

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:  
PARENT ON BEHALF OF STUDENT,

v.

LOMPOC UNIFIED SCHOOL DISTRICT  
OAH CASE NUMBER 2019041183

AND

LOMPOC UNIFIED SCHOOL DISTRICT

v.

PARENT ON BEHALF OF STUDENT.  
OAH CASE NUMBER 2019060788

DECISION

Parent on Student's behalf filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, State of California, on April 26, 2019, naming Lompoc Unified School District. The Office of Administrative Hearings is referred to as OAH in this Decision. OAH continued the matter for good cause on June 12, 2019. On June 17, 2019, Lompoc Unified filed a complaint naming Parent on Student's behalf. On June 28, 2019, OAH consolidated Student's case with Lompoc Unified's case and designated Student's case as the primary case.

Administrative Law Judge Adrienne L. Krikorian heard the consolidated matter in Lompoc, California, on July 16, 17, 18, 23, and 24, 2019. The Administrative Law Judge is referred to as the ALJ.

Attorney Andréa Marcus represented Student. Paralegal Natalie Cummings assisted Ms. Marcus. Student's mother attended the last day of hearing and testified. Attorney Sarah Garcia represented Lompoc Unified. Special Education Director Cynthia Ravalin attended the hearing on all days and testified on behalf of Lompoc Unified. Special Education Coordinator Tish Quam attended the morning of the second day of

hearing.

At the parties' request for a continuance to file closing briefs, the ALJ continued the matter to August 5, 2019. The briefs were timely filed, the record closed, and the matter was submitted for decision on August 5, 2019.

## ISSUES

The issues stated below were clarified and agreed to by the parties during the prehearing conference.

### STUDENT'S CASE

1. Did Lompoc Unified deny Student a free appropriate public education, referred to as FAPE in this Decision, from April 26, 2017, until the date the complaint was filed by failing to address Student's need for behavior support?
2. Did Lompoc Unified deny Student a FAPE from April 26, 2017, until the date the complaint was filed by failing to assess Student in all areas of suspected disability?

### LOMPOC UNIFIED'S CASE

Is Student entitled to independent educational evaluations at public expense although Lompoc Unified did not conduct assessments of Student?

### STUDENT'S MOTION TO ADD ISSUE OR AMEND COMPLAINT

At hearing, Student sought to expand Student's second issue to include whether Student was eligible for special education based upon allegations in the complaint that Student "had a diagnosis of emotional disturbance, [...] a disability which qualifies her" for special education services. Student argued that these allegations sufficiently raised a separate issue of eligibility which, she argued, was a necessary element of finding a

denial of FAPE.

Student made a motion on the third day of hearing to amend her complaint to add the issue of eligibility. At the time Student moved to amend her complaint during the hearing in this matter, Student's stated issue of "Whether Lompoc Unified denied Student a FAPE by failing to find her eligible for special education" was pending in OAH number 2019060655 and set for hearing on October 1, 2019.

Lompoc Unified's counsel conditionally agreed to an amendment, providing Lompoc Unified had sufficient time to prepare witnesses and evidence for that issue. Lompoc Unified also moved to consolidate OAH case number 2019060655 with the pending consolidated matter.

The ALJ informed the parties she was inclined to grant the motion to amend, to consolidate, and to grant a short continuance to allow Lompoc Unified time to prepare. Student's counsel then withdrew her motion to amend the complaint to add the issue of eligibility. Accordingly, the ALJ did not consider evidence as to whether Student had a disability that qualified her for eligibility and this Decision does not address that issue. (See, *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].)

## SUMMARY OF DECISION

This Decision holds that, as to Student's Issue Two, Lompoc Unified denied Student a FAPE by failing to assess Student for suspected disabilities. The failure to assess impeded Mother's participation in developing Student's educational program by depriving Mother of necessary information and the opportunity to participate in an Individualized Education Program team meeting to determine Student's eligibility and, if eligible, address Student's needs for behavior support. An Individualized Education Program is referred to in this Decision as IEP. This Decision does not decide whether or not Student was deprived of educational benefit, or if the procedural violation impeded

her right to a FAPE under the Individuals with Disabilities Education Act, referred to as the IDEA.

Student's remedy is an order compelling Lompoc Unified to assess Student in a safe and controlled environment within Lompoc Unified's geographic boundaries unless Mother and Lompoc Unified mutually agree on an alternate location. Lompoc Unified is not obligated to fund a residential placement for Student for diagnostic purposes, as Student requested. This Decision also orders Lompoc Unified to provide staff training regarding Child Find and assessment obligations under the IDEA.

Lompoc Unified prevailed on its issue and Student's Issue One. Lompoc Unified was not obligated under the IDEA to provide behavior supports by way of an IEP because Student was not eligible for special education supports and services under the IDEA. Lompoc Unified was not obligated to fund independent educational evaluations at public expense until after it assessed Student, held an IEP meeting to review the assessments, and Mother disagreed with an assessment.

## FACTUAL FINDINGS

Student was sixteen years old and in her second year of ninth grade at Lompoc High School at the time of the hearing. She resided with her mother and two younger sisters within Lompoc Unified's boundaries during the relevant time period. No school district found her eligible for special education during that period.

## BACKGROUND

Student was eligible for special education under the category of speech and language from kindergarten until October 2014, when Lompoc Unified exited her from special education. Mother attended Student's IEP meetings while Student was eligible for special education, and received notice of procedural rights regarding Student at least once. Mother was familiar with special education procedures because Student's younger

sibling also had an IEP. Mother received notice of procedural rights when she attended IEP team meetings at least annually for Student's younger sibling.

During Student's younger years she witnessed her father's death, and experienced deaths of her grandmother and other close relatives. She experienced other traumas involving her family, including a brother's incarceration.

Student's older brother, Brother B, testified at hearing. He last lived in the same home with Student in 2009. Student attended seventh and eighth grades at Lompoc Valley Middle School. She reported to Brother B during the middle of 7th grade that she was being bullied at school. Other students called her names and threatened her with fights. Student often stayed in her room at home and would not communicate. She claimed she did not want to go to school.

Brother B reached out to Lompoc Valley Middle School principal Shel Brown twice during spring 2016. He talked to Mr. Brown about his concerns for Student and asked what the school would do about bullying. He told Mr. Brown Student was depressed, did not eat, lost weight, stayed in her room, and started cutting herself. Student told Brother B she was hurting herself because of bullying. Mr. Brown told Brother B the school was aware of the bullying and was investigating.

