

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2018050306

DECISION

Parent on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings on May 4, 2018, naming Santa Monica-Malibu Unified School District.¹ On June 4, 2018, OAH granted the parties' joint request to continue the due process hearing.

Administrative Law Judge Judith L. Pasewark heard this matter in Santa Monica, California, on September 26, 27, and October 2 and 3, 2018.

Dina C. Kaplan and Jodi O. Bynder, Attorneys at Law, represented Student. Mother attended the hearing each day. Student did not attend the hearing.

Sundee M. Johnson, Attorney at Law, represented Santa Monica-Malibu. Pam

¹ Santa Monica-Malibu filed its response to Student's complaint on May 16, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir.) 858 F.3d 1189, 1199-1200 (*M.C.*))

Kazee, Director of Special Education, attended the hearing each day on behalf of Santa Monica-Malibu.

At the parties' request, OAH continued the hearing for the parties to file written closing arguments. The record closed on October 22, 2018, upon receipt of closing briefs from the parties.

ISSUE

Did Santa Monica-Malibu deny Student a free appropriate public education at all times from June 8, 2017, by failing to offer an appropriate educational program, specifically, placement in an intensive residential treatment center with a highly structured classroom-based program and sufficient individual, group, and family therapy to address Student's serious social-emotional and educational issues?

SUMMARY OF DECISION

Student contended Santa Monica-Malibu denied her a FAPE since June 8, 2017, by failing to offer an appropriate educational program of placement in an intensive residential treatment center with a highly structured classroom-based program and sufficient individual, group, and family therapy to address Student's serious social-emotional and educational issues. Santa Monica-Malibu contended Student's IEP could be appropriately implemented at its Off Campus Learning Center, including implementation of one hour per week of individual school-based counseling. Santa Monica-Malibu further argued any need Student might have for residential placement was primarily due to medical, social, or emotional problems that were not educationally related, and did not impact Student's ability to access her education.

Student sustained her burden of proof to establish a need for an intensive residential treatment placement. Student required significantly more counseling and therapy than was offered by Santa Monica-Malibu. Further, the type and intensity of the

therapy Student required could not reasonably be provided in a school-based setting. Student's mental health issues, psychiatric hospitalizations, history of self-harm, elopement, and dangerous peer relationships all demonstrated an educationally related need for the highly structured and restricted environment of a residential treatment placement.

FACTUAL FINDINGS

BACKGROUND

1. Student was 17 years old and resided with Mother within the boundaries of Santa Monica-Malibu. Student was diagnosed with several social-emotional and mental health issues, which included major depressive disorder, generalized anxiety disorder, attention deficit hyperactivity disorder (ADHD), and oppositional defiant disorder.

2. In 2009, Student was diagnosed with ADHD. Mother requested Santa Monica-Malibu assess Student for special education and related services. Santa Monica-Malibu assessed Student, and found her ineligible, as her grades indicated she was accessing her education. Mother subsequently enrolled Student at St. Ann's, a small private school she attended through the seventh grade, 2013-2014 school year. In spite of the smaller, more structured setting, Student continued to have problems and was bullied. Mother placed Student in counseling, however, by the seventh grade, Student's grades declined.

3. In 2014, Mother requested Santa Monica-Malibu conduct a new assessment for special education and related services. Assessment results suggested possible attention deficits, as well as social-emotional problems. Santa Monica-Malibu again found Student ineligible for special education and related services. Based upon

Student's diagnosis of ADHD, Santa Monica-Malibu offered Student a 504 Plan,² consisting of a series of accommodations to address Student's difficulties with inattention and distractibility. Student attended the eighth grade at Lincoln Middle School for the 2014-2015 school year. Mother indicated the 504 Plan did little for Student, and her grades remained low.

STUDENT'S PSYCHIATRIC HISTORY³

4. For the ninth grade, 2015-2016 school year, Mother enrolled Student in St. Monica Catholic High School to provide Student a fresh start, smaller classes, more structure, and academic assistance. Unfortunately, Student was involved in a sex-texting incident, which became public knowledge at school. Student was sexually harassed by her peers. St. Monica's asked Student to leave due to "bad morals." Student was devastated. According to Mother, Student stopped functioning and was catatonic in some respects. Student was full of rage, became violent, and began eloping, not attending school. Student's mental health deteriorated to the extent she attempted suicide by trying to jump out of a window. She was admitted to the University of California Los Angeles pediatric psychiatric unit in October 2015.

² A 504 Plan provides accommodations to students with physical or mental impairment which substantially limit one or more major life activities. (29 U.S.C § 794).

³ Mother, on behalf of Student, and Santa Monica-Malibu entered into a settlement agreement on January 24, 2017, which settled all educational issues prior to that date. Student's background information and psychiatric history is presented in an extended form, including events prior to January 24, 2017, to provide the complete history of the information available to Santa Monica-Malibu in making its post-settlement offers of FAPE.

5. While hospitalized at UCLA, the psychiatric staff informed Mother that Student needed to be in a residential treatment center when released from the hospital. Mother placed Student at Evolve Treatment Center, a residential mental health center for adolescents, where she resided from November through December 2015. After her discharge, Student participated in a partial hospitalization and intensive outpatient programs from January to May 2016. At that time, Student presented with major depressive disorder, recurrent, severe; oppositional defiant disorder; and ADHD. Evolve discharged Student from its program in May 2016. Student was not cooperating with the program, and there was nothing more Evolve could do.

6. As reported by Evolve staff in a letter dated August 6, 2016, Student had a long history of emotional disturbance, which has resulted in her inability to function at home and in school effectively. As observed by psychiatrist, therapist and staff, Student exhibits inappropriate types of behaviors or feelings under normal circumstances as well as an overall pervasive mood of unhappiness or depression, and has done so for a long period of time. While under [Evolve's] care we have specifically observed severe mood swings, during which she vacillates between labile and disengaged affect without apparent cause. Furthermore, these mood swings often result in erratic and aggressive behavior such as punching walls and engaging in verbal abuse toward staff and her mother. Additionally, Student has a history of defiance related to engaging in her schoolwork or group activities, during which time she displays a vacant expression and refusal to connect cognition to emotion. While in our program, there were a number of incidents of Student not completing assignments, walking away from the school site and displaying an inability to effectively manage time. Finally, Student has a history of acting out impulsively and showing poor judgment as evidenced by running away from home, purposefully breaking rules, inability to adhere to home contracts, and engaging in self-injurious behavior.

7. Within a few weeks of her discharge from Evolve, Student was once again hospitalized at UCLA. Placed in an involuntary psychiatric hold, Student was hospitalized for six and one-half weeks. Student's discharge diagnoses indicated major depressive disorder, conduct disorder, oppositional defiance disorder, ADHD, and bipolar disorder, manic episode, substance-induced mood disturbance. Student had limited insight into her psychiatric condition and manipulated providers by minimizing her symptoms. As to her engagement in therapy, Student remained superficial, charming, and manipulative, responding with answers that appealed to her audience. She was mischievous and calculated, often pushing the limits of staff. As noted in her discharge summary, Student's outpatient therapist terminated Student's treatment as Student's psychiatric condition was too acute. Student's inpatient treatment at UCLA was prolonged due to complications in arranging her discharge to a residential facility. Given Student's dangerous behaviors before hospitalization, including eloping, discharging Student home pending residential placement was considered extremely risky, especially a risk to herself.

8. As of her release in July 2016, Student's treating psychiatrist recommended release to a residential treatment center to provide Student with continued structure of consistent, firm, but reasonable limits. Student required a school setting with a small environment and behavioral supports, which might require non-public school, at least for a time, due to the high risk of Student acting out in a public school without those supports.

9. Dr. Mark DeAntonio,⁴ Student's psychiatrist at UCLA, described Student's

⁴ Dr. DeAntonio was a highly qualified psychiatrist with extensive experience in the area of child and adolescent psychiatry. Dr. DeAntonio was, at the time of hearing, the Director of Child and Adolescence Inpatient Service at the Resnick Neuropsychiatric Hospital at UCLA, as well as a psychiatric consultant to the Maternal-Child Immunology

mental health in a letter dated July 25, 2016. Student was quite inconsistent and possibly manipulative. In her past short-term residential programs, Student was able to keep her behavior in check for weeks-to-months without genuine, substantial, and underlying change, only to deteriorate once outside of the contained setting. For those reasons, the staff at UCLA strongly recommended that "Student transition directly to a long-term residential treatment center, in the hope that a sustained structured environment with appropriate but fair boundaries, regular therapy, and continuous monitoring, along with her current medications (for depression) will gradually allow her to genuinely develop better insight, judgment, and self-regulatory skills."

10. Dr. DeAntonio's letter recommended an IEP team meeting be convened to determine and secure Student appropriate programming and services. Given the extent to which her psychiatric illnesses adversely affected her educational functioning under normal circumstances and with pre-referral interventions, as well as the pervasive nature of her conditions, Dr. DeAntonio recommended Student receive an evaluation for educationally related mental health services.

11. UCLA released Student to TLC, a residential treatment program in Sonoma County, California. West Sonoma County Union High School District completed a psycho-educational evaluation of Student.

12. Student remained at TLC only five weeks. The treatment staff at TLC determined Student was stable and did not need a residential program. As reported in the West Sonoma evaluation report, dated September 7, 2016, TLC staff considered

Clinic at UCLA and an advisor to first year medical school students at the Geffen School of Medicine at UCLA. Dr. DeAntonio was a licensed physician and surgeon and board certified as a Diplomat in Psychiatry and Diplomat in Child and Adolescent Psychiatry by the American Board of Psychiatry and Neurology.

Student a model student compared to their other clients in the program. Student participated positively with staff, got along very well with others and eager to return to public school despite the strongly divergent recommendations from Mother, UCLA, and Evolve.

13. The West Sonoma evaluation determined that, due to the past year of extreme examples of serious impulsive, aggressive, unsafe behaviors including a willingness to self-harm that prompted the intensive and multiple mental health treatment and crisis interventions, it was likely that Student qualified for special education and related services under the category of emotional disturbance despite her recent, brief remission at TLC. The West Sonoma recommendations indicated Student might require a small, highly structured, therapeutic educational setting as a starting point to insure adequate supervision while assessing services needed to meet a FAPE. Further, before attempting to integrate Student back into a public comprehensive high school setting, the IEP team should consider what counseling support Student required to benefit from her educational program. West Sonoma did not convene an IEP team meeting because TLC discharged Student and Student returned home. Santa Monica-Malibu was once again Student's local educational agency.

14. Prior to Student's release from TLC, and armed with all of the above information and letters, including the West Sonoma psycho-educational assessments, Mother registered Student at Santa Monica High School, and requested an IEP. Pursuant to its prior written notice dated September 15, 2016, Santa Monica-Malibu declined to hold an IEP team meeting utilizing the West Sonoma psycho-educational evaluation. Pending completion of its own assessments, Santa Monica-Malibu offered Student placement in its Off Campus Learning Center (OCLC), along with a 504 Plan.

