful when she testified at hearing, and very convincing and credible when she gave her opinion that Student was best described as emotionally disturbed, not autistic or suffering from other health impairment. Parent disagreed with the Oakland IEP team members' determination that Student was qualified for special education under the primary category of emotional disturbance, and secondary category of other health impairment due to her diagnosis of attention deficit hyperactivity disorder. Mother wanted Student's eligibility category to be changed to autism.

50. The October 24, 2017 IEP, describes Student's academic achievement and functional performance in a similar manner as the IEP drafted in December 2016. The person leading the meeting tried to have Parent discuss the information in this section of the IEP, but she would not do so; instead she wanted to discuss the proposed goals. The proposed goals were similar to those in the IEP from October 2016, just slightly

updated since Student had been in class so little during the 2016-2017 school year, and the 2017-2018 school year, and therefore had made no progress on the goals.

51. The IEP stated that Student needed goals in the following areas of need: reading, writing, social-emotional, and behavior. There were two reading goals. The first had a baseline stating Student was reading at mid-first-grade level when last tested. The first reading goal stated that “[Student] will be able to read a lower third grade level passage and answer comprehension questions about it with 80% accuracy, as measured by standardized and/or criterion referenced tests.” The second had the same baseline and stated that “[Student] will be able to decode and read unknown words at a lower third grade level including CVVC, CVCe, blends, and digraphs with 80% accuracy as measured by standardized and/or criterion referenced tests.”¹³ With the exception of replacing the words “upper second grade” with the words, “lower third grade,” these goals were identical to those contained in the IEP from October 2016. All of the goals in the October 24, 2017 IEP were nearly or completely identical to those in the October 2016 IEP due to Student’s lack of progress resulting from her excessive absences from class as discussed above.

52. The third goal in the IEP of October 24, 2017, was a spelling goal. The baseline stated that Student “was spelling at a low to mid first grade level. Can currently spell many words with CVC, CVCe, blends and digraphs, but is inconsistent.” The goal stated, “[Student] will be able to spell teacher selected words at a lower third grade level including CVVC, CVCe, blends, and digraphs with 80% accuracy as measured by standardized and/or criterion referenced tests.” The fourth goal was for writing. The

¹³ “CVVC” stands for words which begin and end with a consonant, and have a pair of vowels between them. “CVCe” stands for words that begin with a consonant followed by a vowel and a second consonant, and end with the letter “e.”

baseline stated that Student was able to write individual sentences on her own. The goal stated that “[Student] will be able to write three to four complete sentences on a single topic, editing them for capitalization, punctuation, spelling, grammar, and content as measured by school or district rubrics.”

53. Although not identified as an area of need, the fifth goal in the IEP of October 24, 2017, was a math goal and contained the baseline that Student “does well with basic computation, but has difficulty explaining reasoning.” The goal stated that “[Student] will be able to use a variety of methods, such as words, numbers, symbols, charts, graphs, tables, diagrams, and models to explain mathematical reasoning in 4 out of 5 trials as measured by teacher observation and records.

54. Goals six and seven are related to behavior and social-emotional deficits. Goal six states the baseline as “elopement daily, and out of class 80% of day on average. Cannot stay focused on topic more than a few minutes.” The goal states that “[Student] will remain in the designated area for 70% of the total duration of activities across her entire school day as measured across 10 consecutive days.” Goal seven states a baseline that Student “elopes without asking permission to leave classroom several X per day.” The goal requires Student to “independently ask for a 5 minute break for the purpose of gaining access to a preferred activity during transitions or independent work on 3 out of 5 days as measured by behavioral aide observations and data collection.”