Mr. Brown also testified at hearing. Mr. Brown's responsibilities at Lompoc Valley Middle School included investigating behavioral incidents by students. He had limited training on the IDEA. He consulted with appropriate staff including teachers and counselors to determine the cause of a behavior incident. He oversaw the recommended interventions for those behaviors. He initiated special education assessment referrals in collaboration with the school psychologist.

In May 2016, while in seventh grade, Student engaged in a physical fight with two students. Administrators suspended her from school for five days. In September 2016, during eighth grade, Student punched another student in the face and head.

Administrators suspended her for five days. Student was suspended in September 2016 for three days for possession of marijuana. In February 2017, Student was suspended for three days for stealing a phone from another student. In March 2017, Student was suspended for three days because of a physical altercation with another student.

Mr. Brown knew about all of the reported incidents resulting in Student's suspension in middle school. Student's behavior did not suggest to him that she had a disability that required referral for special education. He opined at hearing she was not a student who fought frequently. Her behavior was typical of students her age and not severe enough to consult with the school psychologist or other staff. He opined Student did not miss enough instructional time in middle school to trigger a concern that she may have a disability.

Mr. Brown opined that Student should have been counseled, as a general education intervention, regarding making choices about her behavior. He talked with her several times during which she offered an explanation for each of her behaviors. She always knew why she behaved as she did. She never gave him reason to suspect she had a disability requiring a referral for assessments.

Mr. Brown initially testified that he did not remember any member of the family coming to school to talk to him about Student's behavior, including Brother B. Later in his testimony he acknowledged that he spoke to Mother over the phone and in one face to face meeting regarding Student's disciplinary incidents. Mother never reported a concern to him that Student was depressed. His testimony was consistent with Mother's testimony regarding their conversations and therefore the inconsistency with his earlier testimony did not affect his credibility. Although Mr. Brown did not recall Brother B's visit, Brother B's testimony was credible regarding his conversations with Mr. Brown.

Student also reported to Mother she was bullied at Lompoc Valley Middle School. She told Mother she did not want to go to school. Mother claimed at hearing that she

repeatedly raised the bullying with Mr. Brown, and asked him and other staff for help and suggestions on how to address Student's constant fighting at school. She claimed the school district never did anything to help her daughter during middle school.

From April 26, 2017, the beginning of the statutory period, until the end of the 2016-2017 school year, Student had no recorded behavior incidents. During that time, no staff member reported to Mr. Brown any behavior incidents involving Student requiring discipline or suspension. No middle school staff, including teachers, reported to Mr. Brown that Student's truancies or behaviors raised concerns about a possible disability. If they had raised a concern about a possible disability, Mr. Brown would have considered referral for assessments after consulting with a student study team or other staff members.

Mother asserted during hearing that Mr. Brown was not telling the truth about his conversations with Mother because he was biased in favor of keeping his job. Her testimony was speculative, in part because she was not present during Mr. Brown's testimony. Her recall of the actual impact of bullying on Student's demeanor at school was not as persuasive as Mr. Brown's because she did not observe Student at school other than when she went to pick up Student.

Mother claimed at hearing that, beginning in middle school, Student had engaged in cutting her stomach, arms and other body parts. Student's mood declined during middle school. She experienced hallucinations. Student received counseling services during middle school at a community-based clinic, Behavior Wellness, because of a diagnosis of depression. Mother did not share Student's diagnosis or treatment at Behavior Wellness with Lompoc Unified. She did not sign a release of information for Behavior Wellness to contact the school district. Although a witness from Behavior Wellness testified at hearing, she declined to share any relevant details regarding Student's diagnoses or treatment during the statutory period because of confidentiality.

Mother claimed Student's depression escalated during the latter part of the eighth grade and into the first semester of ninth grade. Mother was not clear during her testimony as to whether she ever reported Student's increasing depression to anyone at Lompoc Unified.

Student's second older brother, Brother A, also testified at hearing. In 2016, he lived in the same apartment building and saw Student almost every day. At that time, he observed Student keep to herself and disassociate from others while at home. She was angry and withdrawn. She would never talk, and spent an increasing amount of time in her room. He was never aware of her cutting herself, and never observed Student at school during the school day. He never reported his concerns to anyone at the middle school.

Student ended middle school with grades ranging from B to F, and teacher comments referencing incomplete assignments and unsatisfactory work habits. She was absent a total of 116 days in eighth grade. She matriculated to high school at the end of the 2016-2017 school year.

## 2017-2018 SCHOOL YEAR

Student began ninth grade at Lompoc High School. Student was assigned to Assistant Principal Celeste Pico's caseload. Ms. Pico occasionally shared her caseload responsibilities with assistant principal Alicia Ropitor.

Ms. Pico testified at hearing. She held a master of arts degree in educational leadership, an administrative credential, and a multiple subjects teaching credential. At the time of hearing, she had worked for twenty years in education. She worked as a teacher at Lompoc Valley Middle School for twelve years before becoming administrative assistant principal at Lompoc High School.

Ms. Pico's duties as an administrative assistant principal included oversight of ninth grade discipline and attendance. She served as a member of behavior intervention

teams. She provided oversight of the counseling department. She was the direct line of contact for school counselors when they had concerns about Students. She was part of the staff team that referred students for special education assessments. Based upon her education and experience, in combination with her presentation during hearing, Ms. Pico's testimony was credible and given significant weight.

Student began engaging in fights at Lompoc High during her first semester of ninth grade. She reported to Mother and Brothers A and B that she was bullied at high school and fought to defend herself. On August 25, 2017, Student had an argument with another student that escalated into physical violence. Student signed a hands-off contract following the incident. She was referred to detention on September 8, 2017. Student signed two additional conduct contracts in October 2017. From January 2018 through May 2018, she was referred to detention four times.

School counselor Kala Huyck was assigned to Student for the 2017-2018 and 2018-2019 school years. She testified at hearing. Ms. Hauck received a master's degree in educational counseling from University of La Verne in 2007. She held a pupil personnel services credential. She was lead counselor at Lompoc High School for eight years before the hearing. At the time of hearing, she had worked a total of twelve years as a high school counselor. Her job duties included oversight of the counseling department. She organized and facilitated all counseling department activities during the school year. She was not a therapist and she did not handle disciplinary issues with students on her caseload. She worked with students' academic, personal, social, and career goals.

Ms. Huyck was trained on special education referrals through Lompoc Unified's in-service programs. However, referrals were not her responsibility. She referred students suspected of needing assessments to administrators. Based upon her background and experience, and knowledge of Student, her testimony was credible and

persuasive.