15. OCLC was an alternative placement program operated by Santa Monica-Malibu on its Olympic High School campus. OCLC operated two classrooms;

primarily general education; not all students had IEPs. Santa Monica-Malibu developed OCLC as a temporary program and placement to assist and allow “at risk” students to return to the regular high school campus. Students created an education and/or behavior contract and worked on increasing their skills. In the past, OCLC acted as a transition placement for students returning from residential treatment programs. As reported by Darci Keleher⁵, most of the students attending OCLC, had made poor life choices, but wanted a diploma. OCLC provided smaller classes, more structure, as well as individualized learning with more one-to-one teaching. Ms. Keleher reported OCLC had a therapeutic component integrated into its program. She described the therapeutic setting as one which allowed school-based counseling to address issues in the moment or allow a student’s needs to be addressed without disrupting the class. A school psychologist was available three days a week from Olympic for school-based counseling. Behaviorally, OCLC staff developed a system for positive behavior which had been successful. OCLC also operated a mindfulness program for students, but attendance was voluntary.

16. Melissa Nieves testified at hearing, as the general education teacher at OCLC. She collaborated with a special education teacher between the two classrooms. In the 2017-2018 school year, there were 17 students in the program, consisting of nine males and eight females, ranging from ninth to twelfth grades. Students had a variety of issues ranging from truancy, anxiety, to acting out in class. Eleven of the students were special education with IEPs; most were credit deficient for graduation.

17. OCLC was segregated on the Olympic campus. Ms. Nieves indicated that since the beginning of the 2017-2018 school year, OCLC had become a locked facility.

⁵ Ms. Keleher held master’s degrees in special education and educational administration. She was also a credentialed education specialist.

Students, however, had access to the Olympic campus, and student bathrooms were located on the Olympic campus. Students were allowed to go off campus for lunch or share lunch areas with Olympic students.

18. Cynthia McGregory, the education specialist at OCLC for the 2017-2018 school year, and part of the OCLC development team, supported Ms. Keleher's description of OCLC. Many of the students came to OCLC with severe behaviors, such as impending expulsion, drugs, violent acts, or repeated suspensions. OCLC acted as a school of last resort; there was no expulsion from OCLC. Ms. McGregory accompanied Mother on her tour of OCLC. She also interviewed Student. Based upon a review of Student's history, including psychiatric hospitalizations, her conversation with Student, as well as her experience working with students, Ms. McGregory determined OCLC would be an appropriate placement for Student. She indicated OCLC had experience with other students who were "cutters" or suicidal, and they had been successful at OCLC. Although Student exhibited anxiety during her interview, Ms. McGregory found Student ready to learn and willing to be in school. OCLC could implement Student's IEP with specialized academic instruction provided by the special education teacher.

19. Ms. McGregory was aware of Student's elopement behavior. Elopement was not a new problem at OCLC. She believed she and the OCLC staff could have adequately "kept an eye on" Student, and physically escorted her to the bathroom when needed. Ms. McGregory explained that when a student returned to campus after eloping, OCLC staff had a conversation with the student. Further, those students with elopement issues still made progress in the OCLC program. On the other hand, Ms. McGregory admitted that if a student presented with severe elopement problems, then OCLC was not an appropriate or safe environment for that student.

20. Shannon Brinkworth⁶ was the school psychologist for OCLC. Her office was located on the Olympic campus, and she provided school-based individual counseling 20 to 30 hours per week at OCLC. Ms. Brinkworth had completed over 100 psycho-educational evaluations, of which 50 to 75 addressed emotional disturbance. She noted that one-half of her emotional disturbance eligible students had elopement issues; one was placed in a residential treatment center. She acknowledged that the counseling she provided was school based, while educationally related intensive counseling services were more intensive, and designed to address more severe social-emotional needs. Ms. Brinkworth was not qualified to provide educationally related intensive counseling services.

21. Mother visited OCLC, and found it unacceptable to meet Student's needs. Student had a history of acting out sexually. The OCLC campus was coed and there were too many male students. Mother was concerned about the curriculum. OCLC offered a short school day. Mother did not see a lot of teaching/learning going on. Most of the students were hanging around outside the classroom. The academic components of the program were of concern; Student was enrolled in a college preparatory curriculum. Student was an athlete, but there were no extracurricular activities or physical education. The location of the bathrooms in another building on the Olympic campus was worrisome. Student had a history of eloping and took advantage of leaving the

⁶ Ms. Brinkworth had graduate degrees in school psychology, educational psychology, and pupil personnel services. She was a nationally certified school psychologist. She provided psycho-educational assessments, and counseling sessions focused on the areas of interpersonal relationships and friendship building, emotional identification and regulation, grief, and development of coping strategies through cognitive behavioral therapy and solution-focused therapy.

classroom. The demographics of the OCLC program was questionable; another student in the program was a friend of Student, and described by Mother as “bad news.” This student colluded with Student with activities involving violence, sex, and drugs. Moreover, Student was in private therapy three times a week, and OCLC’s “counseling” was not sufficient to meet Student’s psychological or social-emotional needs.

22. On September 30, 2016, Dr. DeAntonio provided another letter that indicated Student remained under his psychiatric care, and reinforced his requests and recommendations contained in his July 25, 2016 letter. Since Santa Monica-Malibu would not provide special education placement and services prior to completing its own assessments, Dr. DeAntonio requested home instruction for Student, pending the convening of her IEP team meeting. Instead, Mother placed Student in a small, individualized academic program at Fusion Academy.

23. Fusion Academy provided an alternate education in a private setting designed for students who struggled in public education due to conditions such as anxiety, ADHD, or dyslexia. Fusion Academy could provide flexible schedules or accelerate learning with one-to-one teaching. Fusion Academy was not a therapeutic school. Further, grades were deceptive. A student could not fail a class. If a student initially failed an assignment, he/she was retaught until reaching a 70 percent mastery of the lesson.

24. On November 16, 2016, Santa Monica-Malibu convened its IEP team meeting for Student. The educationally related intensive counseling assessment, dated November 16, 2016, was determinative for the IEP team. The assessor found that although Mother indicated significant impairment of Student’s functioning in the home setting, the results of Student’s and teacher’s responses on standardized rating scales consistently identified average functioning in all areas, with the exception of separation anxiety and relations with Parent, which fell within the at-risk range. Although Student’s

mental health record suggested intense symptoms and behaviors that appeared to adversely impact her functioning in the past, particularly in the home setting, these behaviors did not appear to adversely impact her functioning at this time. As a result, educationally related intensive counseling services were not recommended. Upon full review of its assessments, Santa Monica-Malibu found Student ineligible for special education and related services, and offered Student a general education placement at OCLC.

25. On December 14, 2016, the IEP team reconvened. Based upon consideration of additional information, the IEP team found Student eligible for special education and related services under the category of other health impairment due to her ADHD. Santa Monica-Malibu offered placement at OCLC with 60 minutes per week of school-related counseling, and 47 minutes per day of specialized academic instruction. Mother did not consent to the IEP, and Student continued with Fusion Academy.

26. On January 23, 2017, Mother on behalf of Student entered into a written settlement agreement with Santa Monica-Malibu settling all educational claims through that date and absolved Santa Monica-Malibu of any obligation to provide Student with any educational services or assessments through the end of the 2016-2017 school year.

27. For the remainder of the 2016-2017 school year, Student's behavior and academics continued to spiral downwards. Student fell behind in her assignments at Fusion Academy and she did not complete her classes for the 2016-2017 school year. Student's anxiety increased and her behaviors were out of control on a daily basis.

28. Santa Monica-Malibu contacted Jaime Porras, the Director at Fusion, to discuss Student's placement and progress at Fusion Academy. Mr. Porras responded on April 15, 2017. Mr. Porras was unable to adequately describe Student's progress on some of Student's proposed IEP goals as Fusion Academy was not a therapeutic school.

In general, however, Student was capable of completing her assignments and could be respectful of her teachers. Her executive functioning, however, was limited, and she reverted to old behaviors. Student was unpredictable, impulsive, and oppositional. Staff had difficulty controlling her; she needed a great deal of support. Student was not a problem during one-to-one teaching, but Mr. Porrás expressed great concern regarding Student's behavior outside the classroom in common areas of the campus. Although Fusion Academy provided a great deal of supervision, even that level of supervision had not prevented Student from engaging in sexual behaviors on campus and eloping from campus. Mr. Porrás reported his concerns regarding Student's sexualized interactions, particularly with older male students. At hearing, Mr. Porrás testified that Student's elopements were increasing by the end of the 2016-2017 school year. She was on a trajectory downward, using drugs and cutting herself.

29. On May 22, 2017, Student was again hospitalized, and placed on an involuntary psychiatric hold. The admission report indicated Student was undergoing additional stressors from school work and social stressors from rejection from a boy. Student made a very impulsive decision to cut herself which resulted in a serious laceration requiring 11 stitches. Given her erratic and impulsive behavior resulting in serious self-harm, Student required inpatient level of care to stay safe at this time. Student remained at UCLA until released by Dr. DeAntonio on May 24, 2017.

POST SETTLEMENT AGREEMENT

30. Mother provided Santa Monica-Malibu with the information regarding Student's latest psychiatric hospitalization, and requested Student's immediate placement in a residential treatment center. Santa Monica-Malibu declined; therefore, on June 8, 2017, Mother notified Santa Monica-Malibu of her intent to privately place Student in a residential treatment center, and seek reimbursement from Santa Monica-Malibu. Santa Monica-Malibu responded with a prior written notice on June 9, 2017,

denying Mother's request, maintaining that placement at OCLC with its school-related counseling appropriately offered Student a FAPE. Santa Monica-Malibu offered to reassess for educationally related intensive counseling services, and provided Mother with an assessment plan. Santa Monica-Malibu indicated any reconsideration of placement would occur after completion of the requested mental health assessment, to which Mother had not yet consented.

31. On June 15, 2017, Mother filed a missing person report on Student. Student had disappeared from home on the evening of June 14, 2017, and had not returned. Upon her return home, Santa Monica police and a mental health social worker interviewed Student. Student cried uncontrollably during the interview. Student left home on June 14, 2017 and walked to Beverly Hills, and then Venice, California with a couple of friends. She returned home on June 17, 2017 at 4:00 a.m. When informed that staying out all night was dangerous, Student indicated she did not care what happened to her. Accordingly, the officers placed Student on another involuntary psychiatric hold, and transported her to UCLA for psychiatric hospitalization. The UCLA discharge summary, dated June 22, 2017, reported that during her stay, Student was calm, cooperative, and pleasant. She was compliant with the program and medications. She appropriately interacted with other patients, and spent a lot of time on the telephone with friends. Student experienced times of increased frustration and irritability with being in the hospital and blamed Mother for her current situation. Student struggled with taking responsibility for her own actions. She got into a screaming match with Mother during supervised homework the day before discharge. On June 22, 2017, Student was discharged from UCLA and transported to Storm Ridge Residential Treatment Center in Monroe, Utah.