55. Goal eight, also a goal related to behavior and social-emotional deficits, focuses on the maladaptive behaviors targeted in the behavior plan. The goal contains a baseline that comes from the October 2016 IEP, and states, “Current rates: Elopement 1.7 instances per day, rate of 5 hours total each day. Tantrum: rate of 1 [or .1?]”¹⁴

¹⁴ The IEP goal stated the rate of “.1” instance per date, which did not comport with the behavior assessment conducted in the fall of 2016.

instance per day. Mouthing rate of .5 instances per day. All were measured across 10 consecutive days." The goal states that "[Student] will reduce instances of elopement, tantrum behavior and mouthing of non-edible items to a rate of 50% of current levels as measured across 10 consecutive days. Preventative measures include using functional communication to request, frequent 'breaks' to earn as a reward for on-task behavior, differential reinforcement of other behaviors, a written schedule to anticipate changes in routine, and a token economy to reinforce appropriate behavior. Tool Box tools, sensory breaks, Zones of Regulation tools, restorative activities, or other coping skill[s] which work for [Student]." (*Sic*)

56. The ninth goal is another goal addressing behavior and social-emotional deficits. This goal is related to field trips, and was also contained in the IEP from October 2016. The goal states that "[Student] will display appropriate distance from an adult while walking for a distance of .25 miles and follow 3 directives when outside of school grounds as requirement for participation in off-campus activities such as field trips, as measured across 10 consecutive days."

57. The last goal is a writing goal related to occupational therapy and states a baseline of "[Student] demonstrates the ability to copy a HWT [Handwriting Without Tears]¹⁵ 4-sentence paragraph, but does not generalize this skill into the classroom." The goal calls for Student to "independently and consistently copy a 4-sentence paragraph with proper letter formation, spacing and line orientation in 4 out of 5 trials, as measured by observation and work samples." This goal was reported as met in October 2016, but shortly before or after that IEP team meeting, Ms. Woodrow reported that

¹⁵ Handwriting Without Tears is a curriculum used by many school districts to help children learn how to write properly. This curriculum was used with Student at the charter school she attended before she was enrolled as an Oakland student.

Student was not coming to, or cooperating in occupational therapy.” Therefore, there was some question as to whether it actually had been met.

58. After the team reviewed these goals at the October 24, 2017 IEP team meeting, Parent stated she agreed with Oakland’s proposed goals. However, she brought several pages of computer printouts of goals, and printouts of notes that appear to have been created for review at an IEP team meeting when Student was much younger. She wanted the goals added to the IEP, and wanted to discuss the notes. A portion of Parent’s proposed goals were generic goals for children with autism in specific areas of need. Each section included goals for Early Education and Preschool, Elementary School, and Middle and High School. Oakland IEP team members believed the goals were inappropriate for Student because they did not address her specific areas of need, and she could already do most if not all of tasks targeted by the goals designed for elementary school children. The pages that appear to be notes for an IEP meeting when Student was younger similarly appeared to be generic, and not appropriate for Student at this time. Oakland attached Parent’s proposed goals and the notes to the final IEP document, and also attached Dr. Bathori’s assessment and a letter from the Regional Center that acknowledged Student qualified for its services due to the diagnosis of autism spectrum disorder.

59. Accommodations for Student in the October 24, 2017 IEP, were similar to, but not identical to those in the IEP of October 2016. They included movement/sensory breaks throughout the day for five to 10 minutes, use of sensory tools as needed, preferential seating to reduce distraction, “preferred pencil and paper activities,” incentives for work completed, and a personalized visual schedule and incentive chart with a break system. In addition, instructions were to be rephrased or repeated to check for understanding, Student was to have a graphic organizer and other tools for written work, homework was to be modified, and there was to be a daily written communication

log between school and home.

60. Oakland's offer of a FAPE and services was the following: placement at Highland Academy in a special day class, 30 minutes weekly of group counseling, and 60 minutes monthly consultation by the occupational therapist with Student's teacher/s. Student was to be provided with transportation, and would be given the opportunity to visit the new placement and meet the teacher and school staff. Student's progress on goals would be reported at the end of each trimester. Extended school year services were recommended. The rationale for these services stated in the IEP was "Due to [Student's] behavioral, emotional, and academic progress, ESY [extended school year] is recommended as to be necessary."