Ms. Huyck personally met with Student approximately five times at the high school. Student was in the Advancement Via Individual Determination program, also referred to as AVID. The program, into which a limited number of students were accepted, helped students have more access to college by helping them become successful. At the end of 2017-2018 school year, the AVID coordinator referred Student to Ms. Huyck because Student was not fulfilling her AVID contract by participating. Student informed Ms. Huyck she did not want to be at school and that she did not feel any connection with school.

Ms. Huyck was concerned about the number of Student's absences during the second semester of the 2017-2018 school year. None of the conversations she had with Student indicated Student had a disability that interfered with her ability to do her school work. Nothing pointed to a possible emotional disability. She described Student's behavior and ability to get good grades as volitional rather than an inability to perform.

## 2018-2019 SCHOOL YEAR

### Fall 2018 Semester

Student repeated the ninth grade in the 2018-2019 school year because she did not earn enough credits to advance to tenth grade. Retention in ninth grade was not uncommon for Lompoc Unified's high school students. Most students recovered their credits after they adjusted to the transition to high school and successfully graduated.

Student again came to Ms. Huyck's attention during the fall semester of 2018 because her grades started falling. However, Ms. Huyck opined that most students turn low grades around with help from teachers, tutoring, and other general education interventions.

On September 17, 2018, Lompoc Unified suspended Student for three days for

smoking marijuana in the girls' restroom. On October 8, 2018, Lompoc High sent Mother a notice of truancy for ten days of unexcused absences in September 2018.

Lompoc Unified suspended Student for five days for willingly leaving campus on October 22, 2018, and for fighting during the school day with another student at the park across the street from school. Student admitted to staff that the fight was intentional. Ms. Ropitor reported to Mother that Student signed a stay-away agreement on October 30, 2018. Between November 14 and December 13, 2018, Student had four behavior reports, involving failure to dress for gym and excessive tardiness. Student served in-school detention or suspension for these incidents. Student also had suspensions in December 2018, for tardiness and smoking marijuana, and one in February 2019 for marijuana possession.

During the fall semester, Ms. Pico frequently saw Student with her boyfriend outside of the classroom on campus. Ms. Pico occasionally escorted Student to the classroom. Ms. Pico and Student talked almost daily at school. Student was cheerful when she engaged with Ms. Pico. She told Ms. Pico she felt safe at school but did not like going to class. Student never reported to Ms. Pico that she was depressed or unhappy. Student never reported any physical abuse at home, neglect, cutting to injure herself, or being in an unsafe situation at home. She never told Ms. Pico that she had witnessed her father's death as a young child.

During the first semester of the 2018-2019 school year, no one, including Mother, ever asked Ms. Pico for special education assessments or counseling support for Student. Mother never asked Ms. Pico for mental health or other counseling for Student.

Ms. Pico opined that Student's physical violence at school was not abnormal because in her experience fighting among teenagers at Lompoc Unified was not unusual. Ms. Pico opined Student's behaviors were reactive in response to provocation from other students. She opined Student was bright, had great potential, and

demonstrated no concerns to Ms. Pico that suggested a disability during the first three semesters of high school. She was surprised to learn that, during the second semester of the 2018-2019 school year, Student ran away from home, and stopped coming to school.

Mother claimed at hearing that Ms. Pico was not truthful when she testified that Student was happy at school, and not depressed. She surmised that Ms. Pico was concerned about keeping her job if she testified otherwise. Mother's testimony as to Ms. Pico's credibility was not persuasive or informative, in part because Mother was not present during that testimony, and because Ms. Pico was credible.

Manuela Venegas worked as Outreach Consultant for Lompoc Unified for twelve years. Her responsibilities included coordinating services between staff and families. She followed up with general education students with multiple absences or who were absent without permission. She verified home addresses when parents did not respond to communications from Lompoc Unified. She referred general education students to outside counseling and assisted them with applying for outside programs. Her responsibilities did not include referral for special education assessments and she had no specific training on the IDEA. If parents requested special education, she would refer them to school counselors.

Ms. Venegas generally knew Student because Student would occasionally visit Ms. Venegas during the school day. Ms. Venegas knew Mother from outside of the school setting. She was also familiar with the family, siblings, and deaths in the family. Student was always rational during her visits with Ms. Venegas. No one ever told Ms. Venegas Student could not do the work assigned to her. Ms. Venegas was concerned that Student's history of fighting, drug use, and resistance to school work were the result of Student never having dealt with the grief of being present when her father died.

Lomita High Principal Paul Bommersbach served in that position for seven years. He had no specific training in special education. His responsibilities included supervision of counselors and assistant principals. His responsibility also included ensuring that staff communicated with students and their families when staff suspected a student had unmet needs. Staff were responsible to find appropriate resources to help the student and family. Community resources included the Family Service Agency, and counseling for drug and alcohol addiction, also referred to as CADA. On campus, the school psychologist was primarily responsible with the assistant principal for following up when a student had a suspected mental health issue.

Mr. Bommersbach opined that if a child was unhappy, and that led to truancy and negative behaviors leading to failing grades, the high school used a truancy program to intervene. Staff would send a letter to the family, and then meet with the family and student study team. If those interventions were unsuccessful, an administrator would meet one on one with the student and family. The final step was to hold a Student Absence Review Board meeting, also known as SARB, to find out how to help a student.

The high school staff referred students for special education assessments if a parent requested assessments, or if a student study team or team of other staff referred the student for assessments. Mr. Bommersbach was not directly responsible for initiating the assessment process.

Mr. Bommersbach occasionally saw Student on the high school campus. During those times, he did not observe Student demonstrate emotional or physical actions that seemed out of ordinary compared to other students he dealt with. Student did not appear depressed or pervasively unhappy. The majority of the times he saw her she was with a boyfriend. When Mr. Bommersbach told Student to go to class, she would walk toward class without a verbal response.

## Winter Break 2019

Mother spoke to Ms. Venegas during the winter break. She told Ms. Venegas that Student ran away from home. She asked Ms. Venegas if anyone had seen Student, and what she could do about Student's truancy and fighting. Mother did not report to anyone at the high school at that time that Student was depressed or had a declining mood, that she ever received private counseling, or that she engaged in cutting herself.

Brother A went to the school two or three times during winter break and spoke to Ms. Venegas and Ms. Pico. He reported on one occasion he did not know where Student was. On another day, Student was at school and came into the room during Brother A's meeting. She went home with him but stayed only four days, until Mother attempted to transfer Student to another high school.

Brother A described Student to Ms. Venegas as a runaway and defiant at home. She did not come home at night and was using drugs. She went into her room when she was home and did not communicate. He was afraid she would become a victim of sex trafficking. Ms. Venegas recommended Brother A take Student to community based grief counseling to deal with her depression regarding past family deaths.