32. Shortly before her release to Storm Ridge, Dr. DeAntonio wrote another letter regarding Student dated June 20, 2017. This letter, intended to provide

information regarding Student's psychiatric history was particularly telling as follows:

Despite Student's history of intact-to-strong academic performance, she has exhibited a marked deterioration in her educational functioning over the past four years. She has been attending a small, private school that provides individualized instruction at the Fusion Academy. Still, even within this small school program, her grades dropped and she had difficulty sustaining adequate participation at school, e.g., not finishing assignments, skipping classes, requiring parental supervision to complete homework. Additionally, she has been engaging in increasingly high-risk and inappropriate behavior over the past two years, which led to her being removed from her school last year and receiving educational services at home. Since then, she has been completing her school work online. Her continuous and increasingly maladaptive unsafe behaviors are reflective of poor judgment, impulsivity, impairment in anticipating consequences, interpersonal reactivity, impaired emotion regulation, and poor safety awareness which is consistent with her diagnostic profile and result in her placing herself in dangerous situations. She has exhibited such difficulties at school and at home

Student has had four inpatient psychiatric admissions over the past two years. In addition, Student has also resided in short-term residential treatment programs for a total of

three months, and intensive outpatient and partial hospitalization programs for a total of five months. Student maintained adequate functioning while in these programs, however shortly after her return home, her functioning deteriorated and she exhibited marked distress, unsafe behaviors and considerable emotional dysregulation

Although Student still demonstrates mood lability and impulsivity, Student generally appears better able to contain herself when in a structured, contained, and supervised environment. However, she has also demonstrated that she can be quite fragile, easily swayed by external factors, i.e., presence or absence of immediate support, and inconsistent in her presentation. In particular, when in short-term residential programs, she has been able to maintain positive behaviors for weeks to months without genuine, substantial and underlying change, only to notably deteriorate once outside of the contained setting. In this regard, Student has exhibited considerable difficulty maintaining safe and appropriate behavior outside of a contained, therapeutic setting, i.e., the hospital or residential treatment program.

33. Dr. DeAntonio went on to indicate Student needed a highly structured, supervised, therapeutic setting, similar to her inpatient program. As part of her inpatient program, Student was involved with daily activities organized around a consistent schedule and inclusive of small group activities, i.e., task groups, coping skills groups, art therapy groups, as well as individualized interventions such as individual therapy and

medication management. Student also required close supervision during all aspects of her daily care, i.e., peer interactions, formal group activities, informal free time. In this type of setting, Student responded well to firm boundaries reinforced by staff.

34. Dee Dee Mascarenas, Student's prior outpatient therapist from November 21, 2016 through May 2017, wrote a letter dated August 5, 2017, which reported her findings regarding Student. Ms. Mascarenas indicated she was increasingly concerned about Student's mental health and her self-destructive tendencies. Student was quite anxious all the time and easily overwhelmed; she could not focus and felt quite helpless. Although Student could be quite insightful at times, she could not sustain that insight, nor could she utilize those insights toward developing more appropriate or healthy behaviors. When pressed, Student took no responsibility for her behaviors and pled victimhood for all of her plights. She had great difficulty maintaining connections with others. Student had not been able to make healthy choices or remain stable in a more open and freer environment.

35. Ms. Mascarenas went on to describe Student as quite astute, but not capable of remaining focused, often struggling with boredom or anxiety. Student exhibited little impulse control, lacked self-motivation, and required assistance to complete tasks. Student could not tolerate much of what she considered negative input, which others might consider commonplace interactions or challenges. She tended to exaggerate, at times, her feelings or experiences to gain sympathy or to have privileges returned to her. Student was quite bright, but was uncharacteristically intentional and persistent when working towards a goal, i.e., the return of her phone or allowing her to go out with friends; rarely did she use these skills to attain or complete more beneficial tasks. Student was only driven toward whatever gave her pleasure or caught her attention at that moment. Ms. Mascarenas concluded Student could not function without supervision, boundaries, and consistency in general, but most specifically in her

school work. Student required placement in a school setting where she attended school regularly, with others, and worked with a teacher or an aide.

SEPTEMBER 2017 ASSESSMENTS

36. Santa Monica-Malibu conducted a new psycho-educational assessment as well as a second educationally related intensive counseling assessment at the beginning of the 2017-2018 school year while Student was unilaterally placed at Storm Ridge. Both assessment reports were provided to Mother in draft form prior to the IEP team meeting scheduled to discuss them. Mother made comments and corrections on each draft and provided her thoughts thereon.

37. The educationally related intensive counseling assessment was completed by Nijja McMillon,⁷ the mental health assessment case manager and assessor for the Tri-City Special Education Local Plan Area. Ms. McMillon had completed over 250 educationally related intensive counseling assessments, but at hearing, she had a difficult time explaining her qualifications to conduct those assessments, and did not recall significant information regarding her training.

38. Ms. McMillon explained that she had recommended residential treatment center placement in some cases (approximately 5 of the 250 cases). A residential treatment center placement could be recommended without an eligibility finding of emotional disturbance or even an educationally related intensive counseling recommendation, but it had never occurred within the Tri-Cities SELPA. Ms. McMillon explained that an extensive continuum of placements must be considered before

⁷ Ms. McMillon held a Master's degree in clinical psychology with an emphasis on marriage and family therapy and a pupil personnel services credential in school psychology. She was licensed and board certified in behavioral sciences. She was not a school counselor.

recommending a residential placement. Typically, she looked at providing school-based services to a student before getting more restrictive, but it depended upon the student. Further, a student's history of outside therapy could be considered in making the decision to skip school-based counseling.

39. A social-emotional history was provided, which included the Student's history of psychiatric hospitalizations and treatment, along with the letters from Dr. DeAntonio and Ms. Mascarenas. Others were contacted as well. Rosalinda Sanchez, Student's therapist between October 12, 2016, and June 26, 2017, reported Student presented with the following behaviors: anger outbursts three times per week; inability to calm herself down; irritability; sad mood; low motivation; difficulty focusing; aggression; use of profanity; underlying depression; poor judgment; a history of physical aggression and engagement in risky behaviors; elopement; substance abuse; and interfacing with people she should not have. Ms. Sanchez reported Student participated in therapy sessions; however, she made minimal progress in treatment, indicated by reduced defiance, physical aggression, and outbursts.

40. While the reporting of Student's recent-past history of psychiatric care was foreboding, Ms. McMillian instead placed a significant amount of weight on Student's interview. Student acknowledged her history and stated her substance abuse had a big effect on what she was doing and how she was doing. Student engaged in the maladaptive behaviors because she felt depressed, worthless, and she lost sense of herself. She began using drugs in 2017 because they made her feel happy, and because she was influenced by peers. Regarding her reported suicide attempt, Student admitted she intended to cut herself because she did not want to be depressed and wanted to take the focus off of everything else. Student, however, described the incident as an accident even though she stated that in May 2017 she did not want to be on this earth anymore. Ms. McMillon also interpreted the Evolve recommendation as primarily a

placement with therapeutic support rather than a residential placement. Ms. McMillon was aware that outside recommendations indicated Student required intensive therapy, including family therapy. Family therapy as a school-based service does not equate to intensive family therapy. Family therapy, offered as an educationally related intervention counseling service, merely provides family support to assist parents in helping their child in the OCLC setting.

41. Student acknowledged that being at Storm Ridge was forcing her to address her behaviors; she admitted not being honest in therapy in the past. While she wanted to be home, sober and healthy, have a good relationship with Mother, and healthy friendships, she stated she needed to continue to stay in the residential treatment program because she continued to have cravings and thought about drugs five times per day. Although she had learned some coping skills to manage her cravings, Student believed they were only effective because of her current environment, and she did not think she could manage these cravings if exposed to peer pressure and/or a change in her environment. Student stated she did not feel she would be successful at Santa Monica High School or OCLC as she was worried about being exposed to bullying and exposed to students who engaged in drug use and risky/illegal behavior.

42. The assessment report noted Mr. Porras's concerns regarding Student's cycles of defiance, inclusive of refusing to do schoolwork, active defiance, pushing boundaries, and leaving campus without permission, which appeared to be impacted by her emotional state. Interventions were implemented to manage her behaviors within the program. Those interventions were effective for a time, however, Student cycled back to defiance.

43. Tracy Knight, Student's initial advocate at Storm Ridge, provided information regarding Student's functioning upon entering the program. Mr. Knight described Student as a smart girl who was very outgoing, made friends easily, and got

along well with those around her. Student also demonstrated manipulative behaviors and could be very deceitful; she was calculating in her decisions. Student's mental health status was confusing. She was prescribed antidepressants, and most of the time she appeared not to need them. However, if something happened and Student got upset, she became her worst enemy and started to take out her frustrations on herself in the form of guilt and extreme anger.

44. Trina Swalberg, a teacher at Storm Ridge, provided feedback regarding her observations of Student. Ms. Swalberg found Student a pleasure to be around. She was able to work independently, required minimal assistance to complete her work, and completed assignments at an average pace. Ms. Swalberg reported there were times when Student was moody, but it was not consistent, and she got over it quickly. Student seemed sad and discontent with life; however, for the most part Student was happy and fun to be around.

45. JoAnne Harris, Student's clinical mental health counselor at Storm Ridge, also provided feedback to the educationally related intensive counseling assessment. Ms. Harris described Student as tenacious and committed to accomplishing her goals, although she has used that tenacity to achieve her negative goals in the past. Student presented as a bright student who had the ability to adjust her behavior when the reward was worth it to her. As of September 2017, Student's compliance had improved greatly and her anger was well controlled.

46. In addition to her extreme noncompliance at home, Student enrolled at Storm Ridge due to difficulties with her mood, affect, behavior problems, difficulties with peers, substance abuse, absenteeism, academic difficulties, difficulties with adults/teacher/staff, and risky behaviors, all of which placed Student at risk for academic failure. Student's counseling was designed to assist her with improving compliance, abstaining from drug use, improving family relationships, and choosing a positive peer

group. Although Student made progress in her therapy, Ms. Harris recommended continued participation in the residential program until Student completed the level system, and then participation in family therapy when she reached the appropriate level within the program. It was noted that at that time, Student remained on Level One of the program.

47. The additional information obtained for the supplemental December 14, 2017 IEP did not persuade Ms. McMillon to change her recommendations. She determined the new information obtained from Student's teacher did not support the information from Fusion. Additionally, Fusion was not a therapeutic setting, and Student was attaining good grades in general education. Student was academically functioning in her education at Storm Ridge; therefore, she was able to access her education. Student had elevated and very elevated scores on standardized testing for emotional distress, in the areas of upsetting thoughts, separation fears, and defiant/aggressive behaviors. Ms. McMillon discounted these scores as "to be viewed with caution," after Student requested to explain her scores during her interview. She concluded Student's current functioning was not adversely impacted by behaviors and/or symptoms associated with depression. Ms. McMillon further concluded that when exposed to external stressors, including schoolwork, Student experienced anxiety and distress. On those occasions, Student acted out in the home, left without permission, was argumentative, destroyed property, and engaged in self-harming behaviors as coping strategies. Although those behaviors impacted Student's functioning and placed her in unsafe situations, they occurred in the home setting and were not evident in the school settings; they did not appear to impact her ability to access her education at that time. Further, Ms. McMillon considered "ditching" school a typical teenage behavior.

48. Ms. McMillon concurred with the consensus of opinions from Santa Monica-Malibu staff that Student required a smaller academic setting, and would

benefit from counseling support to assist her with monitoring her academic and behavioral functioning as well as developing appropriate coping skills to manage educational stressors. Among Ms. McMillon's recommendations for the IEP team was consideration of interventions and/or supports that were benefiting Student at that time, while she was in a residential placement.