61. Parent was an active participant at the IEP team meeting on October 24, 2017, when this IEP was developed. Parent did not agree to the IEP. Therefore, Oakland filed this action asking that OAH permit it to implement the proposed IEP without Parent's consent. As of the time of hearing, Student had not attended school since September. Parent had not completed the necessary documentation for Student to attend Highland, the interim alternative educational placement ordered by OAH on September 21, 2017, because, according to witness testimony, she was required to agree to Student being restrained if necessary to prevent her from harming herself or others. If Parent does not allow placement at Highland, Oakland is asking that it no longer be required to provide Student with special education and related services.

HIGHLAND ACADEMY

62. Highland is a small "hybrid" school jointly operated by the Hayward Unified School District and a nonpublic agency, Point Quest. Point Quest operates several nonpublic schools, and also provides mental health services. Highland is a public elementary school for children who have average to above average cognition, but mental health and/or behavioral challenges. Some of the students are on the autism

spectrum. All of the students have IEP's. Hayward provides special education credentialed teachers and uses its own general education curriculum for the classes at Highland. Most Students are working at a level close to, at, or above their grade level. Students at Highland receive mental health services from mental health professionals employed by Point Quest. In addition, mental health and behavior services are embedded in each classroom. There are two therapists at Highland at all times, as well as one or more behaviorists.

63. There are three classrooms at Highland. The classroom for kindergarten and first grade has 11 students with four adults in the classroom, one of whom is the teacher. The classroom for students in grades two and three has six students and three staff, including the teacher. The classroom for students in grades four through six has seven students and three staff, including the teacher. Highland is located in a residential neighborhood, and the campus is completely fenced. It shares its parking lot with a nonpublic school, but otherwise has its own buildings and facilities.

64. Many if not all of the students at Highland have behavior plans. Everyone on campus is knowledgeable about each student's behavior plan, so behavior plans are consistently implemented throughout the day, and at all locations on campus. Staff meets weekly to discuss all students and to determine if changes need to be made in behavior plans or different strategies need to be used to help a student. All staff have been trained in crisis prevention through the Crisis Program Institute. Therefore, Student will not require a one-to-one behavior aide if placed at Highland.

65. Students at Highland are transported by van from their homes to campus. One or more aides are on the van, and Highland's behavior program begins when a student first enters the van. Mental health services include individual and group counseling for all students. There is a token economy and rewards are given on Friday. The program at Highlands is designed to be focused on the students' needs and based

on a positive behavior intervention model. The campus has a sensory room and a therapy dog. There are quiet rooms where students can go to calm down if they are being disruptive. Highland can implement all of Student's proposed IEP goals and perhaps Student would be able to make appropriate progress on these goals if placed there. Highland has room for Student. After Student has been placed at Highland for 30 days, an IEP team meeting will be held to determine if the goals, behavior plan, and other aspects of the IEP are still appropriate, or if changes need to be made.

66. Student has exhibited out-of-control behaviors in the general education classroom, even with a full-time aide who is supervised by a board certified behavior analyst. She did not receive educational benefit at the Oakland elementary school she attended, because she was unavailable for instruction in all settings, either because she was not physically present due to elopement, was engaging in tantrum behaviors, or was not on task if she was physically present. The program at Highland will help Student learn self-regulation, and with that she should be able to achieve academically, and not engage in the behaviors that were so disruptive in the general education classroom, and on the general education campus. The evidence established that without this type of placement, Student's maladaptive behaviors are unlikely to change, and she will continue to be unable to access her education.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA¹⁶

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. §

¹⁶ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic, and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access

to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs.

4. In *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580 U.S. ___, 137 S.Ct. 988, 996, the Supreme Court clarified that "for children receiving instruction in the regular classroom, [the IDEA's guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" For a case in which the student cannot be reasonably expected to "progress[] smoothly through the regular curriculum," the child's educational program must be "appropriately ambitious in light of [the child's] circumstances" (*Ibid.*) The IDEA requires "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Id.* at 1001.) Importantly, "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." (*Ibid.*)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) 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].) In this matter, Oakland had the burden of proof on the sole issue decided.