Brother A asked Ms. Venegas for the names of Student's teachers to get homework assignments for her. He emailed all of Student's teachers from the fall semester of the 2018-2019 school year. Student's teachers reported to Brother A that Student was a very nice young woman. She seemed bright and smart, but she was not performing well. They reported Student did well in class when she participated, but often appeared uninterested in participating.

Brother A spoke with Ms. Pico twice during winter break of 2018. He expressed his frustration at Student's situation, and that the school did nothing to help her. He told Ms. Pico he felt there had to be an underlying cause other than laziness to explain Student's behavior. He followed up with an email to Ms. Pico on December 13, 2018,

asking her for after school study programs or Saturday study groups, to help Student recover credits. He advised Ms. Pico that he was trying to save what grades Student could improve on before “it was too late.”

At hearing, Brother A described Student as increasingly depressed, rebellious, lashing out, and screaming. She swore, was disrespectful, and regularly left school. He felt Student had bigger problems than were typical for a teenager. Student told Brother A once in December 2018 that she was having a bad time. When he asked her what was happening, she refused to respond other than to tell him that he would not understand.

Mr. Bommersbach had one interaction with Student’s family in December 2018. He went to Ms. Pico’s office on the day Brother A was at school, to say hello to Brother A, whom he knew from past encounters. He understood Brother A was there to help with the family. He saw Student, but did not speak to her. Nothing about her behavior or presentation on that day suggested to him that she was unhappy or depressed. Nothing he heard or saw triggered Mr. Bommersbach to suspect Student had a possible disability and required assessments for special education.

Other than the one communication with Brother A, Mr. Bommersbach never had any communication with the family about concerns regarding Student. He never heard anything from the family about events happening to Student outside of school that may have impacted her attendance or behavior at school.

#### Spring 2019 Semester

Student did not return to live with her family on a regular basis in the first three to four months of 2019. Her family was evicted from their home. Student was reportedly involved in sex trafficking. She only returned to where the family was staying periodically and only for a few hours. She periodically attended school. She was suspended in February 2019 for marijuana possession.

When Student came to the school site, she did not want to be in class. She told

Ms. Huyck home issues were interfering with her ability to do well at school, although she did not provide specifics to Ms. Huyck. She never shared anything during the first three months of 2019 that suggested to Ms. Huyck that she was depressed or anxious. Student never asked her for counseling or other support. Mother never asked Ms. Huyck to provide counseling at school.

On March 20, 2019, Lompoc High School notified Mother and Student that a SARB meeting was scheduled for Student and two younger siblings on March 27, 2019. At that time, Student had attended seventy-nine days of school out of a possible one hundred and twenty-four days. She had twenty-six and six tenths total days of unexcused absences, and two hundred total tardies for the school year. Two of Student's teachers reported to the SARB board that Student usually reported to class late and only performed superficially. One teacher reported that Student was capable of passing if she attended class on time and regularly.

Mother and Student's attorney attended the SARB meeting. Student did not attend. The SARB board reported Student received referrals for counseling for alcohol and drug addiction, general counseling, and alternative educational programs. She refused all offers of help. Student's attorney recommended special education assessments.

Mother refused to sign a SARB contract. Student's case was referred for probation. The SARB board recommended that Mother contact and retain outside counseling services for Student and attend school meetings. Lompoc High School agreed to refer Student to a student study team. Student's attorney wrote to Lompoc Unified on the same day requesting independent educational evaluations. On April 1, 2019, Student was reported as a missing person by the Lompoc Police Department.

After the SARB meeting, when Student came to school, Ms. Huyck counseled Student to obtain outside services from Coast Valley, an entity mandated by her post-

SARB probation. However, Student did not do so. Ms. Huyck also referred Student to CADA counseling for alcohol and drug addiction, which Student also did not attend. Ms. Huyck opined Student's behaviors were caused by drug use, the use of which Student admitted to Ms. Huyck in spring 2019.

Special Education Director Ms. Ravalin testified at hearing. She held a master's degree in Educational Leadership. She began working for Lompoc Unified in 2016. During her 34 years in public education, she also worked as a special education director and teacher in other districts. Ms. Ravalin's duties included oversight of the special education program and providing training for special education teams. She coordinated suicide and risk assessments for students. She was the direct supervisor of nurses and health services. She evaluated the staff she supervised, including school psychologists and special education coordinators. Based upon her education and experience, her testimony was credible and given great weight.

Ms. Ravalin's duties included arranging for training of staff on the duty to assess. School psychologists received some training regarding those duties in the spring of 2019. In addition, legal counsel provided training for all district administrators regarding the IEP process, child find, and duty to assess. Ms. Ravalin recalled the last training for administrators was in August 2017, and some teachers attended the training.

Ms. Ravalin first became aware of Mother's attorney's request for assessments for Student after the SARB hearing. She contacted school psychologist Dr. Michael Shaf to initiate the assessment process. She opined that, whenever anyone raises a concern that a student has a suspected disability, Lompoc Unified's protocol is to assess. She never received a request from anyone within Lompoc Unified or Student's family for assessments for Student before learning about the assessment request at the SARB meeting.

Ms. Ravalin opined that Mother was well aware of Student's rights under the IDEA

and she could have, but never did, request services for Student before the SARB hearing. Ms. Ravalin had more than a dozen phone conversations and two to three face to face conversations with Mother about her other children. Mother first brought up Student's name to her in spring 2019, after Student got into fight at school relating to defending her younger sister.

Most of Ms. Ravalin's conversations with Mother regarding the younger sibling lasted forty-five minutes to hour and a half. Those conversations included questions, concerns, and complaints about staff. Mother was given procedural safeguards at IEP meetings and manifestation meetings. She received prior written notice regarding requests for the younger sibling, before attending Student's SARB hearing.

Ms. Ravalin had no concern, given these interactions, that Mother knew she could request assessments for special education eligibility if she wanted. Mother frequently requested support or services from the school district for her other children.

School psychologist Dr. Michael Shaf testified at hearing. He completed his doctoral degree in school psychology. He held a bachelor's degree in pre-professional studies and a master's degree in school psychology. He obtained his California credential as a school psychologist in 2007. He had served as school psychologist at Lompoc High School for twelve years at the time of his testimony.

Dr. Shaf's duties as a school psychologist included assessments of students with disabilities. He also counseled students who had an IEP. He consulted with teachers, staff, and parents as needed, to provide feedback for parents. He provided recommendations for universal interventions and accommodations for teachers. Although he was not a required first contact, administrators and counselors would come to him if they had concerns about students who could potentially benefit from special education. Based on his education and experience, in combination with his presentation at hearing, Dr. Shaf's testimony was credible and persuasive.