49. Shannon Brinkworth, school psychologist, administered the psycho-educational assessment. The assessment was extensive and provided a detailed chronology of Student's medical, psychiatric, and educational history. Although repetitive, the assessment report reiterated the following:

- 1) During Student's residential placement at Evolve, Student had a long history of emotional disturbance which resulted in her inability to function at or/and in school effectively; and while attending Evolve, Student exhibited limited work completion as demonstrated by several incidents of walking away from the school site and displaying an inability to effectively manage time;
- 2) Santa Monica-Malibu's own review of Evolve records indicated upon release from residential treatment, between January 2016 through May 2016, Student's participation in counseling intervention and aftercare support for her transition back from residential treatment was not observed to improve Student's insight and Student did not appear to acknowledge that her problem behaviors were dangerous;
- 3) In May 2016, Student was again placed in an involuntary psychiatric hospitalization, and remained hospitalized for six weeks. Student's individual therapist terminated her treatment as Student was too acute;
- 4) Based upon information provided by UCLA regarding Student's status upon her release from psychiatric hospitalization, it was reported Student had limited insight into her psychiatric condition and manipulated providers by

- minimizing her symptoms. Although charming, Student was superficial, manipulative, and provided crowd-pleasing responses.
- 5) Dr. DeAntonio recommended Student be discharged to a residential treatment center with a small, contained, specialized school program.
 - 6) While at the residential treatment program at TLC, Student received group therapy three times per week, individual therapy once a week, family therapy bi-monthly, medication support services, and residential treatment services daily.
 - 7) Although discharged from TLC, the September 7, 2016 West Sonoma assessment report concluded Student likely qualified for special education and related services under the category of emotional disturbance, despite a recent brief remission in the TLC residential treatment center placement, because of Student's serious impulsive, aggressive, unsafe behaviors including her willingness to self-harm that had prompted the intensive and multiple mental health treatment and crisis interventions.
 - 8) Although Student was enrolled in a one-on-one learning environment at Fusion with a high level of supervision, Student's behaviors outside the classroom were concerning as Student engaged in sexualized behavior on campus as well as eloping from campus. Student's behavior was described as unpredictable, and her ability to generalize alternative behavior skills was limited.
 - 9) Ms. Mascarenas provided extensive information regarding Student's mental health as contained in her August 5, 2017 letter. Student continued to struggle to take responsibility for her behaviors, and was unable to function without supervision, boundaries, and consistency, particularly in her school work.

10) Student was again placed in a psychiatric hospital in June 2017, and not released until she was unilaterally placed by Mother at Storm Ridge.

50. Ms. Brinkworth also interviewed Mr. Knight. In addition to the information he provided Ms. McMillon, Mr. Knight reported Student's greatest area of need was her ability to recognize her risk-taking behaviors and staying away from those in the future, and learning to have self-esteem and self-worth. When Student fell, she fell hard and took long periods of time to recover. As example, when confronted about stealing a phone to call her boyfriend, Student had a complete meltdown, and it took her over two weeks to recover. As of September 2017, Student was receiving individual counseling once a week; group counseling once a week; and life skills sessions twice a day, seven days per week. Mr. Knight recommended Student remain in a residential treatment center due to her tendency to engage in risky behaviors.

51. Ms. Ouida, Student's advocate as of September 20, 2017, reported she had seen Student grow in her ability to share with others about her experiences and what she had learned from those experiences. She was not as depressed as she was when she first arrived at Storm Ridge. Student's last major behavioral incident occurred three weeks earlier, at which time Student received several consequences and experienced a loss of privileges. Student struggled with her self-esteem, and struggled to say "no"; she was a follower. She was encouraged to end relationships with people who had a negative impact on her life, which was a hard step for her.

52. With regard to Student's group therapy progress, it was reported that in group, Student was working on growing her emotional maturity, decreasing her anger, lessening her self-destructive behaviors, and limiting her defiance with others. Student progressed nicely and the therapist did not see any depression, anxiety, or social isolation difficulties arise.

53. Ms. Brinkworth interviewed Student. Student's responses were similar to

those given to Ms. McMillon. Student reported Storm Ridge was not “her cup of tea,” but she was used to this type of environment and felt she was progressing. Student was working on her impulse control, her decision-making skills, trying to stay out of trouble, and being more open and honest with herself and with her family. Student felt her drug life had taken her over, and she felt a sense of apathy for life. She commented she was hanging out with the wrong people and doing wrong things. She reported she did not have a sense of right or wrong, and when she did have a sense of right or wrong, she often chose to ignore those feelings. Student indicated she was not ready to return home. She felt she was where she should be. Student thought if she returned home, she would be unable to say no, and would fall back into bad habits, particularly with drugs.

54. Ms. Brinkworth administered extensive standardized testing in all areas of cognitive functioning, which overall fell within the average range of abilities. Test scores indicated Student’s cognitive abilities were adequately developed to access her educational curriculum. Student’s psychological processing testing results, including tests for attention processing, executive functioning, visual processing, and memory processing, fell overall in the average range.

55. The Adaptive Behavior Assessment System, Third Edition, a rating scale given to Student, Mother, and teacher, rated Student’s adaptive functioning, particularly how her adaptive functioning manifested in the home setting compared to the school setting. The global adaptive composite score indicated Student rated herself below average as compared to same-aged peers. Teacher rated Student as average. Mother rated Student as extremely low, however it was noted that Mother based her responses on Student’s pre-June 2017 behavior, while Student and teacher based their responses on Student’s behavior in the residential treatment center.

56. Ms. Brinkworth gave Student the Beck Youth Inventories-2 for Children and Adolescents, which was a self-reporting measure designed to assess symptoms of

depression, anxiety, anger, disruptive behavior, and self-concept. Student rated herself average in the area of self-concept, which considered cognition of competence, potency, and positive self-worth. Student rated herself average in the area of anxiety, which included her worries about school performance, the future, negative reactions of others, fears including loss of control, and physiological symptoms associated with anxiety. Student rated herself average in the area of depression, which included negative thoughts about herself, life, and the future, feelings of sadness and guilt, and sleep disturbance. Student rated herself as often feeling sorry for herself, sometimes feeling life is bad, sometimes feeling lonely, sometimes feeling empty inside, but never wishing she was dead or like no one loved her. As to anger, Student rated herself within the mildly elevated level, which included thoughts of being treated unfairly by others, and feelings of anger and hatred. Student indicated she often felt physical manifestations of her anger in her body, sometimes thought people were unfair to her, and sometimes she stayed mad for an extended period, sometimes feeling like exploding. In the area of disruptive behavior, Student rated herself in the extremely elevated level, which identified thoughts and behaviors associated with conduct disorder and oppositional-defiant behavior. Student reported she often broke the rules, told lies, and enjoyed tricking other people. She rated herself to sometimes steal, do mean things, argue with adults, and break things when she was mad. She indicated she would never hurt animals or bully others.

57. Due to concerns regarding Student's overall emotional functioning and her history of clinical diagnoses pertaining to depression and anxiety, Ms. Swalberg was given the Scales for Assessing Emotional Disturbance, Second Edition. This standardized scale rated Student in the areas of inability to learn, relationship problems, inappropriate behavior, unhappiness/depression, and physical symptoms/fears. Overall, Ms. Swalberg did not rate Student's emotional difficulties as significantly or adversely impacting her

academic performance. Individually, however, Student exhibited mild difficulties in her note-taking skills, her ability to independently complete assigned school work, her distractibility, difficulty with math, and her display of lack of interest and/or motivation toward school. Student exhibited mild difficulties in her tendency to be disrespectful or defiant of authority, to be cruel to peers, to verbally tease or taunt others, and to be disruptive. Student exhibited considerable difficulties in her ability to consider the consequences of her own actions and in her tendency to cheat, lie and/or steal. Student exhibited mild difficulties in relation to having feelings of worthlessness, and mild difficulties in her tendency to appear anxious, tense, worried, express excessive feelings of guilt, and to have overly sensitive feelings. Student exhibited considerable difficulties in relation to demonstrating nervous habits. Ms. Brinkworth concluded these behaviors were emotional concerns, but did not rise to the level of emotional disturbance.

58. Ms. Swalberg also informally reported that while Student could make friends, she, at times, was verbally mean to her peers. Behaviorally, Student lacked some abilities to see consequences to her actions, and was often caught in lies. Once Student was confronted with a lie, she often indicated that she was not thinking and the lie was the first thing that came to her mind. Lastly, Ms. Swalberg noted Student was very manipulative to get what she wanted. Student was very aware of her surroundings and acted accordingly, while pretending she did not know what she was doing. Overall, Ms. Swalberg rated Student's emotional overlays as impacting her ability to make meaningful academic progress to a moderate extent.

59. In spite of all of the information to the contrary, Ms. Brinkworth determined Student did not meet the criteria for emotional disturbance, and only asked the IEP team to consider school-based counseling for impulse control, decision-making, and self-esteem. All other recommended accommodations and behavior strategies addressed Student's attention and organization to address her ADHD.

SEPTEMBER 26, 2017 IEP

60. Santa Monica-Malibu held an IEP team meeting on September 26, 2017, to discuss the psycho-educational and educationally related intensive counseling assessments. The IEP team reviewed and discussed each report. Mother made corrections to content she felt was inaccurate. Santa Monica-Malibu determined Student made educational progress at Storm Ridge. Student did well academically and maintained her credits as well as consistently earned A's and B's. Her deficits were related to attention problems. Santa Monica-Malibu members of the IEP team expressed that the biggest piece of Student's emotional deficits were related to her self-esteem, self-confidence, and impulsivity. When looking at the educational impact, Student's difficulties were primarily related to impulsivity and anxiety connected to her attention deficits; they reiterated that what they saw was the educational impact of other health impairment.

61. Santa Monica-Malibu previously crafted IEP goals for Student in December 2016, which had not yet been implemented by Santa Monica-Malibu. Therefore, Santa Monica-Malibu made no changes in the proposed goals. Although Student's therapist at Storm Ridge worked on some of the goals, Santa Monica-Malibu pointed out Storm Ridge was not responsible for working on the goals, and Santa Monica-Malibu had not yet had the opportunity to work with Student.

62. The IEP team discussed placement. Mother requested Student remain in a residential treatment program. Mother expressed concerns based upon Student's past behaviors, including Student's escalating behaviors, negative peer influences, and her elopement capacities. Santa Monica-Malibu defended placement at OCLC, believing OCLC's structured environment could support Student, and the therapeutic supports available there were sufficient to meet Student's needs. Although OCLC was not a locked-down campus at that time, team members indicated that the small teacher-to-

student ratio was sufficient. As indicated in the IEP team notes, OCLC staff did not restrain students to keep them on campus, but connected emotionally with students. Student did not have a history of being physical, she just snuck out if not watched.

63. Nicole McCabe, OCLC special education teacher since July 2017, attended the September 26, 2017 IEP team meeting. She had never met Student; however, based upon the information presented at the September 26, 2017 IEP team meeting, she felt confident OCLC was an appropriate placement for Student. She believed Student's therapeutic needs – the social-emotional component of Student's IEP – could be provided at OCLC. Afternoons at OCLC were more therapeutic than academic. Afternoon "advisory time" dealt with social-emotional issues, ethics, and good citizenship; advisory time taught skills to understand oneself and develop appropriate skills to relate to others. There were also outside community-based programs provided through OCLC. As a teacher at OCLC, Ms. McCabe had never felt underserved by counselors or therapists. She felt she could handle Student's issues, build trust, build Student's confidence, and help Student become self-engaged. Ms. McCabe also noted she was skilled in containment to prevent elopement; she had previous experience with skilled elopers, most of whom got over it while attending OCLC.

64. Santa Monica-Malibu's offer of placement and services consisted of (1) placement at OCLC; (2) 60 minutes per week of counseling services; (3) school-related counseling consultation; (3) one period per day of specialized academic instruction; and (4) transportation daily to and from school. Extended school year was not offered. Mother did not consent to the IEP.