ISSUE: WHETHER OAKLAND'S IEP DATED OCTOBER 24, 2017, WILL PROVIDE STUDENT WITH A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT

6. Oakland contends that it must be allowed to implement the IEP of October 24, 2017, despite the fact that Parent has not consented to it. Oakland believes that the most suitable placement for Student is in a special day class at Highland. Behavior and mental health services are embedded in the Highland program. Oakland argues that Student cannot access her education unless she learns to regulate her behavior, and Highland's program will teach her to do so. Oakland claims that Highland is the least restrictive environment for Student, even though there are no typically developing children on the campus.

7. Parent did not attend the hearing and did not provide OAH with a written closing argument. However, witness testimony at hearing, Parent's comments as reported in notes from IEP's admitted into evidence, the log kept by Mr. McKinley, and assessment reports established that Parent believes that Student has autism and requires a program that is focused on this diagnosis. She does not agree with placement at Highland because she does not agree that Student should ever be restrained, or be confined in a classroom if she wishes to leave, or be directed to do something she does not wish to do, such as climbing down from a dangerous height.

Procedural Timelines

8. The IEP team shall review the pupil's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the pupil are being achieved, and revise the IEP, as appropriate, to address, among other matters, information about the pupil provided to, or by, the parents; the pupil's anticipated needs; or any other relevant matter. (Ed. Code, § 56341.1, subd. (d)(3), (4), and (5).)

Procedural Violations

9. A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.)

General Requirements for the Analysis of IEP's

10. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

PARENT PARTICIPATION

11. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan.

(*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) Accordingly, at the IEP team meeting parents have the right to present information in person or through a representative. (Ed. Code, § 56341.1.)

12. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

ELIGIBILITY CATEGORIES

13. A student's eligibility category may have consequences for funding, the availability of outside services, statistical reporting, and other purposes, but if an IEP delivers a FAPE, the accuracy of the category under which it is delivered is not an issue for judicial review under the IDEA. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2014) 758 F.3d 1162, 1172-1175; *B.B. v. Perry Township School Corp.* (S.D.Ind. 2008, July 11, 2008, Nos. 1:07-cv-0323; 1:07-cv-0731) 2008 WL 2745094, p. 8 [nonpub. opn.]) The United States Department of Education has advised that "a child's entitlement is not to a specific disability classification or label, but to a free appropriate public education." (Letter to Fazio (OSEP 1994) 21 IDELR 572, 21 LRP 2759.)

14. As long as a child remains eligible for special education and related services, the IDEA does not require that the child be placed in the most accurate disability category. The IDEA provides, "Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in . . . this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability . . ." (20 U.S.C. § 1412(a)(3)(B).)

15. California Code of Regulations, title 5, section 3030, subdivision (b)(1), describes the criteria for determining whether a child qualifies for special education under the category of autism:

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

16. Autism is a spectrum disorder, indicating a range of disability, some of which allow a child to appropriately function without special education. As a result, a medical diagnosis alone is not sufficient to support a finding of eligibility for special education. (See, *E.J. v. San Carlos Elem. Sch. Dist.* (N.D.Cal. 2011) 804 F. Supp. 2d 1024, 1032.)

CONTENTS OF IEP'S

17. In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

18. The IEP is the “centerpiece of the [IDEA’s] education delivery system for disabled children” and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the “modus operandi” of the IDEA, “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” (*School Comm. of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

19. An IEP includes a statement of the present performance of the student, a statement of measurable annual goals designed to meet the student’s needs that result from the disability, a description of the manner in which progress of the student towards meeting the annual goals will be measured, the specific services to be provided with the projected initiation date and anticipated duration, the extent to which the student can participate in regular educational programs, and the procedures for determining whether the instructional objectives are achieved. (20 U.S.C. § 1414 (d)(1)(A)(i),(ii); 34 C.F.R. § 300.320(a)(2), (3); Ed. Code § 56345, subds. (a)(2), (3).) Annual goals must meet “the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum” and “[meet] each of the child’s other educational needs that result from the child’s disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).)

20. The IEP shall also include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

21. In developing an IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*).) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.

22. In *Union School Dist. v. Smith* (1994) 15 F. 3d 1519, cert. den., 513 U.S. 965 the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand.