Dr. Shaf first became aware of Student through an email after the SARB meeting. Student's name was not one that came up with staff at the high school regarding maladaptive behaviors. Dr. Shaf called Mother on April 3, 2019, to discuss development of an assessment plan. She told him she would call him back, but never did so. He developed an assessment plan without her input, including multidisciplinary areas for assessment.

On April 5, 2019, Lompoc Unified sent Mother an assessment packet with a cover letter from Dr. Shaf. The packet included an assessment plan for multidisciplinary special education assessments, a student background survey, health and developmental history, authorization for release of information, and notice of procedural safeguards. Mother did not respond. Dr. Shaf caused the assessment packet to be sent to Mother again on April 26, 2019. She did not respond. Lompoc Unified's attorney transmitted the assessment packet to Mother a third time through her attorney in mid-May 2019.

Dr. Shaf opined that the high school used universal interventions before referral to special education to ensure a student was educated in the least restrictive environment. Universal intervention came in three tiers. The first was general interventions such as phone calls to parents regarding attendance. Those were followed up by letters and meetings. The second tier was more intensive interaction, sometimes including SARB. The third tier involved the most intensive interventions, and were commonly used for approximately the top five percent of students with attendance issues.

He opined that two or three fights in a semester would trigger him to expect administrative staff to talk to him about possibly assessing that child. He had no recollection that anyone ever contacted him before the post-SARB email about Student or her challenges at school. At the time he first reviewed Student's records in early April 2019, he concluded the emotional challenges Student had faced in the past, including

the loss of a family member, in combination with her repeated fighting resulted in an “opportunity” to assess her to find out the cause of her behavior.

#### Independent Evaluation – May 2019

In May 2019, after the complaint was filed, Student retained clinical psychologist Dr. Gary Katz to perform an independent psychological evaluation. Dr. Katz’s educational background did not include any formal training or certification as an educator or educational psychologist. He documented his findings in a written report. No one from Lompoc Unified spoke to him during his testing, or reviewed his report until shortly before this hearing.

Dr. Katz reviewed Student’s cumulative school file, including grade reports and disciplinary records. He interviewed Mother. He spent approximately ten hours in mid-May 2019 assessing Student in a private office. Student cooperated during the assessment. His testimony was credible to the extent it was relevant.

Dr. Katz learned that, sometime beginning in the winter of 2018, Student became homeless, a runaway, and a victim of sex trafficking. She used a variety of drugs ranging from marijuana to methamphetamines. He had her blood tested before he assessed her and she was reportedly free of any recent drug use.

Dr. Katz opined at hearing that Student’s pattern of escalating violent fights at school and her truancy raised a question in his mind as to why Student behaved this way. He opined that two possible reasons for Student’s history of violence and drug use were social maladjustment, which was not a disability, or emotional disturbance, which was a disability. He opined that assessments would have helped determine whether Student had one or the other of those diagnoses. He did not offer a clear opinion as to when he thought the school district should have initiated assessments. He opined on Student’s struggles with math. Although he reached conclusions as to diagnoses in his report, his reported diagnoses carried minimal weight as to the issues in this case,

because an IEP team had not yet reviewed his recommendations and conclusions.

Dr. Katz was concerned about Student's safety and wellbeing. He recommended she live in a therapeutic setting with intense counseling to help her rehabilitate. He also recommended school-based assessments be conducted in a safe setting after Student had been placed for at least eight weeks to ensure she was drug free and emotionally and physically stable.

Dr. Shaf reviewed Dr. Katz's assessment report in preparation for hearing. He learned for the first time from the report that Student had recently become involved in sex trafficking. He opined that if Lompoc High School administrators had known about the trafficking they would have come to him for advice and further action.

Dr. Shaf was not concerned that grade retention was a motivator for a special education assessment. However, he acknowledged that Student had red flags in her records that should have been followed up. He was concerned about the combination of violent fights at school, Student's emotional challenges including her father's passing, and her engagement in trafficking. His general impression was that her history suggested she should have been assessed to find services to help her. Dr. Shaf opined that he should have been consulted if general education interventions were unsuccessful.

Mother signed the school district's assessment plan on June 29, 2019, after the end of the school year. Although Dr. Shaf was willing to assess Student during the summer break, Lompoc Unified was waiting until the start of the 2019-2020 school year when staff returned from summer break to find a female assessor because Student's attorney had requested a female assessor. Lompoc Unified also required permission from the coordinator of the safe house where the family resided for assessors to access Student at that location.

## LEGAL AUTHORITIES AND CONCLUSIONS

### INTRODUCTION – USE OF LEGAL CONCEPTS THROUGHOUT THE DECISION

In this discussion, unless otherwise indicated, legal citations are incorporated into each issue's conclusion. All references to the Code of Federal Regulations are to the 2006 version.

### LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
2. to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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 Individualized Education Program, commonly called an IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and

services].)

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

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

In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000] (*Endrew F.*), the Supreme Court held that a child's "educational program must be appropriately ambitious in light of his circumstances." "Every child should have a chance to meet challenging objectives." (*Ibid.*) *Endrew F.* explained that "this standard is markedly more demanding than the 'merely more than de minimis' test. The IDEA demands more. It requires an educational program reasonably calculated to enable a

child to make progress appropriate in light of the child's circumstances." (*Id.* at pp. 1000-1001.) The Court noted 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." (*Id.* at p.999.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.* The Court acknowledged that Congress had not materially changed the statutory definition of a FAPE since *Rowley* was decided and so declined to change the definition itself. The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Generally, a party is limited to filing a request for due process two years from the date the person knew or should have known of the facts which form the basis for the request for a due process hearing. (20 U.S.C. § 1415(f)(3)(C), (D).)

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this consolidated matter, Student has the burden of proof on Student's issues and Lompoc Unified has the burden of proof on its issue.

#### STUDENT'S ISSUE ONE

Student contends Lompoc Unified denied her a FAPE by failing to address her

need for behavior support during the two-year statutory period. Lompoc Unified contends Student was not eligible for special education during that time frame, and therefore it had no duty under the IDEA to address her behavioral needs beyond what it would do for a general education student.

Student did not meet her burden of proof on Issue One. Lompoc Unified's duty to offer and provide a FAPE, including related services in the area of behavior support, arises under the IDEA where a child has been assessed in all areas of suspected need and an IEP team has found the child eligible as a student with a disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) An IEP team must then evaluate when developing an IEP what related services are appropriate to address the student's academic, developmental and functional needs. as impacted by the student's strengths, parental concerns, assessment results, and academic, developmental and functional needs. (Ed. Code, § 56341.1, subd. (a).)