DECEMBER 19, 2017 IEP

65. Santa Monica-Malibu held another IEP team meeting on December 19, 2017, which was listed as a continuation of Student's annual IEP and transition plan. The IEP team updated the September 26, 2017 IEP to include Student's individualized

transition plan. Although the goals were reviewed, Santa Monica-Malibu retained Student's prior goals as it maintained it had no additional or new information on which to base any changes. The only change made to the IEP was the addition of extended school year services of 60 minutes of school-related counseling. Mother did not attend the IEP team meeting or consent to its content. She was frustrated with Santa Monica-Malibu and saw no reason to attend the IEP team meeting. She knew Santa Monica-Malibu would continue to offer OCLC, and she knew Student could not come home and be safe.

DR. SOLOCHEK ASSESSMENT AND TESTIMONY

66. At Mother's request, Teri Solochek, Ph.D.⁸ performed a psychological evaluation of Student on March 20 and 21, 2018, to assess her current level of functioning. Dr. Solochek presented as a credible, informative, and energetic witness. Dr. Solochek administered standardized testing, reviewed records, observed Student and interviewed Student, Mother, and staff at Storm Ridge. All historical information regarding Student was provided by Mother, which was complete as it paralleled the factual findings contained in this Decision.

67. Student's advocate at Storm Ridge reported Student did well with tight structure. After seven months at Storm Ridge, Student remained on Level Two.⁹ Student

⁸ Dr. Solochek had a Ph.D. in clinical psychology. She was a licensed psychologist, educational consultant, and certified educational planner with over thirty-five years experience in educational consulting/school placement, psychological testing, and psychotherapy. She specialized in diagnostic testing, educational consulting, and school placement.

⁹ Levels increased with positive behavior.

lacked the confidence to take the risk of moving forward. She did not hold herself accountable for doing better and struggled to engage in positive behavior. Student was described as sneaky. She was aware of what she should and should not be doing. She lied and tried to get away with things and had a difficult time taking accountability.

68. In her clinical interview Student discussed the difficulty she had working independently. She got distracted and had a hard time maintaining focus. Student often procrastinated when she needed help rather than seek out assistance. Student stated she saw the need for her to be in a residential therapeutic setting and she was not ready to be home. Student wanted therapy to help her with her issues.

69. Based upon Dr. Solochek's assessments, Student was functioning within the average range of intelligence. Her scores were consistent, indicating strength in vocabulary and weakness in her ability to compute mental math and in her fine motor transcription skills. Student noted issues in her attention, which were consistent with her previously diagnosed ADHD. Academically, despite Student's numerous school changes and serious mental health issues, her academic achievement remained in the average to high average range.

70. Student completed several tests designed to assess her social-emotional functioning. The testing data indicated a variety of difficult behaviors. Dr. Solochek indicated it was imperative for these troubling behaviors to be understood in the context of the functions they served and their underlying motivation. Dr. Solochek found much of Student's behaviors were misguided ways for her to feel stronger in the face of her fragile sense of self, and emotionally protected in light of her inadequate coping skills. Testing results indicated Student was functioning at a severe level of disturbance. She exhibited a tremendous amount of anxiety surrounding relationships, which underlied much of her behavior challenges. Her behavioral instability was tenuous and could be triggered by a variety of events, feelings, and even misperceptions of

experiences. Test results reflected highly unpredictable moods, irritability, a pessimistic outlook, and the feeling of having been cheated, misunderstood, and unappreciated. These behaviors exasperated and angered others, thereby creating her anticipated rejection. Although Student may have been capable of functioning satisfactorily on any given day, she also experienced periods of marked emotional or cognitive dysfunction. The testing results indicated Student felt that life did not always feel worthwhile and, at times, she did not care what happened to her. Student reported feeling lonely and empty most of the time. She also believed she deserved to suffer and often turned her anger inward, which resulted in a variety of self-destructive behaviors that spanned a continuum of severity.

71. Dr. Solochek concluded Student had a long history of emotional struggles and challenging behaviors in addition to her ADHD. She exhibited a pattern of defiant, aggressive, and risky behaviors. These challenges, supported by her considerable degree of anxiety and sadness, were consistent with her diagnoses of major depressive disorder and unspecified anxiety disorder. The conflict between Student's need for dependency and nurturing, and her need for self-protection and independence permeated her relationships. Student struggled with long-standing dysthymia that was interspersed with periods of more intense depressive symptoms. Student often felt hopeless, lonely and empty; her feeling could be self-destructive, and she required a setting where she could be kept safe.

72. Student had a limited ability to manage relationships, and inadequate internal resources available to help her cope with everyday stressors and demands. This contributed to her avoiding new or challenging experiences, shutting down, and engaging in maladaptive ways of coping. Given her difficulties, Student adopted a pattern of processing that took in too little information, and resulted in an inadequate and incomplete examination of her everyday experiences.

73. In applying the eligibility criteria for determining emotional disturbance, Dr. Solochek concluded:

- 1) Student did not exhibit an inability to learn that could not be explained by intellectual, sensory, or health factors;
- 2) Although Student had a great deal of anxiety about her relationships, made poor choices for friends, and tended to have relationships which were superficial, conflicted, or where she was taken advantage of, Student did not exhibit an inability to build satisfactory interpersonal relationships with some peers and teachers.
- 3) Student exhibited inappropriate types of behaviors and feelings under normal circumstances exhibited in several situations. Student had a great deal of difficulty managing her behavior in a variety of settings including, home and school for many years. She had a history of engaging in aggressive, self-destructive, and defiant behaviors. It was difficult to identify the triggers of her behaviors, which made her need to be kept safe even more important.
- 4) Student exhibited a tendency to develop physical symptoms or fears associated with personal or school problems. Student had a great deal of anxiety regarding relationships, and deeply feared abandonment, criticism, rejection, and failure. This prevented her from taking interpersonal risks, as well as risks in her academics. Student had a history of avoiding and running away from school. She had a history of mistreatment by peers, which made school difficult. While Student may have shown periods of stability in school, this was likely due to her being in an environment with either actual or perceived decreased threat and instability, as well as increased structure.

74. Dr. Solochek reiterated that, despite her solid intellect and academics, Student was experiencing serious mental health issues that have warranted psychiatric

hospitalizations and residential treatment placements. Dr. Solochek opined in her report, "In reviewing her hospital records, and the dangerous behaviors Student was continuing to exhibit, I agree that there was no option other than residential treatment that could keep Student safe following her last hospitalization. Given the options available at the time, her mother made the best choice with Storm Ridge Ranch... Student had stabilized and shown benefit from her time at Storm Ridge, however her treatment is not complete."

75. Student benefited from the behavioral structure at Storm Ridge, but was now ready for more intense internal therapy. Student's behavior was unpredictable, as it was difficult to anticipate and identify triggers for her reactions. It was important for Student to be in a setting that provided a high level of structure that could safely manage the unpredictability of her behavior. Immediate feedback was important to provide insight into Student's actions as they were unfolding. Student required increased therapy to help her build coping skills, address her anxiety and depression, and provide help for maladaptive behaviors.

76. Dr. Solochek concluded:

It is strongly recommended that Student be placed in a clinically sophisticated residential treatment center. Of primary concern is her need to be kept safe. She requires the structure and immediate feedback only available in a 24-hour therapeutic milieu. Until Student is able to develop some internal scaffolding, she will need external structure, individual therapy, group therapy and family therapy, all within a relationship-integrated program is essential. Because Student is not always a good reporter of information and is not always honest, in a residential

program there are checks and balances and a continuous flow of information between departments [residential, school, clinical, etc.]. Thus, Student can be held accountable in a way that is not possible in any day school. It will give her the opportunity to practice her skills in a variety of settings. In a highly structured setting a functional behavioral analysis can be done to gain insight into Student's triggers, or if not available, she will be under 24-hour observation where triggers can be determined less formally. Without that knowledge, treatment can only focus on her symptoms. In a residential treatment center the high level of structure can slowly be tailored back as Student develops skills and is better able to self-regulate. This will be important given her age. Having the opportunity for increasingly longer home visits will provide information about her readiness to return home and the supports which she will subsequently need.... With appropriate treatment and an organized transition plan over the next one-to-two years, Student can gain skills to have healthier relationships and a happier and more productive life. She can continue her education and increase her ability to access curriculum. Without such treatment Student is at extreme risk for falling back into her old patterns and being a danger to herself. She is likely to return to the pattern of seeking out unhealthy relationships and not remaining on campus during school hours which further impacts her physical and emotional safety.

77. Dr. Solochek advised that the school component needed to have teacher-led classrooms, instead of independent study. Student had difficulty remaining on task when working independently. Student's ADHD interfered with her ability to access the curriculum with an independent study model. Additionally, given Student's weak transcription skills, she qualified for circling responses in test booklets rather than transcribing her responses onto a computerized answer sheet.

78. On April 17, 2018, Dr. Solochek prepared a written addendum to her assessment report as she had the opportunity to visit OCLC. Dr. Solochek found much to like about OCLC, but she did not believe it was the appropriate learning environment for Student for the following reasons.

- 1) OCLC was a multi-grade high school classroom with much independent work, and it was well established that Student struggled to work independently due to her ADHD and emotional issues;
- 2) The school day was short. Although students could stay until 3:00 p.m. to receive help from teachers, it was unlikely Student would do so, which left too much unstructured time in her day. Students were allowed to go off campus for lunch, and it was unlikely Student would be willing to stay on campus. If allowed to go off campus, Student could not be trusted to make good decisions.
- 3) OCLC students could take classes at Olympic High, and the bathrooms were shared with Olympic students. Given Student's inappropriate activities in restrooms, history with boys, and her elopement behaviors, the unsupervised and unstructured areas were not appropriate for Student.
- 4) OCLC lacked the therapeutic support Student desperately needed. While she could receive individual therapy, there were no groups or family therapy, and the therapeutic component was not integrated into the school. Student

required a setting where there was ongoing communication between therapists and school staff to provide a cohesive program.

79. Dr. Solochek maintained her prior opinions after visiting OCLC. Student continued to need a structured, integrated education and therapeutic residential setting. She required an environment where she could receive immediate feedback, positive or negative, and where the therapist was an integral part of the treatment team. Therapeutic goals could be implemented in the classroom as well as in other settings. In Dr. Solochek's professional opinion, Student was not yet ready to return home to out-patient therapy or a day school educational setting.

80. Santa Monica-Malibu held another IEP team meeting on May 1, 2018, to review Dr. Solochek's assessment report and discuss Student's current level of functioning. Mother attended this IEP team meeting.

81. Dr. Solochek reviewed her report. In response, Ms. Keleher reported that OCLC had a therapeutic component that was integrated in the OCLC program. The school psychologist was easily accessible to the program and consistently collaborated and consulted with the team members at OCLC. Other therapists who worked with students on the Olympic campus collaborated often with the school staff at OCLC. Academically, Student could earn credits toward graduation in courses required for admission to California universities. Although OCLC provided a multi-grade classroom, most of the time students were working on the same subjects; they were simply required to share and present different parts of the learning due to the different standards required from their grades. Opportunities were available for small group learning based upon the needs of the student.

82. With regard to unstructured time on campus and free time after school until 3:00 p.m., Ms. Keleher explained that some students did academic work. Others had volunteer opportunities, and some worked through the Workability program. In

addition to gaining vocational skills, Students were working to build up their resumes and skills to support them across various settings. Students were not required to go off campus for lunch, and there was an outside space which Student could access. Ms. Nieves explained there was a paraprofessional available to supervise Student during bathroom and lunch times, especially during her transition back from the residential treatment facility.