Least Restrictive Environment

23. A school district must ensure that a child with a disability is educated in the least restrictive environment. (34 C.F.R. § 300.116.) To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that (1) children with disabilities are educated with non-disabled peers; and (2) special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

24. A specific educational placement means that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the student's IEP, in any one, or a

combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042.)

25. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has articulated a test that balances the following factors: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student has on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of general education was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].)

26. If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options.¹⁷ (34 C.F.R. § 300.115; Ed. Code § 56360; *Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in

¹⁷ "Mainstreaming" is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.)

27. While every effort is to be made to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child's IEP goals. (*San Diego, supra*, 93 F.3d at p. 1468.) Placement in the least restrictive environment is not an absolute. In an appropriate case, it must yield to the requirement that a student receive a FAPE. The IDEA does not require mainstreaming to the maximum extent possible or to the maximum extent conceivable. Rather, it requires mainstreaming to the maximum extent appropriate. Mainstreaming is an important element of education for children with disabilities, but the IDEA does not permit, let alone require, a school district to mainstream a student where the student is unlikely to make significant educational and non-academic progress. (*D.F. v. Western School Corp.* (S.D.Ind. 1996) 921 F.Supp. 559, 571 [citation omitted].)

28. The IDEA recognizes that some students should not be placed in general education. Despite this preference for "mainstreaming" children with disabilities, that is, educating them with nondisabled children, Congress recognized that regular classrooms simply would not be a suitable setting for the education of many disabled children. The Act expressly acknowledges that "the nature or severity of the disability [may be] such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5).) The Act thus provides for the education of some disabled children in separate classes or institutional settings. (*Rowley, supra*, 458 U.S. at p. 181, fn. 4 [citation omitted].)

Analysis

29. Student has not, and cannot receive educational benefit in a general education classroom, even when supported by a one-to-one behavioral aide who is

supervised by a board certified behavior analyst, with a behavior plan developed after a comprehensive functional behavior assessment. During the 2016-2017 school year, her presence in her general education classroom was 20 percent or less. Even when she was present, she usually paid no attention to instruction. Instead she would only stay on task for a few minutes at most, and/or would engage in the tantrum behavior of screaming, crying, crawling on the floor on all fours, pretending to be an animal, and aggression such as hitting, kicking, trying to tear off her aide's clothing, etc. At times she put herself in danger, trying to escape her school's campus by climbing out windows, or climbing on objects to get thumbtacks or other inedible objects which she would put in her mouth and threaten to ingest. These behaviors steadily escalated from 2015 to the present until Parent stopped sending her to school in September of 2017. Student's behavior made her a danger to herself and others, and also was very disruptive in Student's own classroom, and in other classrooms on the general education campus when it occurred during elopement.

30. The IEP team meeting of October 24, 2017, was an annual IEP team meeting convened by Oakland. There was no evidence that it was untimely, and given the fact that her previous annual IEP team meeting had consisted of two sessions in October 2016, one on October 19, and the continuation on October 27, 2016, the fact that the October 24, 2017 IEP team meeting occurred a few days later in October 2017 than the first October 2016 annual IEP team meeting was not a procedural violation that denied Student a FAPE, or educational benefit, or denied Parent meaningful participation in the IEP development process. Parent was an active participant in the IEP team meeting of October 24, 2017.

31. Although it was established that Parent disagreed with Oakland's belief that Student's primary disability for special education purposes was emotional disturbance rather than autism, the evidence established that children on the autism

spectrum are placed at Highland and their needs are met there. Therefore, Student's recent diagnosis of autism by Dr. Bathori would not result in Highland being an inappropriate placement. Oakland's determination that Student's primary disability was emotional disturbance, not autism, was supported by the assessment of Dr. Gross in 2015, and Ms. Garrovillo in 2016. Ms. Garrovillo was credible when she gave her opinion that Student was best described as emotionally disturbed, not autistic or suffering from other health impairment. Although Dr. Bathori found Student qualified for Regional Center services due to a diagnosis of autism, this diagnosis was based on the Diagnostic and Statistical Manual criteria which are not the same as those required under the IDEA, as implemented by California statutes and regulations.