Here, Lompoc Unified had no actual knowledge during the statutory period, without information from assessments and an IEP team determination, that Student had a disability qualifying her for eligibility under the IDEA for related services in the area of behavior support. Student was not assessed and not considered eligible for special education at any time between April 26, 2017, and April 26, 2019.

Lompoc Unified had no duty under the IDEA to provide related services in the area of behavioral support to Student by way of an IEP between April 26, 2017, and April 26, 2019, during the two years before the complaint was filed. Student did not prove that, during the two-year statutory period, Lompoc Unified denied her a FAPE or caused her to be deprived of educational benefit under the IDEA by failing to provide behavioral services.

## STUDENT'S ISSUE TWO

Student contends Lompoc Unified failed to assess Student in all areas of

suspected disability during the two years before the complaint was filed. Student argues her history of discipline, violent fights, and her multiple incidents of truancy resulting in failing grades put Lompoc Unified on notice that she may have a suspected disability related to her mental health that impacted her access to her education and possible eligibility for special education.

Lompoc Unified contends it had no reason to suspect Student had a disability in any area of eligibility requiring special education supports and services during the two-year statutory period. Lompoc Unified argues Student's behavior at school, including fights, truancy, and her poor grades, were typical of students her age. Lompoc contends Student was cheerful at school when she interacted with staff. She never expressed signs or concerns of depression to school staff. No one ever requested an assessment for Student before March 27, 2019. Lompoc contends it could not assess Student before April 26, 2019, because Parent did not give permission to assess Student before the complaint was filed.

A disability is suspected, and a child must be assessed, when a school district has notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21 (*Timothy O.*)). In California, the term "assessment" has the same meaning as the term "evaluation" in the IDEA. (Ed. Code, § 56302.5.)

Notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 13 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].) A child should not have to "fail a course or be retained in a grade" in order to be considered for special education and related services. (*Assistance to States for the Education of Children with Disabilities and Preschool Grants for*

*Children with Disabilities*, 71 Fed. Reg. 46540, 46580 (Aug. 14, 2006).)

Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted, by qualified persons in accordance with testing requirements set forth in Education Code section 56320 subds. (a) through (i). (Ed. Code §§ 56320 & 56322.)

All referrals for special education and related services shall initiate the assessment process and shall be documented. (20 C.C.R. § 3021.) Once a child has been referred for an initial assessment to determine whether the child is an individual with exceptional needs and to determine the educational needs of the child, these determinations shall be made, and an IEP meeting shall occur, within 60 days of receiving parental consent for the assessment. (Ed. Code § 56302.1.)

In order to assess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, §56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(l); Ed. Code, § 56321, subd. (a).) The assessment plan must, among other requirements, be understandable to the student, explain the assessments that the district proposes to conduct, and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(l) through (4).)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that particular disability or disorder. (See *Timothy O.*, *supra*, 822 F.3d at p. 1119). The Ninth Circuit Court of Appeals in *Timothy O.* held a school

district's failure to appropriately assess a child for autism resulted in substantially hindering parents' ability to participate in the child's educational program. Its failure seriously deprived the parents, teachers, and district staff of the information necessary to develop an appropriate educational program with appropriate supports and services for the child. (*Id.*) A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation:

- impeded the child's right to a FAPE;
- significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Student met her burden of proof on Issue Two. Dr. Shaf credibly opined that, when he was finally made aware of Student's behavior history in April 2019, her history raised concerns. Student's numerous violent fights combined with repeated truancy raised the question of why Student was behaving that way. However, he was not specific as to how far back during the statutory period the school district should have acted on that information.

Dr. Katz concurred with Dr. Shaf that the cumulative nature of Student's history of truanancies, tardiness, drug use, and fighting should have triggered an inquiry by Lompoc Unified as to the reasons for her behavior. However, he also did not specifically opine when the cumulative impact of Student's behavior should have triggered the need for an assessment.

Lompoc Unified argued that, because Dr. Shaf did not know about Student's repeated violent fights and truanancies until early April 2019, the school district had no

actual notice of a suspected disability. The argument was not persuasive.

As a team, the school psychologist along with the administrator and school counselor should have considered Student's pattern of discipline and consulted with Mother to determine whether assessing Student was appropriate. Mr. Brown and Ms. Pico were experienced administrators. Both had, or should have had, sufficient training to recognize signs that would have prompted them to confer with their respective school psychologist, school counselor, teachers, and Mother regarding Student's behavior and truancy. Both knew Student, interacted with her regularly, and had access to her cumulative file which included numerous records regarding grades, disciplinary suspensions and behavior contracts. Both interacted with Mother and Brothers A and B, who asked more than once for help with reported bullying because of its impact on Student's attendance and failing performance at school.

Even though Ms. Pico opined Student was cheerful when she interacted with Student, she also knew Student engaged in fights involving other students. She opined these fights were typical of young adults her age. She knew Student had been disciplined for using marijuana multiple times at school. She knew in the fall of 2018 that Student had multiple trancies on her record. She knew Student did not attend class, even when she was on campus, often with her boyfriend. She knew or should have known Student's grades were continually failing.

In December 2018, Brother A spoke with Ms. Venegas and Ms. Pico, expressing his concern about Student's failing grades, trancies, and fighting at school. He asked for suggestions. Ms. Venegas recommended Student seek grief counseling for depression related to past family traumas. Ms. Venegas's concern that Student might be reacting to a past trauma, in combination with requests for help by family members, should have triggered her to consult with Ms. Pico, Ms. Ropitor, or Dr. Shaf, as to whether her concerns required further investigation by the school district.

All of the preceding factors in combination and separately should have raised concerns by Lompoc Unified administrators *at least* by December 2018 that Student may have a disability that interfered with her ability to access her education. These factors all suggested that Student was declining and may have had a disability in the area of emotional disturbance. Administrators should have responded promptly to the family's concerns in December 2018 by, at the very least, holding a meeting with Mother, Dr. Shaf, and possibly Student's teachers to discuss whether Student had any social emotional needs that might require assessment. Lompoc Unified had enough facts to suspect Student may have a disability in the area of emotional disturbance.

Lompoc Unified should have offered Mother an assessment plan for Student after the end of 2018-2019 winter break. If Mother consented, and Student made herself available for assessments, an IEP team that included Mother could have then met to discuss assessment results, and determine whether Student would have qualified for supports and services under the IDEA. Yet, Lompoc Unified did not send an assessment plan to Mother until early April, 2019, after a SARB meeting, in response to her attorney's request.