83. Ms. McMillon disagreed with Dr. Solochek and continued to opine that school-based counseling by a school psychologist was sufficient for Student. Student had never participated in school-based counseling. Ms. McMillon considered OCLC to be a therapeutic setting that could provide Student with sufficient support to access her education. Regardless of whether Student had acted out in the past, such as at Fusion, she still accessed her education, and therefore did not need a residential program.

84. Santa Monica-Malibu members of the IEP team determined Dr. Solochek's assessment report and recommendations was historical in nature and provided no new information that identified Student as requiring residential treatment to access her education. Dr. Solochek disagreed, and indicated her assessment provided new information and insight into the underlying reasons for Student's behaviors, which needed to be addressed. Ms. Keleher voiced that Student's behavior was a manifestation of social maladjustment. Student's psychiatric history and concerns indicating Student's emotional problem impacted her everyday functioning, including school, was discounted and considered outside of the educational domain. Ms. Keleher maintained Santa Monica-Malibu still needed to see significant depression and behaviors in the classroom to find special education eligibility based upon emotional disturbance. Among factors to be considered were things such as attendance, grades, eloping, and not completing assignments. Based upon the rating scales presented by Student's prior and current teachers, depression was not reported as clinically significant in the

classroom setting. Further, Santa Monica-Malibu had no evidence that Student would not remain on campus, as the IEP placed safety measures based upon the information they had. Sadly, Ms. Keleher indicated, drug users were at all schools. Ms. McMillon added that family support could be provided in addition to Student's individual therapy as a way to support Student in her transition back to OCLC. Family support, however, was not family therapy, and could only address concerns that manifested in the school setting and how the parent could best support those concerns.

85. Ultimately, Ms. Keleher reiterated Santa Monica-Malibu's conclusion. Santa Monica-Malibu did not believe that Student required residential treatment to access her education and therefore the recommendations from Santa Monica-Malibu "come from that lens." Santa Monica-Malibu continued to believe that Student's educational needs could be best met at OCLC with integrated and related service supports. The IEP team notes indicated no changes were made to the IEP. The IEP document submitted into evidence, however, included additional supports intended to assist with Student's transition from Storm Ridge to OCLC.¹⁰ The added supports included: (1) 15 minutes per week of school-related counseling consultation; (2) expanded school day at OCLC (8:30 a.m. to 3:00 p.m.); (3) one hour per week of additional consultation between school psychologist and school staff; (4) two hours per month of family therapy to be provided by educationally related intensive counseling counselor; and (5) supervision on campus at all times during the school day in the school setting.

86. On May 5, 2018, Mother formally notified Santa Monica-Malibu that their offer of FAPE was wholly inappropriate to meet Student's unique education and social-emotional needs. Mother placed Student at Heritage Academy, a different residential treatment center, located in Provo, Utah, and would seek reimbursement

¹⁰ These additional supports were not included with the December 19, 2017 IEP.

from Santa Monica-Malibu.

HERITAGE RESIDENTIAL TREATMENT CENTER

87. Eugene Marshall,¹¹ Clinical Director of the Elevate Program at Heritage Academy, was the head of all residential programs at Heritage. Heritage treated adolescents with a multitude of issues, especially trauma, across settings. At the time of hearing, Heritage had 54 students, 27 males, 27 females, housed in separate locations. Heritage provided gender-specific programs, with some coed activities such as group therapy, adoption group, or dances. The Heritage team for each student consisted of a primary therapist, a residential head, two residential staffers, an academic staff member, and a recreational staff member.

88. Mr. Marshall accepted Student into the Elevate Program in March 2018.¹² While Student made progress at Storm Ridge, her trauma issues remained unaddressed. Storm Ridge had been unable to get Student to a level to address her trauma and relationships across domains.

89. After an initial honeymoon period, Student once again reverted to being sneaky and manipulative. Student became non-compliant and reacted to restrictions poorly. Staff became concerned about Student self-harming, and her obsession with

¹¹ Mr. Marshall had a master's degree in social work, and was a licensed clinical social worker.

¹² Student was initially rejected by Heritage in 2017 because her conduct disorder and aggression were considered too intensive for their program. Subsequently, after review of new information, including Fusion records and grades, and records from Storm Ridge, which indicated no serious aggression, Student was accepted into Heritage.

boys. Student was placed on intervention report several times for behavior, and assigned a "staff buddy" at Heritage who was used to restrict Student's conduct. Student was required to remain within five feet of her staff buddy at all times. Student engaged in staff shopping, where she attempted to manipulate and split staff members by playing them against each other.

90. Mr. Marshall reported Student still attempted to get her needs met as easily as possible. She still manipulated. She remained egocentric and did not care about the impact or relationships. Mr. Marshall recommended Student remain in a residential treatment program. Student still needed a residential placement to benefit from her education. Student did not yet have enough impulse control. She did not have the self-discipline necessary to succeed. Student required a therapeutic program in excess of a school-based counseling program from a school psychologist. Given her obsession with boys, a coed campus was not a good idea. It was questionable if Student would remain in the OCLC program; she was still at high risk for eloping. Student needed to have staff near her at all times.

92. Mr. Marshall concluded his testimony by indicating Student needed adoption group therapy to address many issues, including a suspected attachment disorder. Student still presented with major depressive disorder and anxiety. Generally, students completed the Heritage program within 12 to 14 months. Additionally, students could graduate with a high school diploma from Heritage and their home school district.

93. Jonathan Rasbach,¹³ Student's academic advisor at Heritage, was on Student's treatment team. Mr. Rasbach presented at a strong witness. Mr. Rasbach

¹³ Mr. Rasbach held a mild/moderate special education degree and educator's license in Utah.

reported that upon initially meeting Student, she was cordial and downplayed her problems. On the surface, Student wanted to present herself well, and appeared eager to participate in the Elevate Program. Student wanted to complete her Spanish and math classes, and did so in a classroom setting with direct instruction, rather than online.

94. Classes at Heritage were based on state standards in Utah. There were 18 credentialed teachers. All of Student's classes were split by gender, girls in one classroom, and boys in a separate classroom. Staff remained outside of bathrooms to monitor safety. The classes were small and structured and provided accommodations where needed. Student's therapy team created discharge goals for Student; Mr. Rasbach was assigned to a goal related to Student's ADHD. As a special education teacher at Heritage, Mr. Rasbach worked primarily with ADHD issues, but he also worked with mood disorders, anxiety, and detachment issues. He noted that planning and organization was embedded in Student's classroom program. Student rarely required prompting in the classroom setting; she rarely exhibited problem behaviors in school. At the time of hearing, Student was in the 12th grade, and had all required credits needed to remain on the graduation track.

95. Mr. Rasbach noted Student was doing well academically, but he believed she was biding her time until she turned 18 years old. Student was only doing what she needed to do in therapy to get by. Her behaviors recently increased. Mr. Rasbach understood the concept of least restrictive environment. He did not believe Student should be in a regular high school classroom. Mr. Rasbach voiced a particular concern regarding drugs. Student downplayed her drug use, but at a public high school campus, she would be in class with other drug users. He noted that in a controlled environment such as Heritage, Student was protected from things, from which she would not be protected in the community or a regular high school campus.

96. Dana Emmons,¹⁴ was the head of Student's treatment team. Ms. Emmons reported similarly to Mr. Rasbach. When admitted to Heritage, Student appeared confident, and felt she could do the academic work. Student was essentially figuring out the lay of the land.

97. A master treatment plan was created for Student during her first 30 days at Heritage. The plan was based upon Student's history and interviews, and updated quarterly. Student's primary diagnoses remained major depressive disorder and ADHD. Ms. Emmons was required to see Student once a week in individual counseling; however, in actuality Ms. Emmons saw Student more often. Student also participated in group therapy twice per week, as well as equine therapy. Student was scheduled to begin adoption group therapy shortly. Ms. Emmons and Student also participated in family therapy once a week.

98. Initially Student was not diagnosed with oppositional defiance disorder, but Ms. Emmons saw it by the time of hearing. Initially Student was not being honest. She made some progress, but she had just begun showing her real self. Student was obsessed with boys and created drama and conflicts. After her honeymoon period, Student fought the system. She remained manipulative and sneaky. She did not follow rules and was non-compliant. In September 2018, Student became so angry she had to be restrained. She was involved in a drug incident, and refused to go to class. When Student was depressed, she could not or would not do school work or attend class. In late September 2018, Student refused therapy. Ms. Emmons noted Student hung on to acting out and maladaptive behaviors longer than most students did before having an "aha moment" and working with the program.

¹⁴ Ms. Emmons held a master's degree in clinical psychology and was a licensed marriage and family therapist in Utah.

99. Ms. Emmons expressed concern about Student's emotional safety. Student had experienced sexual trauma. She had abandonment issues. She had a difficult time seeing her own value. Student had "daddy issues" and an obsession with boys; she was looking for love. Student did not make emotional connections because she felt she was not worthy. She needed a protective environment where she could learn the consequences of her poor choices. Ms. Emmons believed Student was not ready for a coed program or classroom because "she would hook up if she could." Further, given her history of eloping in unstructured time, Ms. Emmons believed Student would still elope given the chance.

100. Student needed more work on chemical dependency. Drugs helped adolescents with ADHD mellow. Student self-medicated and drugs were still Student's preferred choice. She was likely to pair off with other drug users, and do drugs again. If Student returned to the community at the time of hearing, she would likely return to her old friends. She would not integrate with positive peers. Student was still not trustworthy, and still exhibited dangerous behaviors. Student was unrealistic about what it meant to turn 18 years old. Ms. Emmons indicated Student did not have a clue about independent living, and she remained socially immature.

101. Ms. Emmons did not believe school-based counseling services from a school psychologist would be sufficient for Student. Student required attention 24 hours per day. Student needed chemical dependency support and daily interventions. Student's academics were not a separate issue from her mental health issues. The structure of the residential treatment center had immensely helped Student academically. Ms. Emmons opined that due to Student's age and levels of dysfunction, there was little time left to help Student, and she needed all the help it was possible to give her. Moreover, Ms. Emmons was uncertain if Student would go to school if she was not in a residential placement.

ADDITIONAL TESTIMONY

102. Dr. DeAntonio had previously testified as an expert in child and adolescent psychiatry in due process hearings and federal and superior court cases involving or on behalf of children. In addition to reiterating his medical opinions as contained in his summary notes and letters, Dr. DeAntonio testified regarding Student's prognosis and explained his rationale for continuing to recommend residential treatment placement for Student. Dr. DeAntonio presented as a no-nonsense witness, and was well versed in pertinent areas of special education.

103. Dr. DeAntonio explained Student's diagnoses. Student presented with generalized anxiety disorder in which she sustained unrealistic worries about home, school, and her social world. She also exhibited major depressive disorder, which manifested as a sense of hopelessness and sadness, i.e., things cannot get better. Student's depression was sustained over periods exceeding two weeks, and became more severe and sustained over time. In particular, Student's generalized anxiety disorder impacted her at school, as evidenced by her often eloping from school and/or engaging in risky or sexual conduct. Student was not containable; she would not stay in the classroom. Student was smart, and capable of completing advanced placement work, but only in a structured setting where she could not leave. Student would not be successful in a small class in a public school, because she would not do the work. Further, a one-to-one aide or supervision would not work. Student would not be cooperative with supervision. If staff could not physically "put hands on her" to keep her from leaving, Student would bolt.

104. Dr. DeAntonio expressed that any school program without full-time therapy and therapist would not be effective with Student. Student required extensive therapy. She also needed months for the therapy to become effective. As a result, Student required a long-term therapeutic program, not five weeks. Dr. DeAntonio

disagreed with TLC's decision to release Student after five weeks. Student was adept at knowing what to say, and how to manipulate to get what she wanted. She had not been sincere in following her treatment plan, understanding her behavior, or making lasting changes. Dr. DeAntonio knew Student would not succeed on the outside, because she would not be forced to deal with her issues. As he expected, Student returned to her old patterns and required additional hospitalizations after TLC discharged her.

105. Dr. Antonio was familiar with the concept of least restrictive environment and continuum of placement options. He understood a residential treatment placement was the most restrictive of placements. Nevertheless, he continued to recommend residential treatment and intensive therapy for Student so she could actually access her education.

106. Dr. Solochek provided additional information at hearing. She reviewed all of Student's IEPs. She agreed that Student met the special education eligibility criteria for other health impairment due to her ADHD, but felt Santa Monica-Malibu underplayed Student's social-emotional and safety issues. Student was severely emotionally disturbed, and she needed intensive services from a residential treatment center. Student's hospitalizations were for self-harm and personal safety. Those behaviors had a huge impact on Student's ability to focus on school work. Student saw Lisa Taylor once a week for individual therapy while at Storm Ridge. Ms. Taylor saw Student's depression and anxiety, and recommended more therapy than Student was getting. Student needed to develop coping skills before she turned 18 years of age. This required good integrated therapies to help her learn how to control her impulses. Student was still too sneaky and manipulative for outpatient therapy; "in the moment" therapy was required.

107. Dr. Solochek did not agree that placement at OCLC would have no harmful effects; to the contrary, Student exhibited behaviors that were dangerous on a school

campus. Student was emotionally still too volatile for OCLC. She could still get in trouble. It was not practical to escort Student to the bathroom or on campus. Student would still elope. Student had the capacity to develop skills, but her emotional baggage still got in the way.

108. Ms. Taylor, Student's clinical and mental health counselor at Storm Ridge, confirmed Dr. Solochek's testimony. Over time at Storm Ridge, Student was becoming more genuine, and was buying into the program. Nevertheless, Student was still manipulative to get her way and was still defiant. Student had self-esteem issues; believing she was not good enough was her core belief. When Student left Storm Ridge, she still presented with anxiety and negative image. Based upon her role as a clinical psychologist, Ms. Taylor opined Student still needed a residential treatment placement with a clinical therapeutic component to access her education. School-based counseling would not be sufficient. Student's diagnosis was too severe. Additionally, an appropriate placement could not be coed, due to Student's promiscuity.

REQUESTED RELIEF

109. Mother testified and provided receipts for all educationally related costs she incurred, including travel-related expenses, to provide Student placement at Storm Ridge. Mother had no out-of-pocket expenses for tuition; however, she incurred related expenses for Storm Ridge as follows:

- 1) June 2017 expenses to finalize contract with Storm Ridge;
airfare, car rental, gasoline, and food \$ 409.29
- 2) October 2017 expenses for trip to Storm Ridge;
car rental, hotel, gasoline, and food 507.01
- 3) December 2017 expenses for trip to Storm Ridge;
Uber, car rental, airfare, hotel, food, and gasoline 2,815.63
- 4) March 2018 expenses for trip to Storm Ridge;

	(to bring Student back to California for testing)	
	airfare, car rental, gasoline, food, and hotel	1,513.14
5)	May 2018 expenses for trip to Storm Ridge;	
	airfare, gasoline, food, hotel, and car rental	1,292.88
6)	June 2018 expenses to Storm Ridge;	
	(to pick up Student for transfer to Heritage)	
	airfare, car rental, Lyft, hotel, and gasoline	830.93
7)	Transport Student to Heritage (airfare only)	193.20

110. Mother testified at hearing and provided receipts for Student’s tuition and educationally related expenses for Heritage, including mandatory attendance at parent conference, as follows:

1)	August 2018 expenses for trip to Heritage;	
	(mandatory parent conference)	
	airfare, car rental, Lyft, hotel, and gasoline	\$ 620.00
2)	Monthly tuition for Heritage commencing September 2018,	
	and each month thereafter	10,407.00

111. Mother requested reimbursement of \$8,183.03 for out-of-pocket educationally related expenses, and \$10,407.00 per month, commencing September 1, 2018, for educationally related expenses, including tuition, at Heritage

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹⁵

1. This hearing was held under the Individuals with Disabilities Education Act,

¹⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided herein.

its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq; 34 C.F.R. §300.1 (2006) et seq.¹⁶; Ed. Code, § 56000 et seq.; Cal Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

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

¹⁶ All citations to the Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

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

4. In *Endrew F. v. Douglas County School District* (2017) 580 U.S. ___ [137 S.Ct. 988] (*Endrew F.*), the Supreme Court reconsidered the meaning of the phrase “some educational benefit” for a child not being educated in a general education classroom. The court rejected the contention by the school district that the IDEA was satisfied by a program providing “merely more than *de minimis*” progress, as well as parents’ contention that school districts must provide an education that is substantially equal to one afforded to children without disabilities. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.*, 580 U.S., 137 S. Ct. at p. 1001.) The Court retained its earlier holding in *Rowley* that any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. While *Endrew F.* does not require an IEP to maximize educational benefit, it does require that “a student’s educational program be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” (*Id.*, 580 U.S. ___, 137 S. Ct. at p. 1000.)

5. In so clarifying “some educational benefit,” however, the Court stated that it would not attempt to elaborate on what appropriate progress will look like from case to case. “It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Id.*, 580 U.S. ___, 137 S. Ct. at p. 1001.)

6. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court. Further, *Andrew F.* did not change, but simply clarified *Rowley*. (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535; *K.M. v. Tehachapi Unified School Dist.* (E.D. Cal. Apr. 5, 2017, 1:15-cv-001835 LJO JLT) 2017 WL 1348807, **16-18.)

7. An educational agency formulating a special education program for a disabled pupil is not required to furnish every special service necessary to maximize the child's potential. (*Rowley, supra*, 458 U.S. at p. 199.) Instead, an educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F. 3d 1025, 1033.)

8. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, Student had the burden of proof on each issue presented.

9. The statute of limitations for special education due process claims requires a party to file a request for a due process hearing within two years from the date the party knew or had reason to know of the facts underlying the basis for the request. (Ed. Code, § 56505, subd. (j); 20 U.S.C. § 1415(f)(3)(C).) The statute does not apply to claims filed by a parent who was prevented from requesting the due process hearing due to

either of the following: (1) specific misrepresentation by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) withholding of information by the local educational agency from the parent that was required to be provided to the parent. (Ed. Code, § 56505, subd. (1); 20 U.S.C. 1415 (f)(3)(D).) The statute of limitations in this matter is set by the settlement agreement dated January 23, 2017.

PROVISION OF FAPE

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

11. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) An IEP should be

reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities to enable progress commensurate with nondisabled peers, taking into account the child's potential in light of his unique circumstances. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1201.)

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

ISSUE: FAILURE TO PROVIDE PLACEMENT IN A RESIDENTIAL TREATMENT CENTER

13. Student contends her serious mental health issues and ADHD require placement in a residential treatment center that provides Student with a highly structured, classroom-based program with sufficient individual, group, and family therapy to address Student's severe mental health issues. By failing to provide placement in a residential treatment center, Santa Monica-Malibu denied Student a FAPE. Santa Monica-Malibu contends it is not responsible for a residential treatment placement when the primary purpose for such placement is for issues distinct from Student's educational needs.

14. A school district must provide a residential placement to a student with a disability if such placement is necessary to provide the student with special education and related services. (34 C.F.R. § 300.104.)

15. In analyzing the question of whether a child's behaviors outside the classroom warrant a residential placement, the Ninth Circuit looked at the effect of those behaviors on the child's education. The focus must be on whether the placement was necessary to meet the child's educational needs. "If the placement is a response to medical, social or emotional problems ... quite apart from the learning process, then it

cannot be considered necessary under the IDEA." (*Clovis Unified School Dist. v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635, 643; accord *Ashland School Dist. v. Parents of Student R.J.* (9th Cir. 2009) 588 F. 3d 1004, 1009.) Further, school districts are not responsible for residential placements where the primary purpose is for substance abuse treatment or prevention. (See *Forest Grove School District v. T.A.* (9th Cir. 2011) 638 F.3d 1234, 1238-1239.)

16. Special education classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Ed. Code, § 56040.1, subd. (b).) Therefore, in addition to providing a FAPE, a school district must ensure that "[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled." (20 U.S.C. § 1412(5)(A); see also 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) This "least restrictive environment" provision reflects the preference by Congress that an educational agency educate a child with a disability in a regular classroom with his or her typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (*Rachel H.*)) Given their restrictive nature, removal of a student with disabilities to a residential setting complies with the least restrictive environment mandate only in extremely limited situations for students who are unable to receive a FAPE in a lesser restrictive environment. (*Carlisle Area Sch. Dist. v. Scott P.* (3rd Cir. 1995) 62 F.3d 520, 523.)

17. Student provided overwhelming evidence that she has significant emotional and mental health issues. The evidence presented established Student's diagnoses for major depressive disorder, anxiety, ADHD, and oppositional defiance disorder. Student's psychiatric and therapy professionals each described Student's fragile mental status; and each connected her emotional difficulties to a significant

impact on her ability to access her education. Dr. DeAntonio reflected that despite her history of strong academic performance, Student exhibited a marked deterioration in her educational functioning. Even in a smaller school setting, Student had difficulty sustaining adequate participation in school, did not finish assignments, and skipped classes. Ms. Mascarenas reported Student was quite astute but not capable of remaining focused; Student exhibited little impulse control, lacked self-motivation, and required assistance to complete tasks. Evolve staff reported Student's history of emotional disturbance resulted in her inability to function in school effectively, which was demonstrated by her limited work completion, walking away, and displaying an inability to effectively manage time. As an educator, Mr. Porras reported concerns regarding Student's maladaptive behaviors such as refusing to do school work and leaving campus without permission, being impacted by her emotional state. Ms. Harris, Student's counselor, reported Student was enrolled in Storm Ridge due to difficulties with her mood, affect, behavior problems, difficulties with peers, substance abuse, absenteeism, academic difficulties, difficulties with adults and teachers, and risky behaviors, all of which placed Student at risk for academic failure.

18. Instead of relying on valid information provided by mental health professionals, Santa Monica-Malibu hand selected certain test scores and interviews to determine Student's mental health issues were not significant, rather than consider the entire picture of what was happening to Student. Ms. McMillon, in particular, took a rather simplistic approach to determine Student was not in need of significant mental health services. In essence, if Student's grades were good, and she was not acting out at school, she was appropriately accessing her education. Santa Monica-Malibu determined Student's behavior was just a manifestation of social maladjustment, which could be appropriately addressed with school-based counseling one hour a week. Not only did Santa Monica-Malibu ignore the information provided by Student's mental

health professionals, they ignored the factors that skewed Ms. McMillon's recommendations. Specifically, Student was in a residential setting where her academics and behaviors were subject to a controlled environment, and she was receiving intensive individual, group, and family therapy provided by a clinical therapist, not a school psychologist.