32. Dr. Barthori's diagnosis was also based on an observation at school that lasted only an hour, and the testing she did of Student, as well as Parent's responses to the Social Communication Questionnaire. However, when Parent completed the same questionnaire a few months earlier for Ms. Garrovillo, her score of 11 placed Student well below the threshold of 15 to qualify a subject as possibly being autistic. When Parent completed the same questionnaire for Dr. Bartholi, her score was now 18. There was no evidence to support a finding that Student's behavior had changed so drastically in the few months between the assessments.

33. Oakland staff diligently attempted to reduce and eliminate Student's maladaptive behaviors during the course of the 2016-2017 school year. Approximately one week after the beginning of the school year, Oakland contracted with a nonpublic agency to obtain a one-to-one behavioral aide, as required by Student's charter school IEP. The behavioral aide was supervised by a board certified behavioral analyst, who reviewed the behavior support plan from the charter school and modified it after observing Student and talking to the aide.

34. Ms. Piedrahita revised Student's behavior plan from the charter school

within two weeks of Student beginning to attend school in Oakland. Ms. Woodrow attempted to see Student for regular scheduled occupational therapy sessions, but Student often would refuse to come and/or would elope. Ms. Woodrow tried to keep a box by Student's desk stocked with appropriate sensory diet tools, trying to find ones that would appeal to Student, even though Student tended to ignore the box and tools. Mr. McKinley provided both push-in and pull-out resource specialist services to Student but more often than not she was unavailable for services either because she refused to come to the resource room, she was eloping, she was absent, or Parent had taken her home from school early.

35. From the beginning of the 2016-2017 school year, until Student stopped attending school in September 2017, Oakland personnel went to great lengths to serve Student in the general education environment. Oakland held an IEP team meeting in September 2016, and reviewed a report from Ms. Garravillo summarizing previous psychological assessments and other information, and a report from Ms. Woodrow concerning Student's occupational therapy needs. Mr. McKinley submitted information about Student's academic achievement level for that meeting. Ms. Piedrahita submitted a revised behavior intervention plan. The team discussed the findings of Mr. McKinley and Ms. Catalano concerning Student's academic achievement and needs, as well as the findings of the other professionals at both the September 2016 IEP team meeting, and both of the team meetings in October 2016. Again, Parent was an active participant and approved the resulting annual IEP.

36. The October 24, 2017 IEP team had access to the triennial assessments Oakland had conducted in late 2016, and many of the October 24, 2017 IEP team members were individuals who had conducted those assessments and worked with Student since she enrolled in August 2016. All triennial assessments reviewed at the December 2016 IEP team meeting paint an accurate picture of Student that was

corroborated by the testimony of the witnesses at hearing. The information regarding Student's present levels of performance contained in the IEP of October 24, 2017, while similar to that in the IEP from December 2016 when the triennial assessments were reviewed, as well as the earlier IEP from October 2016, was still accurate. Student continued to frequently elope and, thus, was not engaged in the classroom activities. She often refused to go to the resource room or occupational therapy. Student had not attended school for a few weeks at the time of the October 24, 2017 IEP team meeting, because Parent refused to enroll her in the interim alternative educational placement ordered by OAH in September of 2017. When Oakland tried to have Parent address Student's current levels of academic achievement and functional performance during the IEP team meeting of October 24, 2017, Parent would not do so, insisting instead on discussing goals. Therefore, although some of the information in the October 2017 IEP was not novel, there was no evidence that it was not accurate.

37. The goals that were developed at the IEP team meeting on October 24, 2017, addressed Student's needs, were objectively measurable, and were capable of being met if she were placed at Highland because she would be taught by teachers with special education credentials, and her behavior would be better regulated. Although the goals are quite similar to those contained in the IEP of October 2016, this was because Student was eloping from the classroom and thus unavailable for instruction at least 80 percent of that school year, and during the time she attended during the 2017-2018 school year. She could not have made progress on those goals, unless Parent was working on them with her at home and there was no evidence that this was occurring. At the IEP team meeting on October 24, 2017, Parent verbally agreed to the goals proposed by Oakland. While the team did not adopt the goals that Parent brought with her to the IEP meeting in October 2017, they did review and consider them. They were not adopted because they were inappropriate for a child of Student's age and

developmental level, and were not specifically tailored to meet Student's unique needs.