Dr. Katz opined at hearing that his academic testing in May 2019 suggested weaknesses in math. However, he was not a school psychologist or a credentialed teacher. His independent evaluation and conclusions had limited relevance because his assessment was performed after the complaint was filed, and an IEP team never reviewed the report. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) However, to the extent his opinions were based on his review of Student's past educational records, those records suggested that Lompoc Unified should have considered academic assessments to rule out a specific learning disability, when considered in combination with failing grades, incomplete school work, and Student's avoidance of classes by being late or spending time outside of class with her boyfriend.

Lompoc Unified procedurally violated the IDEA by failing to assess Student in all areas of suspected need. By failing to do so, Lompoc Unified denied Student a FAPE by significantly depriving Mother of the opportunity to participate in an IEP meeting in a meaningful way with all necessary information available to her. This Decision does not decide whether or not the procedural violation deprived Student of educational benefit or impeded her right to a FAPE under the IDEA.

### LOMPOC'S ISSUE

Lompoc Unified contends that it had no obligation under the IDEA to publicly fund an independent educational evaluation until it assessed Student, an IEP team considered the assessment results, and Parent disagreed with the assessment. Student's written request for independent educational evaluations came after Student's attorney raised the issue of assessments at the SARB hearing and after the SARB hearing ended. Mother did not sign the assessment plan, which Lompoc Unified provided three times in the six weeks after her attorney's request. Lompoc Unified argues that Mother did not sign the assessment plan until after the filing of its complaint in this matter, which prevented it from assessing and holding an IEP meeting prior to hearing.

Student contends she is entitled to independent evaluations because Lompoc Unified waited almost three months after her March 27, 2019 request for those evaluations before filing its due process complaint. She argues that time period was excessive.

The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an independent evaluation at public expense. A parent has the right to an independent evaluation at public expense if the parent disagrees with an evaluation by the school district. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § § 300.502 (a)(1) and (b)(1); Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).)

Lompoc Unified met its burden of proof on this issue. The first time Mother

requested an independent educational evaluation, or any assessment, was through her counsel on March 27, 2019. In her letter, counsel requested independent evaluations. She did not ask for school district assessments. However, Lompoc Unified had not yet conducted any assessments of Student, and thus no assessments existed with which Parent could disagree, justifying consideration of independent evaluations. Lompoc Unified declined the request for independent evaluations.

Student's argument that Lompoc Unified unreasonably delayed filing its complaint was not persuasive. Mother had three opportunities within the first six weeks after her March 27, 2019 request for independent evaluations to sign an assessment plan for school district assessments. Mother did not respond until June 29, 2019. However, Student was available to Dr. Katz for a private independent assessment in mid-May 2019, almost simultaneously with Lompoc Unified's third attempt to gain Mother's consent to its assessment plan.

Student offered no authority that supported her argument that Lompoc Unified had a legal duty under the IDEA to fund an independent educational evaluation up to the time it filed its complaint in June 2019. Student also did not request an independent educational evaluation at public expense as a remedy in her complaint. Lompoc Unified was not obligated to fund independent educational evaluations for Student as of June 2019.

## REMEDIES

Student prevailed on Student's Issue Two. As a remedy, Student requested in her complaint a placement in a residential treatment facility, compensatory education, and behavioral services. In her closing brief, she limited her requested remedy to a residential treatment center. Lompoc Unified prevailed on its only issue. Lompoc Unified sought a declaratory order which is granted by this Decision.

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE

denials. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) The purpose of the IDEA is to provide students with disabilities "a free appropriate public education which emphasizes special education and related services to meet their unique needs." (*Burlington, supra*, 471 U.S. 359, 374.) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

#### REMEDY - FAILURE TO ASSESS

Here, Student requested as a remedy for the procedural violation a publicly funded placement in residential treatment facility where she could be safely assessed. Dr. Katz opined Student had declined significantly since his assessments. Dr. Katz also opined Student could not be assessed unless she was in a safe controlled environment for at least eight weeks before testing began. She needed to stabilize emotionally and medically and feel safe. Dr. Katz recommended she remain residentially placed after assessments to ensure her emotional stability and recovery. Dr. Shaf agreed he could assess during the summer and in a residential facility, if necessary.

An analysis of whether a residential placement is an appropriate remedy must focus on whether the placement was necessary to meet the child's educational needs when the child was eligible for special education. (*Clovis Unified School Dist. v. California Office of Administrative Hearings* (9th Cir.1990) 903 F.2d 635, 643.) If the placement is a response to medical, social, or emotional problems apart from the learning process, then it cannot be considered necessary under the IDEA. (*Ibid., accord Ashland School Dist. v. Parents of Student R.J.* (9th Cir.2009) 588 F.3d 1004, 1009.) A school district's

responsibility under the IDEA is to remedy the learning related symptoms of a disability, not to treat other, non-learning related symptoms. (*Forest Grove School Dist. v. T.A.* (9th Cir. 2011) 638 F.3d 1234, 1238-1239.)

Here, Lompoc Unified was not legally obligated to place and fund Student at a residential treatment center, or any other placement, even for diagnostic purposes. An IEP team had not determined that she had a learning related symptom of a disability. She was not eligible for special education services and supports during the relevant time frame addressed by this Decision. Student offered no authority to the contrary. Therefore, Student's request is denied.

Lompoc Unified argued that a district's procedural violation does not qualify an otherwise ineligible student for any relief under the IDEA. The school district relied on an OAH decision in *Parent on Behalf of Student v. Hanford Elementary School Dist.*, OAH Case Number 2018100372. The ALJ in that case, relying in part on *R.B. v. Napa Valley Unified Sch. Dist.*, (9<sup>th</sup> Cir. 2007) 496 F.3d 932, 942, denied a remedy to a student for a procedural violation, after finding that the student did not prove eligibility. The Ninth Circuit in *R.B.* held that a district's procedural violation cannot qualify an otherwise ineligible student for IDEA relief and constituted harmless error where a student was substantively ineligible for IDEA relief. Both cases are factually distinguishable from this case, because they addressed situations where eligibility was a substantive issue decided by the hearing officer. Eligibility was not decided one way or the other in this case.

Here, Student is entitled to a remedy because Lompoc Unified's denial of FAPE impeded Mother's right to participate. The appropriate equitable remedy for Lompoc Unified's failure to assess Student is an order compelling it to assess Student in all areas of suspected need. However, Lompoc Unified has already agreed to assess.

Mother consented to Lompoc Unified's Assessment Plan on June 29, 2019, after the school year ended. A school district has 60 days from the date it receives the signed

and consented to assessment plan, excluding days of school vacation in excess of five days and days that school is not in session, to complete the assessment and convene an IEP team meeting to discuss the assessment results. (Ed. Code, §§ 56321, subd. (a), (c)(4), 56302.1).) Student's attorney made specific requests for accommodations during testing that Lompoc Unified could not fulfill until the school year started in mid-August 2019.

As an equitable remedy, this Decision orders that Lompoc Unified shall assess Student according to the assessment plan signed by Mother on June 29, 2019. The assessments shall take place within Lompoc Unified's geographic boundaries unless Mother and Lompoc Unified mutually agree on an alternate location. Lompoc Unified shall not be bound by the statutory sixty-day timeline for assessments, unless Student cooperates and Mother makes her available for assessments.

Lompoc Unified shall complete the assessments and hold an IEP meeting sixty days from the first day Student makes herself available for assessment. If Student does not cooperate with or is not available for assessments, by no fault of Lompoc Unified, the days on which she is unavailable shall not count toward the sixty-day timeline.

The IEP team shall consider Dr. Katz's report. Providing that Lompoc Unified has completed its own assessments, Lompoc Unified shall pay for up to six hours of Dr. Katz's time, at his usual and customary rate for attending IEPs, to attend Student's IEP meeting to discuss all assessments.

#### REMEDY - COMPENSATORY EDUCATION

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d. at p. 1496.) This authority extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11, 129 S.Ct. 2484.) These are equitable remedies that courts and hearing officers may employ to craft "appropriate relief" for a party. (*Puyallup, supra*, at p. 1496.) A compensatory education award need not provide "day-for-day

compensation.” (*Id.* at p. 1497.) An award compensating for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific. (*Ibid.*)

Student’s request for behavior supports at school and compensatory education is not supported by any evidence. She offered no authority that she should be entitled to those remedies in the absence of special education eligibility and or assessment results that determined what her needs were. She offered no evidence as to what kind of supports and compensatory education she should have, or how much. Dr. Katz’s conclusions about Student’s diagnoses and recommended treatment were not relevant to these requested remedies. An IEP team had not yet considered his report. (*Adams, supra*, 195 F.3d at p. 1149). Accordingly, Student’s request for compensatory education and behavioral services are denied.

#### REMEDY - STAFF TRAINING

Staff training is an appropriate compensatory remedy in this case. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025,1034.) Appropriate relief considering the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.*; see also, *Student v. Reed Union School Dist.* (Cal. SEA 2008) Cal. Ofc. Admin. Hrngs. Case No. 2008080580 [requiring training on predetermination and parental participation in IEP’s].)

Lompoc Unified staff, including administrators, counselors, general staff, and teachers had interactions with Student and her family before and during the relevant statutory period. Mr. Bommersbach, Mr. Brown, Ms. Venegas, Ms. Pico, and Ms. Huyck all testified they interacted numerous times with Student during the school day. Mother testified she reported her concerns about Student being bullied several times and asked

for help. Brothers A and B both voiced concerns to school staff about Student's truancy and fighting and asked for help. Ms. Venegas knew and suspected Student was depressed in part due to deaths in the family and referred her to outside counseling. Dr. Shaf acknowledged that the cumulative nature of Student's truancies, falling grades, and fighting caused him concern when he first learned about Student in April 2019.

Ms. Ravalin arranged in the past for special education training for administrators, and her special education teams. Some teachers attended one training in 2017. General education teaching staff did not receive formal training, but instead used general education interventions such as the student study team process to address children who needed help.

None of Student's teachers expressed notable concerns to responsible administrators regarding Student's truancy and failing grades or her refusal to attend classes. The school staff's focus was on her fighting, drug use and truancy, without consideration that depression or other social emotional reasons may have prompted her behavior. School district staff relied on responses to intervention over the span of more than two years, instead of assessing Student after she consistently failed to make any notable progress at school.

Therefore, to ensure that all students and parents within Lompoc Unified receive the benefits contemplated under the IDEA, staff training in special education and IDEA procedures, including the proper process for referral for assessments and Child Find obligations is an appropriate remedy.

## ORDER

1. Lompoc Unified shall assess Student in accordance with the assessment plan signed by Mother on June 29, 2019.
  - a. The assessments shall take place within Lompoc Unified's geographic boundaries unless Mother and Lompoc Unified mutually agree on an alternate

location. Lompoc Unified shall not be bound by the statutory sixty-day timeline for assessments, unless Student cooperates and Mother makes her available for assessments.

- b. Lompoc Unified shall complete the assessments and hold an IEP meeting sixty days from the first day Student makes herself available for assessment.
- c. If Student does not cooperate with or is not available for assessments, by no fault of Lompoc Unified, the days on which she is unavailable shall not count toward the sixty-day timeline.
- d. The IEP team shall consider Dr. Katz's report. Providing Lompoc Unified has completed its assessments, it shall pay for up to six hours of Dr. Katz's time at his usual and customary rate for attending IEP's to attend the IEP meeting to discuss all assessments.

2. Lompoc Unified shall, by no later than the end of the first semester of the 2019-2020 school year, provide 3 hours of training to its staff at Lompoc Valley Middle School and Lompoc High School.

- a. Trainees shall include all general education teaching staff and paraprofessionals or aides, student study team members, school administrators including principals and vice principals, school psychologists, outreach consultants, counselors, and any other staff who work with parents and students on students' educational programs.
- b. The training shall focus on the general principles of the IDEA, including child find procedures, the special education assessment process under the IDEA, and the rights of parents to participate in a meaningful way in determining whether the child is eligible for special education.
- c. Qualified professionals who are either employed by or contracted with Lompoc Unified, or a private provider selected by the school district, or its

legal counsel, shall provide the training.

- d. Lompoc Unified shall maintain a sign-in sheet for the training, listing the topics presented and time spent on each topic. The sign-in sheet shall be maintained by Lompoc Unified. Lompoc Unified shall make the sign-in sheet available to Mother for inspection, upon her reasonable request, for the purpose of confirming compliance with this Order.
- e. This Order does not preclude Lompoc Unified from offering this training to staff at other schools within the school district.

3. Lompoc Unified was not required during the two-year statutory period to publicly fund an independent educational evaluation of Student in any area of suspected disability.

4. All other claims for 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. Student prevailed on Student's Issue Two. Lompoc Unified prevailed on its issue, and on Student's Issue One.

## RIGHT TO APPEAL

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

DATED: August 22, 2019

/S/

Adrienne L. Krikorian

Office of Administrative Hearing