19. Dr. Solochek's assessment and testimony were balanced and most persuasive. Dr. Solochek determined Student presented with severe mental health issues, similar to those diagnoses and opinions of Dr. DeAntonio and Student's therapists. She made similar associations of Student's mental health to her educational needs. Her academic assessments did not vary significantly from those of Santa Monica-Malibu. The difference, however, was Dr. Solochek not only identified Student's difficulties, she identified the underlying reasons for those difficulties. As one example, Dr. Solochek explained Student exhibited a tendency to develop physical symptoms or fears associated with personal or school problems, and had a great deal of anxiety regarding relationships, and deeply feared abandonment, criticism, rejection and failure. This prevented her from taking interpersonal risks, as well as risks in her academics. Student had a history of avoiding and running away from school. She had a history of mistreatment by peers, which made school difficult. While Student may have shown periods of stability in school, this was likely due to her being in an environment with either actual or perceived decreased threat and instability, as well as increased structure.

20. Dr. Solochek observed OCLC and determined it was a good program, but not appropriate for Student. She presented common sense explanations for her rejection of OCLC as Student's placement. The classroom structure required Student to frequently work independently, which was counterproductive given Student's difficulty working independently due to her ADHD and emotional issues. The shortened school day provided too much unstructured, non-academic time for Student. OCLC's location

on the Olympic campus presented an invitation for elopement; the campus was coed; the bathroom facilities were problematic; and constant supervision was impractical.

21. Further, Student required more intensive and more frequent therapy sessions than were offered by Santa Monica-Malibu, or which could have reasonably been provided in the OCLC setting. Student's behaviors were unpredictable. It would have been very difficult to develop a behavior plan for Student, as it was difficult to anticipate and identify triggers for her reactions. Student required immediate feedback to provide insight into her actions, as well as constant communication between therapists and educators. Student required increased therapy to help her build coping skills, and address her anxiety and depression, beyond the individual, group and family therapy she was already receiving. School-based counseling services, even educationally related intensive counseling services, were not reasonably intended to provide Student the type of support she required.

22. The OCLC placement offered by Santa Monica-Malibu was inappropriate for Student. OCLC, consisting of coed classrooms, located on a high school campus, with significant unstructured time in the afternoon, and like-behaviorally challenged peers, was an invitation for disaster. Santa Monica-Malibu was unable to discredit the opinions of Student's mental health experts and educators. Student was still too impulsive and untrustworthy to remain on campus and stay at school. She still engaged in risky behavior when given the opportunity. There was every reason to believe Student would revert to her old patterns if placed at OCLC. If Student's mental health issues prevented her from attending class, encouraged elopement or risky behaviors at school, then Student was not receiving benefit from her education.

23. Santa Monica-Malibu's contentions that Student's behaviors were merely maladjusted as a result of adolescent conflicts in the home and drug use were misguided. Student was capable of doing well in school, if engaged. Student's

academics, however, were subject to a vicious circle of behaviors resulting from her ADHD, depression, and anxiety. Student's lack of self-esteem, comorbid with her ADHD, contributed to her anxiety, which led to incomplete academics, which led to more anxiety and depression, which led to impulsive or defiant behaviors such as which led to eloping and refusal to attend school, which led to self-harm, which resulted in hospitalization. Once released from hospitalization or residential treatment, after a honeymoon period, which included focus on academics, the entire cycle would begin again.

24. Santa Monica-Malibu's contention that Student's behaviors were home-based and not evident at school was not supported by the evidence. For most part, Student was not attending public school. Nonetheless, Santa-Monica-Malibu discounted or ignored Student's behaviors across domains. Mr. Porras's input was ignored. Student's academic progress was limited; she did not complete the classes she was taking. Her behaviors at Fusion were unacceptable; she eloped and engaged in risky behaviors. As stated in Storm Ridge documents, Student was enrolled in Storm Ridge to clinically address Student's emotional and behavioral issues which placed her at risk for academic failure. Similarly, Heritage staff reported that after a honeymoon period, Student's emotional instability and defiant behaviors reemerged, resulting in Student's refusal to attend school. Instead, Santa-Monica-Malibu disregarded this significant information regarding Student's academic progress, and educationally-related behaviors, thereby relying on preferential input to negate Student's emotional disturbance across domains, which was a determinative factor in its refusing to consider a residential treatment placement for Student.

25. Student's drug use was not persuasive on Santa Monica-Malibu's behalf. Student's drug usage, in this case, was adopted as a means of self-medication to ease her depression and anxiety. Student's drug usage represented a clear example of

Student's impulsive and self-destructive behaviors, when faced with her inability to handle her anxiety. Further, Student's drug use commenced subsequent to Student's diagnoses of depression, anxiety and ADHD; diagnoses which were initially ignored by Santa Monica-Malibu.

26. Residential placement represents the least restrictive environment for Student. This case does not rest on an argument of whether Student would benefit from inclusion or exposure to the general education environment and typical peers. Removal of individuals with exceptional needs from the regular educational environment is serious, and can occur only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. In this matter, placement in a residential treatment center is the least restrictive environment in which Santa Monica-Malibu can provide Student with the intensive therapy, and small, structured academic setting she requires to remain engaged in her education. School-based counseling, as available through Santa Monica-Malibu, is insufficient to address Student's unique needs. Further, the amount of therapy Student required on a weekly, if not daily basis, is impractical to provide in a limited school day program, such as OCLC.

27. Santa Monica-Malibu denied Student a FAPE by offering placement at OCLC, as it would be unable to provide Student with the academic support and mental health services she required to access her education. Further, Santa Monica-Malibu's offer of one hour per week of school-based counseling was insufficient to address Student's serious mental and emotional issues. Instead, Student required placement in a residential treatment center in which she could receive appropriate clinical therapy support along with small, structured classes in which Student could receive direct instruction.

REMEDIES

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

2. An ALJ may order a school district to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Puyallup, supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid, supra*, 401 F.3d at p. 524.)

3. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of*

Burlington v. Department of Ed. (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed.2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provided a FAPE.) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [114 S. Ct. 36, 1126 L. Ed. 284] (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student had made substantial progress.))

4. In this matter Santa Monica-Malibu failed to offer Student a FAPE in any of its IEPs created after June 7, 2017. Santa Monica-Malibu offered the same placement at OCLC and the same counseling services of 60 minutes per week of school-based counseling, in each of its IEPs. Each offer was insufficient to provide Student with the placement and counseling services she required to appropriately access her education. Mother refused to consent to any of the IEPs and notified Santa Monica-Malibu of her intent to privately place Student in residential treatment, and seek reimbursement from Santa Monica-Malibu.

5. The testimony at hearing supported a finding that Student's placement at Storm Ridge was appropriate. Storm Ridge was a residential treatment center that provided Student with therapeutic support needed after her last psychiatric hospitalization. Academically, Student completed two classes she had failed to complete at Fusion before her hospitalization. In class she completed grade-level work at an average pace. Student remained on graduation track.

6. Mother's testimony and documentary evidence indicated Mother had

out-of-pocket costs for educationally related travel expenses to Storm Ridge for June 2017 through June 2018 for \$8,183.03. The listed expenses, however, included expenses for March 2018, which Mother indicated was primarily to bring Student back to California for Dr. Solochek's assessment. Therefore, Mother's requested reimbursement for Storm Ridge travel expenses is reduced by \$1,513.14. Santa Monica-Malibu shall pay Mother the sum of \$6,669.89 as reimbursement for her out-of-pocket educationally related travel expenses.

7. Student's placement at Heritage was appropriate. Mother gave Santa Monica-Malibu notice she was placing Student at Heritage, in lieu of Storm Ridge. Heritage was a residential treatment center that began providing Student with therapeutic services and educational placement in September 2018. Heritage provided Student with intensive clinical therapy and small structured classes, based on Utah state standards and taught by credentialed teachers. Student's mental health providers recommended that Student remain in a residential treatment placement as she remained impulsive, and needed a safe, restricted placement where she could learn the consequences of her actions. According to Student's therapist, the structure of the residential treatment center had immensely helped Student academically. Student was not yet ready for out-patient therapy or a coed classroom.

8. Mother's testimony and documentary evidence indicated the tuition for Heritage was \$10,407.00 per month. Mother took out a personal loan to finance Student's tuition. Although Student began attending Heritage in September 2018, Mother was required to attend a parent conference at Heritage in August 2018, which was a mandatory part of Student's enrollment contract. Mother's out-of-pocket travel expenses for August 2018 was \$620.00. Santa Monica-Malibu shall pay Mother the sum of \$620.00 as reimbursement for her out-of-pocket educationally related travel expenses.

9. Student remained enrolled at Heritage for the 2018-2019 school year, for her 12th grade year. Student was on schedule to graduate with a regular diploma in June 2019. Based upon expert testimony, Student continued to require a residential treatment placement to appropriately access her education. The school-based counseling and placement at OCLC could not provide Student a FAPE. Student established that intensive therapeutic treatment does not produce immediate results; residential treatment, on average, requires a 12-to-14 month placement, before a student is ready to return home. In the last two years Student had been placed in several different educational and therapeutic settings, in which she has not yet completed a therapeutic program. Student demonstrated she requires an adjustment period before she is ready to work her program. Student was also a senior in high school, on track to graduate with diploma in June 2018. Student agreed she was not ready to return home from Heritage. Considering these factors, it would be counterproductive to remove Student from Heritage and place her in another educational setting, unless Heritage indicates any change in placement for the remainder of the 2018-2018 school year would be beneficial or necessary for Student. Therefore, as compensatory education and related supports, Santa Monica-Malibu shall pay Student's tuition at Heritage for the period of September 2018 through June 2019, for \$10,407.00 per month. Additionally, Santa Monica-Malibu shall reimburse Mother for educationally related travel expenses incurred during Student's remaining placement at Heritage.

ORDER

1. Within 60 days of this decision, Santa Monica-Malibu Unified School District is ordered to pay Mother the sum of \$6,669.89, representing reimbursement of out-of-pocket educationally related travel expenses incurred June 2017 through June 2018 while Student attended Storm Ridge Ranch in Utah.

2. Within 60 days of this decision, Santa Monica-Malibu Unified School District is ordered to pay Mother the sum of \$620.00, representing reimbursement of out-of-pocket educationally related travel expenses incurred in August 2018 for mandatory parent conference at Heritage Academy in Utah.

3. Santa Monica-Malibu Unified School District is ordered to reimburse Mother for Student's monthly tuition at Heritage Academy for the period of September 2018 through June 2019, in an amount not to exceed \$10,407.00 per month. Payment for tuition shall be made pursuant to direct contract with Heritage Academy if available. In the event direct contract payment is not available, tuition reimbursement shall be paid to Mother within 60 calendar days of presentation of proof of payment from Mother or invoice indicating payment. Santa Monica-Malibu Unified School District's obligation to reimburse Student's tuition shall terminate upon Student's voluntary or involuntary termination of placement at Heritage Academy, graduation with regular diploma, or June 30, 2019, whichever occurs first. Mother shall make her final request for reimbursement of tuition no later than September 1, 2019.

4. Santa Monica-Malibu Unified School District is ordered to reimburse Mother for out-of-pocket educationally related travel expenses for the period of September 2018 through June 2019. Santa Monica-Malibu Unified School District is ordered to reimburse Mother within 60 calendar days of presentation receipts or other proof of payment. Mother shall complete all request for reimbursement no later than September 1, 2019.

5. All other requests for reimbursement and relief are denied.

PREVAILING PARTY

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

RIGHT TO APPEAL DECISION

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

Dated: November 30, 2018

/s/ _____

JUDITH L. PASEWARK

Administrative Law Judge