38. The accommodations included in the IEP of October 24, 2017, are similar to those that followed Student from her charter school and to those in the IEP of October 2016. The accommodations in the IEP of October 24, 2017, are designed to meet Student's needs. Based on the testimony of the witnesses at hearing, and the assessments admitted into evidence, these accommodations are appropriate in light of Student's circumstances. There was no evidence that additional accommodations were necessary.

39. As previously noted, the IEP accurately reports Student's levels of academic achievement and functional performance, and contains goals designed to meet her unique needs and provide her with educational benefit. The accommodations contained in the IEP are appropriate. Extended school year services were found to be necessary and were offered. The offer of placement and services in the IEP of October 24, 2017, is clear and unambiguous. It offers placement at Highland which is a placement that will meet Student's needs and provide her with educational benefit. This is because its campus is completely fenced and she is not in danger of escaping the campus when she elopes. Further, behavior plans are consistently implemented throughout the day, because everyone on campus is trained to do so. Behavior services begin when a van picks up the child from home, and the van is staffed by trained aides. Mental health and behavioral services are provided by Point Quest personnel, and one or more licensed therapists and behaviorists are on campus during school hours. Therapeutic strategies are embedded in the classrooms. There is a small adult to child ratio in classrooms at Highland, and a general education curriculum is used. All teachers are credentialed in special education. Most children are at or near grade level in terms of academic achievement, matching Student's academic levels.

40. Highland is not a special day classroom on a general education campus.

All of the students have IEP's, so Student will not be exposed to typically developing peers at Highland. However, the evidence established that she requires a more restrictive environment to access her education than can be provided in a general education classroom, even with a full-time aide and behavior plan. The evidence established that a special day class on an elementary school campus is also not appropriate due to her tendency to elope. Student was absent from the classroom approximately 80 percent of each school day when she attended school, and even more after spring break of 2017. Therefore, she did not receive educational benefit in a general education environment. There was no evidence that she received non-academic benefit in the general education environment, since much of the time she was eloping and only accompanied by her aide who tried to keep her safe. When Student remained in the classroom, she was often disruptive, refusing to stay seated, screaming and making loud noises, and crawling around on the floor pretending to be an animal. This behavior interfered with the teachers' instruction and the ability of other students in the classroom to attend to that instruction. Her behavior when eloping also was disruptive to other classrooms on campus. There was no evidence that maintaining Student in a general education environment versus placing her at Highland was cost prohibitive.¹⁸ Based on the criteria from *Rachel H., supra*, Highland is the least restrictive environment for educating Student. At this stage in Student's education, Highland offers Student the most appropriate educational setting despite the lack of mainstreaming opportunities.

¹⁸ Oakland discussed this factor in its closing brief, claiming Highland was less expensive than maintaining Student in the general education environment with a one-to-one behavioral aide supervised by a board certified behavior analyst. However, there was no evidence presented about this at hearing, and therefore it will not be discussed further.

Student must learn to manage her behaviors so she can access her education. Mainstreaming at this time cannot be achieved satisfactorily while assisting Student to achieve her educational goals.

41. Oakland proved, by a preponderance of the evidence, that it cannot serve Student in the general education environment, even with the extensive support of a behavioral aide supervised by a board certified behavior analyst. Student's maladaptive behaviors interfered with her receiving educational benefit during the 2016-2017 school year and the 2017-2018 school year. An environment such as that at Highland, with teachers and staff well-trained to educate children with serious maladaptive behaviors, such as Student, is necessary for her to receive an education. Oakland may implement the IEP of October 24, 2017, without Parent's consent.

ORDER

The IEP of October 24, 2017, offers Student a FAPE in the least restrictive environment. Oakland may implement the IEP of October 24, 2017, without Parent consent.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Oakland prevailed on the single issue heard and decided.

RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: January 16, 2018

